Adler Restructuring Plan Set Aside

Reflections on the English Court of Appeal's Landmark Ruling

February 2024

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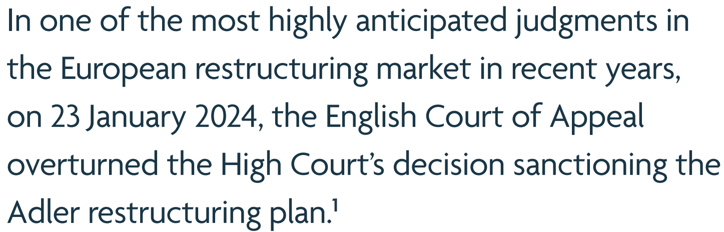


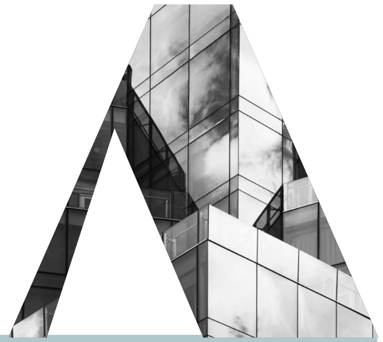
In one of the most highly anticipated judgments in the European restructuring market in recent years, on 23 January 2024, the English Court of Appeal overturned the High Court's decision sanctioning the Adler restructuring plan.[1]

This is the first Court of Appeal judgment to consider a restructuring plan and the scope of the cross-class cram down power following the introduction of restructuring plans in 2020. It is also the first Court of Appeal decision to set aside an English in-court restructuring sanctioned at first instance. Akin advised the ad hoc group of noteholders that opposed the plan.

In its landmark judgment, the Court of Appeal clarifies how the Court should exercise its discretion when sanctioning a restructuring plan, particularly where cross-class cram down is sought. It addresses (among other things) the *pari passu* principle and justifiable (or not) deviations from it, as well as the Court's expectations on procedure and timetable.

1 *Re AGPS Bondco PLC* [2023] EWHC 916 (Ch)

Setting the Scene: The Adler Group and its Restructuring Plan



The Adler Group is one of the largest residential landlords and property developers in Germany. Its capital structure is extensive, including €3.2 billion of German law-governed unsecured notes (the Notes). The Notes were originally issued by the Luxembourg-incorporated parent company of the group in six series, with maturity dates ranging from 2024 to 2029.

Since late 2021, the group suffered a number of challenges, from macroeconomic headwinds to difficulties obtaining an audit, exacerbated by the negative impact of a short seller report. Against that backdrop, and faced with an imminent liquidity shortfall due to debt maturing in April 2023 at its Adler RE subsidiary, in the Autumn of 2022, the group commenced restructuring negotiations with its creditors. The group's proposal was first put to holders of the Notes in November 2022, conducted as a consent solicitation under the German Bond Act which required the consent of over 75 per cent of each series of Notes. When the group did not obtain the necessary consent from the holders of the 2029 Notes, the group sought a different route to implement its proposed solution, pivoting to the English restructuring plan.

The English Restructuring Plan: A Reminder

When the restructuring plan was introduced in 2020, it was intended to be a flexible procedure, designed (in part) to address the absence of a cross-class cram down mechanism in the scheme of arrangement regime.

As with a scheme, a restructuring plan follows a three-stage process: (i) an initial court hearing (the convening hearing) at which the Court considers whether it has jurisdiction and (if so) whether to convene the proposed meeting(s) of creditors (and/or members) to vote on the plan; (ii) the meeting(s) of stakeholders to vote on the plan; and (iii) a second court hearing (the sanction hearing) at which the Court decides whether to exercise its discretion to sanction the plan.

