

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



No. CR-2023-004013

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND
WALES
INSOLVENCY & COMPANES LIST (CHD)
[2023] EWHC 2111 (Ch)

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 26 July 2023

IN THE MATTER OF YUNNENG WIND POWER CO., LTD.
A N D
IN THE MATTER OF THE COMPANIES ACT 2006

Before:

MR JUSTICE MICHAEL GREEN

MR M ARNOLD KC, MS C COOKE and MR P BURGESS (instructed by Linklaters LLP)
appeared on behalf of the Plan Company.

J U D G M E N T

Introduction

- 1 This is an application by a Taiwanese company called Yunneng Wind Power Co. Limited (the “**Company**”) for an order to convene five meetings of certain classes of its finance creditors (the “**Plan Creditors**”) for the purposes of considering and, if thought fit, approving a Restructuring Plan under Part 26A of the Companies Act 2006 (“**CA 2006**”).
- 2 The financing structure and the proposed Plan are complicated and the documentation in support of the application voluminous, comprising, as ever, the Explanatory Statement, which runs to over 130 pages excluding appendices, the Practice Statement Letter and the evidence in support, being the main witness statement of Mr Lars Muck, which is some ninety pages long. I know that the Plan Creditors are sophisticated and well-advised parties but there should be some consideration given to the burden put on the court in having to read and digest this material in short order to deal with these applications, which are by their nature urgent, but in respect of which the Company and its advisors have been working on for many months but which the court has only had a few hours to understand. I said this during the hearing and I have said it again now, so I will say no more about it but I hope that this will be borne in mind by those preparing these plans and schemes for the court in the future.
- 3 Having said that, I have benefited from the skeleton argument and oral submissions of Mr Mark Arnold KC leading Ms Charlotte Cooke and Mr Peter Burgess and much of what I will say in this judgment is derived from that careful skeleton argument. I will, however, try not to get too bogged down in the detail because this is only the convening hearing and the merits of the Plan will only need to be considered at the sanction stage. The prime issue at this stage is the appropriateness of directing there to be the five class meetings of Plan Creditors.
- 4 A brief outline of the situation is as follows. The Company was incorporated in 2019 under the laws of Taiwan for the purpose of developing, constructing, commissioning and ultimately operating the Yunlin offshore wind farm located off the coast of Yunlin County in Western Taiwan (the “**Project**”). The Project started in 2019 with the benefit of substantial financing arrangements but the Company is now experiencing severe financial difficulties and is facing an imminent liquidity shortfall with available cash resources expected to fall below the requisite level by 4 August 2023. The Company is currently seeking additional interim funding to enable it to continue operations pending the restructuring of which the Plan forms an essential part. But even if it secures such interim funding, it expects that the cash resources that would become available would be exhausted by the week commencing 28 August 2023 unless the Plan has been approved and sanctioned and the restructuring implemented by then. In that event, namely if the Plan is not approved, the Company will be forced into an insolvency process in Taiwan.
- 5 In the circumstances, the Company is proposing the Plan in order to address its liquidity issues and to facilitate, by the provision of long-term financing, the continued development, completion and future operation of the Project. The Company considers this to be in the best interests of its creditors, as well as its other stakeholders.
- 6 Among other things, the Plan will:

- (1) provide the Company with the New Taiwanese Dollar (“**NTD**”) equivalent of €500 million of new money under the new loan facilities, which is called the “**Super Senior Facility**”;
 - (2) permit the drawdown of funds committed to the Company under certain existing facilities which are currently undrawn as a consequence of being draw-stopped;
 - (3) facilitate the commitment of up to €1.2 billion (or the NTD equivalent) of new funding, which may consist of share capital or subordinated shareholder loans, by the four shareholders of the Company’s parent (they are called the “**Sponsors**”); and
 - (4) in total, therefore, there could be up to €1.7 billion of new funding available to the Company if the Plan is sanctioned.
- 7 In order to effect the Plan and to encourage the Company’s finance creditors to participate in the Super Senior Facility, various amendments are required to be made to certain finance documents, which amendments under their terms require the consent of all relevant creditors. The Plan is therefore being proposed in order to give effect to the Restructuring without needing to obtain the positive consent of every creditor whose consent would otherwise be required. Furthermore, if there was a dissenting class of creditor, there is the possibility of using the cross class cram-down provisions under section 901G of the CA 2006.
- 8 If the Plan is approved and sanctioned and the Restructuring completed in due course, the Company expects returns to Plan Creditors to be between 90 and 100% (varying as between classes and dependent on the position in relation to participations in the Super Senior Facility). On the other hand, if the Company is forced instead into an insolvency process in Taiwan, the return to Plan Creditors in respect of drawn facilities would only be 9.94% in a high case scenario and 2.38% in a low case scenario.
- 9 No Plan creditor has appeared today to oppose the making of the convening order. Mr Ian Wallace of White & Case has put in a witness statement on behalf of a working group of senior lenders showing how they have kept the finance creditors informed of the details of the Plan and this hearing.

Background

- 10 I will now provide a little bit more background. The Company is a private limited company incorporated on 14 January 2019 under the laws of Taiwan where it has its centre of main interests. It is the wholly owned subsidiary of Yunlin Holding GmbH, a German company (the “**Parent**”). The Parent was incorporated for the sole purpose of holding 100% of the shares in the Company and its shares are held by the Sponsors.
- 11 The Company is the sole operating entity in the Group and it was incorporated for the purpose of developing, constructing and ultimately operating the Project. It is managed by one of the Sponsors, Skyborn Renewables Offshore Solutions GmbH (“**Skyborn**”) and has only one employee.
- 12 The Project commenced in April 2019 and is intended to consist of up to eighty turbines with a total generating capacity of approximately 640MW. When completed, the Project is expected to be one of the largest wind farms in Taiwan and will provide clean electricity to more than 605,000 homes. It is anticipated that Taiwan’s state owned electricity supplier, Taiwan Power Company (“**Taipower**”), will buy 100% of the electricity produced by the Project.

- 13 To date, the Company has completed the installation of eighteen turbines which are generating electricity that is being transmitted to Taipower. A further sixteen to twenty turbines are anticipated to be installed and commissioned by the end of 2023 and it is anticipated that if the Plan is sanctioned, the remaining turbines will be constructed during 2024.
- 14 The construction phase of the Project has been financed by third party lender financing and equity contributions from the Sponsors. The third party lender financing comprises various facilities under which the Company is the sole borrower. Certain of the facilities have the benefit of export credit agency insurances or financial institution guarantees and therefore bear the names of the respective coverage providers such as Atradius Dutch State Business NV, EKF Denmark's Export Credit Agency and Euler Hermes. The facilities can broadly be categorised into four groups as follows:
- (1) The "**Base Facilities**" which comprise six base facilities made available under agreements dated 24 May 2019 and amended on 6 April 2022. The Base Facilities which all have a final maturity date of 24 May 2037 are all fully drawn except one, namely, the "**Euler Hermes Base Facility**". Coverage providers provide coverage in respect of 100% of the principal amounts and certain financing costs under two of the Base Facilities and 95% of the principal accounts and certain financing costs under two other Base Facilities.
 - (2) The "**FFS Debt Facilities**" which comprise six facilities made available pursuant to agreements dated 30 May 2021, as amended on 6 April 2022. The final maturity date of the FFS Debt Facilities is 24 May 2037 and the FFS Debt Facilities are currently undrawn and draw-stopped. Coverage providers provide coverage of 95% of the principal amounts and certain financing costs under four of the six FFS Debt Facilities.
 - (3) The "**Commercial Standby Facility**" which comprises a facility made available under a commercial standby facility agreement dated 24 May 2019. The maturity date of the Commercial Standby Facility is 24 May 2037 and some amounts have been drawn down and the remaining is undrawn and, indeed, draw-stopped.
 - (4) The "Ancillary Facilities" which comprise:
 - i. a "**Working Capital Facility**" with a maturity date of the earlier of the day falling ten months after the Project Completion Date or 29 June 2024 made available under a working capital facility agreement dated 24 May 2019 as amended on 30 May 2021 and 6 April 2022; and
 - ii. a "**VAT Facility**" with a maturity date of the earlier of the day falling twelve months after the Commercial Operations Date or 21 December 2024 made available under a VAT facility agreement dated 24 May 2019 as amended on 6 April 2022.
- 15 These facilities are referred to collectively as the "**Existing Debt**" and the relevant underlying documents as the "**Existing Debt Documents**".
- 16 The Company is also the sole borrower under the following, which do not form part of the Plan:
- (1) a decommissioning Letter of Credit ("**LC**") facility made available under the Guarantee Facilities Agreement dated 24 May 2019; and

