

On behalf of the Applicants
A J Manson
First witness statement
12 December 2022
Exhibit AJM1

Claim No. _____

Company Registered Nos:

Petropavlovsk PLC: 04343841

Petropavlovsk 2016 Limited: 122639 (incorporated in Jersey)

Petropavlovsk 2010 Limited: 104830 (incorporated in Jersey)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF PETROPAVLOVSK PLC (IN ADMINISTRATION)

AND IN THE MATTER OF PETROPAVLOVSK 2016 LIMITED

AND IN THE MATTER OF PETROPAVLOVSK 2010 LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

FIRST WITNESS STATEMENT OF ALLISTER JONATHAN MANSON

I, **ALLISTER JONATHAN MANSON** of Opus Restructuring LLP, 322 High Holborn, London WC1V 7PB, **WILL SAY AS FOLLOWS:**

A. INTRODUCTION

1 I am a qualified insolvency practitioner and chartered accountant. I am licensed by the Insolvency Practitioners' Association to accept insolvency appointments. Since November 2019, I have been a partner in Opus Restructuring LLP ("**Opus**"), having previously had 18 years' insolvency experience at PwC, Smith & Williamson, Cork Gully (all in the UK) and KPMG (in the Cayman Islands). During my career, I have worked on notable insolvencies, such as Atlantic Computers and the restructuring of the Ashanti Gold Mining group. I have accepted a number of recent, high profile,

complex appointments, such as Cloudbuy (formerly AIM listed), TFS Loans (FCA regulated) and the IVA of Pramod Mittal (one of the largest personal insolvency appointments in the UK).

- 2 I am a joint administrator of Petropavlovsk plc (“**PLC**” or the “**Parent**”), having been appointed by the Order dated 18 July 2022 of HHJ Milwyn Jarman KC sitting as a Judge of the High Court in proceedings issued under claim number CR-2022-002121 (the “**PLC Administration Proceedings**”). The other joint administrators of PLC are my partners in Opus, Mr Trevor Binyon and Ms Joanne Rolls (together with me, the “**Administrators**”).
- 3 I have given witness statements in the PLC Administration Proceedings on 11 July 2022 (“**Manson Admin 1**”), 19 July 2022 (“**Manson Admin 2**”), 27 July 2022 (“**Manson Admin 3**”), 30 July 2022 (“**Manson Admin 4**”), 17 August 2022 (“**Manson Admin 5**”) and 12 September 2022 (“**Manson Admin 6**”), which witness statements I refer to below.
- 4 I am also one of the proposed joint administrators (alongside Mr Gareth Wilcox of Opus) of:
 - 4.1 Petropavlovsk 2016 Limited (“**2016 Limited**”), a Jersey subsidiary of PLC which is the issuer of a US\$ 500 million note due in November 2022 (the “**2022 Notes**”), of which PLC is a guarantor; and
 - 4.2 Petropavlovsk 2010 Limited (“**2010 Limited**”), a Jersey subsidiary of PLC which is the issuer of US\$ 125 million in convertible bonds due in 2024 (the “**2024 Bonds**”), of which PLC is a guarantor.
- 5 I make this witness statement in support of applications for orders convening meetings of creditors to vote on proposed schemes of arrangements, to run in parallel, in respect of PLC, 2016 Limited and 2010 Limited. I refer to PLC, 2016 Limited and 2010 Limited together as the “**Scheme Companies**”; to 2016 Limited and 2010 Limited together as the “**Issuers**”; to the proposed schemes in respect of the Scheme Companies as the “**Schemes**”; and to the creditors who it is proposed will be party to the Schemes as the “**Scheme Creditors**”.

6 In summary, and as explained below, the Administrators consider the Schemes to be in the interests of creditors of the Scheme Companies because:

6.1 Under the proposed Schemes:

- (i) the need for multiple interim distributions, which would inevitably arise were an ordinary distribution under Schedule B1 to be proceeded with, and would serve not only to increase expense but also, critically, to delay completion of the process to a point by which banking facilities will no longer be available;
- (ii) payments can be made by reference to the sum, and in the currency, stipulated in the relevant contract, in contrast to the position in an ordinary distribution pursuant to Schedule B1, thereby avoiding the risk of adverse currency fluctuations, the consequences of which could be very significant given the very substantial sums involved and the current volatility of currency markets;
- (iii) the risk of multiple claims being made by multiple parties in respect of the same subject-matter, and the inevitable complexities and risk of inconsistencies that such multiple claims would give rise to, would be eliminated; and
- (iv) a framework that establishes each Scheme Creditor's eligibility to receive payments in advance, including whether payment can be made legally (and without breaching the sanctions regime) and practically is provided for, thereby avoiding the risk of funds being stuck in the Clearing Systems and avoiding the risk that an inability to establish that payment can legally be made to certain creditors would delay payment to other creditors (which would inevitably arise in an ordinary distribution under Schedule B1);

6.2 Payment to Scheme Creditors in full outside the ordinary insolvency framework does not prejudice any other creditor or stakeholder in the Scheme Companies.

7 I refer in this witness statement to the paginated bundle of documents labelled “**AJMI**”. Unless otherwise indicated, any references in this witness statement are references to that exhibit. References are to **[Exhibit/Tab/Page(s) (if relevant)]**. Any reference to “we” in this witness statement refers to the Administrators or our staff.

8 The facts and matters stated herein are either within my own knowledge, in which case they are true, or based on documents and information supplied to me by others, in which case they are true to the best of my knowledge, information and belief.

9 As required by paragraph 18.1(5) of CPR Practice Direction 32, I can confirm that this witness statement has been prepared with assistance from our solicitors, Joseph Hage Aaronson LLP (“**JHA**”).

10 The remainder of this witness statement is structured as follows:

10.1 **Section B:** Background

10.2 **Section C:** Assets and liabilities of the Scheme Companies

10.3 **Section D:** Urgency and delay

10.4 **Section E:** Structure of the Schemes in outline

10.5 **Section F:** Alternatives to schemes of arrangement

10.6 **Section G:** Class issues

10.7 **Section H:** Jurisdiction issues

10.8 **Section I:** International recognition

10.9 **Section J:** Notice

10.10 **Section K:** Arrangements for meetings and voting

10.11 **Section L:** Impact of sanctions

10.12 **Section M:** Directions sought

10.13 **Section N:** Conclusion

B. BACKGROUND

Appointment of Administrators to PLC

- 11 Upon the application of the majority of PLC’s directors by Application Notice dated 11 July 2022 in the PLC Administration Proceedings (the “**PLC Administration Application**”), the Administrators were appointed to PLC on 18 July 2022 by Order of HHJ Milwyn Jarman KC sitting as a Judge of the High Court (the “**PLC Administration Order**”) [AJM1/1/2-5].
- 12 The reasons that the administration of PLC was sought are set out in detail in the first witness statement of Charlotte Philipps dated 11 July 2022 (“**Philipps 1**”) [AJM1/2/6-57] and my first witness statement of the same date (i.e. Manson Admin 1) [AJM1/3/58-95]. The Court may find it helpful to read that evidence in full.
- 13 In summary, at the time the PLC Administration Application was made:
- 13.1 PLC was the parent company of a group of gold mining and exploration companies operating in the far east of Russia (I refer to PLC and its current and former subsidiaries collectively as the “**Group**”).
- 13.2 As a result of international sanctions and other restrictions introduced following the Russian Federation’s invasion of Ukraine in 2022, the Group was rendered unable to pay its debts as they fell due.
- 13.3 In particular, until April 2022, PLC’s main lender was Gazprombank (JSC) (“**GPB**”), one of Russia’s largest commercial banks. GPB provided a US\$ 200 million term loan to PLC (the “**Term Loan**”) and credit facilities of c. US\$ 86.7 million to certain of its subsidiaries in Russia (the “**Facilities**”). The Group also had a significant commercial relationship with GPB and its subsidiaries, who were major buyers of the Group’s gold. On 24 March 2022 the UK government imposed asset-freezing measures on a number of Russian entities, including GPB, under the Russia (Sanctions) (EU Exit) Regulations 2019 (the “**Regulations**”). As a result, PLC and its subsidiaries were unable to make payments to GPB and so defaulted on the Term Loan and the Facilities, which were in turn accelerated by GPB on 18 April 2022. The Group was also unable

to sell gold to GPB (with which it had a contractual relationship of exclusivity). Default under the Term Loan and Facilities also triggered cross-defaults under the 2022 Notes and 2024 Bonds, which were issued by 2016 Limited and 2010 Limited respectively and were guaranteed by PLC and, in the case of the 2022 Notes, certain of its operating subsidiaries.

- 13.4 During the course of April and May 2022 GPB assigned the Term Loan and the Facilities to unrelated third parties which were not sanctioned persons (and to which the Group could therefore, at least theoretically, make payments): the Term Loan was assigned by GPB to UMMC-Invest (“UMMC”), part of one of Russia’s largest metals and mining groups. The Facilities were assigned by GPB to Nordic LLC, which was understood to be an investor in distressed debt. Consequently, the Group no longer had any financial or commercial connection with any entity which was a designated person under the Regulations. However, ongoing sanctions and banking restrictions (as well as a general reluctance on the part of Western financial institutions to accept Russia-related business) made it difficult for PLC’s Russian subsidiaries to move funds to PLC to enable it to service its debts, such that it remained practically unable to meet its obligations to its creditors.
- 13.5 It was accordingly clear to PLC and its advisors (including Opus, then engaged to act as advisors and proposed administrators) that PLC was insolvent on both a cashflow and balance sheet basis.
- 13.6 PLC had explored refinancing its debt but was unable to identify a financial institution willing to lend to it.
- 13.7 PLC had also run a marketing process to identify potential buyers of its business. The marketing process resulted in UMMC (which as noted above had purchased the Term Loan from GPB) making a binding offer to purchase PLC’s operating subsidiaries in Russia and other Group entities for total consideration of approximately US\$ 619 million. This amount was intended to be sufficient to allow PLC to meet its obligations to creditors in full, but would likely result in no surplus remaining for shareholders. Shortly before the PLC Administration Application was made, PLC also received an indicative offer to

purchase its assets from its largest shareholder, ‘Uzhuralzoloto Group of Companies’ JSC (“UGC”).

