Neutral Citation Number: [2021] EWHC 1100 (Ch)

Case No: CR-2021-000321

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF PJSC BANK FINANCE AND CREDIT (IN LIQUIDATION)
And IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

Royal Courts of Justice
Rolls Building, London EC4A 1NL

Date: 29/04/2021

Before :

Insolvency and Companies Court Judge Catherine Burton

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Between :

(1) MS SVITLANA VASYLIVNA GROSHOVA
(in her capacity as authorised officer of the Deposit Guarantee Fund of Ukraine in respect of the liquidation of PJSC Bank Finance and Credit

(2) DEPOSIT GUARANTEE FUND OF UKRAINE

Applicants

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Rowena Page (instructed by Gateley Legal) for the **Applicant**

The hearing took place remotely via Microsoft Teams on 11 March 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the parties by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 3.45pm on 29 April 2021

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Insolvency and Companies Court Judge Burton :

1. Shortly before the Easter vacation I considered an application by Ms Groshova and the Deposit Guarantee Fund of Ukraine ("DGF", together, the "Applicants") for recognition of the liquidation of PJSC Bank Finance and Credit (the "Bank") under the Cross-Border Insolvency Regulations 2006 ("CBIR").

2. Rowena Page of counsel appeared on behalf of the Applicants. Her detailed skeleton argument recognised the Applicants' duty of full and frank disclosure and the public policy exception from recognition, and provided far-reaching details regarding the consequences that recognition of the liquidation may have on third parties who were not before the Court.

3. Having considered the evidence and Counsel's submissions, I was satisfied that:

    i) the Bank is not a "third country credit institution" within the meaning set out in regulation 36 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 and thus not excluded from the scope of the CBIR by article 1(2)(i) of schedule 1 to the CBIR (which sets out the UNCITRAL Model Law on Cross-Border Insolvency as it takes effect in Great Britain (the "GB Model Law");

    ii) the Bank's liquidation comprises a "foreign proceeding" within the meaning of subparagraph (i) of article 2 of the GB Model Law;

    iii) the Applicants fell within the description of "foreign representatives" as defined by article 2(j) of the GB Model Law;

    iv) the Bank's liquidation is a "main proceeding" taking place in a state where the debtor has its centre of main interests, namely in Ukraine;

    v) the procedural requirements of Article 15 of the GB Model Law had been satisfied; and

    vi) no purpose would be served by requiring the application to be served on the debtor, as it was solely within the control of the Applicants and that the Court had the authority to waive the requirement in paragraph 21 of schedule 2 to the CBIR for service on the Bank.

4. Following full and frank disclosure by the Applicants of the potential impact which recognition might have on third parties, which was set out to assist the Court in concluding that there were no public policy reasons why recognition should not be granted, I made an order waiving the requirement for service of the Application on the Bank and recognising the Bank liquidation as a foreign main proceeding.

5. I provided, at the time, only a brief oral judgment, inviting the Applicants, if desired, to request this fully reasoned, written judgment.

Legal principles – the Cross Border Insolvency Regulations 2006

6. The Cross Border Insolvency Regulations 2006 ("CBIR") were introduced pursuant to section 14 of the Insolvency Act 2000 in order to give effect, in Great Britain, to UNCITRAL's Model Law on Cross-Border Insolvency.

7. Article 15(1) of the GB Model Law provides:

> "1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
>
> 2. An application for recognition shall be accompanied by—
>
> a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
>
> b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
>
> c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
>
> 3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings, proceedings under British insolvency law and section 426 requests in respect of the debtor that are known to the foreign representative.
>
> 4. The foreign representative shall provide the court with a translation into English of documents supplied in support of the application for recognition."

8. Article 17 provides:

> "1. Subject to article 6, a foreign proceeding shall be recognised if—
>
> a) it is a foreign proceeding within the meaning of sub-paragraph (i) of article 2;
>
> b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (j) of article 2;
>
> c) the application meets the requirements of paragraphs 2 and 3 of article 15; and
>
> d) the application has been submitted to the court referred to in article 4.