(2) a performance LC facility made available under the Guarantee Facilities Agreement.

As at 30 June 2023, the Company's liabilities under the LC facilities totalled NTD 2.867 billion.

- 17 The Company is party to various bilateral foreign exchange (“**FX**”) and interest rate hedging arrangements (the “**Hedging Arrangements**”) which are governed by various ISDA Master agreements dated 30 May 2019 and entered into between the Company and certain hedge counterparties. As at 30 June 2023 the position in respect of the Hedging Arrangements was that the Company was out of the money in relation to some but, in relation to one, it was in the money.
- 18 The Existing Debt, the LC Facilities and the Hedging Arrangements rank *pari passu* and are subject to the same common terms agreement originally dated 24 May 2019 as amended and restated on 30 May 2021 and as further amended and restated on 6 April 2022 (the “**Common Terms Agreement**”) and an intercreditor agreement dated 24 May 2019 as amended and restated on 30 May 2021 and on 6 April 2022 (the “**Intercreditor Agreement**”).
- 19 The reason that there is jurisdiction to proceed with this Plan in this jurisdiction is that all the financing documents in relation to the Existing Debt, the LC Facilities, the Hedging Arrangements and the Common Terms Agreement and the Intercreditor Agreement are all governed by English law. The Existing Liabilities also benefit from a shared security package which primarily consists of security over the shares in the Parent and the shares in the Company (respectively subject to German and Taiwanese law) and substantially all-asset security granted by the Company.
- 20 The Plan Creditors are the lenders in respect of the Existing Debt and the Hedging Arrangements providers. As I have said, the LC Facilities are not the subject of the Plan.
- 21 I have already referred to the Company's financial difficulties which started in 2020. The Company says that this is as a result of various external and internal factors.
- 22 The external factors that have impacted on the Company's liquidity include the pandemic, which led to unscheduled shutdowns, the unavailability of personnel and restrictions on travel and the movement of vessels and equipment needed to execute the Project. The Project has also been impacted by increased costs in light of inflation, further supply chain issues and the war in Ukraine which has led to increased commodity prices, including oil and steel and increased FX costs. Further issues have been caused by increased demand and limited supply of suitable specialised vessels and essential plant and equipment needed for the construction of the turbines as well as worse than anticipated weather conditions in the April to September construction window and a greater prevalence than anticipated of suboptimal soil conditions.
- 23 From 2020 there have been three Forecast Funding Shortfalls notified to the Intercreditor Agent. The first, on 13 November 2020, led to the FFS Debt Facilities and an increase in the available equity commitments from the Sponsors.
- 24 On 3 August 2021 there was a second notification and this gave rise to a potential event of default under and as defined in the Common Terms Agreement. This in turn resulted in a draw-stop in respect of the Existing Debt. The Company sought to increase the available equity commitments provided by the Sponsors and this documentation was effected on or around 6 April 2022.

