8 SEPTEMBER 2020

The First UK Restructuring Plan Sanctioned

Learning Points from Virgin Atlantic's Plan Process

At a Glance

Kirkland is advising the UK Civil Aviation Authority on the restructuring of Virgin Atlantic Airways Limited (the "**Company**"), in the ground-breaking first restructuring plan under the new Part 26A of the Companies Act 2006.

The Company's plan was sanctioned by the court on 2 September; the plan and the broader recapitalisation became effective on Friday, 4 September. Of the four classes of creditors under the plan, three classes had unanimously approved the plan prior to the convening hearing (the first court hearing, on 4 August). The remaining class, comprised of certain trade creditors, overwhelmingly approved the plan: 99% by value, of those voting, voted in favour, on 25 August.

This represents a major first test of the new procedure, recently introduced under the Corporate Insolvency and Governance Act 2020 (effective from 26 June).

The new plan offers the possibility of cross-class cram-down, to impose a restructuring on dissenting stakeholders. Ultimately, however, cross-class cram-down was not engaged in this case, given each class approved the plan. Accordingly, this critical element of the procedure remains untested.

The Company's plan forms part of its broader solvent recapitalisation deal and seeks to ensure the survival of the airline against the backdrop of the existential crisis in the travel industry, owing to Covid-19 and related restrictions. Crucially, the restructuring allows the Group's planes to continue in operation.

The convening and sanction hearings raised no major surprises, but illustrated a number of practical points which will inform practice and assist the growing numbers of companies and stakeholders considering pursuing a plan on potential restructurings. Those points are explored in this deck.

FURTHER BACKGROUND

For detailed analysis of the new Corporate Insolvency and Governance Act 2020 (the "**Act**"), including the new restructuring plan, see our *Alert*.

This deck updates our original *Alert* issued following the convening hearing.

A NOTE ON TERMINOLOGY

The UK restructuring market has yet to settle definitively on what to call the new procedure – restructuring plan[1], "super-scheme" or "Part 26A scheme".[2]

In the Company's case, the Court was content to use the term "restructuring plan"; we adopt that term in this deck.

JUDGMENTS

The convening judgment is available *here*.
The sanction judgment is available *here*.

1. This terminology is used in the explanatory notes to the Act.
2. As the Act inserts the restructuring plan provisions as new Part 26A of the Companies Act 2006, alongside schemes of arrangement in Part 26; the new practice statement governing court applications under Parts 26 and 26A refers to existing schemes of arrangement as "Part 26 schemes" and the new restructuring plan as "Part 26A schemes".

Outline

Recap: New Restructuring Plan

The Company’s Plan

Issues Arising at the Convening Hearing

Issues Arising at the Sanction Hearing

Other Notable Issues

Timeline

Watch This Space

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Recap: New “Restructuring Plan”

The new, flexible procedure is modelled on schemes of arrangement, but with the key addition of cross-class cram-down — drawing inspiration from US Chapter 11 proceedings.

The new plan sits alongside schemes and company voluntary arrangements as a central tool in the UK’s restructuring toolkit. Like schemes (but unlike CVAs), restructuring plans can compromise dissenting **secured creditors**.

The Act inserts the new procedure into the existing Companies Act 2006 — alongside, and frequently **mirroring, provisions for schemes of arrangement**. The addition of **cross-class cram-down** to impose a restructuring on dissenting stakeholders addresses an often-cited limitation in the existing UK restructuring toolkit.

For a class of stakeholders to approve the plan, at least **75% in value**, of those voting, must vote in favour. Unlike in a scheme of arrangement, there is **no requirement for a majority in number** in this regard.

The plan offers the possibility of compromising **operational as well as financial creditors**, in a shift of approach for English restructuring law.

We expect the tool to play a role on **international restructurings**: non-English companies may use the new procedure, provided they have a sufficient connection to this jurisdiction.

There is **no formal provision for post-petition financing**. New funding must comply with permissions under existing debt documentation, unless new funding is granted under the plan itself.

There is **no automatic moratorium under the plan**. A new stand-alone moratorium is available under the Act (see our *Alert*), but eligibility, and the nature of the protection granted, are limited.

The Company's Plan

The restructuring plan forms part of a **broader suite of inter-conditional financial arrangements** with other stakeholders. The overall solvent recapitalisation deal involves a significant shareholder support package (including £200 million in cash, via a junior term loan facility) and new, third party secured debt financing (amounting to £170 million plus $30 million).

The plan itself includes **four classes** of plan creditor, as follows.[1]

CLASS	NATURE OF CLAIMS	TREATMENT UNDER THE PLAN	APPROVED PLAN?
RCF Lenders	► Under a fully drawn, $280 million secured revolving credit facility	► Certain security released (to make it available to new money provider); maturity date extended; margin increased; covenants amended; converted to term loan facility	► Yes – 100% approved the plan (having locked up to do so in advance of convening hearing)
Operating Lessor Creditors	► In relation to 24 aircraft on operating leases, with aggregate liability of c.$1.25 billion	► Offered three options: rent deferral; rent reduction and bullet repayment; or lease termination and redelivery of the leased aircraft	
Connected Party Creditors	► With claims up to £400 million, including under certain licensing and JV agreements	► Amounts capitalised in exchange for preference shares in the Company's parent	
Trade Creditors	► 162 trade creditors with claims in aggregate of c.£52 million, with respect to goods or services supplied by the creditor ► The Company excluded certain trade creditors from the plan (among others, those owed less than £50,000, for logistical reasons)	► Amounts owed in respect of principal and accrued interest reduced by 20% ► 10% of the remaining balance to be paid shortly after the effective date of the recapitalisation ► 90% of the remaining balance to be paid in quarterly instalments, December 2020 – September 2022	► **Yes – 99% in value, of those voting, approved the plan**

Treatment of Trade Creditors / Notice: At the convening hearing, the Court was especially concerned to understand the treatment of the trade creditors (who had not been invited to sign plan support agreements), and in particular the adequacy of the 21 days' notice of the convening hearing (see Timeline). The Court was ultimately satisfied that the steps the Company had taken – which included a webinar to explain the recapitalisation and plan to the trade creditors, and offer them the opportunity to ask questions – were sufficient, especially in light of the compelling urgency of this case, and as the treatment of trade creditors under the plan was not particularly complex.

1. The Company originally intended to include finance lessors / finance lease lenders within the plan (across three separate classes in addition to those listed). However, once all finance lessors and finance lease lenders agreed to the proposed terms, the Company issued an addendum to its practice statement letter to the effect that these creditors would no longer be treated as plan creditors.

Issues Arising at the Convening Hearing[1]

	GENERAL	THE COMPANY'S CASE
Financial Condition "Condition A": s901A(2)	The company must have encountered, or be likely to encounter, **financial difficulties** that are affecting (or will or may affect) its ability to carry on business as a going concern. The company **need not be insolvent** to propose a plan.	The Court had **little trouble in finding that the Company had encountered severe financial difficulties** affecting its ability to carry on business as a going concern, given the near-shutdown of the global passenger aviation industry in the ongoing Covid-19 pandemic. Evidence showed that, absent the proposed recapitalisation deal: ► the group's cashflow would drop to a critical level[2] in w/c 21 September; ► closing free cash would turn negative the following week; ► the Company's directors considered that administration proceedings would be inevitable by mid-September; and ► returns to the Company's unsecured creditors in administration would be substantially less than under the plan.
"Compromise or Arrangement" and Requisite Purpose "Condition B": s901A(3)	A "**compromise or arrangement**" must be proposed between the company and its creditors (or any class of them) or its members (or any class of them), and the **purpose** of the compromise or arrangement must be to "eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties" described above.	The Court noted it was well-established that "compromise or arrangement" **requires some element of give and take**, but beyond that it is neither necessary nor desirable to attempt a definition of "compromise or arrangement". There was no reason to think that what was capable of amounting to a "compromise or arrangement" for a restructuring plan was any different to that for a scheme. The stated purpose of the Company's plan mirrored the legislative wording (left). The Court held that the **requisite purpose** of the compromise or arrangement (see left) was **phrased broadly and intended to be expansively construed**. The Court was **readily satisfied** that the purpose of the plan was to mitigate, and if possible eliminate, the Company's financial difficulties.

1. Before Trower J, on 4 August 2020.
2. Namely, that the level of closing free cash would fall below a £75m threshold, below which the group's bondholders could potentially commence enforcement of security in respect of the group's landing slots at Heathrow.

Issues Arising at the Convening Hearing (cont.)

Jurisdiction

s901A(4)(b)

Recast Judgments Regulation

GENERAL

The Court has jurisdiction to make a convening order in respect of a "company", which for this purpose means any company liable to be wound up under the Insolvency Act 1986.[1]

In the case of a foreign company, the question is whether there is a "**sufficient connection**" with England. The court will also consider whether the scheme will have **international effectiveness**; the court is concerned not to act in vain. It is now clear that these latter questions fall to be determined at the sanction hearing (the second court hearing). At the convening hearing (the first court hearing), the court will only consider "any issues as to the ***existence*** of the court's jurisdiction to sanction the scheme" – and may indicate whether or not it sees a "**roadblock**" which would inevitably lead to the scheme not being sanctioned.[2]

THE COMPANY'S CASE

Jurisdiction in the Company's case was **fairly straightforward**, given that:

- it is incorporated in England and Wales (and has its centre of main interests in England) – and therefore there is no need to establish any further sufficient connection; and
- the vast majority of the documents to be restructuring under the plan are governed by English law.

The Court was **content to adopt the same practice in relation to the Recast Judgments Regulation** as that adopted in schemes of arrangement.[3] The Company had sought to rely on exceptions in Articles 8[4] and 25[5] of the Judgments Regulation to establish jurisdiction over the plan creditors. In the Company's case, several plan creditors are domiciled in the UK (in particular, 90 out of 168 trade creditors are domiciled here). The Court held this was **amply sufficient to engage the exception in Article 8** of the Judgments Regulation.

Notably, the Court held that the **exception in Article 25 of the Judgments Regulation was not engaged** in this case, given not *all* trade creditors had contracted with the Company on the basis of an English jurisdiction clause. However, this was immaterial in light of the Court's finding that it had jurisdiction based on the exception in Article 8.

The Company planned to file for recognition of the plan in the U.S. under **Chapter 15** of the Bankruptcy Code upon sanction of the plan; the Company had provided expert evidence that such recognition was likely to be granted.

1. Section 901A(4)(b) of new Part 26A of the Companies Act 2006.
2. This is expressly stated in the new Practice Statement governing restructuring plans as well as schemes of arrangement, which builds on existing case law, and was clarified further in Flint's recent scheme of arrangement (*Re ColourOz Investment 2 LLC and others* [2020]).
3. The Recast Judgments Regulation provides a general rule that any person domiciled in an EU Member State must be "sued" in the courts of that Member State; this rule is subject to certain exceptions. It has never been conclusively determined whether the relevant provisions apply to schemes of arrangement. In order to avoid determining this issue, the court has adopted the practice of assuming the relevant provisions do apply (proceeding on the basis that scheme creditors are "sued" by the company, and the scheme creditors are "defendants" to the scheme), and considering whether the court has jurisdiction over the scheme creditors on that basis.
4. In essence: if at least one creditor is domiciled in England, then Article 8 confers jurisdiction on the English court to sanction a scheme affecting the rights of creditors domiciled elsewhere in the EU, provided it is "expedient" to hear the claims together "to avoid the risk of irreconcilable judgments resulting from separate proceedings".
5. In essence, Article 25 confers jurisdiction on a court where a jurisdiction clause (whether exclusive or non-exclusive) provides for the courts in the relevant Member State to have jurisdiction to settle disputes.

Issues Arising at the Convening Hearing (cont.)

Class Constitution and Voting

s901C

GENERAL

Every creditor or shareholder whose rights are affected by the plan must be permitted to vote.[1]

Stakeholders vote on the company's proposed plan in **separate classes**.

An application can be made to **exclude classes** of creditors / shareholders from voting where the court is satisfied that "none of the members of that class has a **genuine economic interest** in the company".

Voting threshold: For a class of stakeholders to approve the plan, at least **75% in value**, of those voting, must vote in favour.

s901G

Cross-class cram-down: Crucially, the plan may still be confirmed by the court even where one or more classes do not vote in favour, provided:

- the court is satisfied that none of the members of the dissenting class(es) would be any worse off under the plan than they would be in the event of the "relevant alternative" (i.e. whatever the court considers would be most likely to occur if the plan were not confirmed); and
- at least one class who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative, has voted in favour.

The court has discretion to decline to sanction a plan if it is not "**just and equitable**".[2]

THE COMPANY'S CASE

As anticipated, the Court applied the same test for determining class constitution as for schemes of arrangement: stakeholders should vote in the same class where their rights are "not so dissimilar as to make it impossible for them to consult together with a view to their common interest". This involves consideration of stakeholders' strict legal rights both absent, and under, the proposed plan.

The Court refrained from lengthy reasoning on class constitution (given the lack of adversarial argument, and conscious that this was the first restructuring plan). It simply held that **none of the differences between restructuring plans and schemes of arrangement should be reflected in a different approach to class composition**. The approach to class constitution should be **broadly the same** – even having regard to the fact that the possibility of cross-class cram-down under a plan raises the possibility that, in some circumstances, a company may have an incentive to increase the number of classes.

The Court **approved the Company's proposed class constitution** which divided the plan creditors into four classes (see here), with fairly little comment. 100% of the creditors in the first three classes had locked up to vote in support of the plan in advance of the convening hearing.

Notably, as the Company's **shareholders' rights are not affected** under the plan, there is no requirement for them to vote on it. (As noted, the broader recapitalisation deal, in parallel to the plan, involves a significant shareholder support package.)

1. **Aircraft-related interests:** the draft Corporate Insolvency and Governance Bill had provided that creditors with certain registered aircraft-related interests could not participate in the vote nor be compromised under the plan — or a scheme of arrangement — without their consent. This would have made it more difficult for the Company to pursue its plan. Fortunately, these provisions do not appear in the final Act.
2. This requirement does not appear in the legislation itself but in the explanatory notes to the Act.

Issues Arising at the Sanction Hearing[1]

The approach to sanction

s901F

GENERAL

The court **may** sanction a plan that has been approved by stakeholders. As the explanatory notes to the Act make clear, the court will always have **absolute discretion** as to whether to sanction a restructuring plan, even though the necessary procedural requirements have been met (as is the case with conventional schemes). It is envisaged that authorities on schemes of arrangement may, where appropriate, assist the court in deciding how to exercise its discretion on a plan.

As noted, the court has discretion to decline to sanction a plan if it is not "**just and equitable**".[2] There is no guidance as to the meaning of these terms and it is not clear to what extent this will be similar to the "fairness" requirement for schemes of arrangement.

THE COMPANY'S CASE

The Court took the view that – as all classes had approved the plan – it would **follow the tried and tested approach to the exercise of discretion** established in respect of conventional schemes of arrangement.

The Court was content that **all four elements of the conventional test for sanction of a scheme** (set out on the following pages) had been satisfied. Accordingly, it exercised its discretion to sanction the plan.

However, this was a **straightforward matter** given each class approved the plan, and the significantly worse outcome for plan creditors in the relevant alternative. The **appropriate test(s) where cross-class cram-down arises remain to be established** – as do the circumstances in which the court might decline to exercise its discretion; **the limits of what is "just and equitable" remain to be tested**, especially in the event of cross-class cram-down. See further here.

1. Before Snowden J, on 2 September 2020; judgment handed down on 4 September 2020.
2. This point does not appear in the legislation itself but in the explanatory notes to the Act.

Issues Arising at the Sanction Hearing (cont.)

	GENERAL	THE COMPANY'S CASE
Compliance with the statute s901D; s901F Practice Statement	**Jurisdiction:** As noted, at the convening hearing, the court will only consider "any issues as to the **existence** of the court's jurisdiction to sanction the scheme" – and may indicate whether or not it sees a "**roadblock**" which would inevitably lead to the scheme not being sanctioned. More detailed questions of jurisdiction fall to be considered at the sanction hearing.	The Court **dealt with jurisdictional considerations swiftly**, after these had been considered carefully at the convening hearing (see here and here) and absent any suggestion that the convening judgment was in error.
	Meetings: The **correct notice** must be given of the court-convened meeting(s), the **meeting(s) held** in accordance with the convening order, and the **requisite approvals obtained** at the meeting(s).	No issues; the requisite 75% majority by value was obtained at all of the plan meetings. Accordingly, the **possibility of cross-class cram-down was not engaged** in this case.
	Explanatory statement: As with a scheme, the notice summoning stakeholder meeting(s) must, amongst other things, **explain the effect** of the compromise or arrangement.[1] The adequacy of the explanatory statement is considered at the convening hearing, but is not formally "approved"; it remains open to any affected stakeholder to raise issues as to the adequacy of the explanatory statement at the sanction hearing.	No issues.

1. The new Practice Statement also requires the explanatory statement to explain the commercial impact of the scheme or plan and provide members / creditors with such information as is "reasonably necessary to enable them to make an informed decision as to whether or not the scheme [or plan] is in their interests, and on how to vote".

Issues Arising at the Sanction Hearing (cont.)

Representation and voting at the plan meetings

GENERAL

Stakeholder approval: For a class of stakeholders to approve the plan, at least 75% in value, of those voting, must vote in favour. (Unlike a scheme, there is no numerosity requirement.)

Crucially, the plan may still be confirmed by the court even where certain classes do not vote in favour – so-called "cross-class cram-down". For more information, see pages 7 and 11 of our *Alert*.

s901C(4)

Exclusion of certain stakeholders: An application can be made to exclude classes of stakeholders from voting on a plan where the court is satisfied that "none of the members of that class has a **genuine economic interest** in the company".

Separately, it is well-established in the context of schemes of arrangement that it is **for the company to decid**e which creditors it wishes to include in the scheme; it need not include all putative members of a class if there are commercial reasons for excluding certain members of that putative class.[1] Those creditors or members who are not bound by the scheme retain their existing rights.

THE COMPANY'S CASE

As noted, of the four classes of creditor under the plan, three classes had unanimously locked up to approve the plan. The remaining (trade creditor) class overwhelmingly approved the plan: 99% by value, of those voting, voted in favour. Turnout in the trade creditor class was also high: over 89% by value, 66% by number. There was **no suggestion** that any of those voting in favour did so for any **collateral motive** or had any special interest.

The potential exclusion of a class from voting based on a **lack of genuine economic interest did not arise** in this case. However, the Company did **exclude certain trade creditors** from the plan for logistical and commercial reasons, and **certain financial creditors** which (in most cases) were dealt with under the broader recapitalisation by separate bilateral agreements. In the convening judgment, Trower J had noted briefly that the excluded categories "all appear to have been excluded for respectable commercial reasons".

At the sanction hearing, Snowden J examined the issue much more closely. He held that the ability of a company to propose a compromise or arrangement with **some, but not all**, of its groups of creditors was **"one of the most flexible and valuable features** of the scheme jurisdiction" and saw no reason not to take the same approach in a restructuring plan. However, "**if creditors who rank pari passu with scheme or plan creditors are being treated more favourably outside the scheme or plan, this should be fully explained**…, so that [creditors under the scheme or plan] can assess whether they are being treated unfairly". The Court ultimately held that the **reasons for excluding certain trade creditors *were* reasonable** (and not arbitrary or designed to manipulate the class), and was satisfied that the facts and reasons for the exclusion were **properly disclosed** in the explanatory statement.

The Court also observed that it would not ordinarily entertain a conventional scheme application where it was known in advance that all creditors are willing to consent. It expressly **declined to decide whether the power to cram down** a dissenting class **can be activated by including within a plan a class of creditors who would otherwise all have been prepared to enter into consensual arrangements** to effect the restructuring of their rights.

As a **practical point**: during the hearing itself, the Court requested that the Chairman's report of meeting(s) continue to give **voting numbers**; even though there is no numerosity requirement in the legislation, it is important as a matter of the court's discretion to understand the full picture.

1. *Sea Assets v Garuda* [2001], affirmed in *Re SABMiller* [2017].

Issues Arising at the Sanction Hearing (cont.)

	GENERAL	THE COMPANY'S CASE
Fairness	The requirement that a scheme be "fair" does not mean that the court imposes its own view of what is in the interests or creditors or even what is the "best" scheme. Fairness in this context means that the scheme must be **one that an intelligent and honest person, a member of the class concerned and acting in respect of their interest, might reasonably approve**.	The Court held it was clear that the plan was one which an intelligent and honest person could reasonably approve: ▶ the plan was part of the **broader recapitalisation**, approved by various stakeholders and all classes of plan creditors; ▶ the plan offered a **return c.4x more** than trade plan creditors were likely to receive in the relevant alternative (administration); ▶ the trade plan creditors had **voted overwhelmingly in favour**, with a high turnout; and ▶ there was **no formal opposition** to the plan: although two trade plan creditors voted against it, neither appeared at the hearing or articulated any reason why the plan should not be sanctioned.
No "blots" or defects	There must be **no "blot" or defect in the scheme**; the term "blot" conveys some technical flaw, for example where the scheme or plan simply does not work on its terms.	The Court expressly approved the giving of an instruction (under the plan) from the RCF plan creditors to the RCF agent to execute relevant documents, noting that the conferral of a **power of attorney** had become common practice in schemes of arrangement. No other issues.
International effectiveness	The court is concerned not to act in vain; it will consider whether the scheme or plan is **likely to be recognised in any key overseas jurisdictions** which are material to its effectiveness.	Given the overwhelming consent of plan creditors to the plan, it was clear on that basis alone that the plan would have **substantial effect**. **Expert evidence** stated that there was no reason the plan should not be recognised as a foreign main proceeding in the US (where the Company holds assets of material value). Final relief was indeed subsequently granted under Chapter 15, on 3 September.

Other Notable Issues

Deed Poll

As noted, finance lessors / finance lease lenders were originally to be included as plan creditors. As there was no direct payment covenant by the Company to the relevant creditors, the Company would have needed to execute a **deed of contribution** in favour of those creditors in order to create a direct claim by creditors at the top of the finance lease structure, to be compromised under the plan. In order to **avoid any potential uncertainty** as to the validity of that approach, the Company decided to **omit such creditors from the plan** once it had obtained their consent.

Cape Town Convention

Many of the Company's leased aircraft are subject to a **registered international interest** for the purposes of the Cape Town Convention[1]. The Convention provides that, following the occurrence of an "insolvency-related event"[2], a debtor is effectively required to give up possession of the leased aircraft to a creditor in respect of which an international interest has been registered (or cure all defaults); the **obligations owed by the debtor cannot be compromised in the insolvency proceedings**.

There has been **much debate as to whether this protection would apply** in the context of a scheme of arrangement – and now, that debate can extend to restructuring plans. The Company considers that its restructuring plan does not trigger an "insolvency-related event" for the purposes of the Cape Town Convention.

However, as each of the plan creditors with a relevant interest had indicated its support for the plan, there was **no need for the Court expressly to consider** this point.

"Ipso Facto" Clauses

The Act's reforms include a **prohibition on enforcement of so-called ipso facto clauses** — i.e., clauses allowing one party to a contract to terminate, or impose altered terms, solely on the basis of the insolvency of the counterparty — **in contracts for the supply of goods or services**.[3] This draws inspiration from US Chapter 11 proceedings and is designed to preserve a business's operational capabilities (and, by extension, value for stakeholders) through a restructuring. Critically, the UK provisions cover only supplier arrangements, not general commercial contracts.

The **rules restrict such action on the grounds of the new restructuring plan procedure** (as well as existing UK insolvency proceedings and the new stand-alone moratorium). Accordingly, the Company's suppliers cannot rely on termination provisions which might otherwise have been triggered by the making of the convening order in respect of its restructuring plan. However, certain safeguards and exclusions apply.

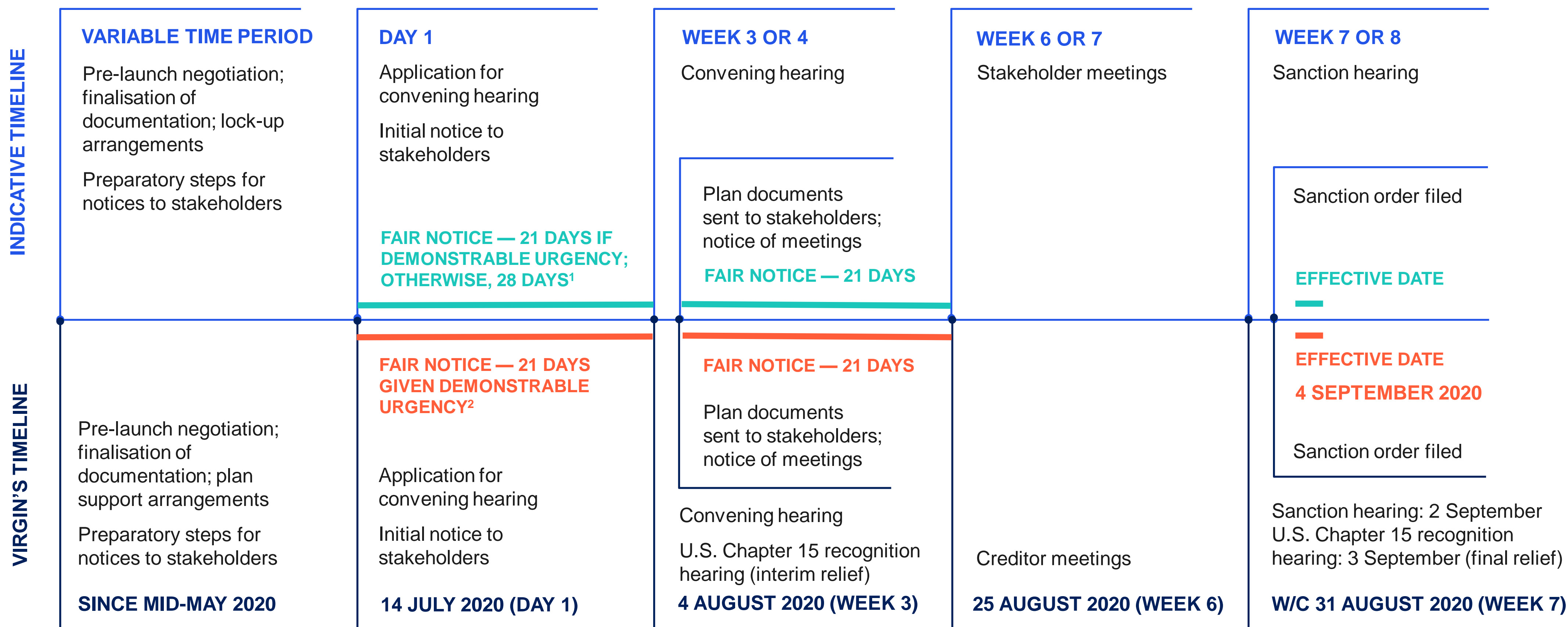
In particular, **Cape Town Convention interests are expressly excluded[4] from the restriction**, i.e., creditors with a registered international interest in relation to aircraft objects would not be restricted from termination, notwithstanding the new "ipso facto" regime – although, as noted, all such creditors have indicated their support for the plan.

1. The Convention on International Interests in Mobile Equipment and related protocols, transposed into English law by The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.
2. The definition of "insolvency-related event" means the commencement of "insolvency proceedings", which for this purpose is "liquidation, bankruptcy … or other collective judicial or administrative insolvency proceedings … in which the assets and affairs of the debtor are subject to control or supervision by a court …"; the operative provisions are framed by reference to the conduct of an insolvency office-holder. A scheme of arrangement or restructuring plan under the Companies Act 2006 (notably, not under the Insolvency Act) is a "debtor in possession" proceeding which does not involve the appointment of an insolvency office-holder.
3. New section 233B of the Insolvency Act 1986.
4. Paragraph 21 of new Schedule 4ZZA of the Insolvency Act 1986.

Timeline

Note: no express timeline is provided in the Act.

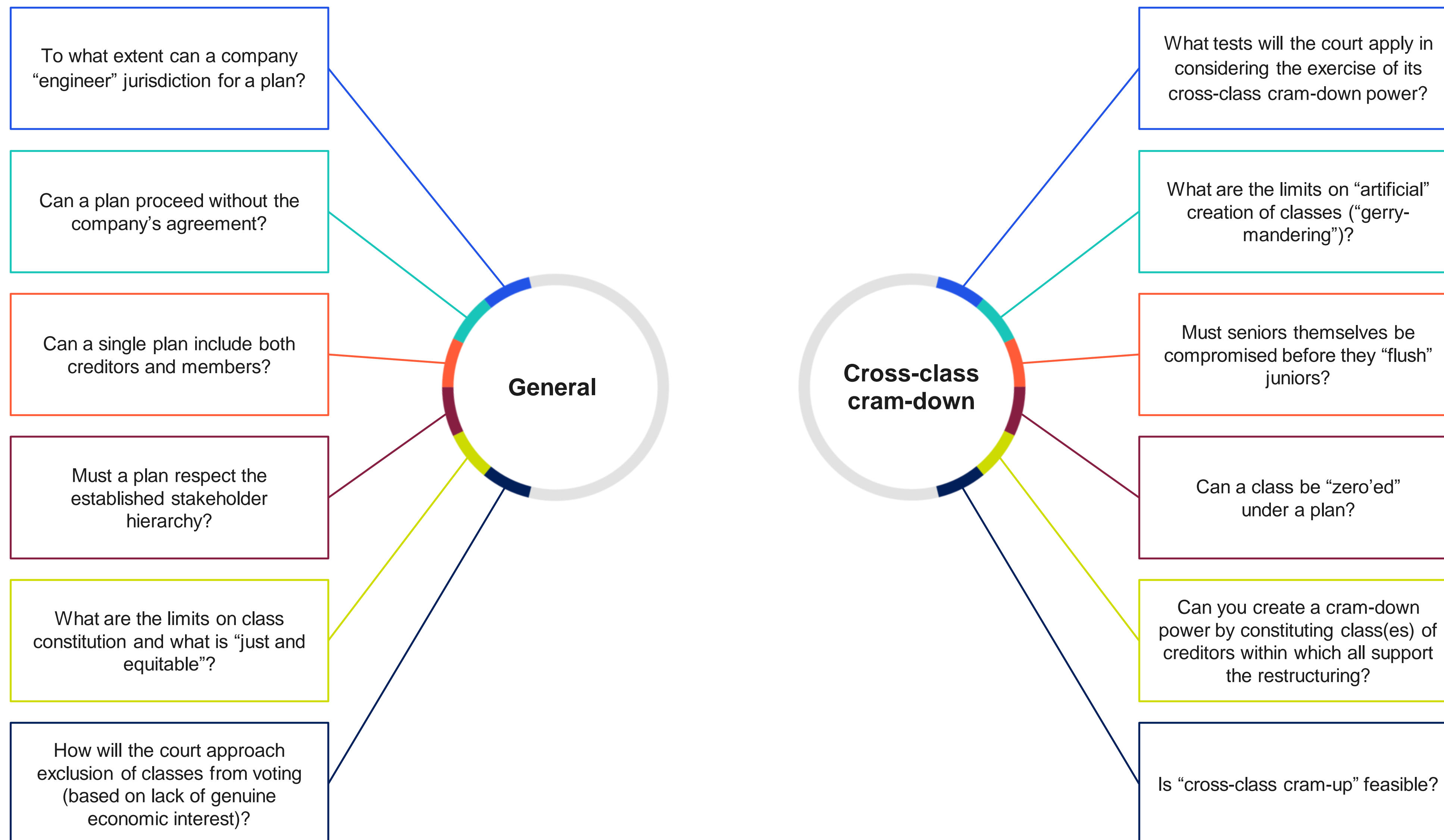
The indicative timeline below is suggested based on Kirkland's extensive experience of schemes of arrangement, and represents an expedited basis. Duration of the hearings, and the requisite period for the court to consider its judgment, would likely be **longer in the event of a contested plan**.



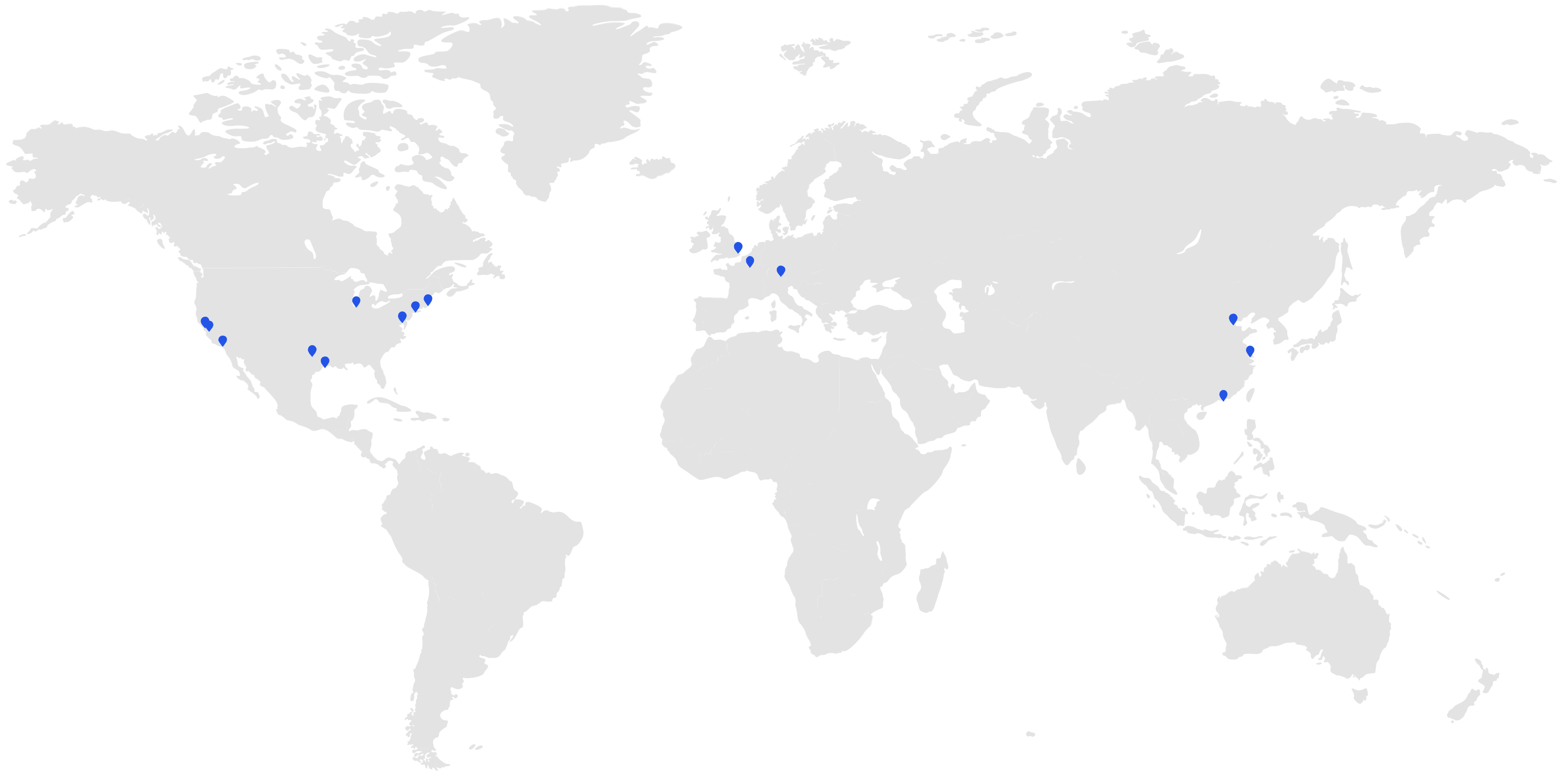
1. Under the new Practice Statement, notice "should be given to persons affected … in sufficient time to enable them to consider what is proposed, to take appropriate advice and, if so advised, to attend the convening hearing". In Flint's recent scheme of arrangement (*Re ColourOz Investment 2 LLC and others* [2020]), the Court appeared to imply that the period between the initial notice to stakeholders (in the form of the practice statement letter) and the convening hearing should be four weeks if there is no significant urgency (or greater, if the scheme/plan involves stakeholders who are not sophisticated commercial investors or e.g. if little consultation has taken place with affected stakeholders before the scheme/plan is launched). This applies even where the overwhelming majority of scheme creditors / plan stakeholders have already approved the transaction via a lock-up agreement.
2. The Court was satisfied that the Company had given proper notice of its proposals – the creditor identification process appeared to be comprehensive and, unlike in Flint's case, there was compelling evidence that the matter was very urgent.

Watch this Space

Many issues remain to be explored in future plans; below are selected issues we have been considering. For more information, see our *Alert*. We are happy to discuss these further with interested clients.



International Reach



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