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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
CHANCERY DIVISION

No. CR-2022-004684
CR-2022-004685
CR-2022-004688

Rolls Building
Fetter Lane
London, EC4A 1NL

Tuesday, 20 December 2022

Before:

MR JUSTICE MICHAEL GREEN

B E T W E E N :

(1) PETROPAVLOVSK PLC (in Administration)
(2) PETROPAVLOVSK 2010 LIMITED
(3) PETROPAVLOVSK 2016 LIMITED

Applicants

MR P ARDEN KC and MR J WIGLEY appeared on behalf of the Applicants.

J U D G M E N T

(Transcript prepared without access to documentation)

MR JUSTICE MICHAEL GREEN:

1 I have before me a number of applications in relation to three companies. The first company is Petropavlovsk plc ("PLC") in administration and it seeks orders convening a meeting of creditors to consider a scheme of arrangement under Part 26 of the Companies Act 2006. The second company is Petropavlovsk 2010 Limited ("2010 Limited") for a convening order for its parallel scheme of arrangement. The third company is Petropavlovsk 2016 Limited ("2016 Limited") also for a convening order for its parallel scheme of arrangements. Those latter two companies, which are not presently in administration, also apply by their directors to be put into administration.

2 Mr Peter Arden KC together with Mr Joseph Wigley have appeared before me today on behalf of all applicants. They have filed very full skeleton arguments and it has been supplemented by Mr Arden's helpful oral submissions this morning. I take most of the detail from the skeleton arguments and the evidence that I have read.

3 PLC is a company incorporated in England and was formerly the holding company of a group of goldmining and exploration companies operating in Eastern Russia. The group's ability to operate its business was substantially impaired by the international sanctions and other restrictions applied in response to Russia's invasion of Ukraine earlier this year. As a result of such restrictions, among other things, PLC was unable to make payments to Gazprombank JSC ("GPB"), which is one of Russia's largest commercial banks and which have provided, among other things, a US$200 million term loan to PLC ("the term loan"). PLC, therefore, defaulted on the term loan, which was in turn accelerated by GPB on 18 April 2022. In the absence of being able to obtain refinancing, PLC was rendered unable to pay its debts as they fell due. Accordingly, upon the application of the majority of the board of directors of the company, the PLC administrators, who are all partners of Opus Restructuring LLP, were appointed pursuant to the order of HHJ Jarman QC, sitting as a judge of High Court, on 18 July 2022.

4 2010 Limited and 2016 Limited ("the issuers") are both Jersey subsidiaries of PLC and were the financing entities for the group, issuing public debt on behalf of PLC and the group. Of particular relevance to the present case is, firstly, 2016 Limited issued loan notes to a value of US$500 million at 8.125 per cent. Those senior unsecured notes were due on 14 November 2022, having been originally issued on 14 November 2017. Secondly, 2010 Limited is the issuer of US$125 million 2024 bonds with a coupon of 8.25 per cent. Those are due on 3 July 2024, having been originally issued on 3 July 2019. PLC is a guarantor in respect of both the 2022 notes and 2024 bonds.

5 In addition, there are three operating companies: JSC Pokrovskiy Mine, LLC Albynskiy Rudnik, and LLC Malomirskiy Rudnik ("the OpCo guarantors"), which are incorporated under Russian law and were part of the group, and are also guarantors of the 2022 notes. PLC remains indebted to each of 2010 and 2016 Limited by way of intercompany loans in amounts arising from the on-lending of the respective proceeds of the 2024 bonds and the 2022 notes issues and various other intercompany debts ("the ICO claims").

6 PLC's interests in the group, including its interest in the OpCo guarantors, were disposed of as part of the sale of its business to UMMC-Invest ("UMMC"), part of one of Russia's largest metals and mining groups, and that sale was executed on behalf of PLC by its administrators. The consideration for the sale was a sum that was anticipated to be

sufficient to repay the external creditors of all three scheme companies and the expenses of the PLC administration, although it is anticipated that there will be no surplus remaining thereafter for shareholders.

