

K2 LESSONS LEARNT AND INSIGHTS GAINED INTO RESTRUCTURING PLANS AND THE PROCESS

RE DSTBTD LIMITED

RESTRUCTURING PLAN (under Part 26A of the Companies Act 2006)

CLAIM NO. CR-2025-003922

THIS DOCUMENT HAS BEEN DRAFTED TO SHARE LESSONS LEARNT, INSIGHTS AND HIGHLIGHT THE UNUSUAL FEATURES OF THIS PARTICULAR RESTRUCTURING PLAN WITH VIEW TO ASSISTING OTHERS WHO MIGHT BE INTERESTED IN RESTRUCTURING PLANS

1. Unusual features of this Restructuring Plan

- 1.1 It involved a very small company with turnover of approximately £6 million.
- 1.2 Only two classes of creditors, secondary preferential creditors and unsecured creditors with other creditors being excluded.
- 1.3 It was the only viable option as it provided for a compromise of the secondary preferential liability where a CVA was not viable.
- 1.4 Unlike all other restructuring plans this one was driven by Turnaround Advisers who produced all the documents, dealt with the company, HMRC, plan creditors and other professionals.
- 1.5 Restructuring to achieve a viable business involved turnaround initiatives and more than just financial restructuring such that a turnaround plan was included in the Explanatory Statement that covered fundamental change and reorganising operations.
- 1.6 Total costs were less than those in a company voluntary arrangement ("CVA") although they were discounted by professional fees being kept to a minimum by Turnaround Advisers preparing all the documents and charging a nominal fee.
- 1.7 Extensive engagement with HMRC throughout the process. While they challenged aspects of the proposals and sought justification for compromising their debt, HMRC were thoroughly helpful throughout.
- 1.8 Radical transparency to disclosure. Much of the documentation was influenced by the Turnaround Advisers 20 years' experience of successful CVAs where documentation requires disclosure and in the case of the Turnaround Advisers' CVAs also includes a turnaround plan that covers initiatives fundamental change and reorganisation as necessary to achieve viability.
- 1.9 A proactive plan chambers clerk is key to expediting hearing dates.

2. Documents accumulated

2.1 Documents produced by The Turnaround Advisers, K2 Business Partners

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Explanatory Statement including the following schedules

Statement of affairs with comparison of outcomes
Plan creditors by class
Statutory information
Restructuring plan process
Key dates and expected timetable
Proxy and voting Form
Claim form

Witness Statement for Convening Hearing

Restructuring plan including the following schedules

Compromise terms
Return table
Confirmation of funds held

Claim form

Deed of Release

Witness Statement for Sanction Hearing

Practice Statement Letter 1 – introducing intention to pursue a Restructuring Plan

Practice Statement Letter 2 – notice of date for Convening Hearing

Practice Statement Letter 3 – confirming time for Convening Hearing

Practice Statement Letter 4 – notice of details for Plan Creditor Meetings

Practice Statement Letter 5 – notice re Validation Order and reminder re Plan Creditor Meetings

Practice Statement Letter 6 – report on outcome of Plan Creditor Meetings and notice of date for Sanction Hearing

Practice Statement Letter 7 – notice of time for Sanction Hearing

Advertisement for London Gazette

Witness Statement for Validation Order Hearing

2.2 Other documents

Relevant Alternative Valuation by Hilco

CPR Part 8 Claim Form by Lewis Silkin Solicitors

Skeleton Argument for Convening Hearing by Andrew Mace, Barrister

Convening Order by Court

Chairman's report on outcome of creditors meetings by WSM Marks Bloom Insolvency Practitioners

Skeleton Argument for Sanction Hearing by Andrew Mace, Barrister

Sanction Order by Court

3. Creditors

3.1 The Plan Creditors consisted of two classes of creditors:

- a Secondary Preferential Creditor in respect of historical liabilities where VAT and PAYE since takeover by new owners was being paid; and
- b Historical Unsecured Creditors due to unsecured liabilities incurred before the takeover.

3.2 The Excluded Creditors consisted of:

- a HMRC Current Liabilities including ongoing PAYE and VAT. These had been paid since shortly after take over of the Company by new owners;
- b Employees and pension liabilities as contingent creditors that would crystallise upon termination of employment as anticipated in the Relevant Alternative;
- c Freelance sub-contractors whose continued services were critical to servicing customers on behalf of the Company; and
- d Contingent Creditors including customers and suppliers whose claims would arise upon contract termination as anticipated in the Relevant Alternative.

