



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 220 OF 2023 (NSJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2023 REVISION)

AND

IN THE MATTER OF E-HOUSE (CHINA) ENTERPRISE HOLDINGS LIMITED

Before: The Hon. Mr Justice Segal

**Appearances: Mr Nick Herrod and Ms Allegra Crawford of Maples and Calder
(Cayman) LLP appeared on behalf of the Company**

Heard: 26 March 2024

**Draft judgment
circulated: 26 March 2024**

**Judgment
delivered: 2 April 2024**

HEADNOTE

Scheme of arrangement - scheme already sanctioned - post-sanction conditions to implementation incapable of satisfaction – Company had the right to waive the satisfaction of relevant condition but had decided to allow the scheme to lapse - a sanctioned scheme in respect of the Company in 2022 had also not been implemented - application by Company for permission to send out a notice to Scheme Creditors confirming that the scheme would lapse and would not be implemented.

JUDGMENT

240402 - In the Matter of E-House (China) Enterprise Holdings Limited – FSD 220 of 2023 (NSJ) – Judgment

1. E-House (China) Enterprise Holdings Limited (the **Company**) is a Cayman incorporated company whose shares have been listed on the main board of the Stock Exchange of Hong Kong (the **SEHK**). The Company acts as the holding company for a large group of entities (the **Group**) involved in real estate agency services, real estate data and consulting services and real estate brokerage network services in the People's Republic of China.
2. The Company's main offshore short term financing obligations are:
 - (a). principal debt of US\$598,200,00 arising under two sets of New York law governed note obligations (the 2022 Notes - \$298,200,000 due April 2022- and 2023 Notes – US\$300,000,000 due June 2023) (the **Old Notes**), and
 - (b). principal debt of HK\$1,031,900,000 arising under a convertible note governed by Hong Kong law (the **Convertible Note**) held by Alibaba.com Hong Kong Limited (the **CB Holder**).
3. The Company has been the subject of two recent schemes of arrangement which have been sanctioned by this Court under section 86 of the Companies Act (2023 Revision) (with a parallel scheme in the High Court of the Hong Kong Special Administrative Region, Court of First Instance for the second scheme). The first scheme (the **2022 Scheme**) was sanctioned by this Court on 9 November 2022 (the **2022 Sanction Order**). The second scheme (the **2023 Scheme**) was sanctioned by this Court on 24 November 2023 (the **2023 Sanction Order**).
4. The background to the 2022 Scheme is set out in my judgment dated 17 November 2022 which explained the background to the 2022 Scheme and my reasons for making the 2022 Sanction Order. As explained in this judgment, the 2022 Scheme was an amend and extend scheme whereby the Old Notes were to be exchanged for new notes with different maturity dates and interest rates.

5. The 2022 Scheme was advanced in order to address the Company's obligations in respect of the Old Notes (and only the Old Notes). That was because the CB Holder was initially supportive of the 2022 Scheme and granted a waiver of the default under the Convertible Note until 15 December 2022 in order to enable the 2022 Scheme to be advanced.
6. The 2022 Sanction Order was filed with the Registrar on 9 November 2022 and the 2022 Scheme became effective on that day, being the Scheme Effective Date. While the 2022 Scheme became effective and therefore binding on the Company and Scheme Creditors on the Scheme Effective Date, implementation of the restructuring to which the 2022 Scheme gave effect was subject to the satisfaction of certain other conditions (the ***Restructuring Conditions***). The terms of the 2022 Scheme provided that the 2022 Scheme would only become effective if and when the Company gave notice to Scheme Creditors that the Restructuring Conditions had been satisfied and that this notice had to be given before the Longstop Date, otherwise the terms of and obligations on the parties under or pursuant to the 2022 Scheme would lapse. I dealt with the impact of these conditions on the sanction decision at [121] of my judgment.
7. The Restructuring Conditions included the making of an order by the United States Bankruptcy Court for the South District of New York for the recognition of the 2022 Scheme under Chapter 15 of the US Bankruptcy Code. The Bankruptcy Court made that order on 15 November 2022.
8. The Longstop Date for the 2022 Scheme was extended until 14 December 2022. By that date there were no Restructuring Conditions which could not have been satisfied. However, despite this, the Company concluded that the risks of implementing the 2022 Scheme were greater than the risks of not implementing the 2022 Scheme and that it would therefore not be in the best interests of the Scheme Creditors and other stakeholders in the Company to proceed with the 2022 Scheme. The reasons for this were explained by Mr Cheng Li-Lan (***Mr Cheng***) in his First Affirmation at [61]-[67]. He said this:

“61. ... This was because of:

61.1 further deterioration of the PRC property market in the fourth quarter of 2022, resulting in the Company having an insufficient cash balance to pay the cash portion of the Scheme Consideration (explained further at paragraph 62 below); and

61.2 the Company's imminent default under the CB resulting in the CB Holder and an associated company of the CB Holder seeking a more comprehensive restructuring plan than that set out in the 2022 Scheme. By this time, it became apparent that the Company was unable to make the required payments under the CB, and it would therefore be necessary to restructure the CB as well as the Old Notes. This led the Company to conclude that the 2022 Scheme would not constitute a sufficient restructuring of its liabilities in order to render it viable going forwards.

