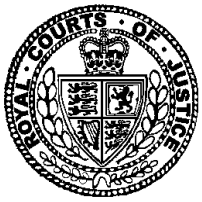

Neutral Citation Number: [2025] EWHC 684 (Ch)

Case No: CR-2025-001153
CR-2025-001168

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Wednesday, 26th February 2025

Before:

MR. JUSTICE HILDYARD

- -

Between:

IN THE MATTER OF ENZEN GLOBAL LIMITED

AND IN THE MATTER OF ENZEN LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

- -

MR. ADAM AL-ATTAR KC and **MS. STEFANIE WILKINS** (instructed by **Simmons & Simmons LLP**) for the **Plan Companies**
MS. CHARLOTTE COOKE (instructed by **Paul Hastings LLP**) for the **Secured Creditors**
MR. GEORGE HOBSON (instructed by HMRC) for **His Majesty's Revenue and Customs**

- -

APPROVED JUDGMENT

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.

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MR. JUSTICE HILDYARD:

1. This judgment relates to two applications made on behalf of a company called Enzen Global Limited (which I will refer to as "EGL" or "the Parent") and Enzen Limited (which I will refer to as "EL" or "the Company") and which companies I shall refer to together as the "Plan Companies". The Plan Companies' applications are for orders of the court to convene certain meetings of the creditors of each of the Plan Companies (the "Parent Pan Creditors" and the "Company Plan Creditors") to consider and, if thought fit, approve, in the case of EGL, what has been referred to as "the Parent Plan" and in the case of EL what has been referred to as the "Company Plan" under Part 26A of the Companies Act 2006. I refer to the two Plans together simply as "the Plans".

2. The Plan Companies are members of the Enzen Group, which provides a range of services including advisory transformation and information delivery to customers in the energy and water industries. The majority of its contracts are held with utility companies, although its customers include a variety of entities throughout the energy and water sector.

3. Both the Plan Companies were incorporated and are registered in England, their head offices are located in England and have their centres of main interests in this jurisdiction. That, of course, is a relevant consideration in determining later, as I have to do, whether there is an obvious roadblock in terms of the enforceability of any orders subsequently made in jurisdictions abroad, as is the fact that many of the financial arrangements are governed English law (though some are not, which does give rise to an issue of International recognition and effectiveness).

4. The Plans are inter-conditional: each must take effect for the other to take effect. There are two key aspects of the Plans. First, the Plans restructure the existing financial debt of the Plan Companies, including by amending and extending the principal facilities agreement and effecting a debt-for-equity swap in respect of part of the financial indebtedness. Secondly, the Plans also compromise the debts owing to unsecured creditors of the Plan Companies, save for those trade creditors who have been identified by the relevant board as being critical to the continuing safe functioning of the relevant company.

5. The stated aim of the Plans is to facilitate the restructuring and rescue of the Plan Companies as going concerns, and to provide a better return to Plan Creditors than would be available to them in the "Relevant Alternative", that is the position as it would be apart from the Plans.

6. The Relevant Alternative is a central concept in the Part 26A jurisdiction, since it is by reference to any alternative to the Plans proposed, which is identified as the Relevant Alternative, that the essential fairness of the Plans must eventually be assessed.

7. Although I shall need to detail some of the factual background of the Plans and in particular describe the creditors affected, because only in that way can I give relevant context to the composition of the classes which is proposed, it is always necessary for the court to remind itself that at this stage, it is *"emphatically not"*

its role to consider the merits or fairness of the Plan. Those are matters which will arise for consideration at any sanction hearing which follows the Plans if approved by any of the classes. That was made clear in the decision of the *Re Telewest Communications plc* [2004] BCC 342 at paragraph 14 by David Richards J (as he then was).

8. The essential role of the court at this stage is to satisfy itself that it has jurisdiction, that there is no obvious and fundamental objection to its exercise and then to consider what is proposed by reference to class constitution, and to be satisfied, since it will be its order that convenes the classes, that it is an appropriate way for the classes to be constituted. Although the principal item of business is the convening of class meetings, it has become conventional also for the Court to address any "roadblocks", as they have been termed, which are or appear to present a fundamental obstacle in the way of sanction, and also to consider whether there might be some other objection to the Plans which clearly show that the Court would be proceeding in vain and result in a waste of everyone's time. The latter might be so, for example, if it is demonstrated that the relevant plan would not be given effect in other jurisdictions where it is considered necessary for it to have effect. Fairness is an omnipresent consideration but is nevertheless not to be determined at this stage.

9. In his clear and helpful submissions Mr. Al-Attar KC, who together with Ms. Wilkins, appears for the Plan Companies, has taken me carefully through the background, the statutory provisions governing my jurisdiction and the description of the creditors and their rights and what is to become of them by way of explaining what is proposed as regards class constitution. I have also received both written and oral submissions on behalf of secured creditors together referred to as "the Existing Secured Creditors" and who are represented by Ms Charlotte Cooke and from HMRC, represented by Mr George Hobson.

Context and need for the Plans

10. The essential context of and need for the Plans is the fact that the Plan Companies have run into considerable financial difficulties. These have been explained at some depressing length in the witness statements in support of the applications, principally that of Mr. Manish Jamthe. Mr. Jamthe explains that he is the Chief Risk and Compliance Officer of Enzen Global Limited, EGL, and its indirect subsidiaries although he has never, he tells me, been formally appointed a director of either of the Plan Companies.

