European Restructuring Watch

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Doncasters' Restructuring Successfully Implemented

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Background

On 6 March 2020, the restructuring of Doncasters Group's £1.22 billion funded debt was completed. Following a successful non-core disposals program, the Doncasters Group (a leading worldwide supplier of high quality engineered components for the aerospace, industrial gas turbine and specialist automotive industries) operates from 12 principal manufacturing facilities based across the United Kingdom, the United States, Germany, Mexico and China.

The transaction provides another example of how New York law governed debt can be restructured without a bankruptcy process through an English law scheme of arrangement.

The Scheme as Solution

Key considerations

The Board's primary focus throughout the restructuring was to ensure the ongoing operations of the Doncasters Group whilst achieving a sustainable capital structure. Consideration was given to a Chapter 11 plan, German and other bankruptcy proceedings as well as a scheme of arrangement. Ultimately, given that a substantial number of obligors of the Doncasters Group debt were organised in jurisdictions outside of the United States, concerns about whether the Chapter 11 moratorium on the enforcement of ipso facto clauses would be recognised in practice outside the United States led the Board to pursue an English law scheme of arrangement.

As a result, the restructuring of the Doncasters Group was implemented using a two-class English scheme of arrangement of Dundee Pikco Limited (the "**Company**") (the "**Scheme**"), together with Chapter 15 recognition in the United States.

US Borrowers and NY Law Debt

Although the Doncasters Group was founded in and headquartered in England, the suitability of the English High Court (the "**English Court**") for its restructuring was not inevitable. The First-Lien and Second-Lien debt were governed by New York law and like many European LBOs financed over the recent years, the two borrowers were Delaware-incorporated entities. This gave rise to a few notable problems:

(1) Sufficient connection: despite the Group's English roots, there was no obvious English connection between the two US borrowers and the New York law governed First-Lien and Second-Lien Credit Agreements and Guaranty Agreements (together, the "**Credit Agreements**").

(2) Chapter 15 recognition: the second issue was ensuring Chapter 15 recognition of the scheme could be obtained. For Chapter 15 recognition to be available, the foreign proceeding, i.e., the scheme, needed to be in the place where the debtor has center of main interests or an "establishment". As Delaware entities, the borrowers did not have establishments in England. Failure to obtain Chapter 15 recognition would increase the risk of the English Courts refusing to sanction the scheme due to a concern that the scheme would not have sufficient utility.

(3) German recognition: the compromise needed to be recognised in Germany, a jurisdiction where the Doncasters Group has substantial operations.

Potential Solutions

Change of governing law and jurisdiction

Changing the governing law and jurisdiction of the Credit Agreements addressed the German recognition concern and provided reinforced basis for sufficient connection. This approach follows a number of similar cases where the change to the governing law to reinforce sufficient connection and improve prospects of recognition has been approved by the English Court (e.g. *Apcoa (2014 and 2015), DTEK (2015)* and *Syncreon (2019)*). However, the problem of Chapter 15 recognition of a scheme of arrangement

of Delaware companies remained.

The solution – 'good forum shopping'

The solution adopted – drawing on *Codere*, *AI Scheme, Re NN2 (2019)* and *Re Lecta Paper UK (2019)* was for an English company to accede to the Credit Agreements as a primary joint and several borrower with the existing US borrowers. Together with the change of the governing law and jurisdiction of the Credit Agreements, this solution provided a basis for the English Court's jurisdiction (due to the English scheme company), reinforcement of sufficient connection (due to the changes to the governing law and jurisdiction) and a clearer path to Chapter 15 recognition (due to the scheme company having its establishment in England, the place of the scheme proceeding). Although the change of governing law and jurisdiction and accession of the Company were all carried out for the purposes of engaging the English Court's jurisdiction and attracting Chapter 15 jurisdiction, what might be termed a kind of 'forum shopping', the English Court held that the structure did not represent a reason to decline jurisdiction.

Convening Hearing – key topics of discussion

Working Capital Facility

The Group required liquidity financing in order to continue trading post-restructuring. The creditors' and the Company's strong preference was to complete the restructuring as soon as possible. Although negotiations had begun with the prospective working capital facility providers, the discussions were not advanced enough to be circulated at convening of the Scheme meetings. Given the uncertainty as to whether the Group would be able to obtain the liquidity funding needed to complete the restructuring before the sanction hearing, there was a question as to whether the English Court might exercise its discretion to refuse to sanction the Scheme due to doubts about its utility.

The Board decided to continue negotiations with potential liquidity providers whilst simultaneously working towards completion of the restructuring. The Scheme document itself included a provision allowing for the intrecreditor agreement to be amended to accommodate additional changes that might be required by the prospective liquidity facility providers. This allowed the intercreditor agreement to be circulated to the Scheme creditors at convening whilst protecting the Scheme creditors against any inappropriate amendments by requiring that the Company have the approval of 75% by value of each of the First-Lien Lenders and Second-Lien Lenders and restricting any amendments that would materially and adversely or disproportionally affect the economic treatment of the First-Lien Lenders or Second-Lien Lenders or impose any additional material obligation on any of them.

To address the question of utility of the Scheme, certain members of the First-Lien and Second-Lien syndicates agreed to backstop and commit to provide an alternative liquidity facility. This new committed and backstopped liquidity facility would be drawn-down only in the event the Group was unable to secure the new third party working capital facility in sufficient quantum, therefore providing certainty of funding.

Sanctioning

On 21 February 2020, Mr. Justice Zacaroli of the High Court of Justice in London sanctioned the Scheme.

Unanimous consent of each class

At the outset of the scheme process, it was not clear that the scheme would have the support it ultimately achieved. The last remaining proxy – directing a vote in favour of the scheme – was received the evening before sanction and following the voting deadline. When informed of this, Mr. Justice Zacaroli questioned "*why are we here if you have 100% agreement?*" The Company's counsel noted that it is clear that there is no statutory restriction which would prevent sanction of such a scheme, but that it would be counterintuitive if a scheme successful enough to receive 100% support from creditors were not sanctioned in the exercise of the Court's discretion. Additionally, if the restructuring were to be completed without the scheme, further cost and time would be lost amending the transaction documentation to allow implementation absent a scheme. It is also important to note that although 99.9% of First-Lien Lenders and 94.46% of creditors had become bound under the lock-up agreement and undertaken in that agreement to support the restructuring, implementing the restructuring without a Scheme would nevertheless introduce execution risk. Finally, sanctioning of the Scheme would ensure that the Scheme would be recognised and enforced in other jurisdictions where significant assets of the

Group were located and where other creditors could potentially enforce their rights.

Key terms of the scheme

Under the terms of the Scheme: (i) half of the First-Lien Debt was reinstated and exchanged for a Senior Term Facility and the other half was exchanged for a Holdco PIK Facility, and (ii) 20% of the Second-Lien Debt outstanding was reinstated and exchanged for the Holdco PIK Facility. The Lenders were also issued equity pro rata to their holdings of the Holdco PIK Facility in a newco group which upon completion of the restructuring acquired the Company (and with it the business of Group) as part of a pre-pack administration sale.

The restructuring resulted in: (i) material reduction of the overall principal amount of debt; and (ii) establishment of a new US$70,000,000 working capital facility. Additionally, the lock-up agreement and certain previous forbearances allowed the Group stability to execute a number of important and time sensitive disposals. The restructuring also allowed the Group's day to day operations to continue without interruption and without any adverse impact on employees, customers or suppliers.

Doncasters Group Advisers

Andrew Wilkinson, Gemma Sage and Mark Lawford (Partners), together with Nick Fortune (Counsel), and Wupya Nandap (Associate) of Weil, Gotshal & Manges acted for Doncasters Group.

Mark Arnold QC and Adam Goodison of South Square acted for the Doncasters Group.

Mike Thomas and Neil Robson of THM Partners as, respectively, Chief Restructuring Officer and Chief Performance Officer of Doncasters Group.

James Dervin (Partner), Callum Fyfe (Director), Gareth Thomas (Director) and Jake Ward (Manager) each of Deloitte LLP acted as financial and tax advisers for the Doncasters Group.

If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below.

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