3.3 The reason for pursuing a restructuring plan instead of a CVA was the need to compromise the Secondary Preferential Liabilities that arose prior to take over of the Company by new owners. While the new owners had hoped to settle them, they turned out to be insurmountable due to a number of unforeseen circumstances.

3.4 The Judge scrutinised class composition for fairness, rights and the 'no creditor being worse off test'.

3.5 While a cross class cram down was not required, this was anticipated in the event that the secondary preferential creditor voted against the plan. In this case it would have been necessary to demonstrate an interest by unsecured creditors in the relevant alternative.

4. Voting by Plan Creditors

4.1 The votes were cast as follows:

- a Voting by the Secondary Preferential Creditor (Class A) Meeting was:

For the Resolution	£866,538.93	<u>100.00%</u>
Against the Resolution	£0.00	<u>0.00%</u>
Abstained/Invalid Votes	£0.00	<u>0.00%</u>

- b Voting by the Historic Unsecured Creditors at the Class B Meeting was:

For the Resolution	£4,909,022.5	<u>99.50%</u>
Against the Resolution	£18,978.00	<u>0.38%</u>
Abstained/Invalid Votes	£5,848.34	<u>0.12%</u>

4.2 The requisite votes by each class meant that a cross class cram down was not required.

5. Turnaround Advisers

- 5.1 The Turnaround Advisers who let the project were Tony Groom and Anton de Leeuw of K2 Business Partners (a trading name of K2 Partners Ltd).
- 5.2 K2 is a small turnaround firm of five turnaround professionals who act as advisers and/or Directors to implement insolvent company turnarounds. Both Tony and Anton are Certified Turnaround Professionals accredited by the European Association of Certified Turnaround Professionals. Tony has over 30 years' experience of restructuring and turning round insolvent companies and Anton has over 20 years' similar experience.

6. Plan Barrister

- 6.1 Andrew Mace of Tanfield Chambers acted as barrister with responsibility for advising on documentation and representing the Company in court.

7. Plan Chambers Clerk

- 7.1 David Clayton as Senior Practice Manager of Tanfield Chambers proved to be key as he was proactive with pursuing the court clerks for dates and the listing of hearings. This expedited the process.

8. Plan Lawyers

- 8.1 Mark Lim and Emily Balment of Lewis Silkin LLP, a firm of solicitors regulated by the Solicitors Regulation Authority acted as the lawyers dealing with the Plan Barrister, filings in court and serving formal notices in.

9. Plan Supervisors

- 9.1 Adam Nakar and Douglas Pinteau, partners and licensed insolvency practitioners with WSM Marks Bloom LLP chaired the Plan Creditor Meetings, sent out documents to creditors, administered the Plan Website and dealt with Plan Creditor claims and distribution of dividends.

10. Adjudication Expert

- 10.1 Tyrone Courtman, partner and licensed insolvency practitioner with RSM UK Restructuring Advisory LLP was available to adjudicate on disputed claims.

11. Valuation Expert and Relevant Alternative

- 11.1 Directors from Hilco Appraisal Limited as a firm of professional valuers valued the business and assets in a pre-pack and liquidation as the two relevant alternatives. This involved valuing the brand, domain name, contracts, minimal computer assets and recovery of book debts.
- 11.2 The valuation followed a review of the options including a consensual restructuring and a company voluntary arrangement where the only realistic alternatives were either a pre-pack or

a liquidation. There were no secured creditors and the only assets available to creditors were proceeds from a sale of the brand, contracts and domain name, and recoveries from book debts. Given their relative costs the funds available for a dividend to second preferential creditors in a pre-pack or liquidation was similar and minimal.

12. Investors

- 12.1 DNY Investments Holding Limited trading as Bos Capital acquired the Company in late 2024 and provided funds for the operational restructuring and the lump sum contribution to plan creditors.

13. Engagement with HMRC

- 13.1 Engagement with HMRC involved the Turnaround Advisers dealing with a number of different teams:
- a HMRC Executive Team - First Permanent Secretary and Chief Executive, HMRC re engagement
 - b Ministerial Correspondence Team, HMRC Legal Group
 - c Company Voluntary Arrangement, EIS, Cardiff, Debt Management - EIS-C re Restructuring Plan
 - d HMRC Legal Group re Service
 - e Large Debt Team re PAYE & VAT
 - f Debt Management PAYE re PAYE
 - g Debt Management PAYE re IR35
 - h Debt Management VAT
 - i Debt Management Enforcement & Insolvency Service re PAYE and VAT
 - j Enforcement Taskforce re IR35
- 13.2 The normal advice on dealing with HMRC as a creditor in a restructuring plan is to either send documents by post to Debt Management — EIS-C, HM Revenue and Customs, BX9 1SH or send them by email to HMRC's Debt Management team at: eisc.cva@hmrc.gov.uk. Following this advice the experience of others was one of little or no response from HMRC despite sending emails to Debt Management team via eisc.cva@hmrc.gov.uk.
- 13.3 It is generally understood that engagement with HMRC requires final documents to be ready which flies in the face of the court's requirement to demonstrate early engagement.
- 13.4 The Turnaround Advisers concluded that given the work involved and time needed to prepare documents there is little scope for early engagement with HMRC to discuss the merits of a restructuring plan if this involves waiting for final documents to be ready. Any delay can have an adverse impact on the prospects for success as a company is normally experiencing pressure from creditors. It is no wonder therefore that most small companies have run out of time and

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entered administration during the process where few small companies can survive long enough to provide the necessary documents and support a lengthy engagement period.

- 13.5 The Turnaround Advisers adopted the approach that HMRC would prefer to be kept informed throughout the process so that the final documents do not come as a surprise.
- 13.6 The aim has been to engage with HMRC early, to provide information and updated documents as soon as they are ready and to respond to queries promptly.
- 13.7 It had been hoped that HMRC would stay enforcement action while discussions about the restructuring plan were ongoing and while payment of the current PAYE and VAT liabilities were being made.
- 13.8 Contact with most HMRC teams was by phone with the director on the call to allow HMRC to talk with the Turnaround Advisers. However the CVA Debt Management Enforcement & Insolvency Team required a “HMRC Email Disclaimer Letter” to be put in place to authorise contact by email and phone with anyone who wasn’t a director including Turnaround Advisers, Plan Supervisors and Legal Advisers. Getting this in place early for everyone helped expedite contact.

14. Turnaround plan

- 14.1 As already mentioned, the Explanatory Statement included a turnaround plan with detailed turnaround initiatives that sought to reassure creditors and justify their support for the plan at the Plan Creditor Meetings. Turnaround plans are believed necessary by the Turnaround Advisers when creditors are voting on proposals that involve the payment of dividends out of future income.
- 14.2 In this case the turnaround plan referred to initiatives which were covered in detail in the Explanatory Statement under the following headings:
 - a Financial restructuring;
 - b Operational reorganisation;
 - c Management and staff cost reduction;
 - d Other cost reduction initiatives;
 - e Impact of cost reduction initiatives;
 - f Systems and process improvement initiatives;
 - g Working capital;
 - h Premises and remote-working initiative;
 - i Culture change initiatives;
 - j Management change; and
 - k Business model based on our Elastic Team delivering high quality solutions.

15. Project management of restructuring plans

- 15.1 A major benefit of having been involved in all aspects of this restructuring plan is seeing how the many elements come together and are related. This led to treating it as a template for future use to drive down both the drafting cost and time needed to prepare them.
- 15.2 It is normal for certain documents to be drafted by lawyers and others drafted by insolvency practitioners with some by others, this means that most restructuring plan documents are a compilation of documents that can duplicate many items and sometimes use different formatting and language. This is also where a shared template would be useful.
- 15.3 It was also useful to learn about the different timetables and how these need to be dovetailed to minimise delay. Co-ordinating court hearings, court and requisite notice periods, creditor engagement and gathering information and drafting documents was a critical function and it is understandable that so many initiatives to pursue a restructuring plan fail due to running out of time in what can be a lengthy process.
- 15.4 Project managing all these elements needs someone who is familiar with them all as most people involved are only familiar with their element making it difficult to see the overall picture.

