

Weatherford: The U.S. and Beyond

March 9, 2020

Akin Gump lawyers who advised the Ad Hoc Group of holders of Weatherford's \$7.4 billion unsecured notes explain how the restructuring was agreed and implemented using three parallel in-court procedures

Weatherford is one of the largest multinational oilfield services companies. Headquartered in Houston, it operates in more than 80 countries, with over 250 subsidiaries and 24,500 employees. In early 2019, Weatherford faced a turbulent and uncertain future. It was levered at over 10.0x EBITDA, its share price had fallen to below \$1.00 for a prolonged period and it faced an impending and significant liquidity shortfall.

Management and the board determined that an urgent but long-term wholesale restructuring solution was needed. Weatherford's parent company, Weatherford International plc (Weatherford Parent), and two of its subsidiaries incorporated in Bermuda and Delaware (Weatherford Bermuda and Weatherford Delaware; together with Weatherford Parent, the Debtors), commenced Chapter 11 proceedings in the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division, on July 1, 2019. However, as explained below, the proposed Chapter 11 plan of reorganization envisaged a compromise of rights that needed to be effective in three different jurisdictions. The restructuring that followed required significant cross-border expertise to ensure the successful implementation of the transaction.

Weatherford's Financial Difficulties

Weatherford's performance mirrored a decline in the wider energy market, with volatility in oil and gas prices, decreased demand for oilfield services, and increased competition. As Weatherford's performance deteriorated, so did its financial health. Weatherford suffered negative cash flows of over \$300 million in both 2016 and 2017, and negative cash flows of over \$240 million in 2018.

Alongside these wider market pressures, the Debtors had significant funded debt obligations of approximately \$1 billion of secured and unsecured bank debt, and \$7.4 billion of unsecured notes governed by New York law (the Notes). Weatherford Parent was incorporated in Ireland, and was the guarantor of the Notes. Approximately \$6.55 billion of the Notes had been issued by Weatherford Bermuda, and approximately

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\$850 million of the Notes had been issued by Weatherford Delaware. The two issuers had cross-guaranteed each other's Notes.

The Agreed Path Forward

It was against this backdrop that Weatherford sought a viable long-term restructuring solution. On May 10, 2019, the Debtors and the ad hoc group of Noteholders (the Ad Hoc Group) agreed a restructuring support agreement, which outlined the key terms of the restructuring in a restructuring term sheet. At the time the parties signed the restructuring support agreement, the Ad Hoc Group held 62 percent of the Notes. Within a week, the Ad Hoc Group had grown to hold 74 percent (some \$5.4 billion) of the Notes.

The restructuring support agreement envisaged a huge de-leveraging of the Debtors, through a debt-for-equity swap. The restructuring would remove approximately \$6 billion of debt from Weatherford's balance sheet. The Noteholders would receive 99 percent of the shares in Weatherford Parent in exchange for the cancellation of their Notes. In addition, the Noteholders would receive new notes in the form of "takeback" paper and the right to subscribe for new notes to inject new liquidity into the Debtors. Weatherford Parent's existing shareholders would receive one percent of the shares in Weatherford Parent and warrants. The Debtors would also refinance their funded bank debt.

Experience shows that a key element of any restructuring is that disruption to business, operations and employees is minimized during the restructuring process to preserve value. In light of the Debtors' connection to the U.S. and the unanimous consent thresholds in the various Note indentures to effect a consensual out-of-court solution, the Debtors and the Ad Hoc Group agreed to implement the restructuring through a Chapter 11 plan of reorganization. The Chapter 11 process would provide the Debtors with the protection of an automatic stay on proceedings under the U.S. Bankruptcy Code while management steered the business through the restructuring. Certain members of the Ad Hoc Group agreed to participate alongside bank lenders in a \$1.75 billion debtors-in-possession (DIP) facility, providing further stability and additional liquidity to fund Weatherford's significant working capital needs. Further, Weatherford paid its trade and other general unsecured creditors in the ordinary course to ensure that its business continued to operate.

Global Implementation

The opening of Chapter 11 proceedings provided the Debtors with breathing space to agree the more detailed terms of the plan of reorganization and then implement the proposed restructuring plan. However, there remained the risk of hostile shareholders and creditors taking action outside of the U.S. to disrupt the restructuring. It is critical to the success of any international financial restructuring that the implementation of any compromise of the existing rights of stakeholders is binding in all of the relevant jurisdictions, not least to avoid a scenario in which hostile parties seek to extract advantage by taking aggressive action against the debtors outside the principal forum of the restructuring.

In the Weatherford situation, the restructuring would need to be binding under both Bermudan and Irish law, as well as under the U.S. Bankruptcy Code. In addition to the Notes and guarantees issued by Weatherford Delaware, the restructuring envisaged a

compromise of principal debt and guarantees issued by Weatherford Bermuda (a Bermudan company) and a compromise of guarantee claims and an equity restructuring with respect to Weatherford Parent (an Irish company).

Recognizing this, the restructuring support agreement required that the restructuring was implemented using two further court procedures in parallel to the Chapter 11 process—a provisional liquidation and scheme of arrangement in Bermuda and an examinership and scheme of arrangement in Ireland. This would perhaps be the first time that a restructuring plan would be implemented simultaneously and on equivalent terms through principal and parallel restructuring proceedings in three different jurisdictions.

Bermuda – Provisional Liquidation

Two days after the commencement of the Chapter 11 proceedings, the Supreme Court of Bermuda (the Supreme Court) approved the appointment of a provisional liquidator to Weatherford Bermuda. The Supreme Court appointed the provisional liquidator to oversee the implementation of the restructuring. The appointment ensured a stay on proceedings in Bermuda, but was structured as a "soft" appointment, meaning that the board and management of Weatherford Bermuda retained control and would continue day-to-day operations.

The provisional liquidator primarily had two routes available to him to implement the terms of the restructuring—either by seeking a "recognition order" from the Supreme Court, giving force to the Chapter 11 plan of reorganization in Bermuda, or by pursuing a scheme of arrangement under Bermudan company law. While the Supreme Court has been willing to grant recognition orders in relation to recent cross-border Chapter 11 plans of reorganization (e.g., Seadrill), the Ad Hoc Group and the Debtors decided to pursue a scheme of arrangement in this case. While a scheme is the more administratively burdensome of the two routes, it was agreed that a creditor-approved and court-sanctioned scheme would provide the most comprehensive form of implementation of the Chapter 11 plan of reorganization in Bermuda, in particular taking into account that a significant amount of debt would become structurally subordinated by being converted to equity in the restructuring.

The Bermuda scheme of arrangement proposed a compromise of the claims of Noteholders against Weatherford Bermuda on the same terms envisaged by the Chapter 11 plan of reorganization. The Noteholders were the only class of creditors in the scheme, and they voted overwhelmingly to approve the scheme, far exceeding the statutory approval threshold (a majority in number representing over 75 percent in value of the creditors present and voting on the scheme).

Ireland - Examinership

Examinership is a court-supervised moratorium and protection procedure under Irish company law. It provides a remedy for a company with serious but not terminal financial difficulties to find a solution with stakeholders to return the company to a sound footing, with a more beneficial outcome than a winding up. The appointment of an examiner provides a stay on proceedings and enforcement action in Ireland and the EU, and provides for the examiner to prepare a compromise or scheme of arrangement for the company.

However, examinership is subject to a 100-day statutory time limit. Within that time limit, the examiner must have formulated a restructuring proposal for the company, and have received creditor approval for that proposal; otherwise, the company must be placed into liquidation. In light of this, Weatherford Parent waited to petition for the appointment of an examiner until September 23, 2019 (initially by way of an interim examiner) so that the 100-day statutory time period began running at a time when there was a high degree of certainty that the Debtors would successfully emerge from Chapter 11 before the 100-day period expired.

Following his appointment, the examiner proposed a scheme of arrangement to compromise the Noteholder guarantee claims against Weatherford Parent and to effect the restructuring of the existing shares in Weatherford Parent, each on the same terms as the Chapter 11 plan of reorganization. Importantly, an Irish scheme of arrangement is binding on shareholders as a matter of Irish law, which would address any potential legal concern as to whether the effect of the Chapter 11 plan of reorganization on Weatherford Parent's shareholders under U.S. law would be recognized in Ireland (Weatherford Parent's shares did not have the same jurisdictional connection to the U.S. as the Notes, which were governed by New York law).

Weatherford Parent held creditor and shareholder meetings to vote on the Irish scheme. In an examinership, only one impaired creditor class needs to vote to approve the examiner's scheme in order for the Irish High Court to have discretion to order the cram-down of the scheme on all impaired creditors and shareholders. Again, the Noteholders voted overwhelmingly to approve the examiner's scheme. As such, following the meetings and a sanction hearing at the Irish High Court, the examiner's scheme bound all Noteholders and Weatherford Parent's existing shareholders and included the adoption of a new constitution.

Implementation

To ensure consistency between the three restructuring procedures, the mechanical implementation elements of the restructuring were effected pursuant to the terms of the U.S. Chapter 11 plan of reorganization (to which the Bermuda and Irish scheme documents deferred by cross-referring to specific sections of the Chapter 11 plan of reorganization and the related disclosure statement). Further, the effectiveness of each restructuring process was conditional upon each other restructuring process taking effect at the same time, to ensure the Debtors implemented the restructuring in a consistent manner across the three jurisdictions.

Following the confirmation of the Chapter 11 plan of reorganization, and the approval of the Bermuda and Irish schemes, the Debtors successfully closed the restructuring in each of the U.S., Bermuda and Irish processes simultaneously on December 13, 2019.

Lessons Learned

When faced with an impending liquidity crisis in a debtor group, the mechanics for implementing a restructuring of a global enterprise can be complex and often needs to be designed under intense time-pressure. The Weatherford transaction supports past experience of the importance of identifying early in a restructuring process how the commercial terms will be implemented in each relevant debtors' key jurisdictions. Early engagement with experienced international and local counsel will avoid any potential roadblocks to successful implementation.

Akin Gump acted as lead counsel to the Ad Hoc Group of Noteholders, and worked closely with Arthur Cox (Irish counsel) and MJM Limited (Bermuda counsel) to coordinate the implementation of this restructuring in three independent but interconditional in-court processes.

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