7 In summary, the consideration that was received by PLC comprised:

(i) cash consideration of approximately US$180 million;

(ii) 2022 notes purchased by UMMC in the market with a face value of approximately US$177 million, plus accrued interest of approximately US$23.2 million; the right to tender the 2022 notes as consideration allowed UMMC to reduce the amount of cash consideration payable and so those notes are now held by PLC ("the PLC 2022 notes");

(iii) the consideration of US$202.5 million, which was equal to the amount outstanding on the term loan, was assigned by GPB to UMMC in April/May 2022 and that is to be discharged by way of set-off, or similar, against UMMC's claims under the term loan, and that has been subordinated to all other creditors pending set-off;

(iv) the day one administration funding of US$7 million to go to funding the remuneration and expenses of the administration and the estimated amount of contingent and uncertain liabilities, with potential top-up funding of a further US$10 million, if required, with any residual funds being returned to UMMC; and, finally

(v) contingency funding of US$4 million, in the first instance, for the purpose of dealing with any challenges brought in relation to the transaction, with any residual funds being returned to UMMC.

By way of further provision, any surplus funds remaining after payments to the external creditors of the scheme companies and in respect of the expenses of PLC's administration would be applied to payment of the term loan, which, as I have said, was subordinated.

8 Following the completion of the sale, PLC administrators and their advisers have been working to identify the most appropriate means by which those net sale funds can be paid to the creditors. The administrators have concluded that the most beneficial means of doing so is via the schemes and, in consultation with the directors of the issuers, the PLC administrators and those directors have concluded that the issuers should also promote schemes that deal directly with their respective liabilities under the 2024 bonds and 2022 notes. Therefore, the schemes are directed at all of the external creditors of the scheme companies, which includes the beneficial holders of the 2022 notes, the beneficial holders of the 2024 bonds and all trade or other creditors of PLC ("the general creditors"). So, 2010 Limited is proposing the scheme with its scheme creditors in respect of the 2024 bonds; 2016 Limited is proposing the 2016 scheme with its scheme creditors in respect of the 2022 notes; and PLC is proposing the PLC scheme with the general creditors.

9 I have already referred to the fact that PLC is a guarantor in respect of both the 2022 notes and the 2024 bonds and it currently holds, or is entitled to receive following the sale, sufficient funds to discharge all liabilities owed by all scheme companies to the 2022 note holders, 2024 bond holders and the general creditors. Therefore, PLC will participate in the 2010 scheme and the 2016 scheme distributions by making payments to the relevant scheme creditors on behalf of 2010 Limited and 2016 Limited as the case may be. It is anticipated

that, pursuant to the schemes and subject to their terms, scheme creditors will receive payments in the full amount of the sums due to them from the scheme companies.

10 Certain liabilities of the scheme companies are not to be included in the schemes. Aside from the term loan now owed to UMMC, these include the liabilities of the scheme companies between themselves, which is principally the ICO claims. They also include PLC's rights arising pursuant to the PLC 2022 notes. As to the ICO claims and PLC's claims in respect of the PLC 2022 notes, any remaining balances after any netting and taking account of any additional rights and obligations that might arise, such as by virtue of payment of scheme claims by PLC on the issuers' behalf, as between PLC and the issuers, are intended to be waived or forgiven once the scheme has become effective.

11 The intention to propose the schemes was stated in the PLC administrators' communications with creditors as long ago as 8 September 2022. To date, it appears that no objections from any creditors have been received and no one appeared today to make representations to me in relation to whether I should convene meetings or not.