16. CVA proposal document as influence on Explanatory Statement

- 16.1 As already mentioned, the Explanatory Statement was drafted to cover its normal clauses but also include those in a CVA proposal.
- 16.2 This included detailed disclosure of assets and liabilities under the following headings:

a Assets

- i Fixed assets
- ii Current assets
- iii Non balance sheet assets

b Liabilities

- i Secured creditors
- ii Specific pledge creditors
- iii First preference creditors
- iv Pension creditors
- v Secondary preferential creditor
- vi Unsecured creditors
- vii Employee unsecured creditor claims
- viii Contingent creditors
- ix Connected party creditors
- x Landlord and premises related creditors

- xi Petitioning creditor
- xii Excluded creditors
- xiii Guarantees for liabilities

16.3 It also sought to provide a lot of information about restructuring plans and their advantages.

17. Correspondence and Practice Statement Letters

- 17.1 While originally considered a burden, Practice Statement Letters (PSL) turned out to be a straight forward way of keeping creditors informed. Indeed several letters were necessary given the need to advise creditors about court hearings, plan meetings and outcomes of the same.
- 17.2 They also are useful for reassuring the court about engaging with creditors.
- 17.3 While the initial correspondence was by post and email, once email addresses were confirmed it was easy for the Plan Supervisors to send these out by email using their creditor engagement software.
- 17.4 A useful lesson learnt for the future was to use an early PSL to identify creditor contacts and emails for correspondence by email as many emails in accounting systems are generic once for accounts or credit control.

18. Press

- 18.1 It was a surprise that the hearings are public and despite requests to the Judge that certain information disclosed to the court was confidential, the Judge ordered that the skeleton arguments be distributed to the press representatives who attended the hearing.
- 18.2 Everyone should be aware that the press is interested in restructuring and can jeopardise plans by reporting on them in a way that adversely affects ongoing trading by causing concern among bankers, lenders, staff, creditors or customers.

19. Section headings in Explanatory Statement and Restructuring Plan

- 19.1 The Turnaround Advisers would have found it useful if there were a standard or even a template for the key documents.
- 19.2 It is hoped that the following list of the sections and schedules may be helpful to others thinking about preparing an Explanatory Statement:
 - 1. DEFINITIONS AND INTERPRETATION
 - 2. INTRODUCTION
 - 3. SUMMARY COMPARISON OF THE POSSIBLE OUTCOMES
 - 4. WHAT IS A RESTRUCTURING PLAN AND HOW DOES IT BECOME BINDING?
 - 5. WHO WILL BE AFFECTED?
 - 6. WHAT IS CROWN PREFERENCE?

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7. WHAT WILL HAPPEN IF THE RESTRUCTURING PLAN BECOMES EFFECTIVE?
8. HISTORICAL CONTEXT FOR THIS RESTRUCTURING PLAN
9. OPTIONS FOR RESTRUCTURING
10. RELEVANT ALTERNATIVE
11. JUSTIFICATION FOR A RESTRUCTURING PLAN IN THIS CASE
12. CORPORATE HISTORY AND REASONS FOR BUSINESS FAILURE
13. TURNAROUND PLAN
14. CLASSES OF PLAN CREDITORS
15. EXCLUDED CREDITORS
16. ASSETS
17. LIABILITIES
18. ADVANTAGES OF THE RESTRUCTURING PLAN
19. VALUATION
20. APPLICATION OF THE RESTRUCTURING PLAN
21. STAY ON PROCEEDINGS AND COMPROMISE OF CLAIMS
22. NOTICE OF EFFECTIVE DATE AND CLAIM PROCEDURE
23. SUBMISSION OF CLAIMS
24. DETERMINATION OF AGREED CLAIMS
25. DISPUTE PROCEDURE
26. SET-OFF
27. DETERMINATION OF ADMITTED CLAIMS
28. PAYMENT OF RESTRUCTURING PLAN EXPENSES
29. INVESTOR LOAN TO PAY DIVIDENDS TO PLAN CREDITORS
30. PAYMENT OF DIVIDENDS
31. THE TURNAROUND ADVISERS
32. THE PLAN SUPERVISORS
33. POWERS OF THE PLAN SUPERVISORS
34. ADJUDICATION EXPERT
35. POWERS, RIGHTS, DUTIES AND FUNCTIONS OF THE ADJUDICATION EXPERT
36. THE PLAN LAWYERS
37. THE VALUATION EXPERT
38. ASSIGNMENT OR TRANSFERS

39. POWERS OF THE BOARD
40. OBLIGATIONS ON DAYS OTHER THAN A BUSINESS DAY
41. BREACH, DEFAULT AND TERMINATION OF THE RESTRUCTURING PLAN
42. COMPLETION OF THE RESTRUCTURING PLAN
43. MODIFICATIONS OF THE RESTRUCTURING PLAN
44. REGISTRATION OF THE SANCTION ORDER
45. CALCULATION OF TIME PERIODS
46. NOTICES
47. WHAT ARE PLAN CREDITORS REQUIRED TO DO?
48. FURTHER ASSISTANCE
49. GOVERNING LAW AND JURISDICTION
50. RECOMMENDATION FOR THE RESTRUCTURING PLAN
- SCHEDULE 1 – DRAFT OF THE RESTRUCTURING PLAN
- SCHEDULE 2 - STATEMENT OF AFFAIRS WITH COMPARISON OF OUTCOMES
- SCHEDULE 3 – RELEVANT ALTERNATIVE AND VALUATION OF BUSINESS & ASSETS
- SCHEDULE 4 – PLAN CREDITORS BY CLASS
- SCHEDULE 5 – INVESTOR LOAN
- SCHEDULE 6 – MANAGEMENT AND YEAR END ACCOUNTS
- SCHEDULE 7 – STATUTORY INFORMATION AND DETAILS OF CHARGES
- SCHEDULE 8 – RESTRUCTURING PLAN PROCESS
- SCHEDULE 9 – KEY DATES AND EXPECTED TIMETABLE
- SCHEDULE 10 – PROXY AND VOTING FORM
- SCHEDULE 11 – CLAIM FORM

19.3 Here is a list of the sections and schedules for the Restructuring Plan:

1. DEFINITIONS AND INTERPRETATION
2. APPLICATION OF THE RESTRUCTURING PLAN
3. STAY ON PROCEEDINGS AND COMPROMISE OF CLAIMS
4. EXECUTION OF RESTRUCTURING DOCUMENTS AND POWER OF ATTORNEY
5. INVESTOR LOAN TO PAY DIVIDENDS TO PLAN CREDITORS
6. IMPLEMENTATION OF ARRANGEMENTS WITH PLAN CREDITORS
7. UNWIND ON INSOLVENCY EVENT

8. INTEREST
 9. CURRENCY OF PAYMENT
 10. NOTICE OF EFFECTIVE DATE AND CLAIM PROCEDURE
 11. SUBMISSION OF CLAIMS
 12. DETERMINATION OF AGREED CLAIMS
 13. DISPUTE PROCEDURE
 14. SET-OFF
 15. DETERMINATION OF ADMITTED CLAIMS
 16. PAYMENT OF RESTRUCTURING PLAN EXPENSES
 17. INVESTOR LOAN TO PAY DIVIDENDS TO PLAN CREDITORS
 18. PAYMENT OF DIVIDENDS
 19. THE PLAN SUPERVISORS
 20. POWERS OF THE PLAN SUPERVISORS
 21. ADJUDICATION EXPERT
 22. POWERS, RIGHTS, DUTIES AND FUNCTIONS OF THE ADJUDICATION EXPERT
 23. POWERS OF THE BOARD
 24. EFFECTIVE DATE
 25. MODIFICATIONS OF THE RESTRUCTURING PLAN
 26. NOTICES
 27. CALCULATION OF TIME PERIODS
 28. GOVERNING LAW AND JURISDICTION
- SCHEDULE 1 – SECONDARY PREFERENTIAL CREDITOR COMPROMISE TERMS
- SCHEDULE 2 – UNSECURED CREDITOR COMPROMISE TERMS
- SCHEDULE 3 – RESTRUCTURING PLAN RETURN TABLE
- SCHEDULE 4 – CONFIRMATION OF FUNDS HELD FOR FIXED CONTRIBUTION PAYMENT
- SCHEDULE 5 – CLAIM FORM
- SCHEDULE 6 – DEED OF RELEASE