> 2. The foreign proceeding shall be recognised—
>
> a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
>
> b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (e) of article 2 in the foreign State."

9. The term "foreign proceeding" is defined in article 2(1) as:

> "a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs or the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation".

10. Article 2(1)(j) provides:

> "'foreign representative' means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding".

11. Recognition under article 17 is expressly subject to article 6 which provides:

> "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Great Britain or any part of it."

12. Article 20 sets out various mandatory consequences of recognition. Commencement or continuation of actions or proceedings concerning the debtor's assets, rights, obligations and liabilities is stayed, as is execution against its assets. The right to transfer, encumber or otherwise dispose of any assets of the debtor is also suspended.

13. Article 21 sets out additional, discretionary relief that may be granted, inter alia, on recognition of a foreign proceeding.

14. Regulation 2(2) of the CBIR provides:

> "(2) Without prejudice to any practice of the court as to the matters which may be considered apart from this paragraph, the following documents may be considered in ascertaining the meaning or effect of any provision of the UNCITRAL Model Law as set out in Schedule 1 to these Regulations—
>
> a) the UNCITRAL Model Law;
>
> b) any documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the UNCITRAL Model Law; and

c) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442) prepared at the request of the United Nations Commission on International Trade Law made in May 1997 ("Guide to Enactment")."

The Application

15. The Application was supported by affidavits sworn by Ms Groshova dated 19 February 2021 and Ms Drake of the Applicant's solicitors, Gateley Legal, dated 22 February 2021.

16. Ms Groshova's evidence provides a detailed summary of the bank liquidation procedure in Ukraine in general, supported by translations of the relevant legislative provisions. She then describes the manner in which, and reasons why, the Bank came to be in liquidation and the purposes for which recognition of the liquidation proceedings was sought. The accuracy of the translation of Ms Groshova's evidence and the translated documents in the exhibit (which include the relevant legislative provisions) has been confirmed by affidavit of Olena Mankovska dated 23 February 2021.

Background

17. Ms Page's skeleton argument provides a detailed summary from Ms Groshova's evidence of the legislative procedure and background to the Bank's liquidation. Having considered and checked each of the documents and legislative provisions referred to, there would be little purpose in seeking to re-word what is already helpfully and comprehensively set out in the skeleton. I shall borrow extensively from it. Ms Page explained that save where she informed me otherwise, references to Ukrainian legislation were to the law as it stood at the time the Bank entered interim administration and liquidation.

18. The Bank has operated since 1991. It was originally registered as a limited liability company under the name 'Commercial Bank for Business Corporation', but in 1995 changed its name to 'Commercial Bank "Finance and Credit"'. In 2002 the Bank's name changed again to 'Bank "Finance and Credit Bank Limited Liability Company"'.

19. In 2007 the Bank's corporate structure changed from a limited liability company to an open joint-stock company, and in 2009 its name changed again to its current name, 'PJSC Bank "Finance and Credit"'.

20. The Bank's registered office is situated at 60 Artema Street, Kyiv, 04050, Ukraine.

21. As of 13 August 2015, the Bank's majority ultimate beneficial owner was Mr Konstantin Zhevago ("**Mr Zhevago"**) who held approximately 95% of the Bank's shares through various corporate entities (including some registered in England).

22. The Bank entered provisional administration on 17 September 2015 and liquidation on 17 December 2015.

23. Investigations into the Bank have revealed that it appears to have been potentially involved in a multi-million dollar fraud resulting in monies being sent to many overseas companies, including entities incorporated and registered in England.

24. Proceedings were issued in the High Court of England and Wales (Chancery Division) against various defendants on 11 February 2021. At the time of the hearing before me, those proceedings and the applications made within them were yet to be determined. For reasons given in an ex tempore judgment, I made an order pursuant to paragraph 46(4) of schedule 2 to the CBIR, restricting third party access to certain documents filed in support of this Application which were provided to the Court to explain some of the Applicants' concerns regarding the potential fraud.

