Ocean Rig – Schemes of Arrangement in the Cayman Islands

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Introduction

In one of the world's largest ever restructurings, Ocean Rig UDW Inc (**UDW**), a leading international contractor of offshore deep-water drilling services, and three of its subsidiaries have been successful in their application for the sanction of four schemes of arrangement by the Grand Court of the Cayman Islands, and recognition and enforcement of the schemes under Chapter 15 in the United States of America.

The schemes restructured the Scheme Companies' core financial indebtedness of approximately US$3.7 billion (plus accrued interest), making use of Cayman's 'light touch liquidation' process, and sanction was given last month.

The four scheme companies were all originally incorporated in the Republic of the Marshall Islands. The parent company, UDW, transferred to the Cayman Islands by way of continuation as an exempted company in April 2016, in advance of the restructuring. Each of the subsidiary Scheme Companies were registered as foreign companies in the Cayman Islands in October 2016. As a result of the transfer (in the case of UDW) and the registrations (in the case of the subsidiaries), the four companies were able to benefit from the Cayman Islands' scheme of arrangement regime – of which there is no equivalent in the Marshall Islands – and also the well-established statutory framework and highly regarded Court system in the Cayman Islands. The provisional liquidation of the subsidiaries represents the first time foreign registered companies have made use of the 'light touch' provisional liquidation process available under the law of the Cayman Islands.

Background to the restructuring

As a result of the decline in oil and gas prices and other changes in the offshore drilling sector, the Ocean Rig group needed to take urgent steps to implement a restructuring of its financial indebtedness, to manage liquidity and to stabilise its business. As a result of discussions with

certain key stakeholders in March 2017, the Scheme Companies agreed in principle the terms of a restructuring support agreement which provided for the appointment of joint provisional liquidators (**JPLs**) to each Scheme Company and for a financial restructuring of the existing debt to be proposed to creditors by way of the Schemes.

On 24 March 2017, each of the Scheme Companies presented winding up petitions and filed applications seeking the appointment of the JPLs under section 104(3) of the Companies Law (2016 Revision). The Scheme Companies were placed into provisional liquidation and Simon Appell of AlixPartners London and Eleanor Fisher of Kalo Cayman were appointed as the JPLs on 27 March 2017.

The primary objective of the restructuring was to avoid a value destructive liquidation process given evidence that creditors would do materially worse in a liquidation than they would under the Schemes. A plan was put in place to implement a new capital structure to weather the ongoing difficult market conditions in the global oil and gas market.

Schemes of arrangement in the Cayman Islands

Under the provisions of sections 86 and 87 of the Companies Law, the Grand Court can sanction a compromise or arrangement between a company and its creditors or members or any class of them.

Section 86 does not confer the benefit of a statutory moratorium on proceedings against the company during the period of negotiation or presentation of the scheme. Accordingly, many companies tend to use the 'light touch' restructuring tool available under section 104(3) of the Companies Law, by appointing one or more provisional liquidators. Companies proposing to implement a scheme of arrangement may apply to the Court for the appointment of a provisional liquidator to benefit from the automatic stay of claims while the scheme are pursued.

While the scheme is being promoted the directors will generally remain in control of the company and can formulate the terms of the proposed scheme, in conjunction with the insolvency practitioners appointed as provisional liquidators. The role and powers of the provisional liquidators are determined by the court order appointing them. In this case, the provisional liquidators played a central role in the restructuring process and were ordered, amongst other things, to supervise the day to day operations of the company, and the actions of the directors, and to consider whether to promote the proposed schemes of arrangement. This ensured that the restructuring was overseen by independent officers of the court.

Schemes of arrangement are available to any company liable to be wound up under the Companies Law, however the articles of association of the company must permit the kind of compromise or arrangement proposed by the scheme. If the scheme is approved by a majority in number representing 75% in value of the creditors or members present, either in person or by

proxy, and is thereafter sanctioned by the Court, it becomes binding on all parties to the scheme.

1. A scheme of arrangement has three substantive procedural steps:
   i. the hearing of the summons (**Convening Hearing**);
   ii. the meeting of the creditors (**Creditors' Meeting**); and
   iii. the substantive hearing of the petition (**Sanction Hearing**)

Step 1 – the Convening Hearing

The main issue for the Court to determine at the Convening Hearing is whether it is appropriate to convene meetings of separate classes of members/creditors and the composition of those classes. This is to ensure that meetings will only be convened of those classes of members/creditors whose rights will be directly affected by the scheme.

The Court must be satisfied that each meeting consists of members/creditors whose rights against the company which are to be released or varied under the scheme, are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. The Court will also consider issues relevant to the jurisdiction of the Court to sanction the scheme and whether the explanatory statement gives adequate information to the members/creditors.

The Convening Hearing in relation to the Scheme Companies took place in the Grand Court on 11-13 July 2017, before the Honourable Mr. Justice Raj Parker. Having heard submissions from, amongst others, the Scheme Companies, the JPLs and Highland (a dissenting UDW Scheme creditor), the Judge ordered that single meetings of the relevant class of creditors for each of the Scheme Companies be convened on 11 August 2017.

Step 2 – the Creditors' Meeting

On 11 August 2017, the Scheme Companies convened meetings of their creditors for the purpose of considering, and if thought fit, approving the schemes of arrangement.

The DFH, DOV and DRH schemes were each approved by 100% in value of those scheme creditors voting. The UDW scheme was approved by more than 97% in value of those scheme creditors voting (Highland, the sole dissenting UDW Scheme creditor, voted against the UDW scheme).

Step 3 – the Sanction Hearing

Notwithstanding that the requisite majority of a class of members/creditors has voted in favour of a scheme, the Court still retains a discretion whether or not to sanction it. In order to sanction the scheme, the Court will consider a number of matters. Firstly, that the classes have been properly constituted. Secondly, that the meetings were convened and held in accordance

with the directions of the Court. Thirdly, that the scheme has been properly explained to the members/creditors and it is one that an intelligent and honest man, who is a member of the relevant class might reasonably approve.

The Sanction Hearing of the Schemes is was heard by Justice Parker on 4 to 6 September 2017, and on 15 September 2017 he made orders sanctioning each of the Schemes.

Proceedings in the United States

In conjunction with the Scheme proceedings in the Cayman Islands, the Scheme Companies filed for Chapter 15 bankruptcy protection in the U.S. Bankruptcy Court in New York on 27 March 2017 (**Chapter 15 Filings**).

The Chapter 15 Filings were made in order to protect the restructuring of the Scheme Companies in the Cayman Islands by enabling them to obtain protection from creditors looking to seize assets in the U.S.

Chapter 15 proceedings are commenced by a "foreign representative" filing a petition for recognition of a "foreign proceeding". After notice and a hearing the U.S. Court is authorised to issue an order recognising the foreign proceeding as either a "foreign main proceeding" (a proceeding pending in a country where the debtor's centre of main interests are located) or a "foreign non-main proceeding (a proceeding pending in a country where the debtor has an establishment, but not its centre of main interests).

Having initially opposed the Chapter 15 Filing in relation to UDW, Highland, the dissenting UDW creditor, subsequently notified the Bankruptcy Court that it did not intent to object to recognition of the Scheme proceedings at the Chapter 15 hearing, which took place before the Bankruptcy Court on 16 August 2017 (**Recognition Hearing**). The Bankruptcy Court granted recognition of the Cayman proceedings as "foreign main proceedings" on 24 August 2017, overruling an objection from a shareholder of UDW.

The JPLs also filed an application for an order of the Bankruptcy Court recognising and giving full force and effect to the Schemes in the United States. At a hearing on 20 September 2017, the Honourable Judge Glenn made an order enforcing of the Schemes in the United States.

Conclusion

The restructuring became effective on 22 September 2017, within 6 months of the appointment of the JPLs, and resulted in an exchange by creditors of approximately $3.7 billion of debt for new equity in UDW, approximately $288 million in cash and $450 million of new secured debt. It is almost certainly the Cayman Islands' largest ever successful restructuring, and is a leading example of how the Cayman Islands "light touch restructuring" tool can be used to achieve successful restructurings of complex and cross-border financing arrangements.

Ogier acted for the JPLs in relation to the provisional liquidations and the Schemes.

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