



Neutral Citation Number: [2022] EWHC 2249 (Ch)

Case No: CR-2022-001793

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 26 August 2022

Before :

MR JUSTICE MELLOR

IN THE MATTER OF NOSTRUM OIL & GAS PLC ('the Company')
AND IN THE MATTER OF THE COMPANIES ACT 2006

DAVID ALLISON QC and RYAN PERKINS (instructed by **White & Case LLP) for the
Company**

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archives website. The date and time for hand-down is deemed to be Friday 26th August 2022 at 3pm.

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THE HON MR JUSTICE MELLOR

Mr Justice Mellor:

INTRODUCTION

1. This is the application by Nostrum Oil & Gas Plc (“the Company”), for an order sanctioning the scheme of arrangement (the “Scheme”) between the Company and certain of its creditors (the “Scheme Creditors”) pursuant to Part 26 of the Companies Act 2006. The Scheme relates to two series of unsecured notes (“the Existing Notes”), with aggregate principal amount of approximately US\$1.125 billion.
2. From those able to and which did vote at the Court Meeting, the Scheme received overwhelming support - over 99% of the Scheme Creditors who cast a vote – and it is not opposed by the only creditor who voted against the Scheme.
3. Although schemes sanctioned in this Court earlier this year may have involved entities subject to sanctions imposed as a result of the war in Ukraine, this topic does not appear to have been expressly addressed prior to this Scheme. Thus, it is necessary to consider the position of certain Scheme Creditors which are the direct or indirect target of sanctions (imposed as a result of the war in Ukraine) in the UK, EU, the US and Guernsey which prohibit them from dealing with the Existing Notes, termed the ‘Sanctions Disqualified Persons’. The Company is aware that Scheme Creditors estimated to hold approximately 7.1% by value of the Notes are Sanctions Disqualified Persons. I note that the Company itself is not a Sanctions Disqualified Person.
4. Today I have heard from Mr. Allison QC and Mr Perkins in support of the Scheme and they also supplied me with a very useful (and comprehensive) Skeleton Argument.
5. The background to the Scheme was set out in some detail in paragraphs 4-19 of the judgment of Mr Justice Meade from the convening hearing: see [2022] EWHC 1646 (Ch). I can gratefully adopt those paragraphs which I set out here:

‘4. The Company was incorporated in England and Wales in 2013. Its shares are listed on the Main Market of the London Stock Exchange. It is the ultimate parent of a corporate group (“the Group”) which operates an oil and gas business in Kazakhstan. The largest shareholder of the Company is ICU Holdings Limited (“ICU”).

5. The key operating company within the Group is an entity called Zhaikmunai LLP (“Zhaikmunai”). Zhaikmunai holds a licence in relation to an oil and gas field in Kazakhstan (“the Chinarevskoye Field”), granted by the Ministry of Energy of the Republic of Kazakhstan.

6. The Chinarevskoye Field is currently the Group's sole source of revenue, but production has been falling since 2017 and is expected to continue to fall as reservoirs are depleted. As a result of several write-downs of the Group's reserves, it has emerged that the Group is seriously over-leveraged and restructuring is needed.

7. The Company's main indebtedness arises from the Existing Notes, which comprise two series of notes: (i) the "2022 Notes", which were issued in July 2017 and are due to be repaid in full on 25 July 2022; and (ii) the "2025 Notes", which were issued in February 2018. The 2022 Notes pay a coupon of 8% per annum and have an aggregate principal amount of US\$725 million. The 2025 Notes pay a coupon of 7% per annum and have an aggregate principal amount of US\$400 million.

8. The Existing Notes are unsecured and are guaranteed by various companies within the Group ("the Guarantors"). They are listed on the Irish Stock Exchange.

9. The Group failed to make interest payments under the Existing Notes in July 2020, did not remedy the failure within the permitted period, and has paid no interest since. I give further details of this below.

Proposed scheme

10. The Existing Notes are issued in the form of a "Global Note": a single global note is issued for the entire face value of each series, and beneficial interests in each Global Note are traded through the Depository Trust Company ("the Clearing System"). The participants in the Clearing System maintain book-entry accounts to which interests in the Existing Notes are credited. The "Noteholders" are the holders of such book-entry interests in the Existing Notes. As the Noteholders are entitled to call for the issuance of "Definitive Notes" in certain circumstances under the Existing Indentures, they are deemed to be contingent creditors for the sums due under the Existing Notes and are therefore treated as Scheme Creditors to ensure that the persons with the relevant economic interest are enfranchised when voting on the proposed scheme.

11. The principal purpose of the Scheme is to allow for the implementation of a comprehensive financial restructuring of the Group ("the Restructuring"). It is worth briefly setting out the development of the Restructuring:

a. Since May 2020, the Group has been engaged in discussions concerning the potential terms of the proposed scheme with an ad hoc group of Existing Noteholders ("the AHG") and with ICU.

b. On 24 July 2020, the Group failed to pay interest due under the Existing Notes and did not remedy the default within the 30-day grace period. No further interest has been paid on the Existing Notes since that date, resulting in a series of defaults under the Existing Notes.

c. On 23 October 2020 various Group companies entered into a temporary forbearance agreement with the members of the AHG. A further agreement was entered into on 19 May 2021, which was

extended on several occasions. On 23 December 2021, an agreement in principle was reached as to the terms of the Restructuring, and a lock-up agreement was executed ("the Lock-Up Agreement"). The Lock-Up Agreement has now been signed by Noteholders representing approximately 77.7% of the aggregate principal amount of the Existing Notes.

d. On 29 April 2022, the Restructuring was approved by a special resolution of the Company's shareholders.

12. The immediate effect of the Scheme will be to impose a moratorium on any enforcement action by the Noteholders to allow the Company to implement the Restructuring by obtaining certain regulatory approvals (which I deal with below). The moratorium is intended to remain in place until the date when the Restructuring is completed, or until a long-stop date of 16 December 2022. There is also a mechanism whereby a majority in value of the Scheme Creditors can terminate the moratorium and indeed the Scheme.

13. There are certain regulatory approvals that the Company must obtain in order to implement the Restructuring, which arise due to certain of the Scheme Creditors being direct or indirect targets of sanctions in the UK, EU or US. Such Scheme Creditors ("the Sanctions Disqualified Persons") are currently prohibited from dealing with the Existing Notes. Approximately 7.1% by value of the Notes are held by Sanctions Disqualified Persons.

14. The Restructuring may require licences to be granted by the sanctions authorities in the UK, the Netherlands and the US. I understand from Mr Allison QC, who appeared for the Company, that there is a possibility that the relevant authorities will indicate that no such licence is required (although this is less likely with the US). There is uncertainty as to when such licences (or confirmation that licences are not required) will be provided, which is why the moratorium is necessary to provide the Company with breathing room to implement the Restructuring.

15. The key commercial terms of the Scheme are as follows:

a. First, all Scheme Creditors will be entitled to receive a pro rata allocation of two series of newly issued notes governed by English law, comprising:

i. US\$250 million of new senior secured notes, which will bear 5% interest (to be paid in cash) and will mature on 30 June 2026. These new senior secured notes will benefit from first-ranking security over all the Group's assets and will be guaranteed by the Guarantors; and

ii. US\$300 million of new senior unsecured notes, which will bear 1% interest (to be paid in cash), plus 13% (to be paid in kind by being capitalised and added to the principal) and will mature on 30 June 2026. These new senior unsecured notes will benefit from second-

ranking security interests over certain bank accounts of the Group, but will otherwise be unsecured. They will, however, benefit from guarantees provided by the Guarantors, and will be capable of being repaid through the issuance of new shares in the Company.

b. Second, all Scheme Creditors will be entitled to receive a pro rata allocation of new shares in the Company representing 88.89% of the equity on a fully-diluted basis.

c. Third, the holders of the new senior unsecured notes will be entitled to receive the benefit of a pro rata allocation of additional share warrants ("the New Warrants") issued by the Company to a trustee on their behalf. Upon the exercise of the New Warrants, the holders of the new senior unsecured notes would increase their holding of the enlarged issued share capital of the Company to 90%.

16. Under the Scheme, the Scheme Creditors are expected to recover between 29.4% to 40.0% of the amounts presently due under the Existing Notes. An analysis carried out by Grant Thornton on the likely returns to the Scheme Creditors in formal insolvency proceedings ("the Scheme Comparator Report") identifies two possible scenarios:

a. The first scenario, a planned insolvency, is where the insolvency proceedings are preceded by a reasonable period of time to allow for contingency planning and an orderly entry into insolvency proceedings. The Scheme Comparator Report shows that the likely recoveries for the Scheme Creditors in a planned insolvency would be equal to 16% of the sums outstanding under the Existing Notes.

b. The second scenario, an unplanned insolvency, would involve a disorderly collapse of the business and a piecemeal liquidation. In this scenario the likely recoveries would be approximately 10.6%.

17. I am satisfied that this is an appropriate and credible comparison: insolvency in the absence of the Scheme must be a strong possibility given the history related above and in particular non-payment under the Existing Notes and the forbearance arrangements.'

6. At this point there appears to be a typographical error in the Judgment. What I believe the Judge meant to say in the following sentence is this: '*The evidence is convincing that, whether planned or unplanned, insolvency would produce a significantly worse result than the Scheme.*' In any event, I so find. To conclude the quote from the Convening Judgment:

'18. The Scheme will operate to discharge all claims of the Scheme Creditors under the Existing Notes against all of the obligors within the Group. I am satisfied that it is a well-established principle that a scheme can compromise a creditor's claim against a third party where such compromise is "necessary in order to give effect to the arrangement proposed for the disposition of the debts and liabilities of the company to its own creditors", e.g. to avoid a "ricochet" claim

which might defeat the purpose of the Scheme (see *Re Lehman Brothers International (Europe) (No 2)* [2010] Bus LR 489 at [65], and *Re Noble Group Ltd* [2019] BCC 349 at [24]).

19. The Scheme will authorise the Company to execute a Deed of Release providing inter alia a customary release of the professional advisors to the Group, the directors of various Group companies and other persons involved in the Scheme / Restructuring from any liability arising from its negotiation or implementation. Again, I am satisfied that this kind of provision is common in these cases.’

DEVELOPMENTS SINCE THE CONVENING HEARING

7. In the Convening Judgment, Mr. Justice Meade ordered a single class meeting of Scheme Creditors. The evidence establishes, to my satisfaction, that the Company complied with the convening order. The Scheme Meeting was held on 22nd August 2022, without any problem, by electronic means. The voting outcome can be summarised as follows:
 - i) 148 Scheme Creditors voted at the Scheme Meeting in person or by proxy, holding claims of US\$1,159,082,235.95;
 - ii) of the 148 Scheme Creditors who cast a vote, 147 of them voted in favour of the Scheme, representing a majority in number of 99.32% and by value of 99.98%;
 - iii) only one Scheme Creditor voted against the Scheme, and that Scheme Creditor held only US\$200,000 in principal amount of the Existing Notes (which is the minimum denomination that can be held); and
 - iv) the turnout (being the value of claims held by those who attended the Scheme Meeting in person or by proxy, including those who abstained from voting, expressed as a percentage of the total value of claims held by Scheme Creditors who were eligible to vote at the Scheme Meeting) was 85.11% by value.
8. Those figures demonstrate that there was a very high level of support for the Scheme from the Scheme Creditors, but, as I have indicated, it is necessary to consider the position of the Sanctions Disqualified Persons and the obtaining of regulatory approvals.

Regulatory Approvals

9. The sanctions legislation in the US is notorious as being particularly stringent, and a licence from the US sanctions authority, the Office for Foreign Assets Control (‘OFAC’), was required before the Scheme Meeting could be held. An OFAC licence was granted on 25 July 2022 (revised in minor respects on 29 July 2022) which permitted the voting form and formal notice of the Scheme Meeting to be circulated to Scheme Creditors (excluding the Sanctions Disqualified Persons) on 1st August 2022.

10. The Company has also applied for licences to be granted by the sanctions authorities in the UK, the Netherlands and Guernsey ('the Additional Licences'). I am told that the Additional Licences were not required to hold the Scheme Meeting and are not a condition precedent to the effectiveness of the Scheme but are required to implement the Restructuring in due course. The Company believes the Additional Licences will be granted, not least because the OFAC licence has already been granted.
11. The Scheme expressly prevents the distribution of the Scheme Consideration to any Sanctions Disqualified Persons until such time as they are no longer sanctioned. Based on legal advice, it is the understanding of the Board of Directors of the Company that, as a result, the Scheme is consistent with one of the important objectives of the sanctions legislation.
12. The company has also obtained the requisite consent from the Kazakhstan Ministry of Energy to complete the Restructuring.

The Second Lock-Up Agreement

13. It is apparent from the Explanatory Memorandum that it was hoped that this sanction hearing would occur somewhat earlier in July 2022, and within the 'long-stop' termination date of the original Lock-Up Agreement of 17 August 2022. That Agreement could not be extended without the consent of each party to it, and, of course, some were now the subject of sanctions. Accordingly, a Second Lock-Up Agreement was put in place. This does not confer any additional benefits on the members of the AHG or provide payment of any additional fees, so I am satisfied it does not affect class composition.
14. The sole purpose of the Second Lock-Up Agreement is to ensure that the members of the AHG remain committed to the implementation of the Restructuring. Notwithstanding the termination of the original Lock-Up Agreement, the Company has confirmed that it will pay the Lock-Up Fee to the signatories, provided they continue to meet the requisite requirements under the original Lock-Up Agreement, including voting in favour of the Scheme.

THE APPROACH TO SANCTION

15. Against that background, the Company now seeks the court's sanction for the Scheme. The relevant principles which are applied at this stage of the process were conveniently summarised by Mr. Justice David Richards, as he then was, in *Re Telewest Communications plc (No. 2)* [2005] 1 BCLC 772, at paragraphs [20] to [22] as follows:

“20. The classic formulation of the principles which guide the court in considering whether to sanction a scheme was set out by Plowman J in *Re National Bank Ltd* [1966] 1 All ER 1006 at 1012, [1966] 1 WLR 819 at 829 by reference to a passage in Buckley on the Companies Acts (13th edn, 1957) p 409, which has been approved and applied by the courts on many subsequent occasions:

‘In exercising its power of sanction the court will see, first, that the provisions of the statute have been complied with; secondly, that

the class was fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent, and thirdly, that the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve. The court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting; but at the same time the court will be slow to differ from the meeting, unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme.’

21. This formulation in particular recognises and balances two important factors. First, in deciding to sanction a scheme under [Part 26], which has the effect of binding members or creditors who have voted against the scheme or abstained as well as those who voted in its favour, the court must be satisfied that it is a fair scheme. It must be a scheme that ‘an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve’. That test also makes clear that the scheme proposed need not be the only fair scheme or even, in the court’s view, the best scheme. Necessarily there may be reasonable differences of view on these issues.

22. The second factor recognised by the above-cited passage is that in commercial matters members or creditors are much better judges of their own interests than the courts. Subject to the qualifications set out in the second paragraph, the court ‘will be slow to differ from the meeting’.”

16. It has now become customary for the court to address the following questions at the sanction hearing, summarised as follows:
 - i) 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?
17. As this Scheme has 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.
18. To guard against the risk that the Court might be seen merely to be rubber-stamping the approach proposed by the proponents of a scheme, I also bear in mind [49]-[50]

from the Judgment of Miles J in *Re ALL Scheme Limited* [2021] EWHC 1401. That judgment is one of the relatively rare cases where the Court has refused to sanction a scheme. In his [49], Miles J. included a lengthy quote from the Judgment of Snowden J (as he then was) from *Re Sunbird Business Services Limited* [2020] EWHC 2493 at [49]-[63], which Miles J. rightly referred to as ‘*an illuminating rehearsal of some key principles which may easily be overlooked if reference is made only to the shorter, digested, accounts.*’ I have kept those passages in mind.

19. With those principles in mind, I turn to consider those questions.

COMPLIANCE WITH THE STATUTE

20. The question of whether the provisions of the statute have been complied with can be subdivided as follows: (i) was the class 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?

Class

21. Although the court is required to be satisfied at the sanction stage that the class(es) were properly constituted, the general expectation is that if notice has been given to scheme creditors in accordance with the Practice Statement (Companies: Scheme of Arrangement under Part 26 and Part 26A of the Companies Act 2006) and the court has determined the class question at the convening stage, the court should not generally revisit the class question of its own motion at sanction unless it can see that some material factor was not considered or there was some obvious error in the determination of the question at the convening stage.
22. In this case, due notice of the convening hearing was given to Scheme Creditors and Mr. Justice Meade considered the class question at some length (see [27]-[44] in his Convening Judgment) at the convening stage. I have no reason to doubt or differ from his judgment.
23. The only issue which I will mention is the position of those who did not vote. First, there are the Sanctions Disqualified Persons. Even if they had been permitted to vote on the Scheme and even if all of them had voted against, the required statutory majorities would still have been obtained. More importantly, as Meade J. noted at [42], even though they were not able to vote on the Scheme, they had previously signed up to the Lock-Up Agreement prior to their being sanctioned. As he said, this strongly indicates that they did not object to the Scheme and would be unlikely to do so now.
24. That leaves those Noteholders who account for approximately 7.5% by value of the Existing Notes who did not vote (or apparently attend) the Court Meeting. Mr Allison submitted that there are always note holders who do not participate and do not want to identify themselves as note holders, often for tax reasons. Whatever the reason for their non-participation, even if all of them had participated and even if, together with all of the Sanctions Disqualified Persons, all had voted against the Scheme, the statutory majorities would still have been obtained. Furthermore, this hypothetical

scenario has very little significance in any event precisely because the likely return from the Scheme is so much better than either of the insolvency alternatives.

The court meeting and explanatory statement

25. As I have indicated, I am satisfied on the evidence that the court meeting was convened in accordance with the court's order, that the turn-out was high and the meeting was properly held. The explanatory statement was also provided to Scheme Creditors in accordance with the convening order and is comprehensive and lengthy. No-one has suggested that it failed in any material respect to give Scheme Creditors the information that they reasonably required to form a view as to the merits of the Scheme.

The statutory majorities

26. As I have already indicated, the statutory majorities were obtained with an overwhelming vote.

WAS THE CLASS FAIRLY REPRESENTED BY THE MEETING AND DID THE MAJORITY ACT *BONA FIDE*?

27. I have already indicated that the very high turnout at the court meeting means that a high proportion of the class were present in person or by proxy. The meeting was therefore plainly representative of the class as a whole. I also have absolutely no basis to think that those attending and voting in favour were doing anything other than voting in accordance with the interests of the class. I can also take comfort from the fact that, as Meade J. noted at [43], that all of the known Sanctions Disqualified Persons had agreed to support the Scheme by signing the original Lock-Up Agreement.

THE 'FAIRNESS' OF THE SCHEME

28. Although the third test which I outlined above is often, for shorthand, referred to as the question of whether the scheme is 'fair', it is apparent from paragraph [21] of the judgment of Mr. Justice David Richards in the *Telewest* case to which I have referred above, that 'fairness' in this context has a specific and limited meaning. The court simply has to be satisfied that the scheme is one that an intelligent and honest man, acting in respect of his interests, might reasonably approve. It does not mean that the court is required to form a view of whether the scheme is, in some general sense, or even in the court's own opinion, the 'fairest' or 'best' scheme.
29. Moreover, as Mr. Justice David Richards explained, provided that the scheme meeting was properly consulted (*viz.*, by creditors having the necessary time to consider sufficient information in an adequate explanatory statement), that attendance at the meeting was representative of the class, and that the majority were not actuated by any form of improper motive or purpose, the court will generally take the view that in commercial matters the majority of scheme creditors are much the better judges of their own interests than the court. Accordingly, given satisfaction of the qualifications that I have mentioned, the court will be very slow to differ from the result of the meeting.
30. On the facts of this case, there are three points I will mention.
31. First, I refer to [16]-[17] from the Judgment of Meade J. which I quoted above. The evidence before me confirmed that there have been no material changes since the time of the Convening Hearing which would require any changes to the likely returns calculated by Grant Thornton in the two insolvency scenarios they considered. Thus, the Scheme provides a better deal for the Scheme Creditors than the liquidation alternative(s) and that is powerful support for the notion that the Scheme is fair.
32. Second, I am satisfied that there is nothing unfair in the fact that the Company has agreed to provide a small Lock-Up Fee of 0.5% to any Scheme Creditor who entered into the original Lock-Up Agreement. Mr Allison drew my attention to *Re PGS ASA* [2021] EWHC 222 (Ch) in which Miles J. at [22] made the point that '*it is well established that there is nothing inherently unfair about offering a (properly disclosed) consent fee in connection with a scheme.*'

33. Furthermore, I also refer to [33]-[34] of the Convening Judgment, where Meade J. considered whether the Lock-Up Fee would fracture the class:

‘33. Consent fees of this type are very common, although there are two strands of authorities which govern how they dealt with. Some authorities suggest that, so long as a consent fee is made available to all creditors in advance of the scheme meeting, it cannot fracture the class. That is the case on these facts. Other authorities suggest that even if a consent fee is made available to all, it is necessary to consider whether the quantum is material. If a consent fee would be unlikely to exert a material influence on the relevant creditors' voting decisions, then the fee does not fracture the class: see *Re Primacom Holding GmbH* [2013] BCC 201 at [57]. Mr Allison submits that there is no basis for concluding that the Lock-Up Fee (which represents 0.5% of the Existing Notes held by the Relevant Scheme) would exert a material influence on the Scheme Creditors' voting decisions.

34. I accept Mr Allison's submissions on this point, and I agree that the quantum of the Lock-Up Fee is sufficiently modest so as not to fracture the class. So the Scheme is acceptable on both strands of authorities.’

34. Although Meade J. was concerned with the different question of whether the Lock-Up Fee fractured the class (and he held it did not), his analysis (with which I agree) also shows that the Lock-Up Fee does not render the Scheme unfair.
35. Third, I must consider the treatment of the Sanctions Disqualified Persons. As I have indicated, those Persons will not be entitled to receive the Scheme Consideration (including any Lock-Up Fee) for as long as they remain subject to sanctions. The Scheme Consideration will be held for them on bare trust (‘the Holding Period Trust’). If or when they cease to be a Sanctions Disqualified Person in the future, such a person will then have 60 days to claim the Scheme Consideration from the Holding Period Trust.
36. Mr Allison submitted that this structure is simply an instance of a broader concept that has been used in many noteholder schemes. He points out that there have been many regulatory reasons why a noteholder may be unable to receive the scheme consideration and to deal with such situations, it is common for noteholder schemes to include some form of holding trust in which the scheme consideration can be held until such time as the noteholder can lawfully receive it. He points to a recent example in *Re Haya Holco 2 Plc* [2022] EWHC 1079 (Ch) per Marcus Smith J. at [72(3)]. I accept his submission.
37. Furthermore, I am satisfied that the holding trust structure does not place the Sanctions Disqualified Persons at any greater disadvantage than the constraints they already face under the sanctions legislation. Accordingly, I accept that the Holding Period Trust structure is a fair and proper way to deal with the situation of the Sanctions Disqualified Persons.

38. Overall, I am entirely satisfied the Scheme is ‘fair’ in the specific sense indicated in [21] of *Telewest*.

NO ‘BLOT’ OR DEFECT

39. On this aspect, Mr Allison drew my attention to two related matters in addition to the point on international effectiveness, which I deal with below.

40. The first point concerns the way in which the Company became the Co-Issuer of the Existing Notes. Prior to February 2022, what is now the Dutch Co-Issuer was the sole issuer of the Existing Notes, which were then governed by New York law. Pursuant to the Supplemental Indentures referred to in the Convening Judgment at [46]-[47], the Company became a co-issuer of the Existing Notes and the governing law and jurisdiction of disputes in respect of the Existing Notes was changed to English law and the jurisdiction of England & Wales. These changes enabled the Company to propose the Scheme.

41. As Meade J. explained at [48]:

‘48. For good order I have considered whether the fact that the Company became a party to the Existing Notes specifically for the purpose of enabling a scheme of arrangement detracts from the conclusion that the court has jurisdiction to sanction a scheme between this Company and the Scheme Creditors. I am satisfied that it does not. The authorities clearly establish that it is permissible to take steps which are intended to confer jurisdiction on the English Court, and indeed similar steps have been taken in a number of recent schemes (see Marcus Smith J at [56]-[57] in *Re Haya Holco 2 plc* [2022] EWHC 1079 (Ch)).’

42. The second related point concerns the co-issuer structure. Newey J. (as he then was) considered the addition of an English incorporated co-issuer in *Re Codere Finance (UK) Ltd* [2015] EWHC 3778 (Ch) and at [18] he said this:

‘18. In a sense, of course, what is sought to be achieved in the present case, is forum shopping. Debtors are seeking to give the English court jurisdiction so that they can take advantage of the scheme jurisdiction available here and which is not widely available, if available at all, elsewhere. Plainly forum shopping can be undesirable. That can potentially be so, for example, where a debtor seeks to move his COMI with a view to taking advantage of a more favourable bankruptcy regime and so escaping his debts. In cases such as the present, however, what is being attempted is to achieve a position where resort can be had to the law of a particular jurisdiction, not in order to evade debts but rather with a view to achieving the best possible outcome for creditors. If in those circumstances it is appropriate to speak of forum shopping at all, it must be on the basis that there can sometimes be good forum shopping.’

43. So here. This is an instance of good forum shopping to achieve a good restructuring. On both points, the steps were taken with a view to achieving the best possible outcome for creditors. I am entirely satisfied that the structure of the Scheme and specifically the manner in which the Company became the Co-Issuer of the Existing Notes does not constitute a ‘blot’ on the Scheme. I also see no other blot or defect in the Scheme.

International effectiveness

44. The final point is that the court will wish to be satisfied that it is not acting in vain when it sanctions a scheme, especially one which has an international aspect. The concern arises where a significant number of scheme creditors and assets of the scheme company are located in other jurisdictions. In such a case the court should be alert to ensure that there is at least a reasonable prospect that scheme will be recognised and given effect in other relevant jurisdictions so as not to be capable of being undermined by action by dissenting creditors (or indeed any creditors who participated under the scheme), who might fancy a second bite at the assets of the company.
45. In this case, there are two points. The first is that there was an overwhelming vote by Scheme Creditors in favour, and a very large number of such creditors entered into the Original Lock-Up Agreement.
46. As Snowden J said in *Re KCA Deutag UK Finance plc* [2020] EWHC 2977 (Ch) at [33]:
- “... there was an overwhelming vote by Scheme Creditors in favour, and a very large number of such creditors entered into a lock-up agreement which bound them contractually to support the Scheme and not to do anything to undermine it. It is very difficult to see how such creditors who contractually agreed to support the Scheme and/or who voted in favour could possibly be allowed to take action contrary to the Scheme in any foreign jurisdiction, and the number and financial interests of those who did not vote in favour is comparatively very small indeed. That alone is sufficient to demonstrate to me that the Scheme is likely to have a substantial international effect and that I would not be acting in vain if I were to sanction it.”
47. On the facts here, I am able to and do reach the same conclusion.
48. Second, the company has also produced independent expert evidence to satisfy me that in practice the scheme is likely to be recognised and given effect in the key foreign jurisdictions, namely the Netherlands (the jurisdiction where the Dutch Co-Issuer is incorporated), Kazakhstan (the location of the Group’s oil and gas field where its principal operations are conducted, as well as the jurisdiction where its key asset-owning subsidiary, which owns certain use rights with respect to development of that field, is incorporated) and the United States (which is relevant because the Existing Notes were formerly governed by New York law). The experts’ reports give me additional comfort in these respects.

49. Accordingly, this is a Scheme which I consider that it is appropriate to sanction. At the conclusion of the hearing I discussed the terms of the Order with Mr Allison QC and that resulted in the Order I have made on this application.