11. I do not think it is necessary for these purposes to rehearse all the many and various difficulties which have confronted the Plan Companies. They have in particular suffered badly from the effects, as many companies have, of the pandemic. There are signs that the Plan Companies, under their then management, have over-reached themselves by adopting quite ambitious plans for expansion abroad, for which they appear from experience at least not to have had the requisite capital base. They have incurred indebtedness which they cannot have expected to repay as what is presented as a matter of choice by the previous management in order to manage a very difficult liquidity situation, which has both brought them into some adverse repute and has also encouraged

the presentation of winding-up petitions and expensive litigation which have further embarrassed and undermined the Plan Companies in financial terms.

12. The long and the short of it is that the Plan Companies have just survived these financial hurricanes only by the injection repeatedly of funds, partly by third parties but for the most part by the Existing Secured Lenders, who have lent before and see the only means of ultimate salvation to lend more and more in order to keep the Plan Companies going.

Summary of the financing agreements

13. The key financing agreement is the Existing Senior Facilities Agreement, which was executed by the Parent (as borrower) and the Company (as guarantor) on 27 April 2023. It is governed by English law. The Original Lenders were GCO II Fund A DAC, GCO II Fund B DAC, BLK GCO Canada (investment) DAC, BlackRock Diversified Private Debt DAC (together referred to as BlackRock), and HBSC UK Bank plc. HSBC traded out of all of the debt in October 2024, and Stellex Capital Holdings II Luxembourg S.a.r.l traded into the Super Priority Facility B Loan and Revolving Loan in October 2024. BlackRock and Stellex each remains a lender, and each is a lender under the Super Priority Facility B Loan, as I shall come on to describe.

14. The Existing Senior Facilities Agreement originally made the following facilities available to the Parent:

    (1) a £45 million revolving credit facility (the Existing RCF Loan), which was reduced in connection with the change of control described in section C4 below; and

    (2) a £55 million term loan facility (the Existing Facility B Loan), which is presently fully drawn.

15. The Existing Senior Facilities Agreement was amended in August 2024 to allow additional interim financing to be provided under the Existing Super Priority Facility B Loan.

16. In respect of the above financial indebtedness only, each of the Plan Companies, together with certain other Group companies, also provided guarantees and security over all or substantially all of their assets (together, the Charged Property). EGSPL, which was at that time the immediate parent of the Parent, also provided third-party security over the shares in the Parent.

17. An Intercreditor Agreement dated 27 April 2023 provided for the enforcement of security over the Charged Property, and the ranking and priority of claims. This was amended in August 2024 when the Existing Super Priority Facility B Loan was provided, as I describe below. Under the Intercreditor Agreement, Existing Super Priority Facility B Loan, the Existing RCF Loan and Existing Facility B Loan rank pari passu in right of payment (clause 2.1), but not in terms of the application of the proceeds of the Transaction Security which ranks the liabilities as follows: first, Existing Super Priority Facility B Loan; second, the Existing RCF Loan; and third, Existing Facility B Loan (clauses 19.13,

19.1.4(b)(i) and 19.1.5(b)(i)). The Intercreditor Agreement is governed by English law.

18. The Group, including the Plan Companies, have also historically borrowed funds under a variety of bilateral loans. These bilateral loans have been entered into with certain banks and financial institutions, and also with management and connected persons. Some of the bilateral loans are governed by English law, and others are governed by the law of another jurisdiction, all as disclosed in the requisite Practice Statement Letter ("PSL").

19. Unlike the Existing Super Priority Facility B Loan, the Existing RCF Loan and Existing Facility B Loan, the amounts currently owing under the bilateral loans are unsecured as against the property of EGL and EL. They are all either in default, or are on-demand arrangements that may be called in at any time.

20. As the financial position of the group slid from bad to worse, these facilities proved insufficient.

2024 and 2025 Financing Agreements

21. By December 2023, there were multiple defaults under the Existing Senior Facilities Agreement. In order to avoid enforcement action by the lenders, the Group commenced negotiations with them and ultimately entered a standstill agreement on 7 May 2024.

22. As part of the standstill agreement, additional funding was made available to the Parent from an indirect shareholder (via EGSPL, which at that time was its immediate parent), but this was insufficient to meet all liabilities.

23. Efforts were made to obtain third party facilities, despite lack of success on previous occasions in this regard. These included attempts in the second half of 2024 to raise equity investment from family offices in the Middle East. These efforts failed.

24. Ultimately, in August 2024, the Existing Facility B Creditors agreed to provide £5.5 million in interim financing, via a new term loan which was provided on a secured and super-senior basis. The Existing Senior Facilities Agreement and the Intercreditor Agreement were amended and restated to provide for this new loan, the Existing Super Priority Facility B Loan. Further interim financing in an amount of £22 million was provided between October 2024 and January 2025.

25. On 23 December 2024, following further defaults (and in light of the Group's worsening financial position), the Existing Secured Creditors – i.e. the lenders in respect of the Existing RCF Loan, the Existing Facility B Loan and the Existing Super Priority Facility B Loan – enforced the share security that had been granted to them by EGSPL in respect of the shares in the Parent.

26. The fixed charge receivers approached four key stakeholders in an effort to provide those persons a final opportunity to refinance the Existing Senior Facilities and avoid an enforcement. This entailed approaching two existing

shareholders of EGSPL (who potentially had the means to refinance the Existing Senior Facilities Agreement) and two lenders to EGSPL (and who were structurally junior to the Existing Secured Creditors).

27. Having received no response, and in circumstances where the Group had urgent liquidity needs and had previously been unsuccessful in raising funds, the receivers sold the entire share capital of the Parent to Edge Bidco Limited (Edge Bidco), a Jersey holding company controlled by the Existing Secured Creditors. As part of the enforcement, the amounts owing under the Existing RCF Loan were reduced to £18 million.