Sale of PLC’s operating assets to UMMC

- 14 Following our appointment, the Administrators took steps to evaluate the proposed transaction with UMMC and the indicative offer received from UGC and to identify possible alternatives to a sale. In the event, UGC ultimately chose not to pursue their offer, we were unable to identify a realistic way for PLC to refinance its debt and we concluded that the proposed transaction with UMMC represented the best outcome for PLC stakeholders.
- 15 Accordingly, by Application Notice dated 27 July 2022, the Administrators applied for directions including a direction that we be at liberty to enter into the proposed transaction with UMMC (the “**PLC Directions Application**”). That application was supported by my third witness statement in the PLC Administration Proceedings (i.e. Manson Admin 3). Like the PLC Administration Application, the PLC Directions Application was made, and heard, on an urgent basis because UMMC’s offer was expressed to be time-limited and it was likely that, were the sale to be lost, PLC would have to enter insolvent liquidation which was likely to result in a materially worse recovery for creditors (as explained in Manson Admin 3).
- 16 On 1 August 2022, we were granted liberty to enter into the proposed transaction by Order of Jonathan Hilliard KC sitting as a Deputy Judge of the High Court [**AJM1/5/96-97**]. The Judge explained his decision in a reasoned judgment dated 5 August 2022 [**AJM1/6/98-133**].
- 17 Consequently, PLC (acting through the Administrators) entered into a sale and purchase agreement with UMMC on 1 August 2022 (the “**SPA**”) [**AJM1/7/134-181**]. The transaction completed, and PLC received the cash and debt consideration of c. US\$619 million due thereunder, in early September 2022 (the “**Sale**”).
- 18 In summary, the consideration received by PLC under the SPA comprised:
- 18.1 cash consideration of £155,969,423 (equating to approximately US\$ 180 million);

- 18.2 2022 Notes, purchased by UMMC in the market, with a face value of approximately US\$ 177 million, plus accrued interest of approximately US\$ 23.2 million. The right to tender 2022 Notes as consideration allowed UMMC to reduce the amount of cash consideration payable under the SPA (put differently, it allowed a partial credit bid option for UMMC);
- 18.3 consideration of US\$ 202.5 million, being equal to the amount outstanding on the Term Loan, to be discharged by way of set-off or similar against UMMC's claims under the Term Loan (which was subordinated to all other creditors pending the set-off)¹;
- 18.4 "day-1" administration funding of approximately US\$ 7 million, to ensure (when added to the amounts of cash already in hand) we were in funds estimated to cover the remuneration and expenses of the administration and the estimated amount of contingent and uncertain liabilities, with potential top-up funding of a further US\$ 10 million if required, with any residual funds being returned to UMMC; and
- 18.5 contingency funding of US\$ 4 million in the first instance, for the purpose of dealing with any challenges brought in relation to the transaction, with any residual funds being returned to UMMC.

Proposed administration of 2010 Limited and 2016 Limited

- 19 By Application Notices dated 12 December 2022, the directors of 2016 Limited and 2010 Limited have applied in England to place those companies into administration (the "**Issuer Administration Applications**").
- 20 The reasons for the Issuer Administration Applications are set out in the witness statement of Ms Philipps (as director of each of the Issuers) in support of them ("**Philipps Issuer 1**") [AJM1/7/182-199]. In summary, the directors of the Issuers and the proposed Issuer administrators consider that they should be placed into administration so that their administrators, once appointed, can manage the Schemes in respect of those companies in parallel with the Scheme in respect of PLC. This is

¹ This, in effect, is also a partial credit bid mechanism. The Term Loan was subordinated in the SPA to allow creditors other than UMMC under the Term Loan to be paid in priority, which they would not otherwise be.

primarily because, as explained below, there is a large degree of overlap between the liabilities of PLC and the Issuers and it is thought appropriate to deal with all of them in the round. It is also relevant that the directors have, in practice, had very limited involvement with the Issuers since the start of the PLC Administration, given that historically the Issuers' business (such as it is, given that they act as Group finance companies) has been managed at Group-level by PLC. As such, the directors consider it more appropriate that administrators with detailed knowledge of the PLC Administration should take the lead in progressing the Schemes proposed by the Issuers. I agree.

- 21 It is hoped that the Issuer Administration Applications will be dealt with before, or at the same time as, the present application. We will ensure that the papers relating to the Issuer Administration Applications are before the Court at the hearing of the present application.

C. ASSETS AND LIABILITIES OF THE SCHEME COMPANIES

Assets and liabilities of PLC

- 22 Following the completion of the sale of PLC's operating assets to UMMC, PLC's asset and liability position is as summarised below. This is also summarised in the draft distribution statement produced by the PLC Administrators, at [AJM1/8/200].

- 23 **Assets.** PLC has the following assets:

23.1 Cash at bank of US\$ 181,715,338 and £15,348,122 held in accounts in PLC's name with Citibank UK, being the cash proceeds of the sale to UMMC. I note that on or around 9 September 2022, the PLC Administrators converted £146,281,971.05 of the cash consideration received from UMMC from Sterling to US Dollars at a rate of 1.1553 USD:GBP. As explained further below, we did so in anticipation of using the resulting US dollar balance in due course to settle the liabilities to 2022 Noteholders and 2024 Bondholders in the currency of their denomination (US dollars) and thus to avoid the risk of adverse currency fluctuations after that date. I also note that PLC's accounts with Citibank UK are not interest-bearing; as explained below, the Administrators have been

unable to obtain either an estate bank account or commercial banking facilities for PLC with any better terms.

- 23.2 An additional cash sum of approximately US\$ 25 million, which is held in an account in PLC's name with GPB Luxembourg, a subsidiary of GPB. Because GPB is sanctioned, the Administrators are not presently able to access these funds.² On 23 October 2022, we applied to the Office of Financial Sanctions Implementation (“**OFSI**”) for a licence to enable us to have these funds paid to PLC's accounts in the UK. As at the date of this witness statement, OFSI have not communicated a decision in relation to that licence application. We will inform OFSI of this application, give them notice of hearings once listed, and keep them apprised of progress in relation to the Schemes. It is hoped that OFSI will grant the licence sought in sufficient time to allow PLC to have these funds available to meet liabilities to Scheme Creditors on the date when the Schemes become effective (if approved), however we anticipate being in a position to meet the Scheme Creditors' claims in full even without the receipt of these funds (including if necessary by calling on UMMC to provide “top-up” administration funding under the SPA).
- 23.3 2022 Notes with a face value of approximately US\$ 177 million, on which the unpaid interest due is approximately US\$ 23,220,000. As explained at paragraph 18.2 above, in circumstances where UMMC had a right to tender 2022 Notes to reduce the amount of cash consideration payable under the SPA, UMMC had acquired such 2022 Notes in the market. These are held in a securities account in PLC's name at Bank St Peterburg, which in turn has an account with Russia's National Settlement Depository (the “**NSD**”), which is a nominee holder holding the Notes on behalf of beneficial holders and part of the Moscow Stock Exchange. I note that the NSD is the subject of EU sanctions, the relevance of which is addressed further below.
- 23.4 The entire shareholding in 2010 Limited and 2016 Limited.

² See Philipps 1 at [96.2].

- 23.5 Certain intercompany receivables from other Group companies, including sums due from each of the Issuers in respect of liabilities of the Issuers which have been met by PLC.
- 23.6 Certain other smaller debtors and chattel assets with a combined value estimated to be less than £100,000.
- 24 **Liabilities.** The creditors of PLC have claims that arise from a number of different sources, including the following:
- 24.1 Various liabilities relating to the outstanding 2022 Notes and 2024 Bonds, comprising:
- (i) claims by the trustees of the 2022 Notes and the 2024 Bonds (together, the “**Trustees**”) against PLC under guarantees provided by it in respect of the 2022 Notes and the 2024 Bonds respectively;
 - (ii) claims in debt by 2016 Limited and 2010 Limited against PLC in respect of the sums by which PLC is indebted to each of them by way of intercompany loans in amounts arising from the on-lending of the respective proceeds of the 2024 Bonds and 2022 Notes issues and various other intercompany debts (together the “**ICO Claims**”). As to this:
 - (A) The intercompany loan note in respect of the loan from 2016 Limited to PLC is at [AJM1/9/201-217]. It will be noted that an interest rate of 8.145% applies to this loan, as compared to the rate of 8.125% applicable to the 2022 Notes.
 - (B) The intercompany loan between 2010 Limited and PLC bears the same interest as that applicable to the 2024 Bonds. The Administrators and the Company’s staff have been unable to locate a copy of the relevant loan note itself but its existence and terms are clear from references to it in other documents.
 - (C) I note that, pursuant to clause 5.3(b) of the SPA [AJM1/6/149], 2010 Limited assigned to PLC a further intercompany loan owed

to it by Petropavlovsk Mining Treasury UK Limited in return for an assumption by PLC of a liability to 2010 Limited in the like amount. There is also a further intercompany debt owed to 2010 Limited of approximately US\$ 81 million arising out of historic intragroup finance arrangements, described at paragraph 28.3 below.

- (iii) claims of former holders of 2024 Bonds who issued conversion notices in respect thereof, and as to which PLC has issued a Cash Alternative Election Notice exercising its right under the 2024 Bonds Trust Deed to satisfy the conversion notices by a cash payment equal to the value of PLC's shares over a defined period. As a result of issuing the Cash Alternative Election Notices, the obligation to settle the conversions became an obligation of PLC which was not settled before the entry into administration of PLC. The liability amounts to US\$ 157,876 due to BNP Paribas (in respect of the conversion of US\$ 800,000 of 2024 Bonds, confirmed in a Cash Alternative Election Notice dated 17 March 2022) and approximately US\$ 57,835 due to another 2024 Bondholder, RVX (in respect of the conversion of US\$ 400,000 of 2024 Bonds confirmed in a Cash Alternative Election Notice dated 11 April 2022). This liability arises because the 2024 Bonds are convertible bonds whose holders had the right to issue conversion notices to PLC, upon receipt of which PLC could elect either to issue shares in PLC to those 2024 Bondholders or to become liable to pay them a sum of cash calculated by reference to the then-prevailing share price of PLC. The reduction in the amount owing under the 2024 Bonds from the original issue amount of US\$ 125 million to approximately US\$ 33 million at present was due to the conversion of the majority of the 2024 Bonds into shares in 2020. The conversion notices referred to above were served at a time when PLC was unable to issue additional shares in respect thereof as there was a risk that issuing listed securities would have been a breach of laws relating to sanctions, so PLC elected to settle the liability in cash, as it was entitled to do under the 2024 Bonds Trust Deed. However, given its distressed financial position at the time, PLC was also unable

to make the actual payments, as these would likely have been considered to have been unlawful preferences under the 1986 Act if made. Therefore, the cash amounts were left unpaid, and the former bondholders have been recorded as creditors of PLC since that time.

