IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 72 & 74 OF 2022 (DDJ)

IN THE MATTER OF SECTION 238 OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF NEW FRONTIER HEALTH CORPORATION

Appearances:	Camilla Bingham KC for the Company instructed by Gráinne King, Catie Wang and Moesha Ramsay-Howell of Harney Westwood & Riegels Jeremy Goldring KC for the Dissenters, instructed by (i) Katie Logan of Campbells, (ii) Nigel Smith of Carey Olsen, and (iii) Rocco Cecere and Natascha Steiner-Smith of Collas Crill
Before:	The Hon. Justice David Doyle
Heard:	31 March 2023
Ex Tempore Judgment Delivered:	31 March 2023
Draft transcript of Ex Tempore Judgment Circulated:	31 March 2023
Ex Tempore Judgment Approved:	4 April 2023

HEADNOTE

Determination of application for extension of time for Company to provide discovery- need to comply with Orders – need for a fair trial within a reasonable time

JUDGMENT

Introduction

1. These proceedings were commenced, over a year ago now, by way of petitions dated 28 March 2022 both seeking, pursuant to section 238 of the Companies Act (2022 Revision), this court's determination of the fair value of shares held in New Frontier Health Corporation (the "Company") together with a fair rate of interest, if any, on the amount payable by the Company to certain dissenters (the "Dissenters"). The present Dissenters are defined in Appendix 1 to the Company's document entitled "Amended Summons".

2. The Company at paragraph 11 of its skeleton argument dated 23 March 2023 wrongly stated that:

> "On 20 March 2023 the Court gave the Company leave to amend its summons pursuant to GCR Order 32 rule 2 (3) [HB/31]."

At HB/31 there is an email from my Personal Assistant dated 20 March 2023 which reads:

> "Justice Doyle is minded to list the Amended Summons for 31 March 2023."

By no reasonable stretch of the imagination can that email be referred to as the Court granting leave to amend and it was misleading of the Company to suggest otherwise. I

raised the point at the hearing and having heard from counsel granted leave to amend the summons. It can now accurately be stated that the Court gave the Company leave to amend its summons.

3. I must also make another point in respect of the language used by the Company in its skeleton arguments. Included in the hearing bundle is the Company's skeleton argument dated 16 February 2023 which at paragraph 19 states that the Company did not formally seek "a determination on the papers (but only informally reminded the Judge of his discretion in that respect)". I regard that wording as unfortunate also. Without first obtaining the agreement of the Dissenters, the Company had on page 2 of the formal summons dated 19 December 2022 included the following wording: "It is respectfully suggested that it be determined on the papers". In my mind the wording that the Company had seen fit to include in its formal summons was not an "informal reminder" but was a formal request for the summons to be determined on the papers and it was wrong for the Company, in its skeleton argument, to suggest otherwise. The Company needs to take care to avoid loose language in its skeleton arguments in the future.

4. On, as long ago, as 12 August 2022 after a two day hearing I made an order (filed on 17 August 2022) that the Company should provide its discovery of certain categories of documents specified in Appendix 3 of the Order within 120 days from the date of the Order (the "August Order"). According to the Dissenters, the Company's discovery should have been completed by 19 December 2022. Appendix 6 to the August Order contained a very detailed protocol regarding documents required to be redacted in order to comply with the laws of the People's Republic of China (the "PRC").

5. At the hearing in August 2022 before the court for determination were 18 disputed issues of which the period of time within which the Company was to provide discovery was one.

6. The Company has failed to comply with the August Order.

The Company's evidence before the Court in August 2022

7. Mr Carl Wu, the Chief Executive Officer and a director of the Company, in his first affirmation dated 21 July 2022 referred at paragraph 8.1 to the timeframe for the Company to provide discovery. He stated that the Dissenters initially sought an order specifying 70 days subsequently increased to 120 days. The Company's initial counter proposal was 240 days subsequently reduced to 180 days.

8. At Part B of his affirmation Mr Wu gave further details of the timeframe for the Company to give discovery under the following subheadings:

B1 Steps taken to date

- preservation of documents
- identification of data sources
- identification of custodians
- communications with custodians
- third parties

B2 Complicating factors in the discovery exercise

- Covid-19 pandemic and associated restrictions
- PRC Data Protection Law.

