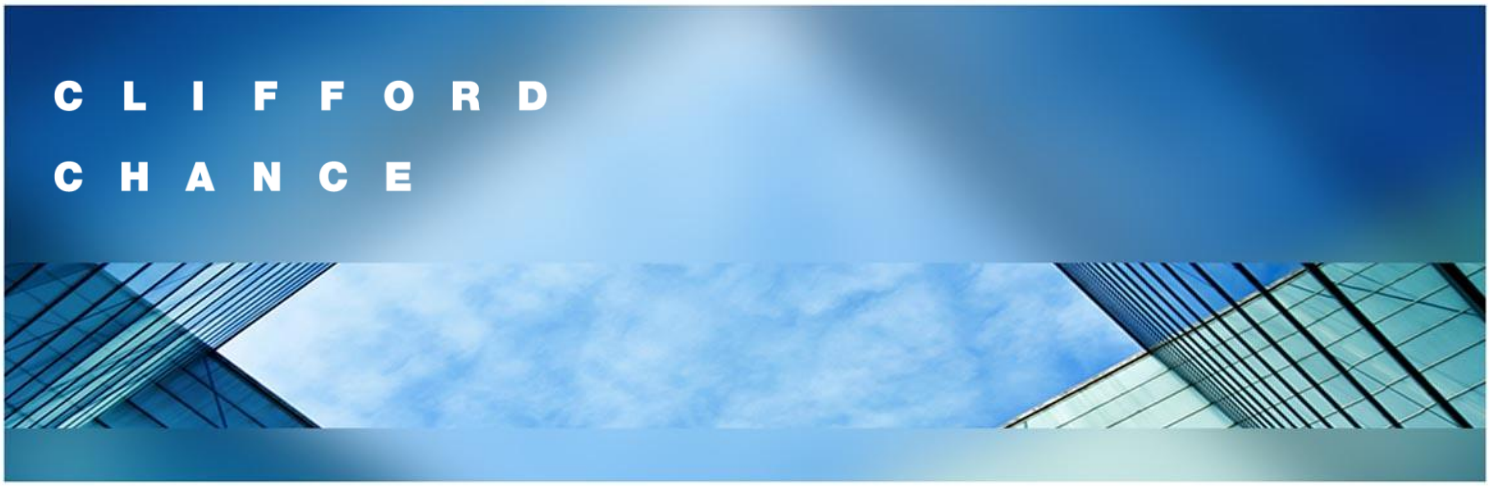

MCDERMOTT INTERNATIONAL GROUP GETS ENGLISH COURT'S APPROVAL ON RESTRUCTURING PLAN

On 27 February, the English high court sanctioned a restructuring plan in respect of CB&I UK Limited as part of a restructuring of the McDermott International Group.

Key issues

- First restructuring plan approved since the Court of Appeal set aside the Adler Plan.
- Part of parallel proceedings in the Netherlands (ongoing).
- Relies upon subsequent recognition in the US, hearing scheduled for 22 March.

The case is of interest for the following reasons:

- It is the first English restructuring plan to be sanctioned following the Court of Appeal decision in Adler which set aside the plan in that case.
- This case puts into practice the Adler guidance (and from other earlier first instance cases) offered to the court when considering cross class cram down.
- For the McDermott International Group, the English Court's approval represents the first step in interconnected restructuring proceedings taking place across different jurisdictions.
- Approval in the UK and the Netherlands is needed first before seeking recognition in the US and before the restructuring comes into effect.
- The English restructuring plan was opposed by two unsecured classes of creditors. In deciding whether to exercise its discretion to sanction the plan, the English Court therefore had to consider its powers to cram down those dissenting classes. The relevant alternative to the plan was a liquidation, despite challenges made that an alternative negotiated deal could be arrived at. However, based on the opposing creditor's inability to agree a deal that gave it everything it asked for, this was dismissed by the court. It was accepted that in a liquidation, the unsecured creditors would be 'wholly out of the money' and therefore the 'no worse off condition' required for cross class cram down, was satisfied.
- Only one of the classes took an active role in opposing the restructuring plan at the sanction hearing. That creditor's unsecured arbitration claim was to be compromised under the plan for nominal consideration.
- Most of the decision is dedicated to the unique facts of this case and the changes to the terms of the restructuring made during negotiations taking place at the same time as the court hearing for sanction.
- The Court criticises the action of the main opposing party, who even after being offered a settlement on the basis of the terms it had originally sought, maintained its opposition to the restructuring. It has since accepted the revised offer. On this basis it is not difficult to see why the judge was

happy to approve a plan that provided the dissenting creditor with what, on its own view, would be fair. It included the opposing creditor receiving at its election between 10.9 -19.9% of equity in the ultimate parent.

- The court was troubled by the level of professional fees which were reported to be around $150m in this case and which amounted to 60% of the new monies raised as part of the restructuring.
- Next up is the Dutch court, which is to consider two interdependent WHOAs in the next couple of weeks. On the basis that the Dutch Court appointed restructuring expert is recommending the terms of the WHOA and the opposition has now settled, it is difficult to see a Dutch court coming to different result.
- Both the English and Dutch procedures require recognition in the US under Chapter 15 of the US bankruptcy code. The hearing in the US is scheduled for 22 March.
- It will be interesting to see whether the US court recognises both procedures. The US application for recognition is unlikely to be opposed, however, it will include a consideration of the different approach to priority adopted by the English and Dutch plans when compared to the US approach.

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