62. At the time of the 2022 Scheme, the Company expected to fund the payments required under the 2022 Scheme with (i) cash flow generated from its ongoing business, (ii) recovery and collection of impaired trade receivables, and (iii) existing offshore cash balances. However, due to the further deterioration of the PRC property in the fourth quarter of 2022 the Company was not able to collect its outstanding trade-related receivables, which was not previously anticipated.

63. Based on statistics from the National Bureau of Statistics of the PRC, during the fourth quarter of 2022, national sales of residential property decreased by 28.02%, resulting in a decrease of 29.91% total gross floor area delivered. This general deterioration of the PRC property market affected the Group's revenue and cash flow as the Group is dependent primarily on PRC property developers paying the fees for its services, and PRC property developers were unable to pay these fees due to the downturn and their own liquidity issues. A majority of the Group's clients are privately owned property developers and, due to property developers facing serious liquidity issues as a result of the macro-economic conditions referred to earlier in this paragraph, the Group was only able to collect approximately 10% of the expected trade receivables during the fourth quarter of 2022. The substantial decrease in cash flow also resulted in the Group having to reallocate its cash resources to ensure that the Group's various lines of businesses were able to continue operations. For example, in response to the deterioration of the PRC property market, the Company underwent staff reductions, which resulted in the Company having to make severance payments and so the reduction in headcount did not result in any immediate financial savings for the Company and instead made further demands on its cash resources. Further, such further deterioration of the Group's operating conditions and cash reallocation caused banks in the PRC to place restrictions on the Group's cash balances onshore, which in turn constrained the Group's ability to remit cash offshore. As a result, the

- Company had an insufficient cash balance to pay the cash portion of the consideration under the 2022 Scheme.*
64. *In addition, the Company had agreed to cause TM Home to provide a limited recourse subsidiary guarantee within six months after the original issue date of certain new notes to be issued as part of the 2022 Scheme. However, such limited recourse subsidiary guarantee required, among other things, the approval from other shareholders of TM Home, including Alibaba Investment Limited (the "TM Home Minority Shareholder"), which is an affiliate of the CB Holder. The Company had been in discussions with the TM Home Minority Shareholder and the CB Holder regarding such matters and the Company's ongoing obligations under the CB throughout the process of the 2022 Scheme. By the fourth quarter of 2022, the deterioration in the financial condition of the Scheme Company described above resulted in the Company being unable to service its ongoing debt obligations under the CB. Due to the imminent default of the Company under the Convertible Note, the TM Home Minority Shareholder and the CB Holder began discussions with the Scheme Company on seeking a more comprehensive restructuring solution that would take into account the rights of the CB Holder rather than focusing on whether or not the TM Home Minority Shareholder would approve the limited recourse subsidiary guarantee and whether any further extension of the waiver in relation to the Scheme Company's default under the CB would be provided by the CB Holder beyond 14 December 2022.*
65. *While the Group continued to explore solutions, for the reasons outlined above, the Group concluded that it was not feasible to consummate the 2022 Scheme and the proposed restructuring. Therefore the Company did not deliver to the Information Agent notice of the restructuring effective date, which was a condition precedent under clause 6.1(d) of the 2022 Scheme, and so the restructuring effective date did not occur. As the restructuring effective date did not occur before the Longstop Date (14 December 2022), the 2022 Scheme accordingly lapsed under clause 4.2 of the 2022 Scheme.*
66. *I note here that the explanatory statement relating to the 2022 Scheme included an explanation of risk factors relating to the 2022 Scheme. This included the risk that the CB Holder might take action in relation to the Company's default under the CB, and that there may also be factors unknown to the Company at the date of the explanatory statement that may result in a failure to complete the restructuring. In the event, there were such factors unknown to the Company at the date of the explanatory statement that resulted in a failure to complete the restructuring, as explained in the preceding paragraphs.*
67. *On 3 February 2023, the Company announced on the SEHK website that it had not been able to consummate the 2022 Scheme and the proposed restructuring in accordance with its terms on or prior to 14 December 2022. ..."*

9. The Company decided to have further discussions with its advisers with a view to formulating an updated restructuring plan and to enter into further negotiations with the CB Holder and holders of the Old Notes (and prepared restructuring support agreements for this purpose). These discussions and negotiations proved successful despite Mr Zhou Liang (the Company's CFO before Mr Cheng took on that role in February 2023) having given evidence that the Company (and the Group) were likely to enter liquidation if the 2022 Scheme was not implemented.
10. Accordingly, in July 2023 the Company proposed and presented a further petition seeking the sanction of the 2023 Scheme (having made an announcement on 3 April 2023 that it had entered into restructuring agreements with the CB Holder and in respect of the Old Notes). This was said to be a more comprehensive restructuring involving the CB Holder. In broad terms, the 2023 Schemes provides for a cash payment and debt for equity swap (relating to shares in one of the Company's valuable subsidiaries, TM Home). In return for the complete compromise and discharge of their claims against the Company, and the Company's subsidiaries which have guaranteed the Old Notes and the Convertible Note, Scheme Creditors were to receive by way of consideration (the **Scheme Consideration**):
- (a). a cash payment reflecting 6% of the face value of their principal debt and all outstanding interest up to and excluding 30 June 2023.
 - (b). shares (indirectly held) in TM Home. A Scheme Creditor that is a Noteholder was to receive shares in a new Noteholder owned entity (Creditor SPV) which was to hold 54.207% of the valuable shares in TM Home. All the shares in Creditor SPV were to be held by the Noteholders. The CB Holder was to receive a proportionate allocation of shares in TM Home.
11. The Company applied for an order at the convening hearing seeking orders and directions in relation to the convening of meetings of two classes of its creditors. In addition to a meeting of the holders of the Old Notes, the Company wished to convene

a meeting with the CB Holder since it had become necessary to restructure the Convertible Note debt as well as the liabilities under the Old Notes. Since the Convertible Note was governed by Hong Kong law, the Company decided to promote a parallel scheme on the same terms as the 2023 Scheme in Hong Kong.

12. At the convening hearing I made it clear that I considered that the Company should have applied to the Court as soon as the board decided that it was not in the interests of the Company and 2022 Scheme Creditors to proceed with the 2022 Scheme despite the Restructuring Conditions having been satisfied and that I was concerned to see that the Company had waited until early February 2023 before notifying the 2022 Scheme Creditors that the 2022 Scheme was not going to be implemented (even though the Longstop Date had been on 14 December 2022). I said that this would have been the right approach for a number of reasons. First, because in my view in the unusual case where a scheme had been sanctioned, the conditions to implementation were capable of being satisfied but the Company had concluded that circumstances had radically changed after the sanction order such that the scheme was no longer in the best interests of the scheme creditors, it was important that before a decision to allow the scheme to lapse was implemented, the Court should be updated and the scheme creditors be given an opportunity to make representations to the Court as to what should be done. It seemed to me that the Court retained its supervisory role regarding the implementation of the scheme and decisions as to whether to implement the scheme should not be taken unilaterally by the Company without at least explaining the position at a hearing. So I said that in view of this, the Company should have given Scheme Creditors advance notice of its decision to allow the 2022 Scheme to lapse and asked the Court to list a hearing so that any 2022 Scheme Creditors who wished to do so would have had the opportunity to appear and make submissions. Secondly, it seemed to me that there were questions as to the proper interpretation of the 2022 Scheme which should at least have been raised with the Court and that it was arguable that the Company was obliged to give, or that the 2022 Scheme Creditors would have been entitled to a direction that the Company give, the notice of the Restructuring Effective Date so as to bring the 2022 Scheme into effect. It was true that the 2022 Scheme contained a right for the Company to “*terminate the [2022] Scheme at any time before the Restructuring Effective Date*”

[being the date on which the Company gave notice of the satisfaction of the Restructuring Conditions] by notice to the [2022] Scheme Creditors” and that in the event of a termination the pre-scheme rights of the 2022 Scheme Creditors would revive. However, as I pointed out at the convening hearing for the 2023 Scheme, I was unaware of a company ever having exercised such a right and it was at least arguable that the exercise of the right was subject to Court control. By failing to inform the Court of the position before allowing the 2022 Scheme to lapse (and asking the Court to list a hearing) the opportunity to explore these issues and obtain input from the Scheme Creditors was lost.

13. As a result of these concerns, I required (at the convening hearing for the 2023 Scheme) that the terms of the 2023 Scheme be amended to require Court oversight of and involvement in the exercise by the Company of any post-sanction rights. Accordingly, the 2023 Scheme requires that the Company must give notice of the Restructuring Effective Date where the Restructuring Conditions have been satisfied (clause 10) and that the Company may only exercise the right to terminate the 2023 Scheme with prior Court approval. The 2023 Scheme also contains (in clause 20) an expanded power for the Company to seek directions from the Court.
14. Furthermore, in order to address these concerns, I required that certain provisions be added to the 2023 Sanction Order. [4] of the 2023 Sanction Order provides that the Court shall retain jurisdiction in relation to the implementation and coming into force and effect of the 2023 Scheme and [2] of that order provides that if the Company concluded that it was likely that any of the Restructuring Conditions would not be satisfied on or before the Longstop Date the Company was required promptly to apply to the Court for directions.
15. Unfortunately, serious problems have now also arisen in relation to the implementation of the 2023 Scheme. On 6 March 2024, the Company’s Cayman Islands attorneys (Maples) wrote to the Court to explain that *“the Company [had] now determined that it [was] more likely than not that the [restructuring pursuant to the 2023 Scheme] will fail (although the Company remains committed to proceeding with [that restructuring]*

if at all possible)." Maples explained that in these circumstances the Company was applying for an order (to be made on the papers) approving the form of disclosure (the **First Disclosure**) which the Company proposed to make to the 2023 Scheme Creditors and giving directions as to the manner in which the disclosure was to be distributed.

16. The problem arises because the assets and business of one of the Company's subsidiaries, Shanghai CRIC Information Technology Co. Ltd. (**Shanghai CRIC**), that were supposed to be transferred to TM Home (and therefore to be available to the Scheme Creditors, through their indirect shareholding in TM Home), can only be transferred with the consent of a bank (the **Bank**) to whom Shanghai CRIC has given a guarantee (for the Company's obligations to the Bank). The consent of the Bank was not obtained before the 2023 Scheme convening hearing, the 2023 Scheme meetings or the 2023 Scheme sanction hearing and the risk of the consent being refused was not disclosed to the 2023 Scheme Creditors or to the Court. The Company says that this was because those dealing with the Bank had understood and been reassured that the consent would be forthcoming. The Bank, the Company says, changed its mind and indicated that it was not prepared to consent to the transfer to TM Home. The Bank's refusal to give its consent has had a knock-on effect on the rights issue which was a critical part of the fund raising needed for the 2023 Scheme. The rights issue was underwritten by the Company's Chairman, Mr Zhou Xin (**Mr Zhou**). Mr Zhou took the position that the Bank's refusal (or threatened refusal) to give its consent had resulted in a material adverse change under the terms of his underwriting agreement and he terminated his obligations thereunder. The Company accepted that Mr Zhou was entitled to terminate the underwriting agreement. However, Mr Zhou did agree to an alternative funding arrangement which would come into effect if the Bank subsequently changed its position and confirmed its consent.
17. At the time of the Company's application for directions to despatch the First Disclosure, the Company remained in discussions with the Bank. The position was explained by Mr Cheng in his Third Affirmation (**Cheng 3**) filed in support of that application. The relevant parts of Cheng 3 are as follows:

“11. As set out in the Explanatory Statement, I confirm that it was intended as part of the deal offered to Scheme Creditors that Shanghai CRIC, the entity holding the business and assets of CRIC Group, would be transferred to TM Home on or prior to the Restructuring Effective Date. I note that this overall principle of the Restructuring was also reflected in the Term Sheets to the Restructuring Support Agreements to which the Noteholders and the CB Holder acceded. I also refer to Kroll's Liquidation and Recovery Analysis (Appendix 3 of the Explanatory Statement) and the valuation of Shanghai CRIC (Appendix 13 of the Explanatory Statement), which show that the value of Shanghai CRIC forms a substantial part of the estimated value of the equity interest in TM Home, and therefore a substantial part of the Scheme Consideration offered to Scheme Creditors. In particular:

11.1 According to Kroll's analysis, the total value of the 65% equity interest in TM Home (referred to as "Tianji Home") was RMB1,702,927,000 (approximately USD236,706,853) to RMB2,128,659,000 (approximately USD295,883,601), depending on whether a minority discount is applied.

11.2 Out of that total value, I further note that the value attributed to Shanghai CRIC (referred to as "CRIC Technology") is RMB690,047,000 (approximately USD95,916,533) to RMB862,559,000 (approximately USD119,895,701), or 41% of the value of the 65% equity interest in TM Home.

11.3 Accordingly, if Shanghai CRIC is not transferred to TM Home, I understand that the total recovery to Scheme Creditors will be reduced from a range of RMB2,040,193,000 (approximately USD283,586,827) to RMB2,465,924,000 (approximately USD342,763,436), down to a range of RMB1,350,146,000 (approximately USD187,670,294) to RMB1,603,365,000 (approximately USD222,867,735).

11.4 This would reduce the recovery rate from a range of 36.3% to 43.8%, down to a range of 24% to 28.5%.

12. Therefore, although the transfer of Shanghai CRIC to TM Home is not a RED Condition, the Company and I are of the view that the Company cannot proceed with the Restructuring if this transfer does not take place. I firmly believe to do otherwise would be fundamentally unfair to the Scheme Creditors as it was a core and valuable part of the bargain struck between the Scheme Creditors and the Company.

13. Therefore, it is clear to me that, even if it were possible, the Company should not press ahead with the Restructuring unless it has first transferred Shanghai CRIC to TM Home prior to the Restructuring Effective Date.