Bank insolvency in Ukraine

25. Ms Groshova's affidavit sets out a detailed summary of the Ukrainian legislation's specific insolvency procedure for Banks. The procedure involves initial input from the National Bank of Ukraine ("NBU"), and at the time that the Bank entered liquidation, followed a number of stages:

Classification of the bank as troubled

26. The NBU may classify a bank as "troubled" if it meets at least one of the criteria set down by article 75 of the Law of Ukraine on Banks and Banking Activity ("LBBA**"**) or for any of the reasons specified in its regulations.

27. Once declared "troubled" the relevant bank has 180 days within which to bring its activities in line with the NBU's requirements. At the end of that period, the NBU must either recognise the Bank as compliant or must classify it as insolvent.

Classification of the bank as insolvent

28. The NBU is obliged to classify a bank as insolvent if it meets the criteria set out in article 76 of the LBBA which include:

    i) the bank's regulatory capital amount or standard capital ratios have reduced to one third of the minimum level specified by law;

    ii) within five consecutive working days, the bank has failed to meet 2% or more of its obligations to depositors or creditors; and

    iii) the bank, having been declared as troubled, then fails to comply with an order or decision of the NBU and/or a request by the NBU to remedy violations of the banking law.

29. The NBU has the ability to classify a bank as insolvent without necessarily needing first to go through the troubled stage. Article 77 LBBA accordingly provides that a bank can be liquidated by the NBU directly revoking its licence.

Provisional administration

30. The DGF is a Ukrainian governmental body tasked principally with providing deposit insurance to bank depositors in Ukraine. However, Ms Groshova explained that the

DGF is also responsible for the process of withdrawing insolvent banks from the market and winding down their operations via liquidation. Its powers include those related to early detection and intervention, and the power to act in a bank's interim or provisional administration and its ultimate liquidation.

31. Pursuant to article 34 of the DGF Law, once a bank has been classified as insolvent, the DGF will begin the process of removing it from the market. This is often achieved with an initial period of provisional administration. During this period:

    i) the DGF (acting via an authorised officer) begins the process of directly administering the bank's affairs. Articles 35(5) and 36(1) of the DGF Law provide that during provisional administration, the DGF shall have full and exclusive rights to manage the bank and all powers of the bank's management.

    ii) Article 36(5) establishes a moratorium which prevents, inter alia: the claims of depositors or creditors being satisfied; execution or enforcement against the bank's assets; encumbrances and restrictions being created over the bank's property; and interest being charged.

Liquidation

32. Liquidation follows provisional administration. The DGF is obliged to commence liquidation proceedings against a bank on or before the next working day after the NBU's decision to revoke the bank's licence.

33. Article 77 of the LBBA provides that the DGF automatically becomes liquidator of a bank on the date it receives confirmation of the NBU's decision to revoke the bank's licence. At that point, the DGF acquires the full powers of a liquidator under Ukrainian law.

34. When the bank enters liquidation, all powers of the bank's management and control bodies are terminated (as are the provisional administrators' powers if the bank is first in provisional administration); all banking activities are terminated; all money liabilities due to the bank are deemed to become due; and among other things, the DGF alienates the bank's property and funds. Public encumbrances and restrictions on disposal of bank property are terminated and offsetting of counter-claims is prohibited.

35. As liquidator, the DGF has extensive powers, including the power to investigate the bank's history and bring claims against parties believed to have caused its downfall. Those powers include:

    i) the power to exercise management powers and take over management of the property (including the money) of the bank;

    ii) the power to compile a register of creditor claims and to seek to satisfy those claims;

    iii) the power to take steps to find, identify and recover property belonging to the bank;

    iv) the power to dismiss employees and withdraw from/terminate contracts;

v) the power to dispose of the bank's assets; and

vi) the power to exercise "such other powers as are necessary to complete the liquidation of a bank".

36. The DGF also has powers of sale, distribution and the power to bring claims for compensation against persons for harm inflicted on the insolvent bank.

