

## Disclosure Takeaways From Superdry Restructuring Plan

By **Patrick Schumann, Marcus Young and Amy Cho** (August 15, 2024, 3:13 PM BST)

British fashion retailer Superdry PLC secured sanction of its restructuring plan in the High Court of England and Wales on June 17.

The Superdry Group, which had been in financial difficulties for some time, launched the plan in order to avoid insolvency, stabilize its liquidity position and implement a wider turnaround plan that will see up to 30 of its European stores close over the next 12 months.

The plan is said to be the first one to be accompanied by a capital raise in respect of shares trading on the London Stock Exchange.



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### The Restructuring Plan

In summary, the plan contemplates:

- An extension of maturity of an £80 million (\$102.8 million) asset-backed loan from specialist lender Bantry Bay Capital Ltd. and of a £25 million asset-backed loan from special situations lender Hilco Capital;
- Hilco advancing a further £15 million to the group;
- Rent reductions across 39 of the group's sites; and
- The compromise of business rates liabilities owed to local authorities.



Marcus Young

At the sanction hearing, counsel for the plan company explained that, if the plan is not approved, the group would likely pursue an accelerated M&A process that would result in:

- A prepack administration sale of parts of the group;
- The plan company entering administration with certain stores trading for a short period of time to liquidate stock; and
- The parent and other group entities entering local insolvency proceedings.



Amy Cho

At the core of the plan stands the variation of the group's leases with the plan proposing to amend terms such as the rent payable, payment terms, rent review periods, payment of rent arrears and tenant exit rights.

Landlords were placed into different classes for the purposes of voting depending on the viability of the relevant retail sites.

### **Settlement**

All but one of the 13 creditor classes voting at the creditor meetings on June 10 approved the plan. While the sanction hearing was uncontested, Superdry initially faced opposition from M&G PLC, the owner of the group's flagship Oxford Street store in London.

M&G had indicated that it would oppose the plan, but a settlement was reached prior to the sanction hearing. Under the terms of the settlement, M&G was removed as a plan creditor and will receive a payment of about £1.3 million, equal to its entitlement as a plan creditor, as well as a turnover linked top-up payment.

In addition, M&G agreed a new lease for the Oxford Street location at a substantially reduced rent. M&G will also be provided with a six-month rolling break clause, allowing it to break the lease if it can obtain a better outcome through reletting on the open market.

### **Disclosure**

Given the court's inherent cram-down powers in restructuring plans, creditors have a clear incentive to oppose restructuring plans when they are at the receiving end of cram-down proposals.

Accordingly, such proceedings are becoming increasingly contentious and one key battleground is disclosure of information.

The explanatory statement issued by the plan company to creditors should provide sufficient information as is reasonably necessary to enable creditors to make an informed decision on whether:

- The plan is in their interests;
- Losses are being appropriately allocated; and
- The value created by the plan is being fairly apportioned.

Given the complexity and volume of underlying evidence, creditors often seek additional disclosure to support their challenge. This is particularly relevant in the context of the determination of the relevant alternative, i.e., the most likely thing to happen if the plan is not approved, and the so-called no-worse-off test, that is, creditors must be no worse off under the plan than they would in the relevant alternative.

The application for additional disclosure by opposing creditors in Superdry is a good example of this trend and the resulting interim judgment by the High Court provides helpful guidance regarding the disclosure requirements in restructuring plans.

In the judgment, Judge Alastair Norris commended the parties for having found agreement regarding a

majority of the disclosure requests, and only addressed the remaining issues in dispute.

These included requests for the cash flow forecasts for the plan company and parent, which was resisted on the basis that the cash flow forecast was prepared on a groupwide basis only.

The court sided with the plan company and declined the disclosure request on the basis that the plan company and its parent would either stand or fall together as part of the group and that it was the restructured group that would benefit from the surplus generated from the plan.

The request for underlying granular data would be burdensome and disproportionate.

The expert report was requested, estimating recoveries to landlords in the relevant alternative. The plan company was only willing to provide this report with anything but information on the premises relevant to the applicant redacted, due to the commercially sensitive nature of the report's contents.

The court rejected the plan company's request and ordered disclosure of the full report, subject to confidentiality restrictions, on the basis that it formed a significant element in the calculation of the estimated recoveries to creditors in the relevant alternative.

A document referred to as "a new target operating model" was also requested, setting out the overall turnaround strategy from the group, comprising:

- The restructuring plan;
- A new equity raise by the group and its delisting; and
- A revised operating, brand and pricing strategy.

The court concluded that the model was a financial projection illustrating the anticipated benefit flowing from the implementation of the plan, and that there was no need to order disclosure of such information. The judge explained that at the sanction hearing, the court will not be concerned with whether a better plan could be devised that paid 200% of the estimated return, or whether a plan could be devised that kept Superdry as a paying, trading tenant.

Instead, the court will be assessing whether what is actually being proposed deals equitably with the plan creditors. Accordingly, this disclosure request was not granted.

Key takeaways from the disclosure application include:

- Creditors should be provided with sufficient information to make a reasoned judgment, and there should be level playing field among creditors.
- Only information relevant to the proceedings is disclosable.
- A balance must be struck between providing sufficient information to creditors and not overburdening the plan company.

### **Wider Turnaround Plan**

The restructuring plan is a part of a wider restructuring of the Superdry group, comprising:

- A new injection of capital from either an €8 million (\$8.8 million) open offer to the parent company's shareholders that is underwritten by Julian Dunkerton, or a £10 million share placement to Julian Dunkerton, the group's chief executive officer;
- The delisting of the group's parent from the London Stock Exchange to enable the group to benefit from significant costs savings; and
- Changes to the group's operating, brand and pricing strategy.

Shortly after the restructuring plan had been sanctioned, Superdry's shareholders approved the £10 million share placement to Julian Dunkerton, as well as the delisting and the proposal to go private at the general meeting.

### **Are Restructuring Plans the New Company Voluntary Arrangement?**

In days gone by, a company voluntary arrangement may have been used to compromise Superdry's landlords. In circumstances where a targeted restructuring of lease liabilities is required, the company voluntary arrangement may be the cost-efficient option.

However, given the cross-class cram-down feature and the growing body of case law, restructuring plans increasingly appear to be the tool of choice for companies wishing to restructure their lease liabilities as well as right-size their capital structure.

Which restructuring tool is ultimately used will depend on the circumstances, but as Superdry has shown, the momentum is clearly swinging in favor of restructuring plans.

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