# Confirmation of WHOA-agreement McDermott

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## Blog

McDermott is a US-based contractor and engineering firm specializing in offshore power generation and nuclear power plants. The group operates in more than 54 countries and has more than 30,000 employees. Relevant entities of the McDermott-group are the Netherlands-based McDermott International Holding B.V. ('MIH') and its subsidiary Lealand Finance Company B.V. ('Lealand'). Faced by a variety of financial challenges, McDermott prepared a restructuring plan that required the consent of courts in the United States, the United Kingdom and The Netherlands. With regard to the Dutch entities, a pubic WHOA-procedure was initiated and a court-appointed restructuring expert was appointed to draw up the plan. The WHOA process has now been successfully completed; on March 21st, the court confirmed the WHOA-plan. The confirmation was preceded by a preliminary judgement on the essential elements of restructuring expert's plan (aspectenverzoek).

This blog provides a summary of the preliminary judgement.

## LC facilities in determining reorganization value

Lealand is the group financier of McDermott and the borrower of letters of credit ('LC facilities'). In essence, an LC facility is a method of payment whereby a vendor opens a credit facility in favour of the supplier and all payment and delivery terms are fixed in advance. An LC facility provides the supplier certainty that it will receive payment after receiving the goods, as the payment is guaranteed by the vendor's bank. LC facilities are often used in international transactions where the creditworthiness of parties is difficult to assess.

In the WHOA proceedings of MIH and Lealand, the question arose as to how the LC facilities should be treated in the determination of the reorganization value. More specifically, whether the LC facilities should be considered as operational costs that impact the free cash flow, or an (unconditional) debt that is subtracted from the Enterprise Value (EV) when estimating the equity value. The restructuring expert raised the following preliminary questions with regards to the LC-facilities:

**Should LC facilities be treated as operating expenses or debt? And if the LC facilities are to be classified as debts, are they a contingent or an unconditional debt?**

These questions were crucial to the proposed WHOA-plan for the following reason. When an LC-facility is drawn, all parties agree that it constitutes a debt of the company. However, if an LC-facility is not debited, the company solely has a conditional obligation vis-à-vis the issuing bank. Therefore, it the assumption is that the company will be able to meet its obligations after the plan is confirmed, the argument can be made that a fewer number of LC-facilities will be utilized. As a

result, the company will incur operational expenses with regard to the bank fees and interests of operating the LC-facilities, but will not need to refund the nominal value of the facilities. For this reason, the restructuring expert argued that the costs of the LC facilities should be classified as operating costs, without the LC facilities being categorically classified as debt. This would lead to a higher reorganization value.

The court answered the restructuring expert's question as follows. In determining the reorganization value, the costs of LC facilities should indeed only be qualified as operating costs, with the exception of those LC facilities that have been issued and drawn by the beneficiary, or for which, at the time of determining the reorganization value, are likely to be drawn imminently. Those LC facilities should be qualified as debt within the context of the reorganization value.

## Consolidated reorganization value

The aspects request also involved a second question, namely: 'Can the WHOA proceedings of MIH and Lealand be based on a consolidated reorganization value, or should the reorganization value be calculated for the individual entities?' In answer to this question the court stated that the starting point of determining the liquidation and reorganization value of a group should be on the individual entity level. This may be different if a division at entity level is not possible, or is extremely difficult, in connection with the close interconnectedness between the various entities. However, in principle the reorganization value should be determined separately for each individual company.

## Mandatory bifurcation

Finally, there was also a third and final question from the restructuring expert regarding bifurcation.

It is possible that only part of a creditor's claim is secured. For that part, the creditor would have priority in bankruptcy when recovering from pledged assets of the bankrupt. Under section 374 of the Dutch Bankruptcy Code, the claim of such a creditor is therefore divided into different classes in WHOA proceedings. For the secured part of the claim, the creditor is assigned to a class with other creditors with secured claims. For the remaining part of the claim, the creditor is assigned to an unsecured class.

The restructuring expert believed that bifurcation of a particular creditor could be forgone in the present arrangement, in short, because the only creditor without security rights was already 'structurally' subordinated to the other creditors. However, the court set aside the restructuring expert's argument and ruled that bifurcation was also mandatory in the present case.

## Confirmation

Following the courts answers to these questions, the agreement was finalized and submitted to the creditors, after which a vote was taken. In the arrangement the claim of the 'structurally' subordinated unsecured creditor was converted into a preferred equity interest in parent company McDermott International Ltd. The secured creditors were assigned to a separate class for the

unsecured part - as prescribed by the court in the preliminary judgement. On March 21st, the court confirmed the restructuring plan.

## Keywords

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