- 24.2 The Term Loan as referred to at paragraphs 13.3 and 13.4 above;
- 24.3 Ordinary trading expenses of PLC. These are primarily made up of service providers and comprise professional fees for services provided to PLC prior to its administration together with a landlord's claim for dilapidations. The PLC Administrators estimate of the maximum extent of these liabilities to be £3,200,000.
- 24.4 Ordinary trading expenses of 2010 Limited and/or 2016 Limited for which PLC was jointly liable or for which PLC assumed responsibility for payment. I believe that these amount to no more than £100,000.
- 24.5 Claims of employees of PLC (both preferential and non-preferential) amounting to approximately £840,000 in respect of accrued and unpaid holiday, redundancy, payment in lieu of notice, pension contributions and retention payments.
- 24.6 Claims of non-executive directors of PLC amounting to approximately £103,750 in respect of notice pay. In addition to this, there is a liability of £900,000 owed to the directors for services provided beyond the terms of their service agreements.
- 24.7 HM Revenue & Customs ("HMRC") in the amount of £2,482,419, which is claim as a secondary preferential creditor, in respect of VAT and PAYE/NIC. Interest of £176,028 is also claimed by HMRC, which is an unsecured liability.
- 24.8 HMRC employee benefit tax. We have investigated the liability that has arisen following an investigation by HMRC into certain employee payments and have established that a formal settlement agreement was entered into with HMRC on 30 September 2020. The terms were such that PLC agreed to repay

£1,450,401.75 by way of nine equal instalments, of which £322,311 remains outstanding.

24.9 HMRC P11D claim. PLC has historically underdeclared employee benefits and it is proposed that a Settlement Agreement is reached with HMRC to pay the liability on behalf of employees. The estimated debt is approximately £183,000.

24.10 Certain other contested contingent liabilities exist in respect of former directors, a former employee and an overseas associated entity. The PLC Administrators are continuing to assess the merits of these potential claims, the total maximum potential liability of which amounts to £3,758,000. The PLC Administrators expect to settle these claims for considerably less than their maximum potential liability.

Assets and liabilities of the Issuers

25 The assets and liabilities of the Issuers are set out in Section D of Philipps Issuer 1. In summary, they are as follows.

26 2016 Limited Assets.

26.1 2016 Limited's only material asset is its ICO Claim against PLC in respect of the sum by which PLC is indebted to it by way of intercompany loans in an amount equivalent (but, as explained above, not identical) to the sum outstanding in respect of the 2022 Notes. The ICO Claim might also be subject to set-off or netting in respect of any of the amounts referred to at paragraphs 24.4, 27.2 and 27.3. In any event, however, any remaining balance, after any netting and taking account of any additional rights and obligations that may arise (such as by virtue of payment of Scheme Claims by PLC on 2016 Limited's behalf as Guarantor) as between PLC and 2016 Limited are intended to be waived or forgiven once the Schemes become effective.

27 2016 Limited Liabilities.

27.1 2016 Limited has a liability under the 2022 Notes which is due and payable. As at 8 December 2022, the sum due is US\$ 330.64 million, comprising US\$ 304.27 million in outstanding principal and coupons of US\$ 26.37 million (such

coupons due in respect of interest arising from December 2021). Of the outstanding amount, 2022 Notes with a principal face value of approximately US\$ 177.51 million are held by PLC and the remainder by unconnected parties. Interest due to 2022 Noteholders is accruing at a rate of 8.125% annually. The majority of the 2022 Notes were the subject of Relevant Event Put Option Notices (as described in paragraphs 30-33 below), but to the extent they were not, they matured on 14 November 2022.

27.2 2016 Limited owes PLC US\$ 18.83 million. The liability comprises US\$ 9.247 million in respect of professional fees and US\$ 9.56 million in respect of redemption premium paid by PLC on behalf of 2016 Limited to former 2022 Noteholders who had taken up tender offers by PLC to re-purchase certain of the 2022 Notes in each of July and December 2021.

27.3 2016 Limited also has outstanding liabilities to various service providers in Jersey, including Ocorian and Baker & Partners, in respect of which PLC is either jointly liable or has assumed responsibility. In aggregate I do not believe the sums due (or likely to fall due) exceed £50,000.

28 **2010 Limited Assets.**

28.1 2010 Limited has an ICO Claim against PLC in respect of the sum by which PLC is indebted to it by way of intercompany loan in an amount equivalent to the sum outstanding in respect of the 2024 Bonds.

28.2 2010 Limited also has a claim against PLC in respect of an intercompany loan which was originally made by 2010 Limited to Petropavlovsk Mining Treasury UK Limited (“**Mining Treasury**”), another company in the Group. As part of the Sale, the shares in Mining Treasury were sold to UMMC and the loan was assigned by 2010 Limited to PLC, in consideration for an assumption of a liability by PLC to 2010 Limited in like amount. The amount outstanding to 2010 Limited from PLC in respect of this debt is US\$ 376,144,622 (US\$ 274,879,042 in principal plus US\$ 101,265,580 in accrued interest as at 30 November 2022). As above, this may be subject of netting-off against PLC’s claims against 2010 Limited.

- 28.3 In addition, 2010 Limited has a further claim against PLC under an historical loan arrangement between the companies. The amount outstanding to 2010 Limited from PLC is US\$ 81,397,210 (US\$ 56,851,900 of principal plus US\$ 24,545,310 in accrued interest as at 30 November 2022). This may also be subject of netting-off against PLC's claims against 2010 Limited.
- 28.4 In any event, however, any remaining balance, after any netting and taking account of any additional rights and obligations that may arise (such as by virtue of payment of Scheme Claims by PLC on 2010 Limited's behalf as Guarantor) as between PLC and 2010 Limited are intended to be waived or forgiven once the Schemes become effective.

29 **2010 Limited Liabilities.**

- 29.1 2010 Limited is the issuer of the 2024 Bonds, of which US\$ 33 million plus interest remain outstanding. The present rights of holders of the 2024 Bonds ("**2024 Bondholders**") are defined by reference to the Terms and Conditions of the 2024 Bonds [**AJM1/10/252-310**] and the 2024 Bonds Trust Deed [**AJM1/10/218-333**]. The 2024 Bonds mature in 2024.
- 29.2 2010 Limited owes PLC US\$ 19.13 million. The liability comprises US\$ 9.12 million in respect of professional fees paid by PLC on behalf of 2010 Limited and US\$ 10.01 million in respect of preference shares dividend liability.
- 29.3 2010 Limited also has outstanding liabilities to various service providers in Jersey, including Ocorian and Baker & Partners, in respect of which PLC is either jointly liable or has assumed responsibility. In aggregate I do not believe the sums due (or likely to fall due) exceed £50,000.

Relevant Event Put Options under the 2022 Notes and 2024 Bonds

- 30 Following the making of the PLC Administration Order on 18 July 2022, the shares in PLC ceased to be listed on the Official List of the UK Listing Authority and to trade on the regulated market of the London Stock Exchange. This constituted a Relevant Event for the purposes of condition 6.3.1(iv) of the 2022 Notes and condition 8(o) of the 2024 Bonds.

- 31 As a result, a holder of a 2022 Note or a 2024 Bond had an option to require the relevant Issuer to redeem its holding at 101% of its principal amount, together with accrued and unpaid interest thereon, and each of 2016 Limited and 2010 Limited made public announcements and issued notices informing 2022 Noteholders and 2024 Bondholders of the Relevant Event and their rights to require redemption of their 2022 Notes or 2024 Bonds (“**Relevant Event Put Option Notices**”) accordingly.
- 32 Following the issue of the Relevant Event Put Option Notices between August and October 2022, holders of approximately US\$ 95 million in principal amount of the 2022 Notes and US\$ 32 million in principal amount of the 2024 Bonds sought to exercise the Relevant Event Put Options. However, the Issuers were unable to make payments of the sums that fell due as a consequence on the dates specified in the relevant Trust Deeds because they did not have the funds to do so.
- 33 It appears that certain further holders of the 2022 Notes and/or 2024 Bonds would have wished to participate in the put option procedure but were unable to do so due to the inability of the clearing system and intermediaries to process relevant instructions arising out of the imposition of sanctions and other restrictions on the NSD. As explained further below, we consider that it would be unfair to divide the holders of the outstanding 2022 Notes and 2024 Bonds, as the case may be, between those who were able to submit valid Relevant Event Put Option Notices and those who were not. It is therefore envisaged that funds will be distributed to 2022 Noteholders and 2024 Bondholders under the schemes on the basis that they are all entitled to receive 101% of the principal amount of the 2022 Notes and 2024 Bonds they hold plus accrued interest to the anticipated payment date (except in relation to those 2022 Notes held by PLC).

D. URGENCY AND DELAY

Summary

- 34 The present application is made on an urgent basis and we respectfully request that the Court list the hearing on an expedited basis to take place on the first available date from 19 December 2022.

35 As explained below, the urgency arises primarily because Citibank, PLC's UK bank, intends to close PLC's accounts at the end of January 2023 and we have so far been unable to identify another bank willing to provide accounts thereafter. It follows that if payments to creditors are not made by the end of January 2023 (whether under the Schemes or otherwise), there is a real risk that PLC will be practically unable to make them at all. Although we have known of that issue for some time, we were not able to move the present application before now due to the need first to resolve various issues relating to the operation of the Schemes, also explained below.

36 It should be noted that these same factors which give rise to a need for urgency also underlie, at least in part, the choice of the proposed Schemes as the appropriate exit route, as further explained below.

Withdrawal of banking facilities

37 Citibank UK, who provide banking facilities to PLC, have recently indicated that they will close PLC's accounts and terminate the relationship at the end of January 2023. Withdrawal of these banking facilities will make it difficult if not impossible for PLC to make any cash distributions to creditors. A brief summary of the events leading to the present situation follows.