- 25 However, the Company's position deteriorated further and a third Forecast Funding Shortfall was notified to the Intercreditor Agent on 3 November 2022. A technical review led the Company to conclude that the construction phase of the Project would not be viable without substantial further funding. As a consequence of this notification, the Company cannot give a "no Event of Default" representation when making utilisation requests in respect of the Existing Debt as required under the Common Terms Agreement. As a consequence, the FFS Debt Facilities are draw-stopped.
- 26 Since November 2022 the Company and the Parent have been engaged in discussions with the Sponsors and a working group of thirteen senior lenders (the "**Working Group**") in relation to the Restructuring and an interim funding solution to enable the Project to continue pending the completion of the Restructuring (the "**Interim Funding Plan**").
- 27 That Interim Funding Plan was agreed by the Company, the Parent, the Sponsors and the Working Group in February 2023. However, the conditions were not fulfilled and so negotiations have continued, leading to the Sponsors agreeing to provide some funding. The Company is also in discussions with the Working Group with a view to agreeing a waiver of the draw-stops currently subsisting in respect of the Working Capital Facility, the VAT Facility and the Commercial Standby Facility.
- 28 The Company is therefore facing a severe liquidity crisis. Indeed, it is anticipated that the Company's liquidity will reach a critical level by 4 August 2023 and will ultimately be exhausted by the end of August 2023 absent the Interim Funding Plan that I have just referred to. The Company therefore seeks to implement the Restructuring in order to address its liquidity issues and ensure the Project is funded to completion.
- 29 At present, the Company is in negotiation with the Sponsors, the Working Group, certain of the Coverage Providers and certain of the Hedging Arrangements Providers to enter into a lock-up agreement with the Company and the Parent which sets out the agreed commercial terms of the Restructuring (the "**Lock-up Agreement**"). Pursuant to the terms of the Lock-up Agreement once executed, Plan Creditors and any other creditor who accedes to the Lock-up Agreement as a consenting creditor will agree to support the implementation of the Restructuring. Whilst the anticipated effective date for the Restructuring is on or around 25 August 2023, the agreed form of Lock-up Agreement will require the implementation of the Restructuring by 14 September 2023 at the latest but building in a contingency should there be a short delay to implementation.

The Plan

- 30 Turning to the Restructuring Plan itself, this is quite involved and this is not the place to set out its detailed terms. I have already said that it is to provide the Company with up to €1.7 billion but this requires adjustments to the original financing structure, in particular, to give super priority to the Super Senior Facility and to adjust the priority of Existing Debt to incentivise the extra funding to be provided so certain senior lenders under the Base Facilities and the Commercial Standby Facility have the right to participate in the Super Senior Facility. If they do so, that new funding will have super priority and a portion of their Existing Debt, depending on how much is contributed, will improve their priority. This is done by a complex re-tranching of the Base Facilities and the Commercial Standby Facility. The FFS Debt Facilities which can be drawn down will rank in priority to the new tranches but behind the Super Senior Facility.
- 31 Under the terms of the Plan, the maturity dates of some of the Existing Debt will be extended variously out to 2044 and 2054 for the Base and Commercial Standby Facilities

and certain other dates for some of the other facilities. The repayment profiles of the Base Facilities and the Commercial Standby Facility will also be changed and the Hedging Arrangements will be amended to waive certain defaults that would otherwise have arisen as a result of certain terms of the Plan.

- 32 The Restructuring also contemplates a new Group structure by the incorporation of two new companies which will, once the relevant regulatory approvals have been obtained, sit above the Company in the Group. This is conditional on approval from Taiwan's Ministry of Economic Affairs.

The Relevant Alternative

- 33 Turning to the relevant alternative, the Company says that without the Plan there is no alternative source of funding available to the Company. Therefore, unless the Plan is approved by the Plan Creditors and sanctioned by the court, it is anticipated that the Company will enter a bankruptcy process in Taiwan by 25 August 2023.

- 34 The Company commissioned Kroll (HK) Limited to assess potential recoveries in a bankruptcy scenario and this is the familiar Comparator Report. The Comparator Report says that if the Restructuring Plan is sanctioned, no Plan Creditor will be any worse off than they would be in a bankruptcy scenario and, in many cases, they will be significantly better off. In particular:

- (1) in a bankruptcy scenario, in respect of drawn facilities, the expected return would only be 9.94% in a high case scenario and 2.38% in a low case, as I have already said; that is compared with between 90 and 100% if the Restructuring Plan is approved and sanctioned.
- (2) whilst there would be no loss in respect of undrawn facilities in a bankruptcy scenario as a consequence of their being undrawn, lenders in respect of the FFS Debt Facilities are expected to recover 100% under the Restructuring and, although recoveries in respect of the Euler Hermes Base Facility will be less than 100%, when the positions of the relevant Plan Creditors are considered overall with their commitments in each class being considered in aggregate, they will suffer materially greater losses in the bankruptcy scenario.

The Company therefore considers that the Plan is likely to result in a better outcome for Plan Creditors than a Taiwanese bankruptcy.

Issues for the convening hearing

- 35 Turning to the matters to be considered at the convening hearing, Mr Arnold submitted, and I agree, that these are fourfold:
- (1) jurisdictional requirements;
 - (2) Conditions A and B under section 901A of the CA 2006;
 - (3) Class composition; and
 - (4) whether there are any other issues not going to the merits or fairness which might cause the court to refuse to sanction the Restructuring Plan, otherwise known as a roadblock.

I will take each in turn.

(1) *Jurisdiction*

36 The Company was incorporated under the laws of Taiwan. It is well established that a foreign company can be wound up under the Insolvency Act 1986 as an unregistered company. The Company is therefore plainly a company for the purposes of section 901A of the CA 2006. The Court therefore has jurisdiction to sanction the Plan in relation to the Company.

37 It will also be necessary at the discretion stage (i.e. not now) to show that such a company has a sufficient connection with England and Wales but, in any event:

- (1) it is well established on the authorities that if the claims that are subject to the Plan are governed by English law and where the English courts are given jurisdiction by the finance documents that that is a sufficient connection; and
- (2) as Mr Arnold submitted, pursuant to clause 8.4 of the Lock-up Agreement, which is expected to be effective prior to the sanction hearing, each Plan Creditor who is a party thereto will have acknowledged and submitted to the jurisdiction of the Court of England and Wales in respect of the Plan.

(2) *Conditions A and B*

38 The second matter is Conditions A and B. Condition A is that the Company has encountered or is likely to encounter financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern. Condition B is that a compromise or arrangement is proposed between the Company and its creditors or any class of them (or, as the case may be, its members or any class of them) the purpose of which is to eliminate, reduce or prevent or mitigate the effect of those financial difficulties (see section 902A of the CA 2006).

39 In my view, the evidence clearly shows that both Conditions have been satisfied in this case.

(3) *Class Composition*

40 So turning to the main issue for today which is class composition and whether the Company is right to propose five class meetings, as Mr Arnold put it, the court needs to consider:

- (i) The rights of the Plan Creditors in the absence of the Plan, sometimes called the rights in; and
- (ii) Any new rights to which the Plan Creditors become entitled under the Plan or rights out.

If there is a material difference between the rights of the different groups under (i) or (ii), they may, but not necessarily will, constitute different classes (see *Re Hawk Insurance Company Ltd* [2002] BCC 300 at [30]).

41 The law is now quite well established in this area. A class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest (see *Sovereign Life Assurance v Dodd* [1892] 2 QB 573 and *Re UDL Holdings Ltd* [2002] 1 HKC 172). The same approach applies in the context of

restructuring plans under Part 26A and see, for example, *Re Gategroup* [2021] EWHC 304 (Ch) at [182] and many more recent cases.

- 42 It is important to emphasise that this is the legal rights of creditors not their separate commercial or other interests or rights against third parties, such as guarantors, which determine the appropriate constitution of the class (see *Re Noble Group Limited* [2018] EWHC 2911 (Ch) and *Re Gategroup* at [183]).
- 43 The Company has considered the current rights of the Plan Creditors against the Company, their rights in the relevant alternative, which is a Taiwanese bankruptcy, and how their current rights are proposed to be compromised under the Plan. It has concluded that there should be the following classes:
- (1) The “**FFS Debt Class**” being the FFS Debt Facilities Lenders;
 - (2) The “**Base and Standby Class**”, being the Base and Commercial Standby Facilities Lenders excluding in respect of the undrawn Euler Hermes Base Facility amounts and the undrawn Commercial Standby Facility amounts, therefore being essentially those lenders who have actually provided loans to the Company;
 - (3) The “**Undrawn Base and Standby Class**” which is basically the undrawn lenders under those facilities;
 - (4) The “**Working Capital and VAT Class**”, being the Senior Lenders under the Ancillary Facilities; and
 - (5) The “**Hedging Class**”, being the Hedging Arrangements Providers.
- 44 The Company has formed this view in the light of the following matters in particular.
- 45 The nature of the liabilities. For example, the Hedging Arrangements are entirely different instruments to the Existing Debt Facilities, with different rights both in and out.
- 46 Differences in maturity dates. I have already described some of those differences and that may become more marked under the Plan.
- 47 Differences in the levels of drawings. There are differences in the levels of drawings across the Existing Debt. This is the reason for separating out the FFS Debt Facilities and the Undrawn Base and Standby Facilities creditors from the others as they are undrawn and will be so in the relevant alternative. They therefore have materially different rights to other creditors in the relevant alternative as they would not suffer loss in respect of the undrawn amounts.
- 48 Differences in ranking. The ranking between Existing Liabilities will change following implementation of the Restructuring. In particular, the FFS Debt Facilities will have super senior priority immediately below the new Super Senior Facility, recognising that in the relevant alternative they would remain undrawn; and in respect of those who choose to participate in the Super Senior Facility, their ranking in the new tranches for Existing Debt will be determined by how much they participate in it. As I held in *Re ED&F Man Holdings Ltd* [2022] EWHC 433 (Ch), the granting of elevation rights, whereby those who lend new money obtain a higher ranking for their existing debt than those who do not does not create a class issue as there were “*very good commercial reasons why such an elevation structure is used*” and “*because it was available to all creditors pro rata it does not fracture the class; all creditors have the same right to elevate their debt by lending more.*”

- 49 The differences in repayment profile and the application of a cash sweep. Following the implementation of the Restructuring, certain tranches of the Existing Debt will benefit from a fixed amortisation schedule and a cash sweep and certain other tranches will benefit from a cash sweep only. However, the Company does not consider this difference to be material.
- 50 I agree with the Company that the rights of the Plan Creditors within each class are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.
- 51 In relation to the FFS Debt Class, the rights of the Plan Creditors in the FFS Debt Class are identical, both currently and prospectively, under the Plan.
- 52 In relation to the Base and Standby Class, in the relevant alternative, the claims of Plan Creditors within this class will rank *pari passu*. In relation to the possible differences between members of this class that I have just referred to, including the elevation rights, different maturity rights and the allocation methodology, I do not believe that this makes it impossible for all members to meet together with a view to their common interest.
- 53 In relation to the Undrawn Base and Standby Class, again, each member has the same rights against the Company. In addition, the Company has considered whether the rights of all Plan Creditors in this class are currently materially similar, the relevant amounts remaining undrawn in circumstances where it is anticipated that the undrawn amounts under the Commercial Standby Facility will be fully drawn before the creditors' meetings take place if they are released by agreement in the meantime as part of the Interim Funding Plan to provide funding pending completion of the Restructuring. Conversely, undrawn amounts under the Euler Hermes Base Facility will remain undrawn at the time of the creditors' meetings.
- 54 I raised this with Mr Arnold during the course of the hearing and he accepted that it does create a potential difference between the Plan Creditors in this class, but I agree with him that it is not such as to make it impossible for them to consult together with a view to their common interest. In both cases, release of the funds will occur in contemplation of the Restructuring, whether as part of the Interim Funding Plan or pursuant to the Restructuring itself, and all Plan Creditors in this class will need to consider whether to release funds in exchange for the rights conferred by the Plan by exercising their rights to participate in the Super Senior Facility at the requisite level. In these circumstances, there is more that unites them than divides them.
- 55 As for the two other classes, the Working Capital and VAT Class and the Hedging Class, each of their members will rank *pari passu* between themselves both under the Plan and in the relevant alternative. There may be some small differences in maturity dates but there is no reason why the members of these classes could not meet together with a view to their common interest.
- 56 The Company has also considered two further matters. First of all, it is understood that many Plan Creditors have commitments under a number of the facilities and will, as such, be members of more than one class. It is well recognised, however, that cross-holdings do not impact on the question of class composition (see *Re ColourOz Investment 2 LLC* [2020] EWHC 1864 (Ch) at [88]). That matter can be considered at the sanctions stage. Secondly, the fact that a Lock-up Agreement will be put in place in short order will not of itself operate to fracture a class (see *Re Telewest Communications plc (No. 1)* [2004] EWHC 924 (Ch)).