B3 Anticipated timing of next steps in the Company's discovery exercise.

9. At paragraph 22 Mr Wu said that the Company was taking advice on relevant requirements of the PRC Data Protection Laws so that it may address any issues arising "without undue delay to these proceedings."

10. At paragraph 23 Mr Wu referred to the need "for an extra level of review."

11. Mr Wu at paragraph 25 referred to restrictions in relation to COVID-19 and the Data Protection Laws of the PRC and stated:

> "… based on discussions with its advisers, the Company anticipates being able to provide the Discovery Documents within 180 days of the Court's directions order, but not earlier than that."

12. At paragraph 24 Mr Wu had admitted that "the Company is yet to begin the process of collecting documents from custodians."

13. At no stage did Mr Wu even hint that governmental approval was required in the PRC before documents could be released for discovery purposes.

The Judgment delivered on 12 August 2022

14. In my judgment delivered on 12 August 2022 I stated:

> "**Issue 4 (Company's Issues Document Issue 1)**
>
> (1) Whether the Company should be ordered to provide the bulk of its discovery within 180 days (as contended for by the Company) or within 120 days (as contended for by the Dissenters).

Ruling

My ruling is that a period of 120 days should be allowed. This should be specified at paragraph 11a of the draft Order.

Reasons

I am not persuaded that the impact of the COVID 19 pandemic and the PRC Data Protection Laws mean that a longer period than 120 days should be allowed. 120 days should be adequate and realistic. The discovery process cannot be permitted to unduly delay the determination of the issues in this case within a reasonable time. The Dissenters have referred to authorities where a "customary" 70 days has been ordered in the past. The evidence before the Court goes nowhere near justifying 180 days. I noted with concern Mr. Wu's statement at paragraph 24 that "the company is yet to begin the process of collecting documents from custodians." The Company seems to have dragged its feet in starting the discovery process earlier than it did and must now get on with the process and devote sufficient resource to it. The Company has already had significant time to progress discovery. The Company must now focus on complying with its discovery obligations."

Paragraph 11a of the draft Order became paragraph 10a of the finalised August Order.

Further evidence

15. I have considered the further evidence now filed (and contained in the hearing bundle) in respect of the Company's application for an extension of time to comply with its discovery

obligations. I do not set it all out in this judgment. It forms part of the court record and I have full regard to it.

The respective positions of the Company and the Dissenters

16. I have also considered the skeleton arguments and the oral submissions placed before the court. I am most grateful to both counsel for their eloquent and well focused oral submissions.

The position of the Company

17. In summary the position of the Company is as follows:

(1) it initially applied for an extension to 28 April 2023 but now seeks an extension to 29 September 2023;

(2) "scant evidence" was put before the court on behalf of the Company in August 2022;

(3) there have been additional difficulties created by COVID-19 over and above those referred to in the evidence before the Court in August 2022;

(4) screening for confidential patient data "has retarded the discovery process significantly";

(5) "… the release of the balance of the Company's data such as was located in mainland China and had at that stage [19 December 2022] been tagged as relevant was *not* released to the Dissenters. The Company's understanding was (and remains) that by reason of data security and protection regulations recently

introduced in the PRC in c. late 2021, their release must await the grant of governmental approval". "On 17 December 2022 a first tranche of documents was sent to the Judicial Assistance Exchange Centre in Beijing for approval to make a cross-border transfer to the Cayman Islands";

(6) although avoidance of undue delay is an important facet of the overriding objective and (consistently with the constitutional requirement that proceedings be determined "within a reasonable time" – section 7 of the Bill of Rights scheduled to the Cayman Islands Constitution) the Court's duty of active case management can include the giving of directions to ensure that the trial proceeds quickly, the Court's priority is always to see to it that substantive justice is done;

(7) it is in no-one's interests for the discovery process to be conducted otherwise than with considerable care and professionalism;

(8) the court should not refuse reasonable extensions which neither imperil hearing dates nor otherwise disrupt the proceedings (*Jalla v Shell International Trading and Shipping Co Ltd* [2021] EWCA Civ 1559 Coulson LJ at [29]);