38 In the past, the Group was provided with banking facilities by GPB and associated entities in Russia and Europe, and by Citibank in the UK. As explained above, the Group sought to wind down its commercial and banking relationships with GPB following GPB's designation under the Regulations. At present, the only bank accounts held by PLC are: (i) the sterling and US dollar accounts with Citibank UK referred to above; and (ii) the GPB Luxembourg account the funds in which, as explained above, PLC is not able to access pending receipt of a licence from OFSI pursuant to the Administrators' application dated 23 October 2022. Neither of the Issuers has or has ever had its own bank accounts.

39 Shortly after the PLC Administrators were appointed in July 2022, Citibank informed the PLC Administrators that it was in the process of exiting all Russia-related business worldwide and closing the accounts of clients with current or historical links to Russia, including PLC, for risk and compliance reasons. We understand that it aimed to have terminated all such relationships by the end of 2022.

40 Following our appointment, we also sought to identify a bank willing to provide an estate bank account for use by the PLC Administrators during the PLC Administration (as would be usual practice in any administration) but we were unable to do so. This appears to be a consequence of a general reluctance on the part of financial institutions to take on business with a Russian connection (even if purely historical) in the current climate. Because we were unable to open an estate account, we have had no option to make use of PLC's Citibank accounts for the purposes of the administration.

41 After Citibank first made their intention to close the accounts known:

41.1 We and our legal advisors spent several months in discussions with Citibank in an attempt to persuade the bank to continue to operate the accounts for longer, and ideally until the PLC Administration had run its course. Although the bank expressed some sympathy for the PLC Administrators' position, it was unwilling to keep the accounts open indefinitely due to its global policy of exiting Russia-related business. However, Citibank did agree to extend the deadline from the end of December 2022 until the end of January 2023. On 30 November 2022, Citibank wrote to confirm that PLC's accounts would be closed on 31 January 2023 [AJM1/11/334]. We understand that any balance on the accounts on that date will be moved to a suspense account and the funds held to PLC's order, but that PLC (and the PLC Administrators) will no longer be able to make operational use of its accounts (that is to say that we will be able to request that the remaining balance is transferred in its entirety to another account in PLC's name if one exists, but not to make any other transactions).

41.2 We have continued our efforts to find another financial institution willing to provide accounts to PLC and/or the PLC Administrators and, in that regard, have approached a large number of UK and international banks. To date, none of them has been willing to bank PLC, for much the same reason (we understand) that Citibank wishes to exit the relationship. Our discussions with one UK bank are continuing, albeit without any guarantee that they will bear fruit.

42 PLC will therefore lose the use of its only currently accessible bank accounts, where the majority of its cash is held, at the end of January 2023, and there is a real risk that PLC will thereafter be left without any accessible banking facilities.

43 I note for completeness that the Administrators have also approached the Insolvency Service to explore whether it would be willing to permit us to use the Insolvency Service account as a fallback option. However:

43.1 The Insolvency Service is unwilling to do so in the absence of a court order.

43.2 In any event, I understand that the Insolvency Service account, even if were available to the Administrators, is able to hold funds in sterling only – whereas the majority of PLC’s cash is US dollars.

43.3 I also understand that the Insolvency Service would also levy substantial fees for any use of its account.

Creditor expectations and threat of action

44 A secondary reason for urgency is the risk that, in the absence of clarity in the near future as to when and how they will be paid (whether under schemes of arrangement or otherwise), creditors of the Scheme Companies will seek to take matters into their own hands by taking enforcement action. This could include claims against the guarantors of the 2022 Notes and the 2024 Bonds (which, in respect of the 2022 Notes, are PLC and certain of its former subsidiaries which, following the Sale, are now owned by UMMC). This raises the possibility of the Scheme Companies and/or their administrators becoming embroiled in legal proceedings in a number of jurisdictions, with the potential to create further delay and expense to the estate, to the detriment of creditors as a whole.

45 I note in this regard that various creditors have contacted the PLC Administrators to communicate their (unsurprising) wish to be paid as soon as practicable and, in some cases, to intimate legal proceedings. So far as the 2022 Noteholders are concerned, I note that as explained above, a redemption event took place following the delisting of PLC’s shares and in any event the 2022 Notes matured on 14 November 2022.

Delay: resignation of trustees and service providers

- 46 In the light of the matters set out above, we would have preferred to move the present application some time ago. However, we were not in a position to do so until we were confident that the Schemes being proposed would be practically achievable. That has been complicated due to the position taken by certain third parties, and in particular Citibank as the current trustee of the 2022 Notes, which we have only recently resolved.
- 47 We and our advisors first determined that (for the reasons explained below) it was likely to be in the best interests of creditors for us to pursue schemes of arrangement in relation to the Scheme Companies in September 2022.
- 48 We were advised that for the proposed Schemes to be workable, it would be necessary, among other things, for the trustees of the 2022 Notes and the 2024 Bonds to participate in and support the Schemes, and to ensure that information could flow to and from Scheme Creditors, wherever they might be located, in an effective way.
- 49 We therefore liaised with (among other parties) the existing trustees, being Citibank in respect of the 2022 Notes and Apex in respect of the 2024 Bonds. Although both trustees were initially supportive of the Schemes:
- 49.1 Citibank subsequently informed us, in late November 2022, that it was not willing to participate in the Scheme in respect of 2016 Limited and that it wished to be replaced as the trustee of the 2022 Notes before that Scheme was launched. We understand that this decision is driven by the bank's global policy of exiting Russia-related business referred to above.
- 49.2 Both Citibank and Apex informed us that, in any event, they were not able to provide information, solicitation, tabulation or settlement agency services in respect of 2016 Limited or 2010 Limited schemes, and that we would therefore need to appoint a separate agent or agents to take on these roles. We were aware in this regard that the work of the agent(s) was likely to be complicated by the need to liaise with 2022 Noteholders and 2024 Bondholders in a number of jurisdictions, including some in Russia, and by the fact that the NSD's designation under EU sanctions would make communications and payments through the clearing system difficult if not impossible (this problem and our proposed approach to it is addressed in further detail below).

- 50 We have therefore spent the past several weeks seeking to identify an alternative trustee for the 2022 Bonds (which would be: (i) able to carry out the required work; and (ii) acceptable both to the Scheme Companies and to Citibank as outgoing trustee), and to identify an information, solicitation, tabulation and settlement agent able to assist with the logistics of the Schemes.
- 51 In early December 2022, each of the Scheme Companies engaged i2 Capital Markets (“i2”), a UK-based trustee and financial services firm with recent experience of dealing with debt issues with a Russian dimension, to act as replacement trustee for the 2022 Notes and to provide the agency services set out above. We did so after a period of extensive discussion and commercial negotiation with a number of potential candidates, following which it was clear to us that i2 was best placed to take on this work. Citibank have also confirmed that i2 is well known to them and that they consider i2 to be a suitable replacement trustee for the 2022 Notes.
- 52 Following i2’s engagement, it was necessary for us to amend the Scheme documentation to reflect their appointment and to liaise with them regarding the practicalities of proposed notices, meetings, and payments under the Schemes (as addressed in detail below). We have issued the present application as soon as practicable after reaching the conclusion that the Schemes as presently envisaged will be workable.
- 53 Finally, I note that:
- 53.1 Although Apex, the trustee of the 2024 Bonds, has to date expressed its willingness to remain while the Scheme in relation to 2010 Limited runs its course, it has expressed the desire to resign as soon as possible and there is no guarantee that it will not also demand that it be replaced if the Schemes are not launched expeditiously.
- 53.2 Several other service providers to the Scheme Companies, including Ocorian, the Jersey-based corporate services provider to the Issuers, also wish to resign as soon as possible.

Conclusion on timing and urgency

54 The Applicants regret that it was not possible to issue the present application earlier, with the result that it is now made on an urgent basis, but trust that the Court will appreciate in light of the matters set out above that this was due to factors outside of our control.

55 We respectfully ask the Court to consider the present application on an urgent basis and, to the extent the Court considers just, to expedite the listing of the hearing and the date of the proposed creditor meetings sought to be convened, so as to allow the Schemes to become effective as soon as practicable and to reduce the risk that the Scheme Companies will be rendered practically unable to make distributions to creditors (assuming the Schemes are approved by the relevant creditors and sanctioned by the Court) as a result of the withdrawal of PLC's banking facilities.

E. STRUCTURE OF THE SCHEMES IN OUTLINE

56 The structure and terms of the Schemes are set out in:

56.1 The letter to proposed creditors of each of the Schemes (the "**Scheme Creditors**") sent by the Scheme Companies on 8 December 2022 (the "**PSL**") pursuant to the Practice Statement issued by the Chancellor of the High Court on 26 June 2020 in relation to schemes of arrangement between a company and its creditors, members, or any classes thereof under Parts 26 and 26A of the Companies Act 2006 (as amended) (the "**Practice Statement**") [AJM1/17/459-479].

56.2 The draft explanatory statement to proposed Scheme Creditors pursuant to Part 26 of the Companies Act 2006 (as amended) (the "**Explanatory Statement**") [AJM1/18/480-714], which includes:

- (i) a summary of action to be taken by creditors (at Section II) [AJM1/18/486-492];
- (ii) the expected timetable (at section III) [AJM1/18/493-494];
- (iii) a letter from me to Scheme Creditors, which reflects the content of the PSL (at section IV) [AJM1/18/495-501];

- (iv) an overview of the Schemes (at section V) [**AJM1/18/502-511**];
- (v) detailed voting instructions (at section VI) [**AJM1/18/512-517**];
- (vi) statutory information on the Scheme Companies and interests of directors (at section VII) [**AJM1/18/518-523**];
- (vii) the terms of the Schemes in respect of 2016 Limited (at Annex 1A) [**AJM1/18/524-559**]; 2010 Limited (at Annex 1B) [**AJM1/18/560-594**] and PLC (at Annex 1C) [**AJM1/18/595-626**];
- (viii) draft notices of the proposed creditor meetings in respect of 2016 Limited (at Annex IIA) [**AJM1/18/627-628**]; 2010 Limited (at Annex IIB) [**AJM1/18/629-630**] and PLC (at Annex IIC) [**AJM1/18/631-632**];
- (ix) a form of account holder letter (which will appear at Annex III);
- (x) a form of general creditor proof (which will appear at Annex IV – this and the form of account holder letter are currently under discussion with i2);
- (xi) the form of the proposed deed of release (at Annex V) [**AJM1/18/633-638**];
- (xii) a copy of the PLC Administrators’ proposals to creditors which were issued on 8 September 2022 (at Annex VI) [**AJM1/18/639-714**];
- (xiii) a master definitions schedule (which will appear at Annex VII when the Explanatory Statement is finalised for distribution).