28. On 10 January 2025, the Plan Companies, together with Edge Bidco, Edge Midco Limited and Edge Topco Limited,[1] entered into the Restructuring Support Agreement (RSA). The principal features of that agreement, as set out in the PSL, are:

    (1) The Existing Super Priority Facility B Creditors agreed to provide additional bridge funding of £11.5 million to the Parent in order to meet critical liabilities whilst the Plans were negotiated and implemented. In the absence of this funding, the Plan Companies were expected to become cashflow insolvent by the end of January.

    (2) Each party has agreed promptly to take all actions which it is reasonably requested to take in order to support the Plans.

29. On 4 February 2025, following a non-payment Event of Default (relating to non-payment on 30 January 2025 of interest under the Super Priority Facility B Loans), as a condition to providing £4,000,000 additional liquidity (and granting certain other forbearances), the Plan Companies and the Existing Senior Creditors entered into the Second Supplemental Debenture. This created supplemental fixed and floating charge security over the assets of the Plan Companies, including fixed charge security over certain bank accounts, such that withdrawals are not permitted without the consent of the Security Agent.

30. This additional security was created in circumstances where (1) the Plan Companies had failed to make an interest payment that was due on 30 January 2025 under the Super Priority Facility B Loans, and had failed to meet a milestone under the Restructuring Support Agreement, and (2) faced a near-term liquidity shortfall in circumstances where no additional funding was otherwise available.

The Plan Creditors

31. The Parent Plan Creditors now comprise the following secured creditors, first the existing Super Priority B Creditors, second RCF Creditors and, third, Existing Facility B Creditors.

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[1] These are Jersey holding companies above Edge Bidco in the structure: see the structure chart at Appendix 2 of the PSL.

32. There are then groups of unsecured creditors, led by HMRC which is further to legislation I think in 2020, a Secondary Preferential Creditor in respect of principle indebtedness though not in respect of interest or penalties, other unsecured creditors, and subordinated creditors who rank last under the unsecured creditors in the waterfall.

33. The Parent (EGL) has one class of creditors which the EL does not: otherwise, EL has the same creditor classes. The exception arises out of the fact that EGL (but not EL) is a tenant under two leases, referred to in the evidence as the "Parent Lease" and "the Excluded Lease". EGL has determined that the Parent Lease is superfluous to business needs. As a result, it vacated the premises which were subject to the Parent Lease on 31 January 2025. Since that date EGL has not paid rent or other amounts due, including business rates relating to the premises.

34. The Parent Landlord has the benefit of a rent deposit which as it 31 January 2025 was estimated to be £65,414.25, but no other security. The total amount of arrears estimated to be outstanding are in the region of £76,000 (on the assumption that the Parent Landlord retains the deposit in full).

Summary of the Plans

35. I turn to summarise the Plans. In doing so, I have (with gratitude) very largely lifted the summary from Mr Al-Attar's clear and helpful skeleton Argument.

36. The Plans will restructure the existing financial debt of the Plan Companies, and also compromise their unsecured liabilities (save for certain excluded liabilities, which are owed to critical creditors).

37. It is proposed that there will be six classes of creditors in the Parent Plan, and five classes of creditors in the Company Plan; the Plans will affect each class differently. The detail of the Plans is explained in Part B of the draft Explanatory Statement, but the terms are straightforward and summarised below.

38. As to the secured creditors:

    (1) The Existing RCF Creditors and the Existing Super Priority Facility B Creditors (together, the Existing Super Senior Secured Creditors) will be subject to the A&E Transaction, by which certain amendments will be made to the terms of the Existing Senior Facilities Agreement. In exchange, the Existing Super Senior Secured Creditors will receive a total sum of £5,000 from each Plan Company, divided amongst them pro rata. It is accepted by the Parent and the Company that the amount of £5,000 is a nominal amount in order to deal with the assenting Existing RCF Creditors and the Existing Super Priority Facility B Creditors by means of the Plans (as opposed to by bilateral agreement). The choice to do so does not it is submitted, for reasons further explained below, give rise to concerns about artificial class creation. The Existing Facility B Loan would be impaired in the Relevant Alternative (of administration) and the creditors in that class that would act as one of the assenting classes (along with, at least, the Existing Super Senior Secured

Creditors) to impose the Plans on the unsecured creditors, if, after the votes at the Plan meetings, it is necessary to satisfy the Court of the conditions for a cross class cram down (CCCD).

(2) The Existing Facility B Loan will be released in its entirety, and in exchange the Existing Facility B Creditors will receive the Bidco Instrument. This will entitle the holder to a synthetic preferred return on all dividends, distributions and redemption rights (including in any liquidation or dissolution) in priority to any equity holder of Edge Bidco, up to an aggregate amount of approximately £52.9 million,[2] with a maturity date of 15 April 2033. As part of this transaction, Edge Bidco will receive additional shares in the Parent.

39. As I will explain when addressing the "Relevant Alternative" in the next section, the Existing Super Senior Secured Creditors are, in respect of each Plan Company, the only class which would receive any substantial return in the relevant alternative. The Existing Facility B Creditors are entirely out of the money (despite their secured status).

40. As to the unsecured creditors:

(1) HMRC as the secondary preferential creditor will release its secondary preferential claims in full, in exchange for a payment of £250,000 in cash in each of the Plans (i.e. a total of £500,000).

(2) In the Enzen Parent Plan, one landlord will have their claims released in full, and the lease will be varied, in exchange for a payment of £1,000 in cash, together with 100% of the return that they are estimated to receive in the Relevant Alternative (which would include amounts available pursuant to a rent deposit deed).

(3) The unsecured creditors of each Plan Company will release their claims against the respective Plan Company in exchange for a payment that is the higher of either 150% of their estimated return in the Relevant Alternative, or £1,000. As is explained in section F2 below, the unsecured creditors will be divided into two classes, depending on whether they have a principal or a subordinated claim against the respective Plan Company.

41. As previously mentioned, there are certain critical unsecured creditors who will not be compromised by the Plans. I consider them later.

42. As also already noted, the Group has historically received funding from management and connected persons under bilateral loan agreements. The ongoing support of seven of those members of management (the Key Employees) is considered to be critical for the success of the Group's business. Accordingly, it is proposed that these bilateral loans will be compromised outside the Plans: the Key Employees will release their claims in exchange for a debt or equity instrument to be issued by Edge Topco Limited (which is now

[2] Being £30,250,000 multiplied by 1.75.

the ultimate holding company in the Enzen Group). The terms of the exchange will have been communicated to the Key Employees prior to the Convening Hearing. In the event that no agreement is reached and the relevant loans are not released by 14 March (being the Record Date), the Key Employees who have not compromised their claims will form part of the class of unsecured creditors.

The Relevant Alternative

43. Turning to the Relevant Alternative, and again lifting liberally from Mr Al-Attar's skeleton argument, the most likely Relevant Alternative to the Plans, if they were not sanctioned, is described in detail in the Relevant Alternative Report which has been prepared by Begbies T Traynor Advisory LLP ("BTG").

44. In short, BTG's assessment is that if the Plans (which are inter-conditional) were not sanctioned, it is most likely that the Plan Companies would be the subject of two to four-week accelerated mergers and acquisitions (AMA), i.e. sale, process followed by a pre-packaged sale of the business and assets immediately following the opening of administration proceedings in respect of the Plan Companies. BTG consider that it is most likely that the Existing Secured Creditors purchase certain business and assets of the Plan Companies by means of a release of their Existing Secured Claims (i.e. a 'credit bid').

45. The background to all this is that the Plan Companies are not expected to be able to continue trade outside a formal insolvency process beyond 25 March 2025. This is because:

    (1) if the Plans are not sanctioned, there would be Events of Default under the Existing Senior Facilities Agreement.

    (2) there would be little liquidity, and the Plan Companies would be unable to pay their debts as they fall due, including to the Existing Secured Creditors, the critical trade creditors and advisers;

    (3) there are no alternative funding options.

46. It is also relevant to note that a trade creditor in the Unsecured Creditors class has already presented a statutory demand, and has threatened to issue a winding up petition if not paid in full. The Group's liquidity position is, therefore, urgent and the likelihood of administration proceedings in respect of the Plan Companies probable, if the Plans were not sanctioned.

The Outcomes for Creditors: comparison between the Plan and the Relevant Alternative

47. BTG have sets out (i) the recoveries for the Plan Creditors under the Plans, and (ii) the likely recoveries in the Relevant Alternative.

48. They have estimated recoveries under the EGL Plan to be as follows:

Class	**Return under the Plan**	**Return in the Relevant Alternative (p in £)**
Existing Super Senior Secured Creditors	Subject to A&E Transaction and £5,000 paid, pro rata in cash	21.1
Existing Facility B Creditors	The Bidco Instrument	Nil
HMRC as the Parent Secondary Preferential Creditor	A payment of £250,000 in cash (equivalent to 4.2p/£)	0.1
Parent Unsecured Creditors	A payment of the higher of 150% of their Estimated Administration Return or £1,000	Nil
Parent Subordinated Creditors	A payment of the higher of 150% of their Estimated Administration Return or £1,000	Nil
Parent Landlord	A payment of 100% of their Estimated Administration Return plus a payment of £1,000 in cash.	Nil

49. The estimated recoveries under the EGL Plan are as follows:

Class	**Return under the Plan**	**Return in the Relevant Alternative (p in £)**
Existing Super Senior Secured Creditors	Subject to A&E Transaction and £5,000 paid, pro rata in cash	10.7
Existing Facility B Creditors	The Bidco Instrument	Nil
HMRC as the Company Secondary Preferential Creditor	A payment of £250,000 in cash (equivalent to 5.6 p/£)	Nil
Company Unsecured Creditors	A payment of the higher of 150% of their Estimated Administration Return or £1,000	Nil
Company Subordinated Creditors	A payment of the higher of 150% of their Estimated Administration Return or £1,000	Nil

50. In each Plan Company, the value breaks well into the highest tier of debt. Even the Existing Facility B Creditors, who are secured, would receive a nil return.

51. The BTG Report is supported by a Relevant Alternative Valuation Report prepared by FRP Advisory Trading Limited ("FRP"). This concludes that in the Relevant Alternative:

    (1) EGL's value, which is derived from the assets and personnel required to operate and deliver the Group's contracts at the Parent would range from £7.5 million to £9.5 million.

    (2) EL's value, which is comprised of contracts and shareholding is subsidiaries, would range from £3.85 million to £5.85 million.

    (3) The combined valuation of the two Plan Companies would therefore be £11.35 million to £15.35 million.

The matters to be determined

52. Section 901C(1) of the CA 2006 provides that:

> 'The court may, on an application under this subsection, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.'

53. The practice at a convening hearing under Part 26A of the CA 2006 is provided for in the requisite Practice Statement.[3]

54. The Practice Statement (at paragraph 6) identifies the principal function of the Court at the convening hearing as being to address the following questions:

    (1) whether the creditors and members to whom the restructuring plan applies have been given sufficient notice of the convening hearing;

    (2) whether the jurisdictional conditions set out in section 901A are satisfied;

    (3) whether there is any roadblock which would prevent the Court from sanctioning the plan; and

    (4) whether more than one meeting of creditors and/or members is required, and to ensure that those meetings are properly constituted.

55. As to notice, paragraphs 7 and 8 of the Practice Statement provide that unless there is good reason not to do so, all creditors or members affected by a restructuring plan be given sufficient notice of the matters to be addressed at the

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[3] Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006) [2020] 1 W.L.R. 4493, issued by the Chancellor on 26 June 2020.

convening hearing to enable them to consider what is being proposed, to take advice, and, if so advised, to attend the convening hearing.

56. The requisite period of notice is fact-sensitive, and will depend on '*the complexity of the scheme or plan, the urgency of the company's financial position, the sophistication of the creditors*' and any other relevant matters: Re *Project Lietzenburger Strasse Holdco* [2023] EWHC 2849 (Ch) at [29] per Miles J.

57. In the present case, the PSL was distributed on Tuesday 4 February 2025, which is 22 days in advance of the convening hearing on Wednesday 26 February 2025.

58. Mr Al-Attar's skeleton argument detailed at some length, by reference to even more detailed evidence, the steps taken to identify creditors and ensure their notification. I do not think it is necessary for present purposes to set out these steps. Suffice it to say for present purposes that, subject to one curiosity, I am satisfied by the efforts which have been made in this regard.

59. The curiosity arises because there may be unsecured claims which might be brought by persons presently unknown but which are to be compromised under the Plans. Mr Al-Attar identified as the particular example insolvency office holders who might not yet have taken up office and whose identity is in any event not known yet. *Ex hypothesi* they will not have been notified save in a generic way by virtue of notification via an information platform

60. More generally, and without minimising the importance of proper notice in due time, it seems to me therefore that the fact that the class is composed by description and not necessarily a warrant that each one each member of the class has been identified or notified expressly is not a fundamental objection. The alternative view would in effect preclude companies by reference to a problem which, as in this case, may or may not even exist cannot be a sensible conclusion.

Jurisdictional Conditions

61. Turning to the jurisdictional conditions, Section 901A of the CA 2006 provides that:

> '(1) The provisions of this Part apply where conditions A and B are met in relation to a company.
>
> (2) 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.
>
> (3) Condition B is that—
>
> (a) a compromise or arrangement is proposed between the company and—
>
> (i) its creditors, or any class of them, or
>
> (ii) its members, or any class of them, and

(b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2).'

62. It seems to me to be obvious by reference to the circumstances I have described that Condition A is satisfied.

63. As to Condition B:

(1) All of the Plan Creditors are creditors of one or both of the Plan Companies.

(2) In order to constitute an 'arrangement' for the purpose of section 901A, it is necessary only that the proposed restructuring plan contain some form of 'give and take' between the company and each class: *Re Project Lietzenburger Straße Holdco S.À.R.L.* [2024] EWHC 468 (Ch) at [38]-[39] per Richards J. Although HMRC have reserved their position and may seek to argue to the contrary at a later stage, I am satisfied, in that regard and by reference to the evidence recently available and my present understanding of the Relevant Plans in that regard, that there is an element of give and take with each of the proposed classes and that the Plans compromises or arrangements within Part 26 A CA 2006. Its fairness is not a matter for this hearing.

Quasi-Jurisdictional issue: International effectiveness

64. Before turning to the issue from which convening hearings get their name, that is to say what classes should be convened, there is one quasi or soft jurisdictional point which I should briefly address. This relates to an international aspect of the Plans, and in particular whether there is a sufficient connection with this jurisdiction to make it appropriate under conflict of law theory to exercise jurisdiction in the manner which is proposed.

65. As to the international aspects of the Plans:

(1) Each of the Plan Companies is incorporated in England, and is therefore a '*company*' within the definition in section 901A(4)(b) of the CA 2006. It is unnecessary to satisfy any test of 'sufficient connection': *Re Dundee Pikco Ltd* [2020] EWHC 89 (Ch) at [24] per Zacaroli J.

(2) Some of the liabilities arise under laws other than English law. An English restructuring plan may compromise debt that is governed by another system of law, although the English court will, in deciding whether to sanction the scheme, consider whether there is a realistic prospect that the compromise will be recognised in a relevant foreign jurisdiction, so that its order is not made in vain; see, for example, *Re Magyar Telecom BV* [2013] EWHC 3800 (Ch); [2014] BCC 448 at [16]-[24] per David Richards J.

66. So far as international recognition and effectiveness is concerned, the relevant jurisdiction which has been identified is Spain because there are creditors there

including as I should have mentioned some actual or potential officeholders who may, under their laws, have special reason to object to the imposition of an English Plan in effect denying them the rights that they might otherwise have had.

67. In that regard, evidence has been obtained by the Plan companies from an appropriately qualified Spanish lawyer, Mr. Iñigo Quintana. The effect of what he says, put very summarily, is that in his opinion the Spanish court would recognise and give effect to the Restructuring Plan if sanctioned in each case. That is so even though it might, as it were, deny the rights of officeholders under that law: that would not be contrary to Spanish public policy such as the provide a special reason for denying effectiveness.

68. Subject to permission being granted for that report to be relied on as evidence, this being an interlocutory matter I have taken it as relevant for this purpose, it seems to me that it would not be appropriate and in fact would be pretentious for me to gainsay that.

69. The essential test is whether the court can see that what it would do is futile because the Plan cannot be given sufficient effect by reference to some jurisdictional bar or failure and I do not see that that is a problem in this case.

Class composition

70. I turn to the question as to the proper constitution of the classes to be convened to consider the Plans.

71. The Plan Companies propose the following class compositions:

(1) For the Parent Plan, two classes of secured and three of unsecured, and the Parent Landlord, and thus six classes in all as follows:

(a) Existing Super Senior Secured Creditors

(b) Existing Facility B Creditors

(c) Parent Secondary Preferential Creditor (HMRC)

(d) Parent Unsecured Creditors

(e) Parent Subordinated Creditors

(f) Parent Landlord.

(2) For the Company, two classes of secured and three of unsecured, and thus five classes in all as follows:

(a) Existing Super Senior Secured Creditors

(b) Existing Facility B Creditors

(c) Company Secondary Preferential Creditor (HMRC)

(d) Company Unsecured Creditors

(e) Company Subordinated Creditors.

72. This is a considerable number of classes. My function is to see that the class composition proposed is sensible and to be very wary of anything which might resemble class manipulation, in particular lest a class has been set up as the cramming class in an envisaged cross class cramming exercise which is now enabled under Part 26A and which is its most important feature in comparison to Part 26 schemes of arrangement.

73. I have been persuaded by Mr Al-Attar that it would not be possible to place the creditors interest smaller number of classes. As he put it in his skeleton argument:

(1) The two classes of secured creditors (i) have different rankings in the Relevant Alternative, and (ii) will be treated differently under the terms of the Plans. Accordingly, there is a difference of rights between the secured classes both as to existing rights, and to the rights that will be conferred by the Plans (i.e., a difference in 'rights in' as well as 'rights out'). It is acknowledged that the lenders under the Super Priority Facility B and the lenders under the Existing RCF Loan have different rankings in the Relevant Alternative and might therefore vote in separate classes, thus creating three classes of secured creditors. However, all Super Priority Facility B lenders are supportive of the Plans, as are all lenders under the Existing RCF Loan, and there is no material difference in treatment of those lenders under the Plans. Further, in the Relevant Alternative, each would expect the agreed priority in the Intercreditor Agreement to apply. There is therefore no material difference in rights between the lenders under the Super Priority Facility B and the lenders under the Existing RCF Loan. In contrast, the lenders under the Existing Facility B Loan are being treated materially differently under Plans (a position justified by their subordinated secured status) and must therefore be placed in a separate class.

(2) Each of the classes of unsecured creditor has an unsecured claim. However, each class has a substantially different set of rights against the respective Plan Company in the relevant alternative (i.e., there is a difference in 'rights in'). Moreover, there is also a difference in 'rights out' for all but one of the unsecured classes, in that each class is treated differently in the respective Plan. The one exception to this is that the unsecured creditors and the subordinated creditors will be separated into two classes in each Plan, notwithstanding that they will be treated the same under the Plans. This is because of the difference in their 'rights in', as I explain below.

74. I have considered also whether it is right that HMRC are in a separate class in respect of their secondary preferential claims (as regards each of the Plan Companies). I am satisfied this is correct as regards those preferential claims. It is the approach that is has been taken in other restructuring plans where it was proposed that HMRC would be compromised in respect to such claims: an

example is *Re Prezzo Investco Limited* [2023[EWHC 1679 (Ch). (For clarity, I should add that as regards their unsecured claims in respect of penalty and or surcharge interest, where they do not have preferential status of any kind, HMRC are included in the unsecured creditor class in each of the Plans.) Again, the treatment of HMRC, which has been in the past a special concern of the court is a matter which will have to be addressed at the sanction hearing.

75. Mr Al-Attar also took me through the position as regards unsecured creditors including creditors whose claims are contingent as well as those whose claims are unknown.

76. Appendix 3 of the PSL has identified in some detail the sorts of claims that are to be compromised in the Unsecured Creditor class. The important point is that it is, in effect, a 'catch all' class that is intended to capture all unsecured creditors (save for those which are known to be Subordinated Creditors, or are excluded as Critical Trade Creditors).

77. A similar approach was taken in *Re Noble Group Ltd* [2018] EWHC 2911 (Ch); [2019] B.C.C. 349, a scheme case in which all creditors were placed in a single class (save for a single financial creditor, which was placed in a class of its own owing to its unique treatment under the scheme (see [92]-[94] of the convening judgment). Two points emerge from the judgment:

    (1) First, for the purpose of the 'rights in' analysis, what was important was the nature of the rights as against the company in the relevant alternative; it was not relevant to consider how they arose, nor whether they were disputed, undisputed, or likely to be the subject of any dispute. In the relevant alternative, all would be subject to the same proof of debt process, irrespective of how the claim arose, and the possibility of different outcomes of the proof of debt process: see [95]-[100].

    (2) Secondly, the scheme sought to compromise not only claims which had been threatened (or were presently the subject of litigation), but also '*contingent claims arising out of certain parent company guarantees and indemnities granted by the company*', and, importantly, '*claims of unknown creditors which have not yet been identified*': see [29], and [30]-[36] for a description of the known claims, which included claims in tort and contract. It was therefore permissible to include 'unknown' claims in the class.

78. A similar approach was also taken in *Re DeepOcean 1 UK Ltd* [2020] EWHC 3549 (Ch) at [11] per Trower J, in which one of the classes comprised '*all of the creditors of each Plan Company not otherwise falling into one of the first three categories, but excluding creditors with what are called excluded claims*'.

79. Any outstanding claims of Key Employees and their connected persons in respect of bilateral loan agreements will also be included in the Plan or Company Unsecured Creditor class (as the case may be). Conversely, any Key Employee(s) and connected persons who have compromised their claims outside the Plans prior to the Record Date will no longer be a creditor in respect of their bilateral loan claim, and will therefore be excluded from the class.

80. The one wrinkle to which Mr. Al-Attar directed me is whether there should in fact be more classes, and in particular, three classes of Secured Creditors rather than two because, in a nutshell, the rights of the RCF Secured Creditors (is that right) differ as regards their inward rights against the Plan Companies and the question is whether lumping them together with the Existing Super Senior Secured Creditors is appropriate.

81. There is a certain degree of theory in all of this, because in point of fact they are all the same people and such discourse that they would have would be entertaining but not necessarily particularly realistic. Even leaving that aside, it seems to me that their rights do not relevantly differ in terms of their likely ability to be able to consult together with a view to their common interest which is the test laid down long ago by Bowen LJ in *Sovereign Life Assurance v Dodd* [1892] 2 QB 573 at 583. It is, of course, necessary in that context to consider any dissimilarity of rights and to consider that question both in terms of their rights before and in terms of the rights that they would have if the Plans are sanctioned afterwards.

82. That issue must also be judged not only in terms of the test I have propounded but by reference to what, in some senses, is a levelling which is to consider that what rights they would have in an insolvency or even in the relevant alternative. If their rights in the comparator as it is called in scheme context would be not such as to settle their common view, then they are perfectly properly assembled together.

Subordinated Creditors

83. In each of the Plans, there is a class comprising subordinated creditors. The Parent Subordinated Creditors and the Company Subordinated Creditors (together, the Plan Subordinated Creditors) are defined as: (see PSL, Appendix 4, [1.1] and [1.2])

> '... any Claims of a guarantor, co-guarantor, co-defendant, or indemnified party against the [Parent/Company] which in the Relevant Alternative would be legally subordinated in priority of payment to the corresponding [Parent/Company] Unsecured Claims, and include without limitation... [a series of claims are identified]'

84. In other words, the Plan Subordinated Creditors are those creditors who hold contingent claims against the Plan Companies which arise because the creditor either:

(1) is a guarantor, or a co-guarantor of a Plan Unsecured Claim; or

(2) shares a joint liability with the Parent and/or the Company in respect of a Plan Unsecured Claim.

85. In the administration of the Plan Companies, each of the Plan Subordinated Creditors would hold a contingent, unsecured claim against the respective Plan Company. Accordingly, each of the Plan Subordinated Creditors has the same principal right against the respective Plan Company in the Relevant Alternative.

86. However, none of the Plan Subordinated Creditors would receive any distribution until the corresponding Plan Unsecured Claim had been paid in full. This is because the rule against double proof prevents a creditor who is a surety, or who has a contribution claim, from receiving a distribution until the creditor with the corresponding principal claim has been paid in full (whether outside or inside the insolvency): *Lehman Brothers Holdings Scottish LP 3 v Lehman Brothers Holdings Plc* [2021] EWCA Civ 1523; [2022] Bus LR 10 at [135]-[139] per Lewison LJ.

87. Accordingly, the Plan Subordinated Creditors have been placed in a different category to the Plan Unsecured Creditors, because whilst all have unsecured claims against the Plan Companies, each of the Plan Subordinated Creditors is legally subordinated to the corresponding Plan Unsecured Creditor.

88. The Parent Subordinated Creditors and the Company Subordinated Creditors are defined and identified in Appendix 4 of the PSL. Appendix 4 also identifies a series of known claims that are Parent Subordinated Claims or Company Subordinated Claims (as the case may be). However, as the heading to paragraphs 1.1 and 1.2 of Appendix 4 makes clear, the classes extend to all subordinated creditors who fall within the definitions in Appendix 4 (and not just those who are known and listed therein).

Arrangements which are outside the Plans

89. There are a number of creditors who are excluded from the Plans, such that their claims will not be compromised by the Plans, and will be paid in full in the event that the Plans become effective.

90. These are listed in Appendix 5 of the PSL, which is headed 'Critical Trade Creditors', together with a brief description of the reason for the exclusion of each.

91. By way of example, the creditors identified in this case include:

    (1) legal and financial advisers to the company, including those who have been engaged on the present restructuring;

    (2) suppliers of services; and

    (3) subcontractors.

92. HMRC is also in this class, in respect of amounts as they fall due. Although HMRC is not in the same position as a supplier of critical goods and services, it has been acknowledged that HMRC has a special position as a creditor: see *Re Nasmyth Group Ltd* [2023[EWHC 988 (Ch) at [115].

93. It is well-established that a scheme or plan may exclude creditors whose support is necessary for the continuation of the business: see, e.g., *Re Virgin Atlantic Airways Ltd* [2020] EWHC 2376 (Ch) [58]-[62] per Snowden J; *Re Smile Telecoms Holdings Limited* [2022] EWHC 740 (Ch) at [19] per Snowden LJ. This is a justified departure from the principle of *pari passu* distribution of the

benefits of the restructuring: *Re AGPS Bondco Plc* [2024] EWCA Civ 24; [2024] B.C.C. 302 at [166] and [170] per Snowden LJ.

The Parent Landlord

94. There is one further class which I should consider, which I have mentioned previously, which is the landlord class. The position in this regard put summarily, is that the Plan Companies in January determined that they had no further use of rented premises and they vacated them leaving unpaid rent and with rent in the meantime in the usual way continuing to accrue.

95. The Parent Landlord is, in that sense, in a special position but also has what might loosely be termed and even accurately termed according to further research a "secure position" (in respect of section 248 of Insolvency Act 1986) because it being a commercial lease it has taken security against future or existing rents and future rents, which it can appropriate at any moment and no doubt if it has not already done so will do so soon.

96. It is right, in my view, that the Parent landlord should, by reason of its special characteristics, be in a class of itself and I approve that way of proceeding likewise. Again, what difference it would make if it was combined with any other class seems uncertain, and may still be relevant in assessing overall fairness.

Conclusion on class composition

97. I have reached the view at this stage, at any rate on what is put forward to me, that the classes that are proposed for the Plan Companies are correct. I note in this regard that both the Existing Secured Creditors and HMRC supported the class constitution proposed.

Status of these determinations

98. A question which has arisen both as regards the class composition and more generally as regards the two issues of roadblock and recognition and enforcement, is whether in the particular circumstances I should include in the order specific provision that my decision is to be capable of, as it were, *de novo* review by whoever is the Judge at the sanction hearing so that he or she can consider afresh what I have decided without the baggage of this judgment or any other process.

99. HMRC pressed this point, not because of any identified objection to class composition (to which indeed, like the Existing Secured Creditors, they did not object), but on the ground that they considered that whilst they had been notified of the prospect of a Plan in January, and had received the Practice Statement Letter some 22 days as the calendar runs before this hearing, they had not received the Explanatory Statement or other evidence until much more recently. They had been deluged, as I was, with the evidence, which is voluminous, only I think on Monday or Tuesday, and had had no time to instruct Counsel properly consider their position.

100. Mr Hobson, on behalf of HMRC, drew my attention to cases in which such a course adopted though in rather different context; these are *CB&I UK Ltd* [2023] EWHC 2497 (Ch), a decision at the convening stage of Miles J and *Re Prezzo,* a decision in fact at the sanction stage but rehearsing what Zacaroli J as he then was had done at the convening stage, that is at [2023] EWHC 1679 (Ch).

101. The problem with this course is that, unless carefully restricted to very special circumstances, it rather undermines the purpose and practice after the decision of the Court of Appeal in *Re Hawk* of the court being able to give some assurance both to the client companies and creditors at large that, absent exceptional circumstances or a change of circumstances, they are safe in proceeding with the classes as convened by the court and in also taking it that again, absent special circumstances, some explosive new argument or change of circumstances, that the court is satisfied that there is no obvious roadblock or reason to believe that what it does is in vain.

102. Further, the whole purpose well, not the whole purpose, but a principal purpose of the requirement for a concise but nevertheless sufficient Practice Statement Letter to be sent in good time before the convening hearing, is to give a sufficient explanation to creditors of the matters which will be germane at the convening hearing.

103. Subject to one point, I do not think that the special provision urged by HMRC is necessary. I do not think it is a practice to which the court should in the ordinary case have recourse to except in circumstances where the Practice Statement Letter itself has not been delivered in due time. Of course that time will depend on all the circumstances of the case, there being no specific requirement.

104. To my mind the Practice Statement Letter in this case, which resembles in many ways an Explanatory Statement was a sufficient description of the matters which will be in issue for the purposes of the convening hearing, to enable HMRC and other creditors to marshal sufficiently their arguments on the relevant points of class composition roadblock and international cross boarder effectiveness.

105. The one point I reserve is this: that as is made clear in a number of authorities, the court is not thereby binding itself. If, for good reason, it felt that it had taken a false step in this regard or has by special circumstances or new events its approach has been falsified then it can always review the position. I make clear that I am not giving any special solidity or permanence to what I have directed or proposed to direct, only an application of its usual approach.

106. I should add that so far as the other points, and in particular whether there is a fatal impediment or roadblock, I'm in a position to say at present is that I have not seen one: and the test really is whether a roadblock is obvious, not whether a sleuth could detect it in what is proposed.

107. There will be a number of arguments of course at the sanction hearing and there are amber lights including the fact that the end result is, which Mr. Al-Attar says could be achieved in other ways and is in any event not an unusual result, that the Super Seniors will have total control at every level of this company, whereas

all the other creditors will go away with next to nothing beyond the nominal payments which are being made to them only to satisfy their rather semantic give and take requirements in order to qualify the Plan as an arrangement.

108. It may be that when it comes to fairness, that result may sound against the sanction. That will depend on an acute analysis of what the relevant alternative truly is. That is in the way of things and not a particular roadblock and I propose to say no more about it.

109. Accordingly, for those rather repetitive reasons which (as I warned was likely to be necessary) I confess I have considerably elaborated in reviewing the original transcript, I am satisfied that what is proposed is appropriate, that the Plan should continue with the hearings to consider them convened as is proposed.

Directions

110. The final matter that I need consider is what directions should be given having regard to the position of HMRC and for that matter any other creditors who might wish to oppose or make submissions in the future at the sanction hearing.

111. Mr. Al-Attar has proposed that I should make directions for HMRC in particular to file and serve a notice of opposition by 10 o'clock on 5th March, if that is what intends to do, and then to file and serve of evidence that it wishes to rely on in opposition by 12th March.

112. The Plan Companies and any supporting creditors are to put in and file and serve evidence in reply by 4 p.m. on the 19th March so as to enable that evidence to be considered and assimilated with the skeleton arguments to be filed and exchanged by 10 o'clock on 21st March.

113. I have accepted that unless some certainty is introduced by the 25th March, it may be too late. That is the date of the hearing which in that context has been secured and, to some extent, the directions must walk backwards from that ultimate date.

114. It does not seem to me unreasonable to require HMRC and other creditors to state by the 5th March whether they do wish to oppose. They can, after all, change their mind but should, if they do so, notify both the court and the Plan Companies forthwith. But by that time they will have had to have made up their mind and put in motion the preparation of their evidence, which might, for example, include expert evidence. The long and the short of it is that I consider that they should have sufficiently focused by the 5th March to make that realistic and not unfair and the further week being granted for that evidence is a necessary corollary of the timetable I have described.

115. The time for skeleton arguments is rather tight, and no doubt preparatory work will have to take place before then, but it is equally necessary for the court to have a reasonable opportunity of putting itself in a position to understand what is quite a many layered Plan.

116. I grant the Plan Companies permission to rely on expert evidence, including insofar as it is necessary to that end the relevant alternative reports compiled by BTG and FRP for valuation and the expert report of the Spanish professor, Professor Iñigo Quintana. If HMRC also seek to put in expert evidence then they should notify me and I would have thought that is a matter that can be dealt with on the papers.

(For continuation of proceedings: please see separate transcript)

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(This Judgment has been approved by the Judge.)

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