(9) when competing interests collide – (a) the Court's interest in promoting the expeditious dispatch of litigation and (b) a party's desire for more time in which to complete a stage in that litigation, - the touchstone deployed by the Court is prejudice;

(10) although "discovery may have got off to a slow start" the Company has now "manifestly moved with all reasonable dispatch" with the assistance of its new attorneys;

(11) the litigation is not being under-resourced;

(12) the added significant complication is the application of PRC laws and regulations. It is the Company's understanding that PRC regulatory approval must be granted before the Company can transfer data stored within the territory of Mainland China cross border in compliance with the August Order;

(13) the Company has duly approached the relevant authorities for approval, by sending tranches of documents to the relevant agency of the Ministry of Justice on a rolling basis as and when review by the Company and its agents is completed. Two tranches have been submitted and it is anticipated that the final batch will be transmitted to Judicial Assistance Exchange Control (the "JAEC") for review at the end of June 2023. The Company refers to a turnaround of not more than 3 months by the JAEC and says that it will be in a position to have released all documents from the data room to the Dissenters by 29 September 2023;

(14) the Dissenters say that the Company is fundamentally mistaken as to the application of PRC law but that issue of foreign law cannot be resolved by the Court without the benefit of the cross-examination of experts for whose reports permission has been duly sought and granted. The Company's position is that the relevant legislation only came into force in late 2021 and the penalties for breach are serious including revocation of licence, suspension of business and fines for corporates and individuals responsible for unapproved transfers. The indications are that the PRC authorities do consider the legislation to be engaged. See also *Sina Corporation* (FSD; unreported judgment 20 January 2023);

(15) the Company recognises that illegality in the place of performance, under foreign law, does not vitiate an order for discovery: the Court must balance the competing interests in play (*Bank Mellat v HMT* [2019] EWCA Civ 449);

(16) the court cannot discharge the statutory duty without the relevant material;

(17) no hearing date has been set. There is no prejudice in providing an extension;

(18) the Dissenters have issued no fewer than four sets of s1782 proceedings in the United States and it is unlikely that all those proceedings will be resolved prior to September 2023. It is therefore difficult to pinpoint any prejudice caused by the Company's request for further time to complete its discovery;

(19) there is no upside for the Dissenters or for the Court in refusing the relief sought;

(20) the approach of Parker J in *Sina Corporation* was sound, and the corporate safeguards proposed by the Company should give the Court comfort that the progress of the proceedings will not drift;

(21) there have been seven principal developments since August 2022 (i) change of legal representation, (ii) volume of data, (iii) impact of COVID-19, (iv) technological difficulties with the laptops of custodians, (v) unforeseen issues in respect of screening confidential patient data, (vi) the mixture of documents confidential to a member of the buyer group, (vii) the receipt by the Company of PRC law advice; and

(22) the Company is not trying to re-argue points determined at the August hearing.

The position of the Dissenters

18. In summary the position of the Dissenters is as follows:

(1) since the filing of the petitions the Company has sought to kick them into the long grass;

(2) the Company's application should be dismissed with costs;

(3) both points (COVID-19 restrictions and PRC Data Protection Laws) now relied upon by the Company were argued and resolved against the Company, for good reason, at the August hearing;

(4) at the August hearing the Company's position was that PRC Data Protection Laws would necessitate an additional level of review by PRC-based counsel. The Company did not at that stage suggest its disclosure required approval of a PRC state authority. The Company's skeleton for the August hearing at paragraph 19 said:

> "The Company is unable to provide data to [its Cayman attorneys], or any party outside the PRC, for review until those documents have been reviewed by PRC Counsel and redacted (if necessary) in accordance with the PRC Redaction Protocol at Appendix 6 of the Draft Directions Order. The time for that review and application for redactions should therefore be factored into the discovery timetable";

(5) nothing in the Company's evidence begins to justify the very lengthy extension of time that is now sought;

(6) delay in the conduct of proceedings is a source of prejudice and there is "obvious prejudice" to the Dissenters in being held out of their statutory entitlement;