The approval threshold for a class of creditors is 75 per cent by value of those who vote at the meeting. If one or more of the classes does not approve the plan, the Court can only exercise the cross-class cram down power and sanction the plan if it is satisfied that (i) none of the members of the dissenting class would be worse off under the plan than they would be in the relevant alternative (the so-called **No Worse**

Off Test); and (ii) at least one class who would receive a payment or would have a genuine economic interest in the relevant alternative has voted in favour of the plan. In this context, the "relevant alternative" is what the Court considers would be most likely to occur if the plan were not sanctioned. In addition to the tests outlined above, the Court will only exercise its discretion to sanction the plan if it is satisfied that the plan is otherwise fair.

A German Group, but an English Plan

The group's operations were predominantly in Germany and the Notes issuer incorporated in Luxembourg. In order to launch a UK restructuring plan, the group relied on a pre-existing substitution mechanism in the Notes, purporting to replace the Luxembourg issuer with an English newco, AGPS BondCo Plc (**Newco**), which would propose the restructuring plan.

The plan sought to implement a proposal on materially the same terms as had been sought under the consent solicitation. In essence, the plan:

- Provided for €937.5 million of new money to be made available to the group, with first ranking security, to be used to fund repayment of Adler RE notes falling due in 2023 and 2024 and payment of fees to the new money providers. The new money was backstopped by certain lenders but was open for participation on a pro rata basis by all holders of the Notes.
- Extended the maturity date of the 2024 Notes to 2025, with those liabilities (and liabilities for a separate issuance of convertible notes) given second ranking security.
- Maintained the original maturity profiles of the other Notes (2025 – 2029), with those liabilities given third ranking security.
- Modified the negative pledge clauses of the Notes to permit the grant of the security.
- Switched cash-pay interest to payment-in-kind until July 2025.
- Allocated 22.5 per cent of the group's equity to the new money providers, but otherwise left the existing shareholders with their equity interests.

The plan was intended to facilitate a phased reduction in personnel and a liquidation of the group's assets such that all of the group's assets would have been sold by the end of 2027. It was not intended to facilitate the group continuing as a going concern in the long term.

Adler proposed that six classes vote on the plan, being one class for each series of Notes. The "relevant alternative" to the plan put forward by the group, which was not in dispute, was an immediate insolvency of Newco in England and other group entities in Germany and Luxembourg, in part due to the impending April 2023 maturity of the Adler RE debt. It was common ground between the parties that all the Notes would rank *pari passu* in an insolvency (i.e., that the risk of shortfall would be shared equally between these creditors with equivalent rights).

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Act I – The High Court

On 24 February 2023, the High Court duly convened the proposed creditor meetings. In doing so, it adjourned certain jurisdictional questions, which would usually be dealt with at the convening hearing stage, to the sanction hearing. At the creditor meetings, each class voted in favour of the plan except for the class of 2029 Notes: only 62 per cent of that class were supportive. With a dissenting class in the midst, the group asked the Court to exercise its cross-class cram down power to sanction the plan. An ad hoc group of the 2029 noteholders (the **2029 AHG**), represented by Akin, opposed sanction.

The Objections

The 2029 AHG challenged the sanction of the plan on a number of grounds, including:

No Worse Off Test: Adler's evidence was that, under the plan, all noteholders would be repaid in full, but that they would only recover 63 per cent of their claims in the relevant alternative. On this basis, they viewed the No Worse Off Test as satisfied. The 2029 AHG's evidence assessed the returns for their class under the plan to be closer to 10 per cent, on the basis that earlier dated series would be paid off in full leaving any deficit to be borne by the later dated notes, in particular the 2029 Notes. In the relevant alternative scenario, they anticipated they would recover 56 per cent of their claim meaning, in their view, the No Worse Off Test was not satisfied.

***Pari passu* – maturity**: Adler's position was that, given all Notes would be paid in full under the plan, they were therefore receiving *pari passu* treatment under the plan. The 2029 AHG, however, asserted that under the terms of the plan, there was a material—and unjustified—departure from the *pari passu* principle. The core of this argument was that the 2029 Notes, in retaining with their original maturity date, assumed a greater risk around repayment, when compared with their entitlement to a rateable distribution in the relevant alternative, which was not borne to the same extent by the earlier dated Notes.