57 In summary, the Scheme Companies are proposing the Schemes in order to discharge the remaining external liabilities of the Group (i.e. liabilities to creditors other than intragroup liabilities, and the liability to UMMC under the Term Loan, which has been subordinated and is to be dealt with in accordance with the SPA). The intention of the Schemes is to put in place a process for the distribution of the Scheme Consideration, which will be (for each Scheme Creditor) an amount intended to pay that Scheme Creditor’s Scheme Claim in full. In consideration for this payment, the Schemes will

cancel all rights of all Scheme Creditors under the 2022 Notes or 2024 Bonds, and discharge in full the claims of PLC's creditors (the "**General Creditors**").

58 The key terms of each of the Schemes include the following (unless otherwise indicated, the defined terms below are those used in the Explanatory Statement):

58.1 Pursuant to Clause 2 (Application of the Scheme and Scheme Effective Date) of each of the Schemes, the provisions of the Schemes shall come into full force and effect on the occurrence of the Scheme Effective Date.

58.2 Clause 3 (Consideration) of each Scheme provides that the authorities, instructions, undertakings and releases given by the Scheme Creditors are given in consideration of the rights given to them under the Schemes.

58.3 Clause 4 (Grant of Authority to Execute the Implementation Documents) provides that each Scheme Creditor irrevocably appoints the relevant Scheme Company as its agent and attorney to carry out certain implementation steps, including executing any Implementation Documents, agreeing any amendments to Implementation Documents, and generally to give effect to the Schemes.

58.4 Clause 4 also provides that each Scheme Creditor authorises and instructs the Undertaking Parties to enter into and perform the Implementation Documents to the extent applicable, and generally to take all steps and do all other things necessary or reasonably desirable to give effect to the Distribution. The Undertaking Parties may rely on any written instruction from the relevant Scheme Company acting on behalf of the Scheme Creditors to take any such action. Each Scheme Creditor is bound by each Implementation Document that is executed in accordance with clause 4.

58.5 Clause 5 (Scheme Mechanics) provides that the relevant Scheme Company will procure that the Information Agent will calculate the amount of Scheme Consideration to be distributed as soon as reasonably practicable following the Scheme Effective Date. This is to be based on the information submitted by Scheme Creditors in Account Holder Letters or General Creditor Proofs and calculated as set out in the Explanatory Statement.

- 58.6 Clause 5 of the Schemes in respect of 2016 Limited and 2010 Limited also provides that prior to or following the Scheme Effective Date the relevant Scheme Company shall issue instructions whereby (to the extent possible) Book Entry Interests relating to the 2022 Notes or 2024 Bonds are debited from custody accounts, and cancelled. The 2022 Notes and 2024 Bonds are to be cancelled in their entirety to the extent possible, and each Scheme Creditor agrees and undertakes that it will have no further recourse against any other parties in respect thereof.
- 58.7 Clause 5.3 provides that on the Scheme Effective Date Scheme Creditors become entitled to receive their pro rata allocations of the Scheme Consideration. Clause 5.4 provides that each Scheme Creditor acknowledges that it is only eligible to receive this Scheme Consideration if it has validly completed its Account Holder Letter or General Creditor Proof, including giving the Confirmations, and that it is not a Disqualified Person.
- 58.8 In respect of the Scheme for the Parent, Clause 5 also provides a process for the determination of disputed Scheme Claims.
- 58.9 A Scheme Creditor may appoint a Designated Recipient to receive its Scheme Consideration provided that the said Designated Recipient also provides the information and Confirmations specified. Scheme Creditors who comply with these requirements in advance of the Scheme Effective Dates will received their Scheme Consideration on the Scheme Effective Date.
- 58.10 If Scheme Creditors are unable to receive Scheme Consideration for any reason, such as the imposition of sanctions or otherwise, then the Scheme Consideration will be paid to the Holding Period Trustee to be held on trust until such time as the Scheme Creditor is able to confirm that it is eligible to receive its Scheme Consideration. The Holding Period Trust will remain in place for a period of one year from the Scheme Effective Date. After this period, any remaining Scheme Consideration held in the Holding Period Trust in respect of the Scheme Claims of Scheme Creditors who have not been able to come forward and establish their claims thereto in accordance with the Schemes may be distributed to PLC, directed to the payment of any other external claim against any member

of the Group, or by default to a registered charity. In such circumstances any remaining entitlement on the part of any Scheme Creditor to Scheme Consideration will be extinguished.

- 58.11 Clause 6 (Releases) provides that with effect on and from the Scheme Effective Date each Scheme Creditor authorises and instructs the relevant Scheme Company and the Trustee to enter into a Deed of Release substantially in the form of that set out at Annex V. The effect of the Schemes, including the Deeds of Release, is to provide a full and absolute satisfaction, waiver and release of all liabilities in respect of Scheme Claims, including (without limitation) any liabilities under the Guarantees.
- 58.12 Clause 7 (Ratifications and Confirmations) provides that in consideration for the receipt of its Scheme Consideration each Scheme Creditor ratifies and confirms everything that the participating parties have done or will cause to be done in compliance with or to give effect to the Schemes. Each Scheme Creditor confirms that its entitlement to receive Scheme Consideration is accepted in full and final settlement of all of its Scheme Claims, and gives undertakings to the relevant parties that it will so treat its scheme claims, and covenants not to sue any such party.
- 58.13 Clause 7.4 provides that any recovery made in contravention of the above undertakings is to be held on trust or turned over.
- 58.14 Clause 7.5 provides a further assurance clause by which, for a period of 45 business days following the Scheme Effective Date, each Scheme Creditor undertakes to the relevant Scheme Company, and *vice versa*, that they will provide such further assistance as may be reasonably required to implement the Schemes and the Distribution.
- 58.15 Clause 8 (Modifications of the Scheme) makes provision for the terms of the Scheme to be modified with the consent of the Scheme Company and the Majority Scheme Creditors, subject to a power on the part of the Scheme Company to consent to any modifications that the Court may think fit to approve or impose at any court hearing to sanction the Schemes, provided that such amendment or modification is of non-material effect.

- 58.16 Clause 9.1 provides for a standstill whereby Scheme Creditors are not permitted to take any Enforcement Action. Clause 9.2 provides that information submitted is to be treated confidentially.
- 58.17 Clause 9.3 confirms that Scheme Claims should be determined as of the Record Time. Clause 9.4 confirms that the relevant Scheme Company is under no obligation to recognise any assignment or transfer of a Scheme Claim taking place after the Record Time, but may in its sole discretion and subject to the production of such further evidence as it may reasonably request or any further terms and conditions which it may consider necessary or desirable, agree to recognise such an assignment or transfer.
- 58.18 Clause 9 goes on to make further provision in respect of procedural or administrative matters.
- 58.19 Clause 10 provides that PLC will pay in full the costs, charges, expenses and disbursements incurred by it or a Scheme Company in connection with the negotiation, preparation, or adaptation of the Schemes. Neither the Scheme Company nor PLC will be responsible for the costs or expenses of any other party, other than cost or expenses to which such party has a prior contractual entitlement.
- 58.20 Clause 11 makes provision as to public announcements, consistent with the prior provisions as to confidentiality referred to above.
- 58.21 Clause 12 provides that the Scheme and any non- contractual obligations arising out of or in connection with it will be governed by and in accordance with the laws of England and Wales, and the English Court is to have exclusive jurisdiction in respect thereof.

F. ALTERNATIVES TO SCHEMES OF ARRANGEMENT

- 59 My fellow Administrators and I have given consideration to potential alternatives to the proposed schemes of arrangement. In particular, we have considered the possibility of:

- 59.1 in the first instance, the PLC Administrators simply proceeding to make a distribution pursuant to paragraph 65, or, possibly, paragraph 60, of Schedule B1 of the Insolvency Act 1986 (“**Schedule B1**”); and
- 59.2 2010 Limited and 2016 Limited entering into an insolvency process, whether administration or liquidation, and the officeholders thereof proceeding with a distribution to creditors in due course.
- 60 The way in which such a distribution might work is described in further detail below. However, in summary, we take the view that the proposed Schemes are significantly more advantageous essentially for the following reasons:
- 60.1 The proposed Schemes would avoid the need for multiple interim distributions which would be required in an ordinary distribution under Schedule B1 and would not only increase expense but also would delay completion of the process considerably beyond the date by which it must be completed owing to the impending withdrawal of banking facilities by PLC’s bankers;
- 60.2 The proposed Schemes, in allowing for payment to be made by reference to the sum, and in the currency, stipulated in the relevant contract, would avoid the risk of adverse currency fluctuations, the consequences of which could be significant given the very substantial sums involved and the volatility of currency markets;
- 60.3 The proposed Schemes would avoid inconsistencies in the amounts proved for by the Trustees in a distribution made by 2016 Limited and 2010 Limited, and the amounts for which creditors (including 2016 Limited and 2010 Limited on the basis of their ICO Claims) could prove in a distribution made by PLC;
- 60.4 The proposed Schemes, in allowing for a framework that establishes each Scheme Creditor’s eligibility to receive payments in advance, including whether payment can be made to legally (and without breaching the sanctions regime) and practically), would avoid the risk of funds being stuck in the Clearing Systems and avoid the risk that an inability to establish that payment can legally be made to certain creditors would delay to payment to other creditors.

61 The points summarised above seem to us to emerge very clearly when one considers how distributions pursuant to Schedule B1 would have to be made as set out further below.

62 As explained at paragraphs 0 to 54 above, owing to the impending withdrawal of PLC's only banking facilities, among other things, the Administrators have very limited time to complete the distribution process, namely until the end of January 2023. However, a distribution process in accordance with Schedule B1 would be extremely unlikely to be completed within that period for the following reasons:

62.1 If the Administrators were to decide to proceed with a distribution in accordance with the provisions of Schedule B1 (or, indeed, if any of the proposed Schemes were not approved by the requisite majority at the Scheme Meetings, or not sanctioned by the Court, and the estates had to continue to be managed in accordance with applicable insolvency legislation), the starting point for all three companies would be first to apply for permission from the court to make a distribution. While an application for expedition would be made upon the same basis as the present application, on any basis the process of obtaining such permission will take at least some time.

62.2 Assuming that permission to make a distribution pursuant to paragraph 65 of Schedule B1 would be forthcoming, the Administrators would then have to proceed with the necessary steps for declaring and distributing a dividend pursuant to the Insolvency (England and Wales) Rules 2016 (the "**2016 Rules**"). The earliest date by which a distribution pursuant to paragraph 65 of Schedule B1 could be made would be after the expiry of the mandated 21-day period between the notice of intention to declare a dividend and the last date for proving together with the time required to make a decision as to the proofs submitted and to declare the dividend in practice. In circumstances where, as further explained below, the asset and liability position of the three companies is not straightforward and there would likely be multiple claims in respect of the same subject-matter, consideration of the proofs submitted and declaration of the dividend is likely to take, at least, some time. There would, of course, also be a risk that the process could be delayed significantly in the event that any

application is made to court challenging any of the Administrators' decisions on a proof.

62.3 Finally, it is anticipated that, were a distribution process under Schedule B1 to be proceeded with, as explained further below, it would be necessary for a series of distributions to be made, compounding the time which the entire process would take.

63 A Schedule B1 distribution by 2010 Limited and 2016 Limited to their respective legal creditors would involve payments to the Trustees in respect of the 2024 Bonds and the 2022 Notes respectively. While the true economic interest in respect of the 2024 Bonds and the 2022 Notes is held by the 2022 Noteholders and the 2024 Bondholders, these are not present legal creditors of 2010 Limited and 2016 Limited and the latter's payments to 2022 Noteholders or 2024 Bondholders would ordinarily be effected via intermediaries through Euroclear and Clearstream (the "**Clearing Systems**"). However, by virtue of the Sale, PLC holds approximately 50% of the outstanding principal amount of the Notes – as explained at paragraph 23.3 above, 2022 Notes with a face value of US\$ 177 million are held in a securities account in PLC's name at Bank St Petersburg, which in turn has an account with NSD, which is a nominee holder holding the 2022 Notes on behalf of beneficial holders as part of the Moscow Stock Exchange. In the first instance, therefore, the Trustee of the 2022 Notes would be obliged to apply any sums received pro rata across all of the 2022 Notes, as it would be unable to differentiate between 2022 Notes held in the clearing systems by or on behalf of PLC or other group companies or those held by external creditors. This would result in a substantial proportion of the funds available being directed towards PLC's account at the Bank St Petersburg and would lead to a dilution in the amounts payable to external creditors and a delay to any final dividend being capable of being paid. Those funds would only become available to PLC again to the extent that they can be received in its accounts at the Bank St Petersburg, and then remitted to it in its capacity as a 2022 Noteholder. However, as this account is held through NSD, these funds are highly likely to be blocked and, therefore, remain unavailable to PLC or to its creditors.

64 Were distributions pursuant to Schedule B1 to be proceeded with, it would result in three different sets of claims being made against different entities in respect of the same subject-matter, namely the 2022 Notes and the 2024 Bonds, as follows:

- 64.1 Firstly, claims by the Trustees against 2016 Limited and 2010 Limited in respect of the amounts due under the 2022 Notes and the 2024 Bonds;
- 64.2 Secondly, claims in debt by 2016 Limited and 2010 Limited against PLC in respect of their respective ICO Claims; and
- 64.3 Finally, claims by the Trustees against PLC under guarantees provided by it in respect of the 2022 Notes and the 2024 Bonds.
- 65 It is also at least theoretically possible, albeit unlikely, that certain subsidiaries of UMMC (being former subsidiaries of PLC), which also provided guarantees in respect of the 2022 Notes, may have claims for contribution or indemnity against PLC.
- 66 Such a multiplicity of claims in respect of the same subject matter would give rise to inherent complexity in the distribution process.
- 67 Apart from anything else, there would be an inconsistency between the amounts for which the Trustees could prove in a distribution made by 2016 Limited and 2010 Limited in respect of the amounts due under the 2022 Notes and the 2024 Bonds (or indeed the amounts which the Trustees could prove in a distribution by PLC in respect of the amounts due under the 2022 Notes and the 2024 Bonds), and the amounts for which 2016 Limited and 2010 Limited could prove in respect of the ICO Claims in a distribution made by PLC in circumstances where:
- 67.1 the relevant date for the calculation of the debts of 2010 Limited and 2016 Limited would, of course, be materially different to that of PLC (likely a date in December 2022 as opposed to 18 July 2022); and
- 67.2 different rates of interest are applicable to the ICO Claims and the 2022 Notes and the 2024 Bonds.
- 68 Furthermore, the sale proceeds received by PLC pursuant to the Sale are only sufficient to pay in full the external creditors of the Group. Accordingly, were 2010 Limited and 2016 Limited in respect of their ICO Claims, or the Trustees upon their guarantees of the 2022 Notes and the 2024 Bonds, to prove in PLC's administration, at least in the absence of an ad hoc arrangement between the Issuers and the Trustees, the initial payments received by the underlying 2022 Noteholders and 2024 Bondholders would

be diluted substantially. While, in due course, the 2022 Noteholders and 2024 Bondholders would then be able to prove in the insolvencies of and, receive a distribution from, 2010 Limited and 2016 Limited, such distribution would be subject to considerable delay and expense, which could in turn lead to a shortfall remaining at least initially.

69 In addition, within each set of claims, a number of further issues would arise as described below.

70 According to the statutory scheme under Schedule B1 and the 2016 Rules, debts in a foreign currency, which would include the majority of PLC's debts, including those owing to 2010 Limited and 2016 Limited in circumstances where they are denominated US Dollars, would have to be converted by the Administrators into GBP Sterling at a rate determined by the Administrators by reference to the exchange rates prevailing on the administration date, namely 18 July 2022 (see rule 14.21 of the 2016 Rules).

71 As noted above, in circumstances where we anticipated making distributions in respect of such debts in US Dollars, on or around 9 September 2022, we took the decision to convert a substantial proportion of the cash consideration received from UMMC in Sterling (£146,281,971) into US Dollars at a rate of 1.1553USD:GBP so as to provide certainty that the US Dollar-denominated liabilities could be met, and to avoid the risks inherent in holding assets in Sterling out of which liabilities in US Dollars were intended to be discharged. Therefore, were a distribution pursuant to Schedule B1 now to be proceeded with and payment made in Sterling, as it would be required to be, it would be necessary for the Administrators to convert back the monies converted into US Dollars into Sterling, thereby again giving rise to the risk of future adverse currency fluctuations. Given the amounts at stake and the recent volatility in the currency markets, the impact of such adverse currency fluctuations could be very significant. Indeed, in circumstances where the USD:GBP rate is as of 11 December 2022 approximately 1.23, were the conversion of US Dollars back to Sterling to occur on that date, it would result in a currency loss in the sum of £8.4 million.

72 It should also be noted that, under Schedule B1, to the extent that any debt of which payment is not due at the date of the declaration of a dividend, the amount of the

creditor's admitted proof in respect of such debt must be discounted under Rule 14.44 of the 2016 Rules. Relevant to the present case:

72.1 so far as PLC is concerned, the ICO Claims of the Issuers against it would have to be discounted under Rule 14.44, not having been accelerated or otherwise due for payment on the date of PLC's entry into administration;

72.2 so far as 2010 Limited and 2016 Limited are concerned:

(i) as explained above, the full nominal amount of the 2022 Notes has either matured or been the subject of a Relevant Event Put Option Notice (as that term is used in the terms and conditions of the 2022 Notes) prior to the possible entry into administration of 2016 Limited; and

(ii) however, while the majority of the 2024 Bonds have also been subject to a Relevant Event Notice (as that term is used in the terms and conditions of the 2024 Bonds, and referred to in this statement together with each Relevant Event Put Option Notice as the "**Relevant Event Notices**") prior to the possible entry into administration of 2010 Limited, to the extent that they have not, the remaining amount would in due course be subject to being discounted under Rule 14.44 of the 2016 Rules.

73 Under a Schedule B1 distribution there is a risk that the issue of sanctions may delay the entire process. PLC, 2010 Limited and 2016 Limited would, of course, not be able to make any payments that would be in breach of any applicable sanctions. While we are not aware of any creditors of any of PLC, 2010 Limited or 2016 Limited that are the subject of sanctions, in circumstances where we are not aware of the ultimate identities of all of those creditors we cannot be certain that this is the case. We are also aware that the NSD is the subject of EU sanctions, and therefore the Clearing Systems are not dealing with or processing any instructions via or through NSD. Payment through the Clearing Systems would therefore be subject to the risk that payments would be blocked by the Clearing Systems or the NSD itself with the consequence that some creditors (even if not sanctioned) may not receive funds. In this way the impact of sanctions gives rise to a further reason why, were a Schedule B1 distribution process to be followed, payment of all creditor claims plus interest is likely to require several

interim distributions as monies are transferred between PLC, the clearing systems and 2010 Limited and 2016 Limited. As this process would consume funds available to the estates by way of increased expenses, whilst interest continued to run under the applicable Trust Deeds, this will create the risk that creditors would not be paid in full.

74 In the light of the various issues which would arise were an ordinary distribution by PLC and, in turn, 2010 Limited and 2016 Limited proceeded with, as highlighted above, my fellow Administrators and I very strongly consider that the proposed parallel Schemes would result in a better outcome for creditors. In particular, as referred to above, we consider that the following factors weigh heavily in favour of the Schemes over the potential alternatives identified above:

74.1 In contrast to the position were an ordinary distribution process in accordance with Schedule B1 to be proceeded with by each of PLC, 2010 Limited and 2016 Limited, which would likely require multiple interim distributions as funds pass back and forth between those companies and the Clearing Systems for the reasons set out above, the Schemes would allow for a single distribution to be made, thereby:

- (i) Allowing for distribution to be made in advance of the date by which PLC's bankers have stated that they intend to withdraw facilities, namely on 31 January 2023; and
- (ii) avoiding the additional expense that would be incurred were PLC, 2010 Limited and 2016 Limited each to proceed with their own respective distributions (let alone successive distributions).

74.2 Again, in contrast to the position in an ordinary distribution under Schedule B1, under the proposed Schemes payment can be made by reference to the sum, and in the currency, stipulated in the relevant contract, thereby avoiding the risk of adverse currency fluctuations, the consequences of which could be significant.

74.3 The Schemes would avoid:

- (i) any inconsistency which would arise in an ordinary distribution pursuant to Schedule B1 between the amounts for which creditors could prove in

a distribution made by 2016 Limited and 2010 Limited, and the amounts for which creditors (including 2016 Limited and 2010 Limited on the basis of their ICO Claims) could prove in a distribution made by PLC;

- (ii) any potential inconsistencies in the proofs that would be submitted in any series of Schedule B1 distributions owing to the extent to which creditors' claims are to be discounted under Rule 14.44 of the 2016 Rules.

74.4 The Schemes would allow for a framework to be put in place that establishes each Scheme Creditor's eligibility to receive payments in advance, including whether payment can be made legally (and without breaching the sanctions regime) and practically), thereby avoiding:

- (i) the need to channel funds and instructions through NSD and funds being stuck in the Clearing Systems as a result; and
- (ii) as to 2022 Noteholders and 2024 Bondholders in relation to whom it is not possible to be certain that payment can legally be made, the proposed Schemes provide for a mechanism whereby monies can be held in trust pending resolution of the issue but also whereby in the meantime their potential claims against PLC and the other guarantors under guarantees would be extinguished, providing certainty for all parties and avoiding any delay to payment to other creditors.

74.5 In contrast to the position in an ordinary distribution under Schedule B1, the proposed Schemes:

- (i) can provide for the express discharge and release of the guarantees provided by PLC and the other guarantors, in circumstances where the Proposed Schemes would be binding upon all 2022 Noteholders and 2024 Bondholders; and
- (ii) can provide for the cancellation of the 2022 Notes held by PLC itself without the inevitable delay that would be caused were steps taken to do

this through the Clearing Systems in circumstances where NSD is sanctioned.

- 75 If, on the face of it, UMMC, PLC's single largest creditor, might appear to have been better off in a statutory distribution under Schedule B1 (as might have been the case subject to currency fluctuations) UMMC's support for the proposed Schemes can be explained by the fact that under such Schemes the 2022 Noteholders and 2024 Bondholders would be paid to the fullest possible extent of their claims as soon as possible which would provide certainty in relation to the release of guarantees provided by certain of its subsidiaries (which were formerly subsidiaries of PLC).
- 76 In the circumstances, payment to Scheme Creditors in full outside the ordinary insolvency framework does not prejudice any other creditor or stakeholder in the Scheme Companies – ordinary unsecured creditors are to be repaid the amounts owed to them in contract or otherwise in full, and to the extent that this might result in any delay or reduction in amounts that would otherwise be distributed to the subordinated creditor, UMMC, UMMC consents to this outcome. The amount of the consideration received for the Sale to UMMC, and those conditions that relate to the application of any surplus towards repayment of the subordinated debt owed to UMMC, mean that there would be no distribution to members on any analysis.

G. CLASS ISSUES

- 77 In order to determine the appropriate classification of creditors, the Applicants have considered the present rights of the various categories of Scheme Creditors and the way in which those rights will be compromised under the Schemes. The Applicants have identified the following potential issues that arise.

Relevant Event Put Options under 2022 Notes and 2024 Bonds

- 78 The present rights of 2022 Noteholder Scheme Creditors are defined by reference to the Terms and Conditions of the 2022 Notes, the 2022 Notes Trust Deed and the existing Deed of Guarantee. The present rights of 2024 Bondholder Scheme Creditors are defined by reference to the Terms and Conditions of the 2024 Bonds, and the 2024 Bonds Trust Deed.

- 79 Following the making of the PLC Administration Order on 18 July 2022, the shares in PLC ceased to be listed on the Official List of the UK Listing Authority and ceased to trade on the regulated market of the London Stock Exchange. This constituted a Relevant Event for the purposes of condition 6.3.1(iv) 2022 Notes and condition 8(o) of the 2024 Bonds.
- 80 As a result, a holder of a 2022 Note or a 2024 Bond had an option to require the relevant Scheme Company to redeem its holding of 2022 Notes or 2024 Bonds as the case may be at 101% of its principal amount, together with accrued and unpaid interest thereon, and each relevant Scheme Company made public announcements and issued Relevant Event Put Option Notices to 2022 Noteholders and 2024 Bondholders accordingly.
- 81 Following the issue of the Relevant Event Put Option Notices, holders of approximately US\$ 95 million in principal amount of the 2022 Notes, and \$32 million in principal amount of the 2024 Bonds sought to exercise the Relevant Event Put Options. The relevant Scheme Companies acknowledged the exercise of the Relevant Event Put Options, but were unable to make payments of the sums that fell due as a consequence thereof on the dates specified in the 2022 Notes Trust Deed or 2024 Bonds Trust Deed.
- 82 It appears to the Scheme Companies that certain further holders of 2022 Notes and/or 2024 Bonds would have wished to participate in the put option procedure, but were unable to do so due to the inability of the Clearing Systems and intermediaries to process relevant instructions arising out of the imposition of Sanctions. The Scheme Companies consider that it would be unfair to divide the holders of outstanding 2022 Notes and 2024 Bonds, as the case may be, between those who were able to submit Relevant Event Put Option Notices and those who were not. Such a division may also result in disputes arising as to the circumstances in which an individual holder was unable to submit a Relevant Event Put Option Notice, which would require a disproportionate allocation of time and expense to resolve.
- 83 The Scheme Companies therefore intend to distribute funds to the 2022 Noteholders and 2024 Bondholders on the basis that they are all entitled to receive 101% of the principal amount of the 2022 Notes or 2024 Bonds they hold, plus accrued interest to the anticipated payment date. The Scheme Companies consider that although certain 2022 Noteholders and 2024 Bondholders, in each case, have slightly different rights

against each Scheme Company depending on whether or not they were capable of delivering a Relevant Event Put Option Notice to the relevant Scheme Company by the applicable deadline, this is not such a dissimilarity of interests between them that they cannot consult together with a view to their common interests in considering the present Schemes.

2022 Notes held by PLC

- 84 Following the sale of substantially all of its assets to UMMC, PLC holds approximately \$175 million in principal amount of the 2022 Notes.
- 85 These 2022 Notes are held in an account at the Bank of St Petersburg, which in turn has an account with NSD. As NSD is presently the subject of EU Sanctions, the Clearing Systems are not carrying out any dealings with or via NSD – this means that the 2022 Notes held by PLC cannot be cancelled in practical terms, as would ordinarily be the case where notes are obtained by an Affiliate of the issuer.
- 86 Although these 2022 Notes are outstanding obligations of 2016 Limited, PLC would not be entitled to cast any votes in respect thereof on any resolution put to 2022 Noteholders under the 2022 Notes Trust Deed – see the definition of “outstanding” at page 5 of the 2022 Notes Trust Deed (**[AJM1/12/340]**). PLC will also not be distributing any funds to itself in respect of the Schemes – even if such a distribution could be effected without funds being frozen by the Clearing Systems, this would be purely circular and only serve to dilute the distributions to other Scheme Creditors. Therefore, PLC is not considered to be a Scheme Creditor of 2016 Limited but will deal with its rights and obligations as against 2016 Limited by bilateral agreement. No class issue arises.

Creditors of PLC

- 87 The General Creditors of PLC have claims that arise from a number of different sources, including:

87.1 Ordinary trading expenses of PLC;

- 87.2 The ordinary trading expenses of 2010 Limited or 2016 Limited, such as those referred to at paragraphs 27.3 and 29.3, but in respect of which PLC was either jointly liable or as to which PLC assumed responsibility for payment;
- 87.3 Claims of employees of PLC calculated in accordance with applicable laws following the PLC Administration;
- 87.4 Claims of former holders of 2024 Bonds who had issued Conversion Notices in respect thereof, and as to which PLC had issued a Cash Alternative Election Notice whereby the applicable obligation under 2024 Bonds Trust Deed became an obligation to make a cash payment to the former bondholder, but which had not been settled before the PLC Administration Date.
- 88 These differing categories of claim arise from different sources and have minor differences in rights attached to them, such as to the time of payment and whether contractual interest applies to them. However, they are all fundamentally claims to payments of cash from PLC, and in the absence of the Schemes they would all be determined in accordance with the Insolvency Rules 2016. They would all be subject to the same provisions as to post-administration interest under Rule 14.7. Therefore, the PLC Administrators consider that all of the General Creditors have sufficiently similar rights against PLC that they can sensibly consult together with a view to their common interest in considering the PLC Scheme.

Impact of sanctions

- 89 Sanctions imposed as a result of the conflict in Ukraine may have an impact on the ability of Scheme Creditors to participate in the Scheme process or receive their Scheme Consideration.
- 90 None of the Scheme Companies has been made the subject of any Sanctions, nor has any individual associated or connected with them. The Scheme Companies are not aware of any Scheme Creditor who is the subject of Sanctions, although the Scheme Companies cannot be aware of the present identity of every single Scheme Creditor by virtue of the way in which the 2022 Notes and 2024 Bonds are held through the Clearing Systems.

- 91 The Scheme Companies are aware that NSD has been made the subject of Sanctions by the European Union. One consequence of this is that the Clearing Systems, which are situated in the European Union and subject to its jurisdiction, will not communicate with or pass instructions via NSD. Scheme Creditors who hold 2022 Notes or 2024 Bonds via NSD will not be able to submit Voting Instructions through the Clearing Systems in the usual way, and would not be able to receive any Scheme Consideration that was distributed via the Clearing Systems. This is so regardless of whether the Scheme Creditor itself is the subject of any Sanctions.
- 92 The Schemes have been structured so as to mitigate these issues to the extent possible. Scheme Creditors are notified that if they consider that their ability to submit Voting Instructions is affected by the imposition of Sanctions, they may contact the Information Agent to submit evidence of their Scheme Claims by other means. Scheme Creditors are also given the opportunity to nominate a separate account or Designated Recipient where Scheme Consideration may be received without having to pass through the Clearing Systems. If it transpires that certain Scheme Creditors are unable to submit Voting Instructions and/or Account Holder Letters prior to the Scheme Effective Date, due to Sanctions or for any other reason, Scheme Consideration is transferred to the Holding Period Trust (as described in further detail below) for a reasonable period to permit the resolution of whatever issue it is that has prevented that Scheme Creditor from participating.
- 93 None of the above factors results in any class issue between Scheme Creditors who may be the subject of Sanctions themselves or whose ability to participate is affected by Sanctions. The proposition being put forward by the relevant Scheme Company is the same as regards all of its Scheme Creditors. Whether or not a particular Scheme Creditor is able to respond to that proposal is a function of the status of that individual Scheme Creditor, and not the consequence of any inherent difference in treatment of such Scheme Creditor by the Schemes themselves.