(7) the issues upon which the Company now relies have already been determined against it and there is no good reason for the Court to reopen them. The matters relied on by the Company are either (i) matters that were squarely raised at the

hearing in August or (ii) matters that could and should have been raised at that hearing. There is no material change in circumstances;

(8) in the absence of a material change of circumstances, the Court should be exceptionally reluctant to permit a party to have a "second bite of the cherry" in acceding to a second application where a first one has failed. Repetitive applications call into play the fundamental principles of finality in litigation, the need to protect the Dissenters from repeated applications and the need to promote the overriding objective in conducting litigation efficiently, not just for the benefit of the litigants in the present proceedings, but also so that Court resources may be appropriately allocated (*Woodhouse v Consignia Plc* [2002] 1 WLR 2258 at [56] and *Arnage v Walkers* (FSD; unreported judgment of Doyle J 28 October 2022 at para 7(1));

(9) there have been no COVID-19 restrictions in the PRC beyond those which were anticipated at the time of the August hearing and in any event these have caused minimal disruption;

(10) the Company asserts that it has an obligation to obtain the approval of a PRC state authority – the JAEC – before it can transfer any data out of the PRC which arises from Article 36 of the Data Security Law of the PRC ("DSL"). The Company's interpretation of Article 36 of the DSL is misconceived. However any argument in this regard could and should have been made at the hearing in August. Moreover, the Company has, again, been inexcusably slow in progressing approval;

(11) the Company's new evidence demonstrates afresh the leisurely pace at which the discovery process has proceeded;

(12) there is no reason for the Court to consider the Company's new arguments of PRC law;

(13) even if the Court considers it necessary to give further consideration to the evidence of PRC law and the Company's new contention, it provides no good reason for the Court to allow the Company to delay its discovery. The balance remains overwhelmingly against the relief sought by the Company because (i) this Court will have regard to foreign "blocking statutes" only in limited circumstances not satisfied by the Company and (ii) in any event, the Company's position in relation to the substance of Article 36 of the DSL and Article 38 of the Personal Information Protection Law of the PRC ("PIPL") is misconceived and wrong. The balancing exercise required by *Bank Mellat* weighs clearly in favour of discovery;

(14) the Company's attempts at delay are prejudiced to the Dissenters in that the delay will disrupt the proceedings and cause increased costs and inefficiencies;

(15) the Company should only be permitted one bite of the cherry;

(16) the Court should not allow any further delays as justice delayed is justice denied;

(17) the Court should not permit delay in respect of these proceedings and it should not relinquish its control of the proceedings to authorities in the PRC; and

(18) PRC law does not assist the Company in this case and in any event there is no evidence of any real risk of prosecution.

What has changed since 12 August 2022?

19. There is no evidence that the substantive Data Protection Law of the PRC has changed. On behalf of the Company there is evidence that on 1 September 2022 the Measures on Security Assessment for Cross-Border Data Transfer came into effect. There is evidence

that the DSL came into force on 1 September 2021 and the PIPL on 1 November 2021, well before the August hearing.

20. There is some evidence that the Company has had difficulties with COVID-19 over and above those evidenced at the August 2022 hearing (including a couple of key individuals (the General Counsel of the Company and a senior PwC staff member responsible for the data collection in Beijing testing positive for COVID-19); the designation of Shanghai as a "high-risk" COVID-19 area in October 2022; the Company's Beijing offices being under a COVID-19 lockdown from 20 November 2022 to 10 December 2022 and subsequently staff suffering from COVID-19 over a period of 3 weeks) but such difficulties cannot excuse the failure of the Company to comply with the August Order, on a timely basis.

21. The Company has changed its legal representatives but that cannot justify non-compliance with the August Order. The Company and its officers should not seek to hide behind its legal representatives when it comes to the Company's direct responsibility to comply with its discovery obligations. Yet again I find myself in the position of having to stress the importance of strict compliance with court orders (*Toledo v Walkers* FSD, unreported judgment, 25 January 2022 (DDJ) at paragraphs 78 – 103).

22. I place little weight on the Company's submissions that the significant volume of data has become clearer since the August hearing as have the difficulties created by confidential patient information and the mixture of documents confidential to a member of the Buyer Group.