The Bank's liquidation

37. The Bank was formally classified by the NBU as "troubled" on 19 January 2015. The translated NBU resolution records:

> "The statistical reports-based analysis of the Bank's compliance with the banking law requirements has found that the Bank has been engaged in risky operations"

38. Those operations included:

i) a breach, for eight consecutive reporting periods, of the NBU's minimum capital requirements;

ii) ten months of loss-making activities;

iii) a reduction in its holding of highly liquid assets;

iv) a critically low balance of funds held with the NBU; and

v) 48% of the Bank's liabilities being dependent on individuals and a significant increase in "adversely classified assets" which I understand to be loans, whose full repayment has become questionable.

39. Despite initially appearing to improve, by September 2015, the Bank's financial position had deteriorated further with increased losses, a further reduction in regulatory capital and numerous complaints to the NBU. On 17 September 2015, the NBU classified the Bank as insolvent pursuant to article 76 of the LBBA. On the same day, the DGF passed a resolution commencing the process of withdrawing the Bank from the market and appointing a Ms Cherniavska as interim administrator.

40. Three months later, on 17 December 2015, the NBU formally revoked the Bank's banking licence and resolved that it be liquidated. The following day, the DGF initiated the liquidation procedure and appointed Ms Cherniavska as the first of the DGF's authorised persons to whom powers of the liquidator were delegated. Her appointment was for the period from 18 December 2015 to 17 December 2017. Ms Cherniavaska was replaced as authorised officer three times before 13 August 2020 when the then-authorised officer, a Mr Mikhno's appointment was prospectively revoked and replaced with effect from 17 August 2020 by the Applicant, Ms Groshova. On 14 December 2020, the Bank's liquidation was extended to an indefinite date, described as arising when circumstances rendered the sale of the Bank's assets and satisfaction of creditor's claims no longer possible.

41. On 7 September 2020, the DGF resolved to approve an amended list of creditors' claims totalling UAH 30,889,692,260.70 (approximately US$ 1.113 billion). Ms Groshova states in her affidavit that the Bank's current, estimated deficiency exceeds UAH 22 billion or US$ 823 million.

Recognition of the Bank's liquidation under the CBIR

42. In order to be recognised, the Bank's liquidation must meet the definition of "*foreign proceeding*" set out in article 2(j) of the GB Model Law.

"*Collective proceeding"*

43. UNCITRAL's guide for judiciary, "The Model Law on Insolvency: The Judicial Perspective" (2013) explains the requirement for proceedings to be "*collective*":

> "The UNCITRAL Model Law was intended to apply only to particular types of insolvency proceedings. The Guide to Enactment and Interpretation indicates that the notion of a "collective" insolvency proceeding is based on the desirability of achieving a coordinated, global solution for all stakeholders of an insolvency proceeding. It is not intended that the Model Law be used merely as a collection device for a particular creditor or group of creditors who might have initiated a collection proceeding in another State, or as a tool for gathering up assets in a winding up or conservation proceeding that does not also include provision for addressing the claims of creditors. The Model Law may be an appropriate tool for certain kinds of actions that serve a regulatory purpose, such as receiverships for such publicly regulated entities as insurance companies or brokerage firms, provided the proceeding is collective as that term is used in the Model Law."

44. The Guide to Enactment and Interpretation of the UNCITRAL Model Law (2014) explains that when:

> "evaluating whether a given proceeding is *collective* for the purpose of the Model Law, a key consideration is whether substantially all of the assets and liabilities of the debtor are dealt with in the proceeding, subject to local priorities and statutory exceptions, and to local exclusions relating to the rights of secured creditors. A proceeding should not be considered to fail the test of collectivity purely because a class of creditors' rights is unaffected by it."

45. Ms Groshova expressly states in her affidavit that a bank's liquidation in Ukraine is a collective process. She explains:

> "From the date of their appointment, the relevant authorised officer begins assessing the bank's assets and property. This assessment is carried out to form the liquidation pool for the bank. The DGF applies receipts from the liquidation, realisation and sale of the bank's assets in satisfaction of creditor claims in

> the order listed in Part 1 of Art 52 of the DGF Law. Creditors' claims are paid under a list of priority set out by Part 1 of Article 52 of the DGF Law. Claims of each priority will be satisfied as proceeds from the sale of property are received, following which the DGF will address claims falling within the next priority.
>
> If the amount received from the bank's assets and property is not enough to satisfy claims within the same priority, creditors' claims will be satisfied in proportion to the claims within the priority class as a whole. Claims which are not satisfied due to there being an insufficiency of funds within the bank are deemed to be extinguished."

46. It is my understanding from Ms Groshova's evidence and counsel's submissions that *all* of the Bank's creditors are entitled to claim in the liquidation and that their claims are met from available assets, according to the statutory order of priorities. Consequently, the Bank's liquidation is, in my judgment, a "*collective proceeding*".

***"Judicial or administrative"* and "*subject to the control or supervision by a foreign court*"**

47. The collective proceeding, must be "*judicial or administrative*" where "*the assets and affairs or the debtor are subject to control or supervision by a foreign court*".

48. The term "*foreign court*" is defined at article 2(e) of the GB Model Law and means:

> "a judicial or other authority competent to control or supervise a foreign proceeding".

49. The Guide to Enactment notes:

> "87) A foreign proceeding that meets the requisites of article 2, subparagraph (a), should receive the same treatment irrespective of whether it has been commenced and supervised by a judicial body or an administrative body. Therefore, in order to obviate the need to refer to a foreign non-judicial authority whenever reference is made to a foreign court, the definition of "foreign court" in subparagraph (e) includes also non-judicial authorities."

50. In ***Re Sanko Steamship Co Ltd*** [2015] EWHC 1031 (Ch) Simon Barker QC, noted that a foreign proceeding may be recognised where the control or supervision of the proceeding is undertaken by a non-judicial administrative body.

51. The Guide to Enactment states:

> "74) The Model Law specifies neither the level of control or supervision required to satisfy this aspect of the definition nor the time at which that control or supervision should arise. Although it is intended that the control or supervision required under subparagraph (a) should be formal in nature, it may be

> potential rather than actual. As noted in paragraph 71, a proceeding in which the debtor retains some measure of control over its assets, albeit under court supervision, such as a debtor-in-possession would satisfy this requirement.
>
> Control or supervision may be exercised not only directly by the court but also by an insolvency representative where, for example, the insolvency representative is subject to control or supervision by the court. Mere supervision of an insolvency representative by a licensing authority would not be sufficient."

52. In the case before me, as noted at paragraphs 32 to 36 above, DGF has control of all of the Bank's assets and overall control of the liquidation. Its role is set out in article 3 of the DGF Law which provides that it is an institution that:

> "performs special functions in the field of guaranteeing deposits of individuals, withdrawing insolvent banks from the market and liquidation of banks in cases established by this Law."

53. The DGF's independence is addressed at articles 3(3) and 3(7) of the DGF Law which confirm that it is an economically independent institution with separate balance sheet and accounts from the NBU and that neither public authorities nor the NBU have any right to interfere in the exercise of its functions and powers. However, pursuant to article 5, the DGF remains accountable to Ukraine's unicameral parliament, Verkhovna Rada, as well as to the Cabinet of Ministers of Ukraine and the NBU to whom it is obliged to submit annually a report and audit report.

54. Article 37 establishes that the DGF (or its authorised person, insofar as such powers are delegated) has extensive powers, including powers to exercise managerial and supervisory powers, to enter into contracts, to restrict or terminate the bank's transactions, and to file property and non-property claims with a court.

55. Taking these factors into account, in my judgment, the Bank's liquidation is *administrative.* The assets and affairs of the Bank are subject to the control of the DGF, an official body which exercises its powers in the liquidation free from intervention by government or the NBU and which should be considered, for the purposes of the definition set out in article 2(j) of the GB Model Law, as a "*foreign court*".

56. The control exercised by the DGF is supplemented by article 54 of the DGF Law which provides a limited degree of court supervision: the legality of decisions taken by the DGF or its authorised employees in the performance of their functions under the DGF Law can be referred to the court. The court does not appear to have the power to reverse fundamental decisions made by the DGF such as the approval of a settlement plan or the authorisation of an appointed Fund representative but can provide a remedy in damages.

