The Legal Backdrop: Restructuring Plans and the Water Special Administration Regime

A refresher on the English restructuring plan

A restructuring plan is a powerful statutory mechanism under Part 26A of the Companies Act 2006, which enables a company to propose a compromise or arrangement to its creditors (secured and unsecured) and/or shareholders. A restructuring plan must be approved by the Court and requires two Court hearings. At the first hearing, the Court considers whether it has jurisdiction in relation to the plan and (if so) whether to convene the proposed meeting(s) of stakeholders to vote on the plan. After the convening hearing, the meeting(s) will be held and at the second hearing, the Court decides whether to approve the plan.

A plan will be approved by a class of stakeholders where at least 75% in value of those present in person or by proxy at the meeting vote in its favour. If one or more classes do not support the plan, the Court may still approve the plan if it is satisfied that:

(A) none of the members of the dissenting class would be any worse off under the plan than they would be in the relevant alternative (the "**NWO Test**"); and

(B) at least one class who would receive a pay(t)0.9 (o ( )0(l)1..5 (e)3 b Td[(n<(s)1,b ( )0.5)9 (oE147 0 Tdy /MCITd[(()-8 (6 (e)30.9(e)1 ( )
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effectively gives the Class A creditors veto rights over the recapitalisation of the group (particularly given that the Class A creditors indicated they could launch their own bid in the Equity Raise Process).

In proposing the Company RP, the group submitted that the relevant alternative to it was a WSAR of TWUL, the regulated entity, and administration of the other group companies running concurrently (a proposition that was supported by the Class A AHG) ("

that could be reversed if the approval order were overturned by the Court of Appeal. Crucially, the Plan Company made it clear that no consent fees would be paid, and none of the new senior-

Leech was also not convinced that, in the event the Company RP was not approved, the Class A AHG would support the Rival RP or release the group from the TSA (in order that it might support the Rival RP).

The Class B AHG also took issue with recoveries in the SAR Scenario (in anticipation, as ended up being the case, that the Court would find that to be the relevant alternative, and not the Rival RP). Their approach was two-fold:

first, in their own expert valuation evidence, the Class B AHG submitted that the Plan Company significantly undervalued the Thames Water group, and if a proper approach to valuation had been adopted, the Class B creditors would be better off in the SAR Scenario than under the Company RP;

second, the Class B AHG submitted that the Class A creditors were able to "divert value" away from the Class B creditors, which they would otherwise have received in any of the relevant alternatives. The Class B AHG alleged that without various control terms in favour of the Class A creditors (such as the JRC), the group would have more time to entertain equity bids and achieve a high valuation for Thames Water. In particular, the JRC was said to severely limit the Equity Raise Process by giving the Class A creditors early veto rights in respect of any future restructuring.

The Court disagreed with those arguments, concluding that the Class B creditors and TWL would be no worse off under the Company RP than in the SAR Scenario. Leech accepted the Plan Company's valuation evidence and rejected the Class B AHG evidencterf9 (n)[(m)4.t me t(n)0d7 (d)0.5 (S)3.9(n)0d7 (d mIf3.7 (t)1.7 (TJ-0.002 3Tc 0 (cr)9.9 (qui)3.4 (t)7.0 -1t5 (77 (f.7 (TJ 3Tc)3.8 (t)1.7t)3

Better or fairer plan? In *Adler*, the Court of Appeal confirmed that, when considering whether there has been a fair

Public interest

This was the first restructuring plan case opposed on a public interest basis, raising interesting and novel issues.

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Standing: The Plan Company and Class A AHG argued that Maynard did not have standing to appear before the Court in relation to the plan and as a result, the Court should not take into account his submissions. Leech rejected those arguments in short order. The Court considered that the customers of Thames Water and the members of the public who are the recipients of the Thames Water's services are "plainly affected" by the approval of the Company RP, even those neither

Initially minded to allow the convening hearing to take place, the judge refused permission to convene the meetings on the basis that there was no reasonable probability that the meetings would serve any reasonable purpose[5], given that:

1. the Class B AHG had not asked for permission to appeal Leech's finding that the Rival RP would not be implementable before the liquidity runway expires;
2. the Class B AHG faced an "insuperable obstacle" of knowing what proposal to put to the creditors at the meetings until after the Court of Appeal has made its final decision; and
3. the Class B AHG have no standing to invite the Court to convene meetings to vote on its Rival RP unless and until the Court of Appeal overruled Leech's preference for the group's valuation evidence because as it stood, if the Plan Company's valuation is correct, the Class B creditors have no genuine economic interest in Thames Water and so should not be able to bring the Rival RP.

In response to the Court's dismissal, the Class A AHG clarified that the Reinstated RP would no longer be pursued.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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