23. Since my judgment in August 2022 Parker J has delivered his judgment in *Sina Corporation* (FSD; unreported judgment 20 January 2023), which I have carefully considered. Parker J's judgment in *Sina Corporation* (FSD; unreported judgment 25 January 2022) was however available in August 2022 but the Company did not bring it to

the Court's attention nor did it rely upon such judgment or the provisions of Chinese law it now relies upon.

24. The Company now appears to place more reliance on difficulties it says are created by PRC law than was the case in August 2022. It is most unfortunate that the Company did not take PRC law advice well before the August hearing.

25. Apart from the additional COVID-19 difficulties and the reliance on PRC law, not much has materially changed since 12 August 2022.

Determination

26. Having considered the evidence and arguments placed before the court I can take the determination section of this judgment relatively briefly.

27. Insofar as is presently relevant, under Order 3 rule 5 (1) of the Grand Court Rules the Court may, on such terms as it thinks just, by order extend the period within which a person is required by any order to do any act in the proceedings. Under Order 3 rule 5 (2) it is provided that the Court may extend any such period as is referred to in paragraph (1) although the application for an extension is not made until the expiration of that period. When considering an application to extend time the court is exercising a judicial discretion.

28. It is unfortunate that despite the comments I made in my judgment delivered on 12 August 2022 the Company has not progressed compliance with its discovery obligations in a timely fashion.

29. In its skeleton argument at paragraph 15 the Company says that the general practice of the Grand Court is, like the English Court, not to refuse reasonable extensions which neither imperil hearing dates nor otherwise disrupt the proceedings and cites *Jalla v Shell*

International Trading and Shipping Co Ltd [2021] EWCA Civ 1559, Coulson LJ at paragraph 29. As the Company failed in its skeleton argument to refer to the second important part of paragraph 29, which stresses the paramount importance of the need to comply with court orders, I set it out in full as follows so that readers will not be misled:

> "29. The court will grant a reasonable extension if it does not impact on hearing dates or otherwise disrupt proceedings: see *Vneshprombank LLC v Georgy Bedzhamov* [2019] EWHC 1430 (Ch), citing *Hallam Estates v Baker* (2014) 4 Costs LR at 26. The fact that a refusal to extend time would in practice mean the end of the claim is a factor to be weighed in the balance, but it cannot of itself warrant the grant of relief: see *Chartwell Estate Agents Ltd v Fergies Properties SA* [2014] 3 Costs LR 588 (CA). The need to comply with court orders was there said to be of "paramount importance". That approach ties in with the long-standing principle that a claimant's entitlement to sue a defendant is not an absolute right, and does not permit that claimant to fail to comply with court orders, or delay and disrupt the administration of justice: see *Leizert and Anr v Kent Structural Engineering Ltd* [2002] EWHC 942 (QB)." (my underlining)

30. Coulson LJ at paragraph 30 stated that the court should take careful account of the overriding objective and:

> "… the court should consider the effect of the application in question on the administration of justice and upon other court users."

31. *Jalla* concerned an application for a further extension of time to allow more of the claimants to serve Date of Damage Pleadings and associated material. The judge at first instance had refused the application. The Court of Appeal refused the appeal on the merits. In that case further delay would have led to the adjournment of the trial of the limitation

issues (paragraph 49) and there was no real explanation for the delays (paragraphs 53 and 64). The authority stresses the need to comply with court order on a timely basis.

32. Parker J stated at paragraph 1 of his judgment in *Sina Corporation* (FSD unreported judgment 20 January 2023):

> "Disclosure by the Company is fundamental to a fair trial of this section 238 proceeding. Disclosure by companies, as experience shows, is of central significance in the context of fair value cases and is central to the analysis of the experts."

33. I have also considered Parker J's earlier judgment delivered on 25 January 2022 especially paragraphs 66 – 79. It is common ground between the Company and the Dissenters that the Company's discovery in this case will be fundamental to a fair trial.

34. It is unsatisfactory, to say the least, that the Company has not complied with the August Order. The Company's changing positions in respect of PRC law is also of considerable concern. Frankly the Company's attitude to discovery at times was verging on an inappropriate mindset of "it will take as long as it takes in view of PRC requirements."

35. The Company in the evidence presented to the Court in August did not even hint that approval would be required from the authorities in the PRC before it could comply with its discovery obligations in this jurisdiction, the place of its incorporation. The clear message provided by the Company to the Court in August was to the effect that a further level of review by the Company and its agents was required and this would take some time. There was no reference whatsoever to any external State approvals being required in the PRC.

36. In *Bank Mellat* the relevant Iranian Bank was concerned that the production of documents in redacted form would expose the Bank to the risk of criminal prosecution in Turkey, Iran

and South Korea (paragraph 9 of the judgment). At the appeal hearing the Turkish aspect was described as "now academic as the Bank has recently indicated that it will not be pursuing its claim in respect of losses allegedly suffered by its Turkish branch" (paragraph 11). In respect of the South Korean documents the judge ruled in favour of HMT and the Bank did not appeal (paragraph 12). It was common ground that production of the Iranian documents covered by the order and with which the appeal was concerned would constitute a breach of Iranian law (paragraph 4 of the judgment). It is far from common ground in our case that the production of the documents covered by the August Order would constitute a breach of Chinese law. Moreover, the Company is not at this stage refusing to provide discovery. It simply wants more time to deal what it considers are necessary regulatory approval steps in the PRC.

37. The Company at the August hearing did not refer to any requirement for prior State approvals from the Chinese authorities. The Company now says that under PRC law such approvals are required and will take some further time to obtain. The Dissenters say that the Company has misunderstood the legal position and that no approval is required from the PRC authorities. I note all that is written and said in respect of Parker J's judgment in *Sina Corporation* (FSD; unreported judgment 20 January 2023). I have considered that judgment but do not benefit from sight of all the evidence and arguments presented to Parker J, other than those briefly referred to in the judgment itself. The Dissenters have produced expert evidence (albeit without leave) to the effect that Article 36 of the DSL is not intended to apply to *inter partes* discovery in legal proceedings and that it does not apply to the Company's discovery in these proceedings and that Article 38 of the PIPL does not cause a problem in this case. The Dissenters' evidence is that the Company is not required to seek approval from the PRC authorities and even if this is required, which it says is very unlikely, the Company would face a very low risk of being prosecuted in the PRC for failing to seek approval. The Company has produced expert evidence (again without leave) to the contrary effect. None of the experts have attended today to be cross-examined. I am not in a position to resolve the dispute as to PRC law today. I decline the

Dissenters' invitation to conduct a *Bank Mellat* assessment and conclude that in any event the risk of prosecution was not sufficient.

38. The Company appears to have contacted the Ministry of Justice in the PRC on a rolling basis as and when the review by the Company of each tranche of documentation is completed. The Company appears to have initially failed to redact certain information for example cell phone numbers for business use and this has caused further delay. It says that two tranches have already been submitted and it anticipates that the final batch will be transmitted to the relevant authority in the PRC at the end of June 2023. On behalf of the Company it was indicated that the third batch of documentation was submitted but has not yet been accepted pending a debate within various bodies of the Chinese authorities.

39. It appears that the Company did not arrange for the interviews with custodians to take place until the period between 9 and 27 September 2022 some considerable time after the August Order. Furthermore, it appears that the application for approval to make the first cross-border transfer was not made to the JAEC until as late as 17 December 2022, on the Dissenters' calculation just a few days before the Company's discovery was due to be provided pursuant to the August Order. It is unfortunate that it was left so late in the day.

40. The Company needs to inject a real and continually pressing sense of urgency into its processes for complying with its discovery obligations.

41. Valid criticism can be levied against the Company in respect of the way in which it dealt with the discovery issue both prior to and subsequent to the August hearing. It has dragged its heels. It has not acted expeditiously. Issues in respect of screening of confidential patient data should have been obvious from the outset. Significant parts of the delay cannot be blamed on COVID-19. It has given different messages to the Court in respect of PRC law. All in all a very unsatisfactory position.