"*Pursuant to a law relating to insolvency*"

57. The Guide to Enactment provides at paragraph 48:

> "Acknowledging that different jurisdictions might have different notions of what falls within the term "insolvency proceedings", the Model Law does not define the term "insolvency". However, as used in the Model Law, the word "insolvency" refers to various types of collective proceedings commenced with respect to debtors that are in severe financial distress or insolvent."

Further explanation is provided at paragraph 73:

> "This formulation is used in the Model Law to acknowledge the fact that liquidation and reorganization might be conducted under law that is not labelled as insolvency law (e.g. company law), but which nevertheless deals with or addresses insolvency or severe financial distress. The purpose was to find a description that was sufficiently broad to encompass a range of insolvency rules irrespective of the type of statute or law in which they might be contained and irrespective of whether the law that contained the rules related exclusively to insolvency."

58. Article 76 of the LBBA and the relevant provisions of the DGF Law clearly set out Ukraine's specific insolvency procedures for insolvent banks. The Bank's liquidation was commenced pursuant to those provisions and in my judgment should be considered by this Court as being "*pursuant to a law relating to insolvency*".

"In which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation"

59. Having determined that the DGF falls within the definition of "*foreign court*", I am satisfied, that by virtue of the legislative provisions set out above, it has control of all of the Bank's assets and affairs for the purposes of administering the Bank's liquidation.

The Applicants' standing as a "*foreign representative*"

60. "Foreign representative" is defined by article 2(j) of the GB Model Law to mean:

> 'a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding'

61. Article 16(1) of the GB Model Law provides:

> 'If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (i) of article 2 and that the foreign representative is a body or person

> within the meaning of sub-paragraph (j) of article 2, the court is entitled to so presume.'

62. This application is brought jointly by the DGF and Ms Groshova. Ms Groshova's affidavit explains that the DGF's role as liquidator arises under statute. As noted at paragraph 34 above, article 77 of the LBBA provides that the DGF is automatically appointed as liquidator on the day it receives the NBU's decision pursuant to article 77 revoking a bank's licence and commencing its liquidation. Article 35 of the DGF Law expressly provides that the DGF is the liquidator of a bank in liquidation (save in circumstances where the bank has entered liquidation as a result of a decision on the part of its owners).

63. Article 48(3) of the DGF Law, empowers the DGF to delegate its powers to an "authorised officer" or "authorised person". The "Fund's authorised person" is defined by article 2(1)(17) of the DGF law as:

> "an employee of the Fund, who on behalf of the Fund and within the powers provided for by this Law and/or delegated by the Fund, performs actions to ensure the bank's withdrawal from the market during provisional administration of the insolvent bank and/or bank liquidation".

64. Article 35(1) of the DGF Law specifies that an authorised person, must have:

> "…high professional and moral qualities, impeccable business reputation, complete higher education in the field of economics, finance or law…and professional experience necessary. "

An authorised person may not be a creditor of the relevant bank, have a criminal record, have any obligations to the relevant bank, or have any conflict of interest with the bank. Once appointed, the authorised officer is accountable to the DGF for their actions and may exercise the powers delegated to them by the DGF in pursuance of the bank's liquidation.

65. Ms Groshova's appointment on 13 August 2020 was pursuant to a Decision of the Executive Board of the Directors of the DGF, No. 1513 ("Resolution 1513"). Resolution 1513 notes that Ms Groshova is a "leading bank liquidation professional". It delegates to her all liquidation powers in respect of the Bank, set out in the DGF Law and in particular articles 37, 38, 47-52, 521 and 53 of the DGF Law, including the authority to sign all agreements related to the sale of the bank's assets in the manner prescribed by the DGF Law. Resolution 1513 expressly excludes from Ms Groshova's authority the power to claim damages from a related party of the Bank, the power to make a claim against a non-banking financial institution that raised money as loans or deposits from individuals, and the power to arrange for the sale of the Bank's assets. Each of the excluded powers remains vested in the DGF as the Bank's formally appointed liquidator.