12 Without the schemes, it is likely that, in the first instance, the PLC administrators would proceed to make a distribution pursuant to para.65, or possibly para.60, of Schedule B1 of the Insolvency Act 1986; and the issuers would enter into an insolvency process (whether administration or liquidation) and the office holders would proceed with a distribution to creditors in due course. However, Mr Arden submitted that these sorts of distributions could be problematical because of the potential for multiple claims to be made by multiple entities in respect of the same subject matter, namely the 2022 notes and the 2024 bonds. This could lead to considerable delay, which would be highly prejudicial as PLC's banking facilities will shortly be withdrawn as a result of the impact of sanctions. Therefore, the PLC administrators consider these schemes to be in the interests of creditors of the scheme companies because:

(1) firstly, under the proposed schemes, the need for multiple interim distributions, which would inevitably arise where a distribution under Schedule B1 be proceeded with, and would serve not only to increase expense but also, critically, to delay completion of the process to a point by which banking facilities will no longer be available;

(2) secondly, payments can be made by reference to the sum and in the currency stipulated in the relevant contract, in contrast to the position in an ordinary distribution pursuant to Schedule B1, thereby avoiding the risk of adverse currency fluctuations, the consequences of which could be significant given the very substantial sums involved and the current volatility of currency markets;

(3) third, the risk of multiple claims being made by multiple parties in respect of the same subject matter and the inevitable complexities and risk of inconsistencies that such multiple claims would give rise to would be eliminated; and

(4) fourthly, that a framework that establishes each scheme creditor's eligibility to receive payments in advance, including whether payment can be made legally and without breaching the sanctions regime, and practically, as provided for, thereby avoiding the risk of funds being stuck in the clearing systems and the risk there is an inability to establish that payment can legally be made to certain creditors would delay payment to other creditors, which would inevitably arise in a distribution under Schedule B1.

13 The administrators are, therefore, intending and asking me to convene a single meeting of the scheme creditors of each scheme company and they ask for an order to that effect. Mr Arden explained the urgency of these applications, namely in particular that Citibank plc's UK bank intends to close its accounts at the end of January 2023 and the administrators have been unable presently to find another bank willing to provide banking facilities, a not unfamiliar situation for companies with Russian connections at the moment. If the payments are not made by the end of January 2023, there is a real danger that they will not be able to be made effectively at all, or certainly for some considerable time. The administrators wanted to propose the scheme some time ago, but needed to be confident that they would be practically achievable. This has been complicated by creditors such as Citibank being unwilling to participate, at one stage, but they seem to have now been brought on board and the administrators are more confident that these schemes will be achievable and approved.

14 I am satisfied that it is, in the circumstances, appropriate to have brought this on quickly before the Christmas vacation and to seek to have it approved before the accounts close at the end of January.

15 I have read the detailed accounts of the background and the evidence. I do not think it is necessary to restate it in this judgment save for the broadest details.

16 As I have said, PLC was placed into administration on 18 July after it concluded that, as a result of the sanctions, it was both cash-flow and balance-sheet insolvent. UMMC had already taken the term loan from GPB and was keen to buy PLC's business in Russia. PLC was placed in administration to facilitate the sale. The administrators concluded that the sale to UMMC was the best outcome for PLC's creditors and this sale was approved and authorised by Mr Jonathan Hilliard KC, sitting as a Deputy Judge of the Chancery Division, on 1 August 2022. He set out his reasons in a helpful written judgment. The sale then was signed and completed in early September for a consideration of approximately US$619 million. I have already explained the form of the consideration received by PLC.

17 As I have also said, there are applications to place the issuers into administration and I will be making such orders in due course. But it makes sense for these interrelated schemes to be managed by the administrators and to be run together, there being a large overlap between the liabilities of PLC and the issuers. The schemes seem broadly uncontroversial. The proposal is designed to discharge all external liabilities in full. The only liabilities not being discharged are intercompany liabilities, principally the ICO claims and PLC's claims pursuant to the PLC 2022 notes and the term loan owed to UMMC, which is being dealt with under the terms of the SPA and is being subordinated.

18 The key terms of the schemes and their implementation and mechanics are set out in the explanatory statement and I do not need to set them out here. The holders of the 2022 notes and 2024 bonds are scheme creditors, as is now well recognised in the authorities, and they will have their rights cancelled under the notes and bonds when they receive payment in full.