***Pari passu* – ranking**: Adler argued that the higher ranking security given to the 2024 Notes was appropriate compensation given that the 2024 Notes were the only series whose original maturity date was being extended through the plan, to allow the group a period of "breathing room". The 2029 AHG objected to the differential ranking given to the 2024 Notes, on the basis that the justification for the difference in treatment (in circumstances in which the 2024 Notes would rank *pari passu* with the other Notes in the relevant alternative) was insufficient.

Distribution of benefits: Adler's position on equity retaining its existing stake was that, given that it anticipated a par recovery for noteholders under the plan, there was no requirement for any "restructuring surplus" (i.e., the value created or preserved by the plan) to be given to noteholders and that the existing equity should remain in place. The 2029 AHG argued that it was unfair for the existing shareholders to retain their equity in circumstances in which creditors were being compromised, and shareholders provided no support for the restructuring.

Issuer Substitution: Adler relied on an issuer substitution mechanism in the terms of the Notes to establish UK jurisdiction and launch a restructuring plan. The 2029 AHG asserted that, as a matter of German law, the issuer substitution clause (and therefore the Newco substitution) was invalid, and therefore the English Court did not have jurisdiction to sanction the plan.

The Outcome

The three-day Adler sanction hearing, which commenced on 3 April 2023, was the first fully contested valuation challenge of an English restructuring plan and was closely followed by lawyers and investors in the UK, Germany and elsewhere. Navigating an extremely compressed procedural timetable, experts were instructed by both parties, extensive evidence filed, factual and expert witnesses were cross-examined and, on each of the three days, the Court sat extended hours. Adler told the Court that it required a decision to be made on the plan by no later than 12 April 2023 to allow time to put

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the new money in place and for it to be used to repay the Adler RE 2023 notes, which matured on 27 April 2023. On 12 April 2023, Mr Justice Leech gave his decision to sanction the plan, with his written judgment following on 21 April 2023.

In sanctioning the plan, he found (among other things) that:

No Worse Off Test: This was satisfied because, on the balance of probabilities, all noteholders, including the 2029 noteholders, would be repaid in full under the plan.

***Pari passu* – maturity**: There was no deviation from the *pari passu* principle because the different maturity dates of the Notes under the plan reflected the pre-plan position and because it was likely that all noteholders would be repaid in full under the plan.

Although Leech J noted that Adler had provided no compelling reason for not harmonising the maturity dates of the Notes, he concluded that there was no need to enquire as to whether an alternative plan was feasible or likely, or any need for him to be satisfied that the plan proposed was the best or fairest plan.

***Pari passu* – ranking**: The elevation of (only) the 2024 Notes was commercially justified as they were the only series being asked to extend their original contractual maturity date.

Distribution of benefits: Although Leech J described the existing shareholders' retention of the equity as concerning, it was not reason enough to refuse sanction of the plan, particularly where that retention had been agreed by those most affected, namely the new money providers who would share in the post-restructuring equity.

Issuer substitution: The issuer substitution was valid as a matter of German law.

Rationality test: The plan satisfied the "rationality test", i.e., whether, in relation to each class, the plan is one that "*an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve*".

Weight accorded to majority votes: It was "*appropriate*" to "*give effect to the votes cast by the majority of the Plan Creditors in all classes including the 2029 Notes*" who voted by 62 per cent in the class of 2029 Notes.

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Act II – The Court of Appeal

The Court of Appeal had not previously been asked to consider any restructuring plan cases: Adler was the first of its kind. Indeed, it was rare for any scheme cases to come before the Court of Appeal at all. Despite the High Court refusing to grant leave to appeal, the Court of Appeal gave permission to appeal on all grounds in May 2023. The appeal was heard over three days in October 2023.

The Arguments on Appeal

The 2029 AHG's appeal focussed on the following key grounds:

Pari passu: The judge was wrong to conclude that the plan did not deviate from the *pari passu* principle. The impact of such deviation was borne to a greater extent by the 2029 Notes, and no good or proper justification had been provided for this deviation.