Conclusion on class issues

- 94 Each relevant Scheme Company considers that the Scheme Creditors in attendance at each Scheme Meeting have a sufficiently common interest in considering the proposal that is being put by the Schemes – namely whether they wish the distribution

mechanisms set out in the Schemes to be adopted by the Scheme Companies as a means of paying and discharging their external creditor claims; or whether they prefer the estate of each relevant Scheme Company to be administered and distributions to take place independently in accordance with the applicable insolvency laws of England and Jersey, with the risks to a full recovery of the amounts owed to them that this would entail as set out above.

- 95 Therefore, PLC proposes to convene a single meeting of the General Creditors; 2010 Limited proposes to convene a single meeting of the 2024 Bondholders; and 2016 Limited proposes to convene a single meeting of the 2022 Noteholders, notwithstanding the matters set out above.

H. JURISDICTION ISSUES – USE OF ENGLISH SCHEMES

- 96 While PLC is incorporated in England & Wales, 2010 Limited and 2016 Limited are both incorporated in Jersey. However, without waiving privilege, we are advised that:

96.1 as a matter of English law a scheme may be pursued in respect of a company that is liable to be wound up in England and Wales, even if not itself incorporated there;

96.2 2010 Limited and 2016 Limited are considered to be overseas companies under the Insolvency Act 1986, and may be wound up pursuant to section 221 of that Act if sufficient connection is shown with England and Wales.

96.3 sufficient connection can be shown for the following reasons:

- (i) they are UK tax resident;
- (ii) their principal liabilities are, respectively, their liabilities under the 2024 Bonds and 2022 Notes, which are governed by English law;
- (iii) the trustee of the 2024 Bonds is an English incorporated company with its registered offices and place of business in England and Wales.
- (iv) the trustee of the 2022 Notes is a UK-registered establishment of an overseas company, with its registered establishment office address and

place of business in England and Wales. In both cases, they are within the jurisdiction of the Court;

- (v) the Issuers' respective principal assets are their intercompany claims against PLC, which is situated in the UK and which claims are governed by English law;
- (vi) PLC is already in administration in England, and is under the control of the PLC Administrators, who are officers of the English Court;
- (vii) the Issuers consider that it is appropriate for them also to enter into administration under the supervision of the English Court, and by the time the Schemes become effective (if approved) they will already be subject to an English administration order;
- (viii) we believe that there are several 2022 Noteholders and/or 2024 Bondholders within the jurisdiction of the Court – it is anticipated that the Scheme Companies may file further evidence on this point in due course; and
- (ix) all communications and any negotiations in relation to the distribution, including physical meetings, between 2010 Limited and 2016 Limited and their respective Scheme Creditors have been conducted from London, in that the Trustees, the 2024 Bondholders and the 2022 Noteholders typically look to the investor relations unit and company secretarial department of PLC, whose personnel are based in London.

97 It is also considered highly desirable for the distribution to be effected under a single mechanism under the oversight of a single Court, and appropriate officers of that Court. Therefore, 2010 Limited and 2016 Limited consider that they can demonstrate that they have sufficient connection to England and Wales, and that the Schemes would be an appropriate exercise of the powers of the English Court, and will seek to implement the Schemes in England accordingly.

I. INTERNATIONAL RECOGNITION

- 98 Without waiving privilege, we have been advised that the Schemes in respect of the Issuers are likely to be recognised in Jersey such that no creditor would be able to take any action in Jersey that would be inconsistent with the terms of the Scheme. The appointment of administrators in respect of the Issuers, if made by the Court, will also likely be recognised by the Jersey courts on application thereto, and their acts will therefore be recognised as validly carried out on behalf of the Issuers as a matter of Jersey law.
- 99 Aside from the obvious need for the appointment of administrators in respect of the Issuers to be recognised by the Jersey courts, in circumstances where the Issuers are Jersey companies, the extent to which, as far as we are currently aware, the proposed Schemes give rise to further issues of international recognition is limited in circumstances where:
- 99.1 UMMC, PLC's largest single creditor and holder of the Term Loan, supports the proposed Schemes;
- 99.2 While the Administrators cannot be certain of the identity or location of all creditors, in particular the identity or location of all 2022 Noteholders and 2024 Bondholders, the proposed Schemes provide for all such creditors to be paid in full; and
- 99.3 No objection to the proposed Schemes has yet been received.
- 100 In the circumstances, we currently do not envisage opposition to the Schemes. Further, in circumstances where creditors' claims are to be satisfied to their fullest extent, it is difficult to see from where any such opposition would emerge. However, we will keep this under review and, in the event that any opposition to the Schemes emerges in any other jurisdiction, address any issues of international recognition at the sanction hearing.

J. NOTICE

101 The Scheme Companies have considered carefully the issue of how much notice it is appropriate to give to Scheme Creditors of the Scheme Meetings. The Scheme Companies have taken the following matters into account.

102 First, the Scheme Companies have considered whether Scheme Creditors or any subsets of them have any legitimate expectations as to the notice to which they are entitled for any particular transaction or step. The 2022 Notes Trust Deed contains provisions for meetings of noteholders. These are not suitable for use in the present case, but I note that under these provisions a meeting of noteholders would ordinarily be convened on 21 days' notice – see paragraph 3.2 of Schedule 4.

103 Similarly, the 2024 Bonds Trust Deed also contains provisions for meetings of noteholders, which also include provision for 21 days' notice – see paragraph 4 of Schedule 4.

104 Finally, as noted above, were there to be a distribution under paragraph 65 of schedule B1, there would be a period of 21 days following notification of the intended distribution for creditors to submit a proof.

105 On the other hand, the Scheme Companies are under significant pressure to effect the distribution as soon as possible. As I have noted elsewhere in this statement, it presently appears to be critical that the distribution be effected before the end of January 2023. If claims are not paid out at that time, then there is a severe risk that the funds available for the payment of creditors will be frozen or otherwise made unavailable for distribution. Taking account of the fact that, following the Scheme Meetings, and assuming that resolutions approving the Schemes are passed at the Scheme Meetings, the Scheme Companies must return to court for a sanction hearing, following which further administrative steps such as delivery of sealed orders to Companies House and other logistical steps relating to making payments must be performed, it is desirable to hold the Scheme Meetings as soon as possible in January 2023 in order to ensure that the distribution can take place as envisaged.

106 Therefore, the Scheme Companies respectfully request an order convening Scheme Meetings for 9 January 2023. This date falls 19 days after the anticipated date of the

convening hearing. Taking account of the fact that there are certain additional public holidays falling over the Christmas period, this provides at least 9 business days for Scheme Creditors to submit their votes. In my respectful view, this provides a fair opportunity in the circumstances for Scheme Creditors to submit their votes.

107 Whilst this might be considered to be tight, I consider that it is appropriate for a number of reasons. As I have explained, there is a significant need to effect the distribution as soon as possible and in any event by the end of January 2023. Given that, unusually, the intention of the scheme is to pay all creditors' claims in full, it would appear that it is firmly in the interests of all creditors to press on and seek to effect the distribution as soon as possible, and it is unlikely in my view that any creditor would seek to object to the Schemes in their current form.

108 While the period between publication of the notice of the Scheme Meetings and the voting deadline will be relatively short, the promulgation of the Schemes will not be a surprise to creditors. The intention to utilise a scheme of arrangement was noted as a preferred outcome in the Proposals, which were issued on 8 September 2022 – see paragraphs 1.12, 1.13, and 5.13. This has also been reiterated in our public communications – see, for example:

108.1 Page 6 of the “Frequently Asked Questions” document we published on 13 September 2022 [AJM1/13/448-454];

108.2 The press release in relation to the 2022 Notes of 7 October 2022, which envisaged the pursuit of a scheme of arrangement with a view to payment in Spring 2023 [AJM1/14/455];

108.3 The press releases in relation to both the 2022 Notes and the 2024 Bonds of 2 November 2022, which envisaged an application for a scheme of arrangement being made “in the coming weeks” with a view to payment on or around the end of January 2023 [AJM1/15/456 – AJM1/16/457]; and

108.4 Publication of the PSL on 8 December 2022. A copy of the PSL was distributed to the Trustees of the 2022 Notes and the 2024 Bonds and to the holders of the 2022 Notes and the 2024 Bonds through the clearing systems and news channels such as Bloomberg. We also published a press release directing interested

parties to the PSL (via LSE REACH and PLC's website, in English; and via Interfax, a Russian news agency, and PLC's Russian-language website, in Russian).

109 Finally, I can confirm that we have sought to pre-warn as many creditors as possible of the launch of the applications in respect of the Schemes. Following the occurrence of the Relevant Events (described above) we were contacted by 2022 Noteholders representing approximately 80% of the outstanding 2022 Notes, and 2024 Bondholders representing approximately 95% of the outstanding 2024 Bonds. We have remained in contact with these Scheme Creditors and the Information Agent has notified them that they should be ready to submit their Account Holder Letters. In addition, since being appointed as Administrators of PLC, we have dedicated significant time to identifying and contacting General Creditors of PLC and are confident that we have identified and have contact details for the overwhelming majority of them. We have also, therefore, beginning in October 2022, written to General Creditors to request that they submit up-to-date information regarding their claims in advance of the anticipated launch of the Schemes.

110 So far as I am aware, to date no objections to our intention to propose the Schemes have been received from any proposed Scheme Creditor (or anyone else). On the contrary, several creditors have expressed the wish that the Schemes be launched as soon as possible.

111 It is proposed that notices of the Scheme Meetings, the Explanatory Statement and voting materials be distributed as follows:

111.1 Notices will be distributed to the 2022 Noteholders and 2024 Bondholders and via the Clearing Systems as is ordinarily the case with proposals to be made to holders of book-entry interests in this type of security;

111.2 In addition, as we are aware that instructions vis NSD are not presently being processed, and that the Clearing Systems themselves may be hesitant in taking steps to process matters involving Russian-related securities, we will also distribute the materials directly to those creditors of whom we are already aware;

- 112 Further, we intend to:
- 112.1 Issue additional press releases: (i) giving notice of the convening hearing once listed; and (ii) confirming the outcome of the convening hearing once known. We will also publish the notices, Explanatory Statement and voting materials on the PLC website and through the channels