19 There are provisions dealing with creditors who are subject to or affected by sanctions and their consideration will be paid into what is called a holding period trust that will last for a year. There are also provisions which provide for a release of creditors' claims against third parties, such as guarantors, to prevent ricochet claims, and these have become recognised as legitimate so as not to defeat the purpose of the scheme: see what Snowden J (as he then was) said in *Re Noble Group Limited* [2019] BCC 349. The scheme also provides for releases against professional advisers.

20 At this convening hearing the merits of the scheme are not considered. It is only for the court to consider whether there might be some jurisdictional roadblock that it could be said, at this stage, that the scheme will not be sanctioned when it comes to consider that. The main purpose of this hearing is to approve the proposal of the single meeting for each company's creditors.

21 It is appropriate, first of all, to consider whether adequate notice of the hearing was given to creditors. It is clear from the authorities that the usual practice is to require a minimum of fourteen days' notice to be given. This is not prescribed anywhere and if the matter is urgent and/or there is a good reason to give shorter notice, then the courts have approved such shorter notice in the particular circumstances of the case. Similarly, the court may require longer than fourteen days to be given.

22 In the present case, the Practice Statement Letter (as it is so-called) ("PSL") was issued on 8 December 2022, which I think is twelve days ago, and it was distributed to the trustees and to the holders of the 2022 notes and the 2024 bonds through the clearing systems and news channels, such as Bloomberg, to the extent possible, and published on the Petropavlovsk website. PLC administrators also published a press release directing interested parties to the PSL.

23 In the PSL it was explained (among other things) that the convening hearing would take place in the Companies Court, Chancery Division, Rolls Building, and was presently expected to take place by 21 December, but that the date was yet to be confirmed; and the precise time and date on which the convening hearing was to take place would be notified to all scheme creditors in writing when it had been confirmed and fixed by the court, again via the clearing systems to the extent possible, by posting on the Petropavlovsk website and via any other means appropriate. So the actual notice to scheme creditors of the convening hearing and the convening hearing itself was relatively short. However, the urgency is, of course, the closure of PLC's bank accounts at the end of January. Furthermore, the promulgation of the schemes will not have been a surprise to scheme creditors. The intention to utilise a scheme of arrangement was noted as a preferred outcome in the PLC administrator's proposals to creditors which was issued on 8 September. This has also been reiterated in the PLC's administrators' public communications, all of which have been published on the Petropavlovsk's website.

24 In addition, as explained in the evidence, the administrators have sought to pre-warn as many creditors as possible of the launch of the applications in respect of the schemes. No objections to that intention have been received from any proposed scheme creditor, or anyone else; and, on the contrary, several creditors have expressed the wish that the schemes be launched as soon as possible. As the whole point of the schemes is to find a way of paying scheme creditors in full and that this can only practically be done with a decision and sanction before the end of January, there is unlikely to be objection from scheme creditors and particularly not in relation to the shortness of notice. In the circumstances, it is my view that the period of notice given by the scheme companies to scheme creditors of the convening hearing is sufficient.

25 There are two jurisdictional questions canvassed by Mr Arden: firstly, whether the issuers are "companies", as so defined; and second whether this is a compromise or arrangement within the meaning of Part 26 of the Companies Act.

26 On the question whether the issuers, as Jersey companies, are companies within the meaning of the Act, the definition is whether they are companies that are liable to be wound up under the Insolvency Act 1986. As unregistered companies, they are liable to be wound up under Part V of the Insolvency Act. There may be an issue as to whether they have a sufficient connection with England, but the fact that the notes and bonds are governed by English law provides that sufficient connection. In any event, it is at least sufficient for the purposes of this convening hearing. There may also be an issue as to international recognition, but, again, at this stage, there is sufficient evidence that they will be recognised, in particular in Jersey, thus preventing creditors from taking action in Jersey inconsistent with the scheme. Also, it is likely that any administration orders made against them would be recognised in Jersey.