66. As a result of the sharing of some, but not all of the liquidator's powers and the division of responsibility between Ms Groshova and the DGF, it seems likely that depending on the nature and timing of relief sought from this Court pursuant to the CBIR (if any), the appropriate applicant may, in the future, be either or both of Ms

Groshova and the DGF. I am satisfied that subject to the express limitations on Ms Groshova's powers, they are both authorised to administer the liquidation and as such both meet the definition of "*foreign representative*". In my judgment they both had the necessary standing to apply in that capacity, for recognition of the Bank's liquidation.

67. Having determined that I am satisfied that the Bank's liquidation is a "*foreign proceeding*" and that the Applicants are "*foreign representatives*" entitled to apply to the Court for the Bank liquidation to be recognised, subject to being satisfied that (i) there are no public policy grounds to refuse to grant such recognition; and (ii) certain evidential and procedural requirements have been met, I am bound to recognise the Bank's liquidation proceeding.

Article 6 and public policy considerations

68. Ms Groshova clearly states in her affidavit that she is not aware of any reasons of public policy why recognition should not be granted. Observing the Applicants' duty of full and frank disclosure, Ms Page provided detailed written submissions regarding the type of relief that may be sought by the Applicants, following recognition, and potential issues which the Court may need to consider if and when such an application is before it. In doing so, she satisfied me that recognition will not unduly impact any third party nor preclude them from objecting to orders being made against them granting specific relief, again, if and when an application for such relief is made.

69. In my judgment, there are no public policy considerations which should prevent the Court from recognising the Bank's liquidation under article 17 of the GB Model Law.

Article 17(2) recognition as foreign main or non-main proceeding

70. Article 2(g) of the GB Model Law provides that a proceeding will be a "*main proceeding*" if it is taking place in the state where the debtor has its centre of main interests ("COMI**"**). Article 16(3) provides that in the absence of proof to the contrary, a company's registered office is presumed to be the centre of its main interests.

71. The Bank's registered office address is in Kyiv, Ukraine and its primary administrative office address (and the address currently given on the Bank's website for correspondence) is at a different street address from the Company's registered office, but also at an address in Kyiv. Prior to its liquidation, the Bank had 7 regional branches and 282 departments in Ukraine. Not only is there no evidence before the Court to displace the statutory presumption at Article 16(3), but it is also clear from the evidence before me that the Bank's COMI is in Ukraine.

Procedural requirements

72. Addressing the requirements of article 15 of the GB Model Law, the Applicants filed, inter alia, translations of the NBU resolutions certifying the Bank's provisional administration on 17 September 2015; formal revocation of the Bank's banking licence and consequent liquidation on 17 December 2015; the DGF's resolutions certifying commencement of the Bank's interim administration on 17 September 2015 and commencement of the Bank's liquidation from 18 December 2015; the Decision appointing the first authorised officer of the DGF; the indefinite extension of the

Bank's liquidation on 14 December 2020; and Resolution 1513 appointing Ms Groshova as authorised officer on 13 August 2020.

73. The documentation, not being formally certified, nevertheless meets the evidential requirements set out in in article 15(2)(c) of the GB Model Law.

74. Ms Groshova's affidavit has addressed the requirements of article 15(3) by informing the Court that on 7 December 2020, by order of A. Jay Cristol, the Bank's liquidation was recognised by the Miami Division of the United States Bankruptcy Court, Southern District of Florida, as a foreign main proceeding under Chapter 15 of the United States Bankruptcy Code. Ms Groshova also confirmed that she is not aware of any other proceedings falling within article 15(3) of the GB Model Law.

75. The only remaining issue for the Court to consider is service of the Application. Paragraph 21 of schedule 2 to the CBIR sets out a list of persons upon whom the application must be served, unless they are the applicant or the Court otherwise orders. In the instant case, the only relevant party listed at paragraph 21, is the debtor. As full control over the Bank's affairs now lies with the Applicants, service on the Bank in this case would serve no purpose. As noted at the beginning of this judgment, I was therefore prepared to waive the requirement for service of the application on the Bank.

Conclusion

76. The Court recognises the Bank liquidation as a foreign main proceeding.