14. *I note, however, that Shanghai CRIC has provided a RMB200 million (approximately USD28 million) guarantee (the "**Guarantee**") in respect of borrowing extended to the Company by a PRC bank, Shanghai Pudong Development Bank (the "**Bank**") which has a current balance of RMB436 million (approximately USD61 million). The terms of the Guarantee prevent Shanghai CRIC from, among other things, (i) selling, transferring or conveying all or substantially all of its material assets, or (ii) permitting any major change of ownership or shareholding structuring, in each case without the prior written approval of the Bank. In respect of the valuation of Shanghai CRIC in the Liquidation and Recovery Analysis, I note that it does not refer to or take account of the Guarantee, which I understand is because it had been prepared on the assumption that the Guarantee would have been released prior to the transfer of Shanghai CRIC to TM Home (as was anticipated by the Company and I until recently).*
15. *Due to the importance of the transfer of Shanghai CRIC to the Restructuring, I recall that the Company began discussions with the Bank regarding the proposed transfer in April 2023, immediately after the plan for the Restructuring was announced. These discussions continued from time to time throughout 2023. During these discussions, I was told by the Company's Cash Management Department, who conducted these discussions with the Bank, that the Bank provided repeated assurances that a solution would be found one way or another that would allow the Restructuring to proceed, and the Bank would not stand in the way of the Restructuring. The Bank was, during these discussions, open to considering a range of possibilities for permitting the transfer of Shanghai CRIC, including the release of the guarantee outright (because there are a number of other entities in the Group that are also guarantors of the same loans), or replacing the guarantee with a pledge over a 20% stake of TM Home.*
16. *I recall that no formal written agreement was entered into because the Bank had to go through its required internal approval process before it would be ready to enter into an agreement. However, because of the firm assurances provided, and based on the feedback provided by our Cash Management Department who were involved in the discussions with the Bank, the Company determined that there was no real risk that the Bank would not permit the transfer of Shanghai CRIC. The Bank has been the Company's lender since 2016 and has been highly supportive of it, and has accommodated the Company's requirements in relation to many complex situations, including the Company's delisting from the New York Stock Exchange, the Company's internal restructuring, and the Company's relisting on the Hong Kong Stock Exchange. The Company therefore had significant trust in the Bank's assurances that the Bank would continue to support the Company through the current Restructuring.*
17. *Unfortunately, notwithstanding these previous assurances, and without any prior warning, the Bank has now changed its position. On 21 February 2024, the Bank informed the Company that it would not agree to the release*

of Shanghai CRIC's guarantee obligations, and that it would not agree to allow the transfer of Shanghai CRIC to take place on the condition that the Guarantee stays in place. It is not clear why the Bank has changed its position but as a general point, in my experience, with the continuing downturn in the PRC real estate market and no sign of any material improvements, the banking sector has become increasingly conservative, and liquidity within the banking system for the real estate sector has been significantly impacted.

- 18. I note that the Company does not have available cash to repay the RMB200 million (approximately USD28 million) loans to which the Guarantee relates in order to release the Guarantee, and therefore allow the transfer. Even with the funds expected to have been generated by the Rights Issue, I note that the Company would not have sufficient cash available to pay all of the Cash Consideration (approximately USD48,384,584.44), the Instruction Fee (approximately USD1,624,839.54), and the RMB200 million secured by the Guarantee. Together, this would amount to approximately USD78 million, while the Rights Issue was expected to generate only approximately USD59 million.*
- 19. The Company has also considered whether it would be in the best interests of the Company to transfer Shanghai CRIC without the Bank's consent, notwithstanding the terms of the Guarantee. However, I understand that this would be a breach of the Guarantee, and would entitle the Bank to declare the full amount of the borrowings owed to the Bank (RMB436 million, or approximately USD61 million) in default and accelerate payment. I also understand that the Bank could freeze all of the Company's domestic bank accounts, which would immediately cripple the Company's daily operations, for example the Company would be unable to pay staff salaries or office rent. The Company has determined that this would be a worse outcome for the Company than failing to complete the Restructuring. I agree with that conclusion.*
- 20. Accordingly, I believe that it is not possible to transfer Shanghai CRIC without the cooperation of the Bank. The Company is continuing discussions with the Bank and is using its best efforts to reach an agreement with the Bank which allows the transfer of Shanghai CRIC to take place prior to the Longstop Date, so that the Restructuring can proceed. However, at this stage it is my view (and that of the Company) that it is more likely than not that the Company will be unable to reach an agreement with the Bank prior to the Longstop Date. As this would prevent the Company from completing the transfer of Shanghai CRIC to TM Home, I believe (and so does the Company) that there is a high likelihood that the Company will be unable to complete the Restructuring. As explained at paragraphs 11 and 12 above, even though the transfer of Shanghai CRIC is not a RED Condition, the Company is not prepared to proceed with the Restructuring in circumstances where the Scheme Creditors will receive*

significantly less valuable Scheme Consideration, as compared to the deal to which they have agreed, and I agree with that position.

21. *I understand from the Company's Advisors that the Company notified Scheme Creditors of the above matters in an announcement published on 26 February 2024*
22. *I acknowledge that the requirement for the Bank to agree to release the Guarantee, and the risk that this agreement would not be forthcoming, was not disclosed to the Court, or to Scheme Creditors in the Explanatory Statement. The Company was advised of its obligation to provide full and frank disclosure to the Court and to Scheme Creditors. I know that the reason for omitting disclosure regarding the Shanghai CRIC transfer issue was that, as noted above, due to the assurances received from the Bank, the Company expected the transfer to proceed without difficulty and did not believe there was any real risk otherwise. The Company and I now realise that this belief was mistaken, and this potential issue should have been disclosed to the Court and to Scheme Creditors, and both the Company and I apologise unreservedly for this error. I was surprised and disappointed by the Bank's sudden reversal of its position, and I know that the Company and I are working to try to find a path forward for the Bank to agree to the transfer of Shanghai CRIC to TM Home, so that the Restructuring can occur by 31 March 2024.*

.....

23. *As I explained in my First Affirmation, the Rights Issue was expected to raise HKD465 million (approximately USD59 million), which was required to fund the payment of the Cash Consideration and Instruction Fee. I note that Mr Zhou Xin, the Company's Chairman, entered into an Underwriting Agreement with the Company, pursuant to which he agreed to subscribe for any unsubscribed Rights Shares, so that even if the Rights Issue was undersubscribed, the Rights Issue would nonetheless raise the funds required to complete the Restructuring....*
24. *Under Clause 12 of the Underwriting Agreement, I note that Mr Zhou Xin is entitled to terminate the agreement on the occurrence of a material adverse change in relation to the business or the financial or trading position or prospects of the Company as a whole ("MAC"). On 29 February 2024, due to the matters described above in relation to Shanghai CRIC, and the fact that both the Company and I now consider that the Restructuring is now more likely than not to fail, Mr Zhou Xin notified the Company that he was exercising his right to terminate the Underwriting Agreement on the grounds that a MAC had occurred. Mr Zhou Xin's termination notice sent to the Company is at page 199. The Company's directors agree that the Shanghai CRIC issue amounts to a major change in the Company's overall condition, and accordingly Mr Zhou Xin was entitled to terminate the Underwriting Agreement.*

25. *I note that the Rights Issue is conditional upon, among other things, the Underwriting Agreement having become unconditional, pursuant to Clause 3.1 of the Placing Agreement between the Company and CRIC Securities Company Limited dated 19 June 2023, which is at pages 200 to 218. I understand that, as a result of the Underwriting Agreement being terminated, it is therefore no longer possible to complete the Rights Issue. In any event, without the Underwriting Agreement in place, the Rights Issue would not generate the funds required to complete the Restructuring – as at 29 February 2024 (the latest time for acceptance of shares under the Rights Issue), only 2% of the 2,098,871,436 shares to be issued under the Rights Issue were subscribed.*
26. *I understand from the terms of the Scheme that the Restructuring Effective Date will occur on the Business Day on or before the Longstop Date on which the Company gives notice to the Scheme Creditors that the RED Conditions set out at Clause 7.1 of the Scheme have either been satisfied or waived by the Company (although the condition at Clause 7.1(h) cannot be waived). Consummation of the Rights Issue is one of the RED Conditions (clause 7.1(e)). As a result, unless that condition is either satisfied or waived by the Company, I understand that the Restructuring Effective Date cannot occur.*
27. *In such circumstances I understand that if the Restructuring Effective Date does not occur before the Longstop Date the Restructuring will not be able to proceed.*
28. *If the issue regarding Shanghai CRIC is resolved prior to the Longstop Date so that the Restructuring can proceed, I note that as set out in Mr Zhou Xin's termination notice at page 199, he has stated that he is prepared to provide the same level of financial support for the Restructuring. I can confirm that the funding will be provided in the form of a shareholder loan from Mr Zhou Xin to the Company, on terms that are more favourable to the Company than terms available to or from independent third parties....”*

(footnotes omitted)

18. I made the order giving directions for the circulation of the First Disclosure but required that a hearing be listed before the Longstop Date of 31 March 2024 so that the Court could be updated as to the position and that the 2023 Scheme Creditors be given an opportunity to appear or make representations to the Court and that the First Disclosure be amended to give notice of this hearing and to make it clear that the 2023 Scheme Creditors would be able to make representations (and that they could do so through Cayman attorneys instructed to represent them or if they had problems

instructing such attorneys alternative arrangements could be made). The hearing was listed for today (26 March 2024).

19. Prior to the hearing the Company filed a further, updating, affirmation from Mr Cheng (*Cheng 4*). In Cheng 4 Mr Cheng:
- (a). said that the First Disclosure had been despatched in accordance with the directions I had given.
 - (b). said that neither the Company nor Maples had been contacted by any 2023 Scheme Creditors regarding the matters addressed in the First Disclosure or the hearing save that one custodian had contacted the Information Agent on 18 March 2024 enquiring whether the 2023 Scheme Creditors were required to take any action in relation to the hearing. No 2023 Scheme Creditor has indicated that they wish to attend the hearing or to raise any matters with the Court.
 - (c). said that the Company has also informed the High Court of Hong Kong of the matters that were addressed in Cheng 3 and of this Court's order regarding the First Disclosure and of the listing of a further hearing. The learned judge dealing with the matter in the Hong Kong High Court had informed the Company via a letter dated 19 March 2024 that there was no need to update the Hong Kong Court unless the Company intended to make a further application to it.
 - (d). said that no agreement had been reached with the Bank that would enable Shanghai CRIC to be transferred to TM Home without breaching the guarantee. The Company had continued with its efforts to resolve this matter however, despite the Company's best efforts, the matter will not be resolved in time to allow the transfer to take place before 28 March 2024, being the last Business Day before the Longstop Date.
 - (e). gave a further and more detailed explanation of the Company's dealings and discussions with the Bank as follows:

- “13. ...During that period, I was told by the Company's Cash Management Department, who conducted these discussions with the Bank, that the Bank provided repeated assurances that a solution would be found and that the Bank would not stand in the way of the Restructuring. However, on 21 February 2024 the Bank informed the Company that it would not agree to the release of Shanghai CRIC's obligations under the Guarantee and would not agree to the Transfer occurring whilst the Guarantee remains in place. This came as a significant surprise to the Company and to me.
14. The Company has had a relationship with the Bank since 2016, when the Company de-listed in the United States. The Bank provided a loan to support the privatisation of the Company. The Company's relationship with the Bank has been good throughout that time. The Bank has been a predictable counter-party, and has been supportive of the Company as I noted in paragraph 16 of my Third Affirmation. For example, the due date for the loan relating to the privatisation has passed without it being repaid, but the Bank, in view of the Company's difficulties and given the Company has continued to service the loan, has been accommodating, agreeing to extend the loan on several occasions in the last three years.
15. The Company's Cash Management Department comprises a small team of experienced employees (for example, it is headed by an individual who has held that role for at least 9 years – that is, throughout the period the Company has had a relationship with the Bank) who are used to dealing with the Bank and are familiar with its processes. I and the Company therefore relied on their experience and expertise in dealing with the Bank and relied on the updates they provided about their discussions with the Bank regarding the Guarantee.
16. As previously outlined, the Company began its discussions with the Bank promptly upon the plan for the Restructuring being announced. That is, once the Company had reached an agreement with the CB Holder and was announcing the Restructuring plan, the Company knew it would have to transfer its stake in Shanghai CRIC, and so began discussions with the Bank. I recall that, initially, the timetable for the Restructuring was such that there was a reasonably long period of time between the Restructuring plan being announced in April 2023, and the Longstop Date (which, under the RSA and the RSA (CB) was 31 January 2024, unless extended). The Longstop Date was later extended to 31 March 2024. I understand from my colleagues in the Company's Cash Management Department that typically where an event is not due to occur for some time, the Bank will not start its internal approval process, but will wait until nearer to the time when approval is required. As such:

- 16.1 *The Company began its discussions with the Bank in April 2023 as I have stated, and understood from its preliminary interactions with the Bank that it would raise no issue with the Transfer.*
- 16.2 *The frequency of and level of detail covered in the Company's discussions with the Bank then increased towards the end of 2023 and increased further into 2024. Throughout that time the Company was given assurances that the Bank would support it through the Restructuring and had significant trust in those assurances.*
17. *It was not until after the Chinese New Year holiday period (which ran from 10 to 17 February 2024 in the PRC), that the Bank informed the Company it did not agree to the matters necessary to enable the Transfer to occur.*
18. *The Explanatory Statement and other documents for the Restructuring were prepared during the second half of 2023. Throughout that time, and until 21 February 2024, I and the Company believed that the Bank would agree to allow the Transfer to proceed. I was heavily involved in reviewing drafts of the Explanatory Statement and checked, and frequently provided additional input on, the details that were being included. Had I had any inkling that the Transfer might have been a problem, I would have raised this for inclusion in the Explanatory Statement. I would also have pressed the matter further with my colleagues in the Cash Management Department and would have considered and sought advice on whether the process should have been paused and the Scheme Meetings delayed until we obtained a clear, written commitment from the Bank. As I have said, I and the Company were aware that we had an obligation to provide full and frank disclosure to the Court and to the Scheme Creditors and we take that obligation seriously. Regrettably, we simply did not appreciate that the Transfer might not take place. With the benefit of hindsight, my belief and the Company's belief that there was no material risk the Transfer would not proceed was misplaced and I reiterate the Company's and my apology, set out in paragraph 22 of my Third Affirmation."*
- (f). Mr Cheng confirmed that since the Company considered that the issues with the Bank will not be able to be resolved in time for the Restructuring Effective Date to take place on 28 March 2024 (being the last Business Day before the Longstop Date) the Company would not waive the condition that the Rights Issue be consummated for the Restructuring Effective Date to occur. As a result, the Restructuring will not come into effect.

- (g). Mr Cheng also said that given that the Restructuring will now not proceed, the Company was actively working with its financial adviser on an alternative restructuring proposal and will provide an update to 2023 Scheme Creditors as soon as possible and, in any event, by the end of April 2024.
20. In these circumstances, the Company seeks permission to make and directions for the despatch of an announcement (the *No RED Notice*) informing 2023 Scheme Creditors (a) that the 2023 Scheme (and the Hong Kong scheme) will lapse and will cease to have any force or effect (on the Longstop Date, 31 March 2024) and (b) of the next steps that the Company intends to take with respect to its outstanding debt obligations under the Old Notes and the Convertible Note. The Company filed a draft of the No RED Notice.
21. As I explained at the hearing, this is both an unfortunate and unusual situation. This is the second scheme that the Company has had sanctioned by this Court but been unable to complete and implement. In both cases, the Company made a decision after sanction not to go ahead with the scheme. In the case of the 2022 Scheme, this was because of a significant change in circumstances which in the view of the Company's directors meant that implementing the 2022 Scheme would not be in the interests of the 2022 Scheme Creditors. In the case of the 2023 Scheme, the failure to obtain the consent of the Bank ultimately meant that the 2023 Scheme could only go ahead without the Rights Issue which was needed to generate the funding needed by the Company in order to give effect to the restructuring (and even had it been possible to proceed with the 2023 Scheme, the value of the 2023 Scheme Creditors' interest in TM Home would have been substantially less than the value promised in the Explanatory Statement).
22. In the result, the substantial costs of two sets of schemes have been incurred but wasted. In the case of the 2023 Scheme, the problem that torpedoed the 2023 Scheme arose out of an issue that was not disclosed in the Explanatory Statement. The Company has gone to a good deal of trouble to explain and apologise for that failure and I accept the Company's evidence (which has not been challenged) that those at the Company dealing with the Bank had behaved with proper care and been given assurances which it

was reasonable for them to rely on. I also accept, based on the evidence adduced to date, that the Company has sought to act properly and taken into account the interests of the 2023 Scheme Creditors and I assume the Company's board has acted with full legal and financial advice when deciding whether to allow the 2022 Scheme and the 2023 Scheme to proceed. As I said at the hearing, it is important that the board has given proper consideration to whether a new restructuring will be better for the 2023 Scheme Creditors than would be available under the 2023 Scheme, assuming that the 2023 Scheme could be made to work even if TM Home did not immediately have Shanghai CRIC transferred to it (although I accept that in the absence of committed funding from Mr Zhou that would be available even where the Bank refused to give its consent, the restructuring effected by the 2023 Scheme was incapable of being implemented and had ceased to be viable).

23. It does appear that the Company has found itself facing some unusual and challenging issues. The Bank appears to have radically changed its position only after the 2023 Sanction Order and it appears that there are no Noteholders who have come forward and been prepared to act as a sounding board to allow the Company to share and obtain 2023 Scheme Creditor input on its thinking in advance of having to decide whether to proceed with the 2023 Scheme (perhaps in a modified form). The CB Holder has been kept informed of developments because it has a representative on the Company's board. But, having said that, it is important that companies promoting schemes act with great care, proper diligence and make full disclosure to scheme creditors and the Court, and do not abuse the process by promoting schemes that even after sanction remain subject to (non-administrative) conditions whose satisfaction remains seriously in doubt. Had the Company disclosed to the Court the need to obtain and the critical importance of obtaining the Bank's consent, the sanctioning of the 2023 Scheme is likely to have at least been deferred until further confirmations and assurances as to the position of the Bank had been obtained.
24. The Company gave evidence at the time of the sanctioning of the 2022 Scheme and at the time of the sanctioning of the 2023 Scheme that if the schemes were not approved and sanctioned an insolvency of the Company and the Group was likely. This evidence

has turned out to be unreliable. This is a happy result in the sense that the creditors have not had to suffer the adverse consequences of an insolvency but it does raise a concern as to the basis on which the Company has presented its case and the reliability of its evidence (and as to abuse of the process). If the Company's evidence as to the prospects following a failed scheme is unreliable, that also raises a question mark over the reliability of the evidence as to what scheme creditors would receive if the scheme did not go ahead. Of course, I understand that it is often difficult to predict exactly what will happen if a restructuring cannot be implemented but the fact that the Company has twice presented an insolvency as at least likely to scheme creditors and on each occasion this has not come to pass, is a concern.

25. In the circumstances, I accept that the Company must be permitted to send out the No RED Notice. I made a few amendments to the Company's draft to include a reference to the hearing before me today, the fact that no 2023 Scheme Creditors have come forward to raise any objections or to make any representations, to be precise as to the time at which the 2023 Scheme would lapse and cease to have effect, to confirm (so that the 2023 Scheme Creditors were clearly aware of the position) that despite the 2023 Scheme not going ahead the Company would be paying the costs of the 2023 Scheme process and paying its advisers in accordance with their contractual entitlements and to spell out that the 2023 Scheme was at an end and that the rights of the 2023 Scheme Creditors had revived and become enforceable once again. I said that this last clarification was important so that the No RED Notice did not suggest that the further restructuring discussions that the Company has already embarked on were being conducted pursuant to the 2023 Scheme or under the umbrella of this Court's scheme jurisdiction. Subject to these changes, the No RED Notice is approved.



The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands
2 April 2024