42. Based on the information provided to the Court I have done my best to balance the competing interests and I am conscious of the need for a fair trial within a reasonable time. I have also considered the potential prejudice to the parties if I do or if I do not grant an extension. I need to adopt a proportionate response to the present difficult situation which the Company has placed the Court in. I note that no hearing date has yet been set and that the extension requested will not necessitate vacation of trial dates. I note also that the s1782 proceedings launched by the Dissenters may take some time to determine, although I also note the conflicting positions adopted by the Dissenters and the Company in respect of the timings of the determination of the outstanding s1782 proceedings. Apart from the usual prejudice associated with delay the Dissenters have not been able to persuasively point to any additional direct prejudice that cannot be compensated for by way of money.

43. Dealing pragmatically with the situation now facing the Court and balancing the various interests as best I can I think, albeit somewhat reluctantly, that justice does indeed require the Court to give the Company one further extension to 29 September 2023 to comply with its discovery obligations. It is important that the Dissenters and the Court are provided with all the relevant documentation to enable a fair trial to take place. It is also important that such trial takes place within a reasonable time.

44. I make an order substantially in terms of the Amended Summons insofar as the extension and safeguards are concerned. I will come to costs in a moment. The recital to the Order should include reference to the Company by its attorneys undertaking to the Court that its discovery will be provided on a rolling basis as approval is granted for the cross-border data transfer by the relevant Chinese regulatory authorities. Turning now to the substance of the Order. The Company is granted an extension of time until 29 September 2023 in respect of para 10a of the August Order as regards its obligations to give discovery in these proceedings. The Company shall update the Court and the Dissenters (a) every 21 days from today's date in relation to the regulatory approval process that it is undertaking (I intentionally omit the following additional wording in the Company's Amended Summons

namely "to comply with its discovery obligations pursuant to paragraph 10 of the Order for Directions" as the need for regulatory approval is presently in dispute between the Company and the Dissenters and has not been determined by this Court); and (b) as soon as reasonably practicable after receiving any response from the regulatory authority. The Company shall progress its applications for approval with all due expedition. The Company should not underestimate the importance of complying with Court orders and the adverse consequences that may follow if orders are not strictly complied with. The Company needs to comply with its discovery obligations within the extended time period.

45. Without fettering the Court's discretion I should add that it is unlikely that any further extensions will be granted even if the approval of the Chinese authorities is not obtained on a timely basis prior to 29 September 2023. I am concerned that even now not all of the relevant applications have been made to the Chinese authorities for approval. These applications need to be expedited as a matter of urgency. I note that since the August Order the Company has devoted some additional resources to dealing with its compliance. If need be, further resource must be made available within the respective teams assisting the Company. No further delays will be tolerated. The Company should not expect any further indulgence from this Court in respect of compliance with its discovery obligations.

46. I turn now to costs. The Company requests that the costs of and occasioned by its application to extend time should be costs in the cause. The Dissenters say that the application should be dismissed with costs. Order 62 rule 6 (6) of the Grand Court Rules provides that the costs of any application to extend the time fixed by the rules or any direction or order thereunder shall be borne by the party making the application.

47. To mark the Court's disapproval of the Company's failure to comply with the August Order and the highly unreasonable way in which the Company has belatedly dealt with the PRC law position and its contrasting positions at the August hearing and this hearing and in view of the fact that this Court is giving indulgence to the Company I am minded to make an

order that the Company pays the costs of the Dissenters of and incidental to its two summonses for extensions such costs to be taxed on the indemnity basis in default of agreement. On the face of it the Company's conduct as outlined in this judgment has been unreasonable to a high degree and outside what should be the norm. The Company's conduct was not merely wrong or misguided in hindsight. Its conduct, as outlined in this judgment, was deserving of a serious mark of disapproval (*Woods Furniture and Design Limited v James* 2020 (2) CILR 543; CICA judgment 30 July 2020).

48. The Court heard and considered submissions in respect of costs and made an order that the Company should forthwith pay the costs of the Dissenters of and incidental to the two summonses for extensions of time and the Dissenters' set aside summons such costs to be taxed on the indemnity basis in default of agreement.

49. The attorneys should file a draft Order reflecting the determinations in this judgment before 3pm on Monday 3 April 2023. I am grateful to counsel for their assistance.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT