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UK restructurings in spotlight post-**Amigo**

By Christopher Spink

LONDON, Jun 4 (IFR) - Last month's decision by a London High Court judge to reject a scheme of arrangement to cap compensation liabilities at UK consumer lender **Amigo** has thrown up questions about how UK courts will treat other restructuring deals.

The ruling came even after the affected creditors had voted in favour of the scheme in sufficient numbers. Previously, most schemes had been waived through if backed by creditors and other stakeholders. "It is very rare for the court to decline to sanction a scheme," said Kate Stephenson, partner at law firm Kirkland & Ellis.

Some reckon the **Amigo** decision is a one-off since the company faced strong opposition in court from the Financial Conduct Authority.

"Restructuring has got a lot more contentious over the years. But **Amigo** is a real one-off. It is very unusual for a business to put forward a proposal to settle regulatory-driven issues without the regulator being on board," said Andrew Wilkinson, senior European restructuring partner at law firm Weil.

But the other main point, that shareholders under the scheme were getting a "disproportionate benefit" compared with other stakeholders, will "definitely come up again" he told IFR.

"Bumpitraging"

The question of how any surplus should be distributed in a restructuring will be tested at a meeting of investors in Hurricane Energy on June 11. The oil explorer has convened a meeting to propose a restructuring plan, using new UK insolvency laws.

Under this plan, existing shareholders would be massively diluted as holders of US$230m of convertible bonds received shares in exchange for amending the terms of their bonds.

Hurricane's second largest shareholder, Crystal Amber, has objected to the plan and is prepared to lodge a challenge at any court hearing to approve the plan. If the judge follows precedents, this should not derail the plan since the value lies with the convertible bonds.

But post-**Amigo**, advisers are being extra careful to avoid any challenges on procedural grounds succeeding. This is where most schemes, when used to carry out acquisitions, have been challenged in the past, generally by activists holding a target's shares and keen to extract a higher bid price from acquirers.

"One of the tactics undertaken by bumpitraging activists in UK bids implemented by scheme of arrangement is to seek to exploit the minority protections in schemes in an attempt to force the bidder into increasing its bid price," said Sam Bagot, a partner at law firm Cleary Gottlieb.

This can be done by making objections at court hearings for scheme approvals, as the FCA did with **Amigo**.

"Disgruntled shareholder activists frequently attack bids implemented by scheme of arrangement at the court hearing at the end of the scheme process on the basis that the disclosure was inadequate and the scheme unfairly undervalued the target," said Bagot.

"Particular care does therefore need to be taken to ensure that the disclosure in scheme documentation does not open the door to criticism by bumpitraging activists."

CVA scrutiny

Company voluntary arrangements, which have been regularly used by companies to lower the rents owed to their landlords, have also been challenged in increasing numbers recently. Most of these challenges have failed, but one by a landlord of Caffe Nero is to be heard next month.

The landlord that is challenging Caffe Nero's CVA is supported by EG Group, which just before the CVA was approved launched a bid for the chain. EG, which is one of the biggest operators of petrol stations in the UK, was set up by the Issa Brothers and recently bought UK supermarket Asda.

Under EG's offer, which is likely to proceed if the CVA is overturned, Caffe Nero's current landlords will not suffer the cuts in rents proposed by the CVA. The landlord said the company had not given sufficient time for the alternative proposal to be considered.

"It is clear that the courts are being asked to scrutinise CVAs and the processes leading to their approval," said Mark **Fennessy**, a partner at law firm McDermott Will & Emery.

"All these cases are being closely monitored by commercial landlords and companies contemplating restructuring their leasehold portfolios, and will provide the template for the use of CVAs going forward," he said.

(Reporting by Christopher Spink)

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