27 As to the question as to whether they are a compromise or arrangement, this is always construed broadly and merely requires some element of give-and-take. Mr Arden referred me to the *New Look* case and that shows the breadth of the jurisdiction and certainly in terms of what needs to be considered at this stage. It might be thought that where scheme creditors are being paid in full, they are not giving anything up in terms of compromise. But that would be to take a narrow view. They are converting their existing rights under the notes or bonds, including their rights to obtain a definitive certificate, and to direct the trustees to take enforcement action, including against guarantors against whom rights are being released. They have to submit to the scheme timetable and mechanics and this could lead to them missing out on favourable currency exchange rates that might otherwise apply in an insolvency distribution. All the schemes have to be looked at as, essentially, one, and it is clear that while the claims are being settled in full, it does involve alterations to the creditors' rights sufficient to give rise to some element of give-and-take, satisfying the requirement for a compromise or arrangement.

28 The same applies to the general creditors of PLC. Of course, PLC and the issuers are giving up their rights *inter se*. So, in my view, there is no jurisdictional roadblock that prevents this scheme going ahead.

29 As to class composition, in a nutshell, the test for whether there are separate classes or should be separate classes is whether or not the rights of different creditors or different groups of creditors against the scheme company are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. The focus is the legal rights of creditors against the scheme company, not their separate commercial or other interests. When dividing creditors or members into classes, two considerations are relevant: the rights that the creditors or members would have if the scheme were not implemented; and the rights that the creditors or members would have if the scheme were implemented: see *Re Hawk Insurance Company Limited* [2002] BCC 300 at [26]. Material differences in the rights of creditors do not necessarily fracture the class provided that they are not so dissimilar as to make it impossible for them to consult together with a view to their common interest: see David Richards J (as he then was) in *Re Telewest Communications plc* [2004] BCC 342. And it is important to avoid unnecessary proliferation of classes. As Chadwick LJ observed in *Re Hawk Insurance*, there is a risk that by ordering separate meetings the court gives a veto to a minority and it is important that the test for class composition should not be applied in such a way that it becomes an instrument of oppression by a minority.

30 This is, in my view, a straightforward case and no scheme creditor has suggested that there should be separate classes. In an insolvent situation, all scheme creditors would be unsecured and would rank *pari passu*. Their legal rights are identical and they would

receive the same rateable return. In circumstances where the purpose of the schemes is, so far as possible, to satisfy the scheme creditors' claims against the scheme companies to their fullest extent, it is difficult to see any real difference between the rights of the scheme creditors which are to be released under the schemes and the rights which the scheme creditors would have under the schemes.

31 Mr Arden drew my attention to four matters potentially relevant to class composition.

32 First of all was to relevant event put options under the 2022 notes and 2024 bonds. Under the terms of the notes and the bonds, the de-listing of the shares in PLC following the administration order gave rise to a relevant event for the purposes of a relevant event put option whereby holders had an option to require the relevant scheme company to redeem its holding of 2022 notes or 2024 bonds at 101 per cent of its principal amount, together with accrued and unpaid interest thereon.

33 The holders of approximately US$95 million worth in principal amount of the 2022 notes and US$32 million in principal amount of the 2024 bonds sought to exercise those options. However, the relevant scheme companies were unable to make payments of the sums that fell due on the dates specified in the notes and bonds trust deeds. It appears to the scheme companies that further note holders or bond holders would have wished to participate in the put option procedure, but were unable to do so due to the inability of the clearing systems and intermediaries to process relevant instructions arising out of the imposition of sanctions. The scheme companies consider it would be unfair to divide the 2022 note holders and 2024 bond holders between those who were able to submit options and those who were not. Such a division might also result in disputes arising as to the circumstances in which an individual holder was unable to submit a relevant event put option notice, which would require a disproportionate allocation of time and expense to resolve.

34 Therefore, the scheme companies intend to distribute funds to the note holders and bond holders on the basis that they are all entitled to receive 101 per cent of the principal amount of the notes and bonds they hold, plus accrued interest to the anticipated payment date. I agree with Mr Arden that although in the absence of the schemes certain 2022 note holders and 2024 bond holders in each case had slightly different rights against each scheme company, dependent on whether or not they were capable of delivering the option notice to the scheme company by the applicable deadline, this is not such a dissimilarity of interest between them that they cannot consult together with a view to their common interests in considering the present schemes.

35 The second point concerns the PLC 2022 notes. As I have explained, following the sale, PLC holds the PLC 2022 notes with a face value of approximately US$175 million, and this is held in an account in PLC's name at the Bank Saint Petersburg, which in turn has an account with the NSD, the Russian National Settlement Depository. As the NSD is presently the subject of EU sanctions, the clearing systems are not carrying out any dealings with or via NSD. This means that the PLC 2022 notes cannot be cancelled, in practical terms, as was intended and would ordinarily be the case when notes are obtained by an affiliate of the issuer. So PLC is not being treated as a creditor of 2016 Limited and will not be able to vote or receive a distribution. Its claims will either be extinguished by netting or set-off or discharged by agreement. So this, therefore, is not a problem in relation to class composition.

36 Thirdly, the general creditors of PLC have claims that arise from a number of different sources, including ordinary trading expenses of PLC, ordinary trading expenses of 2010

Limited or 2016 Limited, and employee claims calculated in accordance with applicable laws following the PLC administration. These different categories of claim arise from different sources and have minor differences and rights attached to them, such as time of payment and whether contractual interest applies to them. They are all, essentially, claims to payments of cash from PLC and in the absence of the schemes they would all be determined in accordance with the Insolvency Rules. They would all be subject to the same provision in respect of post-administration interest under r.14.7. So, in the circumstances, the administrators consider that all of the general creditors have sufficiently similar rights against PLC that they can sensibly consult together with a view to their common interest in considering the scheme. I agree.

37 Fourthly, Mr Arden drew my attention to potential problems as a result of sanctions. As things stand presently, none of the scheme companies have been made the subject of any sanctions, nor has any individual associated or connected with them. The scheme companies are not aware of any scheme creditor who is the subject of sanctions, although they cannot be aware of the present identity of every single scheme creditor by virtue of the way in which the notes and bonds are held through the clearing systems. That said, the NSD has been made the subject of sanctions by the EU with a consequence that the clearing systems, which are situated in the European Union and subject to its jurisdiction, will not communicate with or pass instructions via the NSD. In the circumstances, scheme creditors who hold 2022 notes or 2024 bonds via the NSD will not be able to submit voting instructions through the clearing systems in the usual way and will not be able to receive any scheme consideration that was distributed via the clearing systems. This is so regardless of whether the scheme creditor itself is the subject of any sanctions.

38 The schemes have been structured, therefore, in order to mitigate these issues to the extent possible. First of all, scheme creditors are notified that if they consider that their ability to submit voting instructions is affected by the imposition of sanctions, then they should contact the information agent to submit evidence of their scheme claims by other means. Secondly, scheme creditors are also given the opportunity to nominate a separate account or designated recipient where scheme consideration may be received without having to pass through the clearing systems. Thirdly, if it transpires that certain scheme creditors are unable to submit voting instructions and/or account holder letters prior to the scheme effective date due to sanctions or for any other reason, scheme consideration is transferred to the holding period trust for a reasonable period to allow for the issue to be resolved.

39 So none of these matters, in my view, results in any fracturing of the class. This sort of issue was dealt with recently by Meade J in *Re Nostrum Oil & Gas plc* [2022] EWHC 1646, where he accepted the submission that the holding period trust structure employed in that case did not fracture the class. I agree with what he what said there and I do not think that this can, in this case, sensibly fracture the class.

40 Of course, the administrators have carefully considered the impact of both EU, UK and US sanctions regimes and whether there is any risk of facilitating a breach of sanctions. They are satisfied that such risk is minimal, but the situation is constantly under review. If issues in relation to voting, for example, arise at the meetings, then that would be within the discretion of the chairman to resolve at the time.

41 Mr Arden referred me to some late changes to the schemes, in particular about the determination of scheme claims, but I do not think they materially affect the issues for today. The companies want to hold their meetings now on 11 January so that everything can be sorted out in good time before the closure of their UK bank accounts. I am satisfied that

this is sufficient notice so long as the methods for giving notice and distribution of the scheme documentation as set out in the draft order that Mr Arden took me through are complied with. In relation to the scheme and the convening meeting orders, I therefore approve the draft orders that have been put before me and which Mr Arden took me through.

42 Turning to the administration applications in relation to 2010 Limited and 2016 Limited, I have read the witness statement of Ms Charlotte Philips, dated 12 December 2022. She was recently appointed as a director of both companies. The background is apparent from what I have already said. Both 2010 Limited and 2026 Limited are in default of their respective bonds and notes and have no means of paying them. Accordingly, they are unable to pay their debts within the meaning of para.11(a) of Schedule B1 of the Insolvency Act.

43 There are one or two matters to consider. First of all, jurisdiction. The company against which an administration order can be made if incorporated outside of the EEA (such as these companies which are incorporated in Jersey) has to have its COMI (centre of main interests) either in an EEA state other than Denmark or the UK: see para.111(1A) of Schedule B1. The COMI is the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

44 In *Re Swissport International Holding SARL* [2020] EWHC 3556 (Ch), Trower J identified certain principles for considering COMI derived from the terms of the EU Regulation and its recitals, together with certain other relevant authorities.

45 The starting point is that there is a rebuttable presumption that COMI is where the registered office is. Mr Arden submitted that, notwithstanding that the registered office of each company is located in Jersey, it is clear that the COMI of both issuers is in England in circumstances where it is from there that they conduct the administration of their interests on a regular basis and that this is ascertainable by third parties for the reasons that were set out in Ms Philip's witness statement. The relevant points are:

(i) both companies are finance companies whose primary function has always been to act as the issuers of debt instruments, including the notes and bonds, and which are governed by English law for the benefit of PLC's wider corporate group;

(ii) PLC has historically performed all head office functions for the issuers, including the provision of administrative, accounting, legal and investor relation services from its offices in London;

(iii) all regulatory and contractual steps undertaken by the issuers, including communications with holders of the notes and bonds, the issuance of annual certificates, disclosures to the market, preparation of annual accounts and review of annual returns, have always been managed by PLC;

(iv) neither issuer has or has ever had any employees of its own and they are, accordingly, entirely reliant on PLC in this regard;

(v) the holders of the 2022 notes and 2024 bonds have always corresponded with the issuers via PLC's office in London;

(vi) the trustee of the notes (Citibank) and the trustee of the 2024 bonds (Apex) are both based in the UK;

(vii) until July 2022, the issuers' directors were all habitually resident in England. Since July, while one director now lives in California, the only other director continues to be based in London;

(viii) The board meetings for the issuers have almost always taken place in London.

So I am satisfied that, based on these factors, the COMI is England.

46 As to the statutory purposes, the court must be satisfied that the administration order is reasonably likely to achieve the purposes of the administration, i.e. that there is a real prospect that the purpose of the administration may be achieved. I am satisfied that the proposed administrators are reasonably likely to achieve a better result for the issuers' creditors as a whole than if the issuers were wound up. This is principally because of the schemes that have to run in parallel with PLC's scheme and will ensure that all external creditors are paid in full. In a liquidation, that would be complicated by the involvement of the Official Receiver and the Insolvency Service, and it is far better to have all scheme companies under the same control of the administrators.

47 All the other notice and other formalities have been complied with. It is clearly urgent in the circumstances that I have already described, and I will make the administration orders as a result.

48 There is also, finally, an application by the administrators on the basis that such administration orders were made, and that is for the approval for the issue of a letter of request to be sent to the Jersey Court for the recognition of the appointment of the administrators there in Jersey. I have seen the letter of request and I am happy to approve its issue so that there can be recognition of their appointment as administrators and avoiding any complications in that regard.

CERTIFICATE

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