- 57 In all the circumstances, I will direct that there be convened the five plan meetings of the Plan Creditors proposed by the Company.
- (iv) *Any roadblocks*
- 58 The final matter to be considered is whether there are any other issues not going to the merits or fairness of the Plan but which might lead the court to refuse to sanction the Plan, otherwise known as a roadblock. Mr Arnold submitted that there are no such matters. He referred to two points.
- (1) A Plan is capable of waiving a draw-stop on a facility, as that is not the imposition of a new obligation; and
 - (2) the court can sanction a plan notwithstanding an outstanding requirement of regulatory approval - this is to do with the Group restructure that is to be implemented outside of the Plan.
- 59 Finally, the Company has also obtained an opinion from an independent expert, a Professor Shen, an expert in Taiwanese law, that the Plan is likely to be recognised, and given effect to, in Taiwan. That opinion will be made available to the court at the sanction hearing.
- 60 I should deal with a few final matters. First of all, the service of the Practice Statement Letter or “PSL”. In light of the fact that the material terms of the Restructuring were not agreed between the Company, the Sponsors and the Working Group until 10 July 2023, the Company was not in a position to circulate the PSL to Plan Creditors until 11 July 2023, which was fourteen clear days before this convening hearing. While it is recognised that a notice period of three weeks has become commonplace in these matters, Mr Arnold submitted that adequate notice had been given to Plan Creditors, particularly in circumstances where:
- (1) All Plan Creditors have been kept up to date on the status of the Restructuring, the Restructuring Plan and the negotiations with the Company and the Sponsors including through weekly or bi-weekly standing calls, frequent hybrid/in person meetings and regular weekly emails (see for more detail on this Mr Wallace’s witness statement).
 - (2) In order to keep Plan Creditors as informed as possible in the circumstances, the Company circulated advance notice of the convening hearing to Plan Creditors on 29 June 2023, twenty-six clear days prior to this convening hearing. The advance notice gave Plan Creditors certain information regarding the proposed Plan, including, among other things, a summary of the proposed amendments to be made to the existing finance documents in order to give effect to the Restructuring, information about the jurisdiction of the English Court to sanction the Restructuring Plan and a summary of the proposed composition of the classes of Plan Creditors.
 - (3) The Plan Creditors are sophisticated and well advised finance parties who will be accustomed to reviewing legal documents.
 - (4) The Company is facing severe liquidity issues, as I have already explained, and is forecast to run out of cash by mid-August 2023. The implementation of the Plan is therefore urgent.
- 61 I am satisfied that, in those circumstances, adequate notice has been given to Plan Creditors both of the Plan as set out in the PSL and of this hearing.

- 62 I am also required to consider the adequacy of the Explanatory Statement. I have already commented on its length but I take into account the recipients of it and it does, in my view, communicate all material matters in a way that would be readily comprehensible to its intended addressees.
- 63 Mr Arnold pointed out to me that there were a couple of errors in the Explanatory Statement and, indeed, in the evidence that had been adduced relating to the maturity dates of the FFS Debt Facilities which do not change under the Plan and also the potential maturity date of the Super Senior Facility which is under discussion with the Working Group. Those amendments will be entirely in order and will be made to the Explanatory Statement before it goes out to Plan Creditors.
- 64 As for the Plan meetings, it is intended that the Explanatory Statement and other relevant documents will be circulated to Plan Creditors as soon as reasonably practicable following this hearing via the Plan website. It is then proposed that the Plan meetings be convened for 15 August 2023, that the meetings will be held on a hybrid basis and the practical arrangements for the Plan meetings have been set out in the evidence and in the draft order. I have been through the draft order with Mr Arnold and I am satisfied that it is appropriate to make an order in those terms and with those directions contained within it.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge