

## THAMES WATER RESTRUCTURING PROGRESSES TO THE NEXT STAGE

The first hearing of the Thames Water (Thames) restructuring plan took place on 17 December 2024. Thames' restructuring plan is supported by its largest Class A creditors. Despite opposition from certain Class B creditors, Thames succeeded in getting the court's order to convene meetings to consider the plan on 21 January 2025. The second court hearing at which the court must decide whether or not to approve the plan is scheduled to start on 3 February 2025. The plan is described as 'an interim solution', giving Thames a liquidity runway and providing a bridge to implement a more substantive restructuring in June 2025 (or later) when all parties will have the benefit of OFWAT's price determination for AMP 8 (i.e. the next 5 years).

### Restructuring plans

Restructuring plans are a restructuring process under the UK Companies Act 2006. In summary, they allow companies to restructure their debts with the support of a 75% majority by value in at least one 'in the money' class, and the approval of the Court. Restructuring plans are very powerful tools. Almost any restructuring that could be agreed contractually can in principle be implemented using a restructuring plan.

### Class A creditor support

Thames has the support of its largest 'Class A' creditors for its restructuring plan. Thames says the Class A creditors are 'in the money' in the most likely alternative to the plan – referred to as the 'relevant alternative'. In Thames' view, the relevant alternative to its plan is a special administration under the UK's water special administration regime, which is a type of insolvency process. In simple terms, Class A creditors have a right to be repaid ahead of Class B creditors.

The court has the power to approve a restructuring plan with the approval of at least one 'in the money' class, even if other classes are opposed, provided that the opposed classes are left no worse off than they would be in the relevant alternative. This power is often referred to as 'cross class cram down'. This power has been used by the court before, and the suggestion is that the court is likely to be asked to do so in this case.

### Key issues

- English court allows Thames' restructuring plan to progress to the next stage.
- Creditors' meetings to consider the plan to be held on 21 January 2025.
- Next court hearing to consider whether to approve the plan to be held on 3 February 2025 and listed for 4 days.

## **Class B creditor challenges**

Thames considers that its Class B creditors are 'out of the money' in the relevant alternative. Certain Class B creditors are however seeking to challenge the plan on the basis that Thames' plan in fact does make them worse off. The opposing Class B creditors:

- disagree with the company's assertion that the relevant alternative is a special administration and argue that it should in fact be the Class B's rival financing proposal; and
- challenged the factual basis for the company's assertion that its interim plan, in combination with a more substantive restructuring plan to be launched in 2025 would result in no creditor being worse off, when the terms of, and levels of support for, that second plan were unknown. This line of reasoning did not appear to win support from the judge, who indicated that there was no difference to other cases where creditors might seek an 'amend and extend' to financing while putting in place a longer term solution or being asked to be vote on a restructuring where it was not an absolute certainty that the plan would necessarily succeed when creditors are asked to vote on it.

The Class B creditors also suggested that the Thames' plan and in particular the offer of funding under the plan may constitute a possible breach of competition rules. This, they argued is on the basis that the coordination between the company and its supporting creditors in respect of the conditions attached to the £1.5bn of additional funding that will be needed in June 2025, may be construed to restrict or distort competition between rival sources of funding. At the convening hearing yesterday, the Class B creditors said they needed more time and factual and expert evidence to demonstrate the potential breaches, which they promised for the sanction hearing in February.

## **Class B's rival plan**

The Class B creditors are looking to launch an alternative plan which, they argue, should be considered as the relevant alternative to the company's plan. While the judge presiding over the case yesterday is no stranger to seeing alternative restructuring routes presented at court, (see *Re Amigo* [2022] EWHC [1318] (Ch)), the alternative schemes of arrangement in that case were both presented by the company, and both, when it came to sanction, had the support of the requisite creditor classes, with the court choosing to sanction the new business plan instead of a wind down scheme in that case. Moreover, almost all restructuring plans are proposed by the relevant debtor company – there is a precedent for a court approving a creditor-driven plan in a SME case *Re Goodbox* [2023] EWHC 274 (Ch), in that case the creditor was also a shareholder and supplier, the company was in administration and the administrators did not actively oppose a direction sought by the creditor that they should consent on the company's behalf to the plan. A distinction was made in that case between the *Goodbox* plan and the one being proposed by an outside creditor without reference to the company. The court did not decide whether it would have jurisdiction to sanction a plan which was opposed by the company at yesterday's hearing. There is, however, precedent in the context of schemes of arrangement (*Re Savoy Hotel Limited* [1981] 1 Ch 351 which was applied in the *Re Goodbox* case to restructuring plans) that confirms that the consent of the company is required for the court to have jurisdiction to sanction a scheme or plan; and in that case the court refused to

convene meetings for a scheme that did not have the company's consent. It remains to be seen whether the Class B creditors will seek to propose a plan of their own.

## **Implications**

This case is another illustration that for companies in financial difficulty, particularly where they have complex capital structures, the restructuring plan offers a potential solution where formal insolvency may be the only other option. The novelty of the Class B creditors' proposal to launch a rival plan is likely to further test the boundaries of the court's discretion. Whatever the outcome of this case, it will provide all parties with greater legal certainty on issues that so far have remained theoretical. Greater certainty will ultimately be of assistance to other companies facing financial difficulties, and creditors looking to understand their position.

## **The next steps in the Thames plan process:**

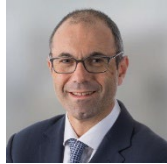
Creditors' meetings: 21 January 2025

Sanction hearing: 4 days starting on 3 February 2025

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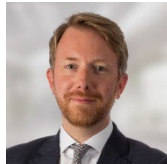
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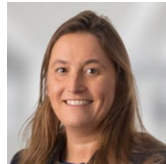
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