Discretion - rationality: The judge erred in applying the rationality test in considering whether to exercise discretion to sanction the plan and impose a cross-class cram down.

Discretion – a fairer plan: Further, as part of assessing whether the distribution of benefits under the plan was fair, the judge erred in determining that he was not required to consider whether a better or fairer plan would have been possible.

Factors irrelevant to discretion: The judge placed undue weight on both the degree of support in the consenting classes, and the (bare) majority vote in favour of the plan in the 2029 Notes class. Despite correctly stating that there is no presumption in favour of sanction where jurisdictional requirements, including the No Worse Off Test, are satisfied, he wrongly considered the satisfaction of the No Worse Off Test as a factor to be considered in the exercise of his discretion to sanction.

The Court of Appeal's Judgment

The Court of Appeal unanimously overturned the High Court's decision and set aside the sanction of the restructuring plan.

In a judgment delivered by Lord Justice Snowden, aspects of the law on restructuring plans were restated and clarified; focussing primarily on the factors which will guide judges in exercising their

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discretion to sanction a plan involving cross-class cram down.

The principles that guide the Court's exercise of discretion in scheme cases are long established.[2] The fundamental question before the Court of Appeal was whether, and if so to what extent, these principles applied to restructuring plans, especially where a cross-class cram down is sought.

Unsurprisingly, given the similarity of schemes and restructuring plans, many of the same principles continue to apply wholesale. Where a cross-class cram down is attempted, the principle which the Court appeared to consider required the most significant degree of modification was the application of the limited "rationality test", which applies in schemes of arrangement, to a horizontal comparison of the relative treatment of creditors (or members, as the case may be).

The "Rationality Test" in Schemes of Arrangement

The question of whether it is "fair" to impose a scheme upon the dissenting minority within a class is answered by applying a limited rationality test to the majority vote within that class. The Court does not impose its own view of the commercial merits of the scheme, but asks a more limited question in relation to each class of whether the compromise or arrangement embodied in the scheme is one that "*an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.*" This is the "rationality test."

Where a scheme is proposed, the Court can draw comfort, in assessing whether the scheme is "fair" and in the interests of the classes concerned, from the fact that each class must necessarily have approved the proposal with a 75 per cent majority. Recognising that creditors are normally the best judges of their own interests, where an enhanced majority of creditors within a class have voted in favour of the scheme, that vote is likely to be a (very) good indication that what is proposed is rational and fair. The rationality test is therefore applied to the requisite majority vote as a sense-check.

The "Rationality Test" in Restructuring Plans

Applying the same logic, the Court of Appeal was clear that, where sanction of a plan is sought without cross-class cram down, the same principles of discretion and the equivalent application of the rationality test apply. Where cross-class cram down is invoked, a different approach is required.

At first instance, Mr Justice Leech effectively relied on the traditional scheme rationality test. Despite finding that overall support for a plan was "*not [an] important or decisive factor,*" Leech J accepted that he was ultimately persuaded to sanction the plan partly due to the creditors' overall majority votes in favour of the plan, including the 62 per cent of the 2029 Notes that voted in favour of the plan.

The Court of Appeal disagreed with this approach, noting that there can be no assumption that it is fair to impose the views of the majority upon a minority that, as is evident from being in a different class, is in a materially different commercial position ("*the fact that assenting classes have voted in favour of a plan for entirely understandable reasons tells you nothing about the fairness of imposing the plan*

2 See, for example, Snowden J (as he then was) in *Noble Group Limited* [2018] EWHC 2911 (Ch) at [178]-[179]

upon dissenting classes whose interests are different").[3] Rather, where cram down of a class (or classes) is sought, a modified approach to the rationality test must be applied as regards (i) the voting within the dissenting class, and (ii) the overall voting across the different classes; while the Court can have some regard for these factors, it cannot simply defer to inadequate majorities (i.e., those falling below the 75 per cent statutory threshold for approval). If the Court is to place any weight on the vote of the dissenting class(es), it must also consider why the plan may be in the commercial interests of that class.

Horizontal Comparison

So if the Court cannot simply apply the traditional rationality test to determine if it is fair to sanction a plan with cross-class cram down, what can it do?

The Court of Appeal took the view that, in those circumstances, a 'horizontal comparison' is required. A horizontal comparison compares "*the position of the class in question with the position of other creditors or classes of creditors (or members) if the restructuring goes ahead.*"[4] The Court is not generally required to make a horizontal comparison in a scheme case, as all classes will have approved what is proposed and in that way, it can be assumed that each class is content with the allocation of benefits. The position is different where cross-class cram down is proposed and a dissenting class is expressing dissatisfaction with the allocation of benefits.

When conducting a horizontal comparison in the case of differential treatment of creditors, the Court will need to determine if those differences are justified. The obvious reference point for a horizontal comparison is the relevant alternative, including the order of priority in that alternative. To simply look, however, at whether a creditor will be any worse off under the plan than in the relevant alternative is insufficient, as that simply reapplies and restates the No Worse Off Test. The Court will need to go

3 [141]
4 [149]

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further and inquire about how the restructuring surplus is allocated under the plan. Where the horizontal comparison shows that a plan allocates the benefits of a restructuring in a materially different way between the assenting and dissenting classes without justification, the Court of Appeal was clear that it would take a compelling reason to persuade the court to sanction the plan.

Pari Passu Treatment

In its decision, the Court of Appeal confirmed a principle which other schemes and restructuring plans had previously adopted, and that Leech J had also confirmed at first instance, that "*a departure from the principle of pari passu distribution of benefits of the restructuring is permissible and can be approved by the court provided that there is good reason or a proper basis for that departure.*"[5] The Court of Appeal considered that the relevant alternative is the appropriate framework for the Court to start from; and in the case of Adler that was an insolvency in which all the Notes ranked *pari passu*.

There were two key questions in connection with departure from the *pari passu* principle. The first related to the retaining of the sequential maturity dates under the plan. The second focussed on the senior ranking of the security given to the 2024 Notes.

At first instance, Leech J found that there was no departure from the *pari passu* principle (essentially on either basis) because (among other things) on the balance of probabilities the plan creditors, including the 2029 noteholders, were "likely" to be repaid in full under the plan.

5 [166]

6 [193]

The Court of Appeal concluded that satisfying the No Worse Off Test, on the balance of probabilities, was insufficient and that, in the circumstances, it did not mitigate the unfairness of the plan or address the underlying risk that the 2029 noteholders would not be repaid in full if the asset disposals under the plan failed to realise the estimated proceeds. The Court of Appeal also agreed with Leech J that Adler had failed to give a convincing commercial justification for retaining sequential maturity dates, but held that the judge was wrong to accept Adler's suggestion that preserving the staggered maturity dates of the Notes reflected the commercial bargain struck by the 2029 noteholders). Rather, the Court of Appeal found that the relevant bargain was that all outstanding Notes would rank *pari passu* in an insolvency, whereas in the wind-down plan that the group proposed, that bargain was not respected. As Snowden LJ noted, "*sequential payments to creditors from a potentially inadequate common fund of money are manifestly not the same as a rateable distribution of that fund.*"[6]

While the Court of Appeal did not outline a list of acceptable justifications for departing from the *pari passu* principle under a plan, it did note that (among other potentially legitimate justifications for departing from the order of priority, such as the payment of employees or essential trade creditors) provision by a creditor of some additional benefit, such as new money, may justify a departure from the order of priority or a proportionately enhanced share of the restructuring's benefits.

The Court of Appeal went on to find that the grant of priority to the 2024 Noteholders would have been a justified departure from the *pari*

passu principle. The deferral of the maturity date of the 2024 Notes was an additional accommodation or benefit given by the 2024 Noteholders to the group for the benefit of the plan creditors as a whole, and ensured that the group would not need to find the €400 million plus interest needed to repay the 2024 Notes on their (original) due date.

Fairness: A Better or Fairer Plan

It is settled law that, in a scheme context, the job of the court is not to enquire whether the scheme is the only or even the best proposal that could be put to creditors. The High Court adopted this approach, despite noting that no compelling reason had been provided for not harmonising the maturity dates of the Notes (which would have been a more equitable outcome).

Snowden LJ considered that, in the context of a cross-class cram down, the Court must necessarily consider whether a fairer or improved plan might have been available.[7] This marks a significant, albeit logical, departure from established scheme case law. In a scenario in which the relevant alternative is an insolvency and where creditor treatment does not entirely reflect that outcome in that insolvency, the company (including in negotiating the deal which will form the basis of the restructuring plan) and the Court should consider whether an outcome that more closely reflected the insolvency treatment could have been possible.

7 In doing so, the Court of Appeal affirmed the equivalent view expressed by Johnson J in *Great Annual Savings Co Ltd* [2023] Bus LR 1163 at [106] and *Houst Limited* [2022] EWHC 1941 (Ch) at [29]-[31]

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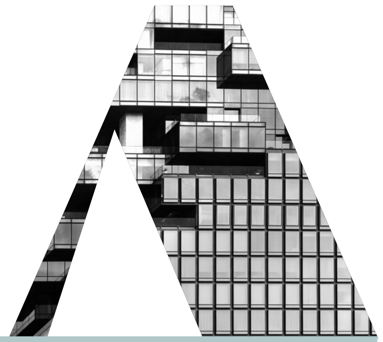
Key Practical Takeaways



We offer some thoughts below on the practical consequences of the judgment.

Don't Ransom the Court

Compressed timelines and "cliff edge" scenarios, where proposals have to be sanctioned or the Courts will be blamed for casting companies and creditors into the abyss of insolvency, have long been the bugbear of judges. Snowden LJ himself has previously warned, at first instance, against presenting the Court with a "*metaphorical 'gun to the head*'."[8] The introduction of cross-class cram down only increased the complexity of cases, but timelines had not adjusted accordingly.

It is no surprise, therefore, that timeline featured heavily in the Court of Appeal hearing and judgment. Snowden LJ noted the extremely compressed procedural timetable and the pressure that had been placed by Adler on Leech J to make his decision on sanction within five business days. Reflecting on these concerns, the Court of Appeal was clear that restructuring plans should be proposed with sufficient time to allow the plan and any challenge to be properly heard, including to allow time for creditors sufficiently to engage with the company's information, and for the judge to produce a reasoned judgment and consider any application for permission to appeal. We expect that schemes and plans proposed by companies with tight timetables but "foreseeable" problems like debt maturities will come under particular scrutiny in the future.

This guidance has already been heeded in the scheme context, in which (shortly after the Court of Appeal judgment) a judge sanctioned the scheme but informed the parties that he would be delaying the sealing of the sanction order by 20 days in order to give parties "*a chance to digest*" the judgment and permit time to make any applications for permission to appeal.[9]

Play Fair With Information

The Court of Appeal also set out its expectations of those involved with or advising on (or in relation to) restructuring plans. A plan company must (subject to applicable confidentiality undertakings if required) make available in a timely manner the relevant material that underlies the valuations upon which it relies

8 *Noble Group Limited* [2018] EWHC 2911 (Ch) at [178]-[179]
9 *Re Link Fund Solutions* [2024] EWHC 250 (Ch)

to affected stakeholders. Parties, their advisors and experts must cooperate to focus and narrow issues in dispute. If sensible agreement is not forthcoming, the Court should exercise its power to order specific disclosure of key information and use other case management powers robustly.

A plan company must also ensure that the explanatory statement is adequate. If the explanatory statement is inadequate or misleading, the Court may have no confidence that the votes reflect the commercial interests of that class. In this case, the Court of Appeal noted that at no point did the explanatory statement draw noteholders' attention to the material departure from the *pari passu* distribution of assets that would have applied in the relevant alternative, or explain the difference in treatment and the risks involved for the different series of noteholders when compared with the relevant alternative.

Be Ready at Convening

In both schemes and restructuring plans, certain issues, primarily those relating to the composition of creditor classes, should be brought and aired at the convening hearing, rather than sanction. In some circumstances, particularly where time is tight and creditors consider they have had insufficient information, convening hearing issues can be held over and decided at sanction. However, the Court of Appeal did issue a warning that this practice (particularly where tight timelines are being blamed) "*is to be deprecated.*"[10]

Wiping Out Out-of-the-Money Stakeholders

As a provisional view, the Court of Appeal considered that there is no jurisdiction to sanction a confiscation of shares or extinguishing of claims for no consideration through a restructuring plan, even where the stakeholders are out-of-the-money and add no commercial value to the plan, and that there was nothing to indicate that paying a "modest amount" to out-of-the-money shareholders or creditors in those circumstances would unduly impede the restructuring process.[11] Snowden LJ noted, in that context, that there is a clear distinction between effectively removing a right of veto over a restructuring under a cross-class cram down, and a power to confiscate rights and property.

Manufacturing Jurisdiction?

The Court of Appeal left open the question of the permissibility of the recent practice of incorporating an English company as a substitute obligor or co-obligor of debt and whether this is an "*artificial device*", in order to engage the scheme or plan jurisdiction of the English court.[12] Since the handing down of the Court of Appeal's decision, judicial scrutiny of this practice at restructuring plan hearings has already been reported, and it is expected that the practice will likely soon attract further judicial consideration at first instance.

10 [62], *citing Miles J in Re Project Lietzenburger Strasse Holdco SÀRL* [2023] EWHC 2849 (Ch) at [31]
11 [275]-[277]
12 [34]

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The Courts Have Teeth. And Will Use Them.

Courts have long warned that their discretionary power to sanction schemes and restructuring plans is more than just a rubber stamp, and that they will scrutinise proposals. Until the advent of the restructuring plan, the lack of cross-class cram down had practically limited the opportunity for significant challenge given the high degree of creditor support required for proposals.

Restructuring plans exercising a cross-class cram down involve higher degrees of coercion and were necessarily going to attract more judicial scrutiny and a higher potential for creditor dispute. Indeed, since the introduction of restructuring plans, we have seen increasing numbers of proposals blocked at sanction. Nasmyth and Great Annual Savings Company followed hot on the heels of Adler and were both examples of proposals that failed at first instance. Although it represents a change from the "ordinary course" set by schemes, it is a natural consequence of the Court's consideration of the new toolbox that distressed companies have at their disposal.

Restructuring Plans – Where Are We Now and What Comes Next?

The Adler decision re-frames key principles underpinning the restructuring plan legislation and the Court's discretion to sanction a restructuring plan with cross-class cram down, an area which the legislation intended would (as with schemes of arrangement) be principally developed and refined by the judiciary.

The decision will no doubt have wide-ranging implications for the way deals are put together in the future and the framework within which cross-class cram down can be applied. It will be particularly relevant for any distressed business looking to implement cram-across or cram-up structures.

Although the facts of Adler were somewhat unusual in contemplating a wind down plan,

the overarching message coming out of the judgment (which is of universal application) is that the Courts are alive to issues of fairness and will actively scrutinise proposals. The Courts are mindful of the time pressures which can be brought on with unexpected financial distress, but expect to be treated with respect and given time to properly consider issues (including on appeal). They expect creditors to be treated fairly and given proper access to information to make a considered decision. These will be welcome messages for first instance judges and stakeholders alike.

The Adler challenge and outcome are important milestones in the continuing development of a world-leading and user-friendly cross-border restructuring regime in the UK, with a highly sophisticated judiciary applying clear principles in logical and rational ways to deliver certainty to debtors and creditors alike.

Seminal though it undoubtedly is, the Adler judgment is a staging post in this regard—we are currently awaiting judgment from the High Court in two contested restructuring plans where Adler was extensively cited in the sanction hearings, and which will provide insight into how the High Court is applying the Adler principles in different fact patterns.[13] We will be providing further updates in that regard at the earliest opportunity.

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13 *Re Project Lietzenburger Strasse Holdco SÀRL; Re CB&I UK Limited*

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