

AGGREGATE GROUP RESTRUCTURING – FURTHER HEARING TO CONSIDER AMENDED PLAN SCHEDULED LATER THIS WEEK

In the latest development for UK restructuring plans, on 4 March, the English court ordered a further meeting of creditors to consider an amended plan for the Aggregate Group. While the Court was not prepared to give its approval, by making an order excluding junior creditors from voting on the amended plan, it paves the way for the Aggregate Group to seek approval to that amended plan later this week.

There are a number of useful points to note from the judgment:

- The case shares some common themes with the Adler Court of Appeal decision, not least that it concerned a distressed real estate business.
- In this case the plan company was incorporated in Luxembourg with its only major project in Germany.
- The plan company moved its central administration (otherwise known as its centre of main interests (COMI)) to England in October 2023. Despite arguments from the junior creditors disputing the English Court's jurisdiction to approve a restructuring plan, the court considered that there was a sufficient connection to England based upon the recent COMI shift.
- It also considered that a restructuring plan was likely to have effect and be recognised in Germany and Luxembourg based upon the expert evidence provided. This all bodes well for the next hearing.
- However, as a direct result of the Adler decision, the company took steps to improve the plan to provide junior creditors with an allocation of value, despite them being 'out of the money' i.e. having no economic interest in the plan company based on current valuations. This was on the basis that the restructuring plan would then satisfy the requirement that as a compromise, there was sufficient 'give and take' between the plan company and those affected by the plan. Comments regarding the necessity of there being such 'give and take', had been made by the Court of Appeal in Adler.
- Despite improved terms for the junior creditors, they continued to oppose the approval of the amended plan, suggesting an alternative plan might be available with funding provided by new investors. The court was not persuaded that that this was a credible alternative.

Key issues

- Court of Appeal Adler decision influences Aggregate's in progress restructuring plan
- New sanction hearing for amended plan due later this week
- Court excludes junior creditors as they are 'out of the money'

- The change in the allocation of value, while favourable to the junior creditors, took place after the creditors had already voted upon the original plan and so the court was unable to approve the plan based upon insufficient 'give and take'.
- Instead, the court has paved the way for the amended plan to be voted upon at short notice (3 days). Not only that, but the court has made an order excluding the 'out of the money creditors' from voting on that amended plan, on the basis that they have no genuine economic interest in the plan company.
- The amended plan will come before the court again for approval later this week, and as a result of the court order excluding the junior creditors from voting, the plan company will only have one class of creditors being the senior creditors, who have been supportive of the restructuring.

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