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**UK Court:
Dissenting Creditor
Class Need Not
Constitute a
Meeting to be
Crammed Down
Under Scheme of
Arrangement**

Re Listrac Midco Limited
[2023] EWHC 460 (Ch)

22 May 2023

**LEGAL
UPDATE**

In this Update

The English High Court in *Re Listrac Midco Limited* [2023] EWHC 460 (Ch) held that the English cram-down provisions only require that a meeting of the dissenting class of creditors be summoned, and not that any creditors actually attend the meeting. This interpretation of the statute ensures that dissenting creditors cannot escape the operation of the cram-down provisions merely by refusing to attend a meeting.

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WHAT IS A “CROSS-CLASS CRAM DOWN”?

Under Singapore’s statutory provisions concerning schemes of arrangement, the court may approve a scheme even where the voting thresholds (majority in number and 75% in value) have not been met in respect of some classes of creditors (Insolvency, Restructuring and Dissolution Act, section 70). This is commonly called a “cross-class cram down”, because creditors in a dissenting class become bound by the scheme even though the voting thresholds are not met in their class.

For the court to exercise its power under this provision, the court must be satisfied that a majority in number of all creditors intended to be bound by the scheme, representing 75% in value, have agreed to the scheme. The court must also be satisfied that the scheme does not discriminate unfairly between classes, and that the scheme is fair and equitable to each dissenting class.

The usefulness of this provision is that in appropriate cases, it can prevent a minority of creditors in a dissenting class from being able to veto a scheme merely by being in a different class. But what happens if none of the dissenting minority creditors even attend the meeting of their class, such that no meeting of that class is actually constituted?

UK DECISION: DISSENTING CREDITORS NEED NOT CONSTITUTE A MEETING IN ORDER TO BE CRAMMED DOWN UNDER A SCHEME OF ARRANGEMENT

The English High Court was confronted with this issue in *Re Listrac Midco Limited* [2023] EWHC 460 (Ch). In this case, the meetings of some classes of creditors were not attended by any creditors, or were attended by only 1 creditor who either voted against or abstained from voting. The scheme company nevertheless sought the court’s approval for the scheme, using the cram-down provisions under the English statute to disregard the fact that the voting thresholds had not been met in these classes.

The court noted that strictly speaking, it could not be said that a meeting of these classes had taken place. This is because a meeting logically requires the attendance of at least 2 persons (*Re Altitude Scaffolding* [2006] BCC 904 at [18]), especially where the class does not consist of only 1 possible creditor.

However, the court went on to decide that the statute did not require a meeting to be formed by the classes of creditors sought to be crammed down. The court found that the statute only required that a meeting of those classes be summoned, and did not require that a meeting be actually constituted by sufficient numbers of creditors.

The court noted that “Were it otherwise, dissenting creditors could disable the operation of the cram down machinery simply by deciding not to attend and vote at the relevant class meeting”.

RELEVANCE OF UK DECISION IN SINGAPORE

Singapore’s cram down provisions are sufficiently similar to the English provisions for the reasoning above to also apply in the Singapore context. It remains to be seen whether the Singapore courts will adopt the same reasoning if a similar case were to come before the Singapore courts.

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If you have any questions or comments on this article, please contact:



Sushil Nair

Deputy Chief Executive Officer, Drew & Napier LLC
Co-Head, Corporate Restructuring & Workouts
T: +65 6531 2410
E: sushil.nair@drewnapier.com



Julian Kwek

Co-Head, Corporate Restructuring & Workouts
Co-Head, Indonesia Group
Director, Corporate & Finance
T: +65 6531 2451
E: julian.kwek@drewnapier.com



Blossom Hing

Director, Dispute Resolution and Corporate Restructuring & Workouts
T: + 65 6531 2494
E: blossom.hing@drewnapier.com



Chan Wei Meng

Director, Corporate Restructuring & Workouts
T: +65 6531 2412
E: weimeng.chan@drewnapier.com



Mohan Gopalan

Director, Corporate Restructuring & Workouts
T: +65 6531 2755
E: mohan.gopalan@drewnapier.com

Drew & Napier LLC

10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T: +65 6535 0733
T: +65 9726 0573 (After Hours)
F: +65 6535 4906