

Neutral Citation Number: [2023] EWHC 264 (Ch)

Case No: CR-2022-002121;  
CR-2022-004684;  
CR-2022-004688;  
CR-2022-004685

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

7 Rolls Buildings  
Fetter Lane  
London  
EC4A 1NL

Friday, 20 January 2023

BEFORE:

**MR JUSTICE MICHAEL GREEN**

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- (1) PETROPAVLOVSK PLC (IN ADMINISTRATION)**  
**(2) PETROPAVLOVSK 2010 LIMITED**  
**(3) PETROPAVLOVSK 2016 LIMITED**

Applicants

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**MR P ARDEN, KC** and **MR J WIGLEY** (instructed by Joseph Hage Aaronson LLP Solicitors) appeared on behalf of the Applicants

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**JUDGMENT**  
(Approved)

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1. MR JUSTICE MICHAEL GREEN: These are applications for the sanction of proposed schemes of arrangement under Part 26 of the Companies Act 2006 in respect of: Petropavlovsk PLC (“PLC”) acting by its joint administrators, Mr Alistair Manson, Mr Trevor Binyon and Ms Joanne Rolls; Petropavlovsk 2010 Ltd (“2010 Ltd”); and Petropavlovsk 2016 Ltd (“2016 Ltd”) both latter companies also acting by their administrators, who are Mr Manson and Mr Gareth Wilcox. I appointed them as administrators of those two companies at the convening hearing on 20 December 2022.
2. At the convening hearing, I delivered a full judgment setting out the background and details of the proposed schemes. I will not repeat that here but adopt what I said there in my judgment, which is reported at [2022] EWHC 3448 (Ch). I will also adopt the definitions that I used there. As before, Mr Arden KC together with Mr Wigley appear on behalf of the companies and the administrators, and they have provided a helpful skeleton argument supplemented by Mr Arden’s oral submissions today.
3. The broad purpose of the schemes is to enable all external creditors of the group to be paid in full, and the need for the schemes to do that is because there is urgency in the light of the fact that their bankers, Citibank, intend to close their accounts at the end of this month and because of the reluctance of banks generally to deal with Russian-associated companies, the administrators were having difficulty in obtaining alternative banking arrangements. If the administrations had followed their usual course, it may have taken a long time for the money to have actually been distributed, and there were other advantages to this being done by way of the schemes which I referred to in the convening judgment.
4. No one opposed the convening order, and no one has appeared before me today to oppose the sanction of these schemes. I should say, however, that Mr Arden showed me an email which had apparently been sent to the court yesterday by someone who does not identify him or herself, and that email raised certain issues as to whether it is appropriate to sanction the schemes today, in particular concentrating on the existence and impact of the sanctions and more particularly in relation to Gazprombank, which was originally the group’s lender in relation to the term loan but is no longer because that loan has been assigned to UMMC. Gazprombank is no longer a creditor and is not subject to these schemes. So, even though the status of the person who sent in that

email is totally unclear, it does not seem to me to affect the issues that I have to decide today.

5. The scheme meetings were held on 11 January 2023, pursuant to notice given in the form that I directed. By the convening order, I had given permission to convene a single class meeting of each company's scheme creditors, and I gave directions as to how that should be conducted. The results of the meetings were as follows, according to the chair's report. Firstly, as to the 2010 Ltd scheme meeting, the resolution to approve its scheme was passed unanimously; there were five creditors voting at the meeting. That represented 100% in both number and value of those present and voting at the meeting in person or by proxy. The turnout was very high. The votes were cast by 96.36 per cent by value of those eligible to vote at the meeting. As for the 2016 scheme meeting, the resolution to approve the scheme was passed unanimously in both number and value. The turnout was high in that case. Votes were cast by 73.96 per cent of those eligible to vote at the 2016 scheme meeting.
6. As for the PLC scheme meeting, the resolution was passed by 90.32% in number. That is 28 out of 31 of the scheme creditors voting. There were no votes against, but there were three abstentions. Those creditors voting in favour represented over 96.53% in terms of value, and the turnout in relation to PLC was high. The votes were cast by a high proportion of the debts of ascertainable value or debts where values were attributed for the purposes of voting. It is not possible to precisely calculate the turnout in relation to PLC scheme creditors because not all of the debts are liquidated debts.
7. Some slight technical modifications have been made to the schemes, both before and after the meetings. There were some modifications prior to the convening hearing, which Mr Arden brought to my attention then and which I took into account in making the convening order. But, subsequent to the convening hearing and before the scheme meetings, as explained in Mr Manson's second witness statement, there were two minor amendments concerning definitions that needed to be made to each of the three schemes, namely:
  - (1) first of all to insert into the schemes a definition for the term "Majority Scheme Creditors", who are those persons whose consent is required to modifications

and amendments made to the schemes after they had been sanctioned pursuant to clause 8 of each scheme. That definition had been inadvertently omitted.

(2) The second was to update the definition of ‘‘Voting Instruction Deadline’’, which is still a relevant definition to the operation of the schemes post-sanction as certain steps regarding the review of scheme claims and the subsequent distribution of funds flow from it. That was inadvertently not updated to conform to the deadline specified in the final form of the notices convening the scheme meetings and the body of the explanatory statement.

8. A further set of amendments was put forward for the PLC scheme alone. Those concern clause 5, which makes provision for the process whereby general creditor proofs are reviewed and disputes resolved if necessary and for the scheme consideration to be transferred to the holding trust pending determination of any disputes. Some of these provisions had been updated shortly in advance of the convening hearing, as I have just said, and were brought to my attention then, but, as further explained in paragraphs 20 to 22 of Mr Manson’s second witness statement, the proposed further amendments were as follows:

(1) first of all to make the terms of the scheme clearer in allowing PLC to reserve for scheme claims or potential scheme claims of which the PLC administrators were aware but in respect of which a general creditor proof had yet to be submitted and where this involved setting aside funds in hand, making it clear that those could be transferred to the holding period trust if thought appropriate; and

(2) secondly, to render the urgency of receiving any outstanding general creditor proofs less significant and, as such, to allow for the deadline for doing so post-sanction to be extended to 90 days rather than the 21 days in the scheme terms as published.

As is immediately apparent, these amendments are in the interests of the estate and the scheme creditors, as they allow for more time for scheme claims to be submitted whilst providing some additional flexibility in the management of the funds held. All of these amendments were identified in advance of the scheme meetings, and, as noted in the

chair's report, they were described to the scheme meetings before the resolution was put to a vote.

9. Following the scheme meetings, a further potential issue was identified relating to the ascertainment of scheme claims. In particular, whilst paragraph 6.7 of part VI of the explanatory statement makes clear that the PLC scheme claims are to be assessed as at the date of which PLC went into administration, which was 18 July 2022, it was considered that the schemes were not entirely clear as to how a PLC scheme claim made in respect of a liability that had not fallen due as at 18 July was to be valued. An amendment was proposed to clause 5.1(b) in the terms of the final form scheme for PLC in order to clarify that. That proposed amendment effectively provides the same approach to valuing future claims as would be applied by rule 14.44 of the Insolvency Rules 2016 and would be in line with scheme creditors' expectations and usual market practice in dealing with claims against insolvent estates, and, as is usual, what that provides for is for there to be a discount against the full value of such future claims to recognise the fact that they are being paid in advance of the due date.
10. Mr Arden therefore on behalf of the scheme companies seeks the court's approval for these modifications to the schemes. Clause 8.2 of the schemes is drafted in customary terms and permits the scheme companies to consent on behalf of all scheme creditors at the sanction hearing to any modifications to the schemes as the court may approve and which does not materially adversely affect the rights or interests of the relevant scheme creditors.
11. I am satisfied that the proposed modifications do not have a material adverse effect on any scheme creditor, and I approve them for the purposes of implementing the schemes.
12. Turning to the question of sanction itself, the approach to be taken by the court when considering whether to exercise its discretion to sanction a compromise or arrangement is well known and has been summarised in many cases, including the frequently cited decision of David Richards J (as he then was) in *Re Telewest Communications PLC* [2004] EWHC 924 (Ch), and that approach has been stated more recently by

Snowden J (as he then was) in *Re KCA Deutag UK Finance PLC* [2020] EWHC 2977 (Ch) at paragraph 16, where he said:

“The relevant questions for the court at the sanction hearing can therefore be summarised as follows:

4) Has there been compliance with the statutory requirements?

ii) Was the class fairly represented and did the majority act in a *bona fide* manner and for proper purposes when voting at the class meeting?

iii) Is the scheme one that an intelligent and honest man, acting in respect of his interests, might reasonably approve?

iv) Is there some other ‘blot’ or defect in the scheme?

In the case of a scheme with international elements there is also the question of whether the court will be acting in vain if it sanctions the scheme. This requires some consideration of whether the scheme will be recognised and given effect in other relevant jurisdictions.”

13. That test has been cited with approval in a number of recent cases which I do not need to cite.

14. I will deal with the each of those four issues in turn. First of all is whether the provisions of the statute were complied with. As Mellor J recently observed in *Re Nostrum Oil & Gas PLC* [2022] EWHC 2249 (Ch) at paragraph 20:

“The question of whether the provisions of the statute have been complied with can be subdivided as follows: (i) have the classes been properly constituted; (ii) was there compliance with the terms of the convening order (including in particular whether the scheme creditors received an adequate explanatory statement); and (iii) were the statutory majorities obtained?”

15. Looking at class composition I considered this at the convening hearing. Where class composition has already been considered in detail at the convening hearing, the court at the sanction hearing should ordinarily adopt and follow the conclusions that had been

earlier reached; see *Re Global Garden Products Italy SpA* [2017] BCC 637 (Ch), a decision of Snowden J. Accordingly, in my view, no further consideration of class composition is necessary.

16. As to compliance with my convening order, I am satisfied that the scheme meetings were summoned and conducted in accordance with the convening order as explained in Mr Manson's second witness statement. Finally, in relation to the statutory majorities, as I have already set out, those were achieved.
17. Turning to the second consideration, namely whether the respective classes were fairly represented by the relevant scheme meetings and did the majority act bona fide, this is clearly satisfied by reference to the overwhelming support for the schemes and the high turnout at the meetings. There is no basis for suggesting that those attending and voting in favour were doing anything other than voting in accordance with the interests of the class.
18. As to the third requirement, whether a relevant scheme creditor could reasonably approve the relevant scheme, it seems to me that I should respect the convincing judgement of the creditors who have voted for the schemes in large numbers. It is not for the court to second-guess their decision to vote in favour of the schemes, and their fairness is really a matter for them unless they were acting with some sort of improper motive. In any event, irrespective of the very high level of support of the scheme creditors, the evidence shows that the schemes are clearly fair. In particular it is anticipated that pursuant to the schemes and subject to their terms, scheme creditors will receive payments in the full amount of their scheme claims. It is difficult to see how that could be said to be unfair. It is also significant that there is no opposition to the schemes and no scheme creditor has come forward to identify any reason, concrete or otherwise, as to why the scheme is unfair. I should add that the email that I looked at this morning did not suggest that the scheme terms themselves were unfair. In the circumstances there is no basis to go behind the votes of the scheme creditors. On the contrary, full weight should be given to their views.
19. The final consideration is whether there is any blot on any of the schemes, and part of that is whether the schemes will be recognised and given effect to in other relevant

jurisdictions. The court must consider whether there are any blots or defects in the schemes. This can be paraphrased by asking whether there is some technical or legal defect in the scheme, for example it does not work in accordance with its terms or that it would infringe some mandatory provision. I considered this at the convening hearing and found there to be no such blot at that stage. I considered jurisdiction, namely whether the scheme companies were companies within the meaning of the act, and I decided that they were. However, a court will not exercise its jurisdiction to sanction a scheme unless a sufficient connection with England is shown; see *Drax Holdings Ltd, Re* [2003] EWHC 2743 (Ch) at paragraph 29.

20. Where a company is incorporated in England, as is the case with PLC, there is no need to establish any further sufficient connection with the jurisdiction; see *Re Dundee Pikco Ltd* [2020] EWHC 89 (Ch) at paragraph 24 of Zacaroli J's judgment.
21. In the case of a foreign company, a sufficient connection with England will be established if the liabilities compromised by the scheme are governed by English law; see *Re Vietnam Shipbuilding Industry Group* [2014] BCC 433 per David Richards J, and that has been applied in many subsequent cases. As explained above, both the 2024 bonds and the 2022 notes, which comprise the overwhelming majority of the respective debts of the issuers, are governed by English law with the consequence that there is no doubt that a sufficient connection exists. Indeed, neither the PLC administrators, the 2010 Ltd or 2016 Ltd administrators are aware of any scheme claims which are governed by any law other than English law.
22. I also considered at the convening stage whether this was a compromise or arrangement within part 26 of the Act. My views have not changed from the convening hearing that it is.
23. Moving on to consider whether the schemes will have substantial effect in other relevant jurisdictions, in *Re DTEK Energy BV* [2022] 1 BCLC 260, Sir Alastair Norris helpfully summarised the relevant principles governing the test for international effectiveness, and I will not set out what he said there.. It should be noted that firstly where the debt to be schemed is English law, it is inherently likely that the scheme will be recognised abroad, and there is authority in the form of two decisions of David



Richards J, *Magyar Telecom BV* [2014] BCC 448 and *Re Public Joint--Stock Commercial Bank Privatbank* [2015] EWHC 3299 (Ch). Secondly, the English court will regard a scheme as substantially effective abroad if it has very solid support amongst its scheme creditors.

24. As to the present case, both the 2024 bonds and the 2022 notes, which comprise the overwhelming majority of the respective debts of the issuers, are governed by English law. Neither PLC, nor the 2010 Ltd and 2016 Ltd administrators are aware of any scheme claims which are governed by any law other than English law, and accordingly it is inherently likely that the schemes will be recognised abroad in relation to the rights of the bond holders and noteholders and the other holders of English law debts or rights. The schemes have been approved with overwhelming support, providing good evidence that the schemes will achieve substantial effect in relation to the scheme creditors as a whole, and in any event, as explained in Mr Manson's first witness statement, the PLC administrators have been advised that the schemes in respect of the issuers are likely to be recognised in Jersey, such that no creditor would be able to take any action in Jersey that would be inconsistent with the terms of the scheme, and I think I am right in saying that the application for recognition has already been made.
25. Further, the extent to which the proposed schemes give rise to further issues of international recognition is limited in circumstances where:
  - (1) first, the schemes in contrast to some other noteholder schemes where rights to receive cash are exchanged for shares or other notes, which perhaps understandably are more prone to give rise to recognition issues overseas, these schemes provide for all the scheme creditors to be paid in cash in full.
  - (2) Secondly, PLC's largest single creditor and holder of the term loan, UMMC, supports the proposed schemes.
  - (3) Thirdly, while the administrators cannot be certain of the identity or location of all the creditors, in particular the identity or location of all noteholders and bondholders, the proposed schemes provide for all such creditors to be paid in full.

(4) Fourth, no objection to the proposed schemes has been received, which is unsurprising in circumstances where creditors' claims are to be satisfied to their fullest extent.

So I am satisfied that these schemes are likely to be recognised in other relevant jurisdictions.

26. Finally, Mr Arden addressed me on the question of the ongoing sanctions and the effect on the schemes. The administrators have considered these issues carefully, and I was satisfied at the convening hearing that there appeared to be no issue in relation to sanctions affecting the schemes or ones that would not be satisfactorily dealt with during the course of the administration and the schemes themselves. Since the convening hearing, as explained by Mr Manson, no scheme creditors have come forward who are domiciled in the United States and who would therefore have been subject to US sanctions legislation, which is particularly stringent and may have required an OFAC licence even to allow a US person to vote on the schemes.
27. Also, none of the scheme creditors who have submitted a scheme claim appears to be the subject of any sanctions themselves. If the schemes are sanctioned by me and then brought into effect, the PLC administrators, the 2010 Ltd administrators and the 2016 Ltd administrators would be in a position to make payments totalling approximately \$150 million (or Mr Arden said it was approaching \$200 million) to the substantial majority of the scheme creditors, subject to verification of their eligibility, with only a much smaller amount being held over for those who have not yet come forward. Mr Arden particularly took me to a recent extension of the sanctions regime that has been imposed by the UK government by way of a prohibition on the provision of trust services to persons connected with Russia under regulation 18C of the Russia (Sanctions) (EU Exit) Regulations 2019. Mr Arden took me through the somewhat convoluted regulations, including the explanatory memorandum and in particular regulation 18C.
28. No scheme creditor has yet, as I have said, been identified as a designated person within the meaning of the rules or as being connected with Russia, but it is recognised that there might well be one or more such persons. There are exceptions in the new

regulations. The prohibition in regulation 18C concerns trust services, but it is made subject to various exceptions, including those set out in part 7, which has a complicated number regulation 60ZZB(1)- and that exception potentially applies to this situation because that regulation says that the trust services prohibitions are not contravened by any act done by a person ‘I in connection with transferable securities or money-market instruments where dealing with such securities or instruments is not prohibited by regulation 16 or 18B’’. That therefore takes one to regulation 16, and the point here is that the bonds and notes are probably transferable securities or other money-market instruments within that subsection, but, going to regulation 16, which provides for prohibitions in relation to such securities, it is fairly clear that the prohibition would not apply to these bonds and notes, because they have not been issued by a prohibited person within the meaning of that regulation, and nor were they issued on or after 1 March 2022, which applies to some of the later prohibitions within that regulation.

29. The other prohibition or exception that is referred to in regulation 60ZZB is 18B, and that concerns various activities, including acquiring ownership interests in land located in Russia, indirectly acquiring any ownership interests in land et cetera, none of which appear on their face to cover any of the activities that might have to be carried on in relation to the schemes.
30. The one final matter that I should refer to is that there is a further exception within regulation 60ZZB, and that is in subparagraph (2)(g), for ‘trust services provided in the course of, or in connection with, the acting by way of business as an agent holding funds, economic resources or documents in escrow until the performance of a contractual condition agreed between two or more other persons, including the person for whom the funds, economic resources or documents are being held’’. This potentially comes into play in relation to the holding period trustee, who will be holding money whilst the enquiries and disclosures of scheme creditors that might be subject to sanctions or affected by sanctions will be worked out. Under the terms of the scheme, a disqualified person will not receive any money until they cease to be disqualified, and the whole point of the holding period trust is to hold the money until those issues can be resolved. The fact that a trust is being set up obviously brings potentially into play these regulations as it is a trust, and it is likely, as I have said and as Mr Arden recognised, that there will be such persons amongst the note or bond

holders that are revealed over time. But because of the exceptions within the regulations and the protections within the scheme itself, I am satisfied that this is not an issue at this stage in relation to sanction of the schemes and that this will be dealt with responsibly and cautiously by the administrators and the trustees in working out the schemes. Accordingly there remains no obstacle to the schemes proceeding as envisaged, and it is clear that persons engaged with the management of the schemes will bear very much in mind the impact of sanctions and whether there is any danger of them being infringed.

31. So I am satisfied as to all relevant matters for consideration at this sanction stage. I have been shown the draft orders and, subject to the small technical amendments that we discussed, I grant sanction to all the three schemes in the terms of those draft orders.

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**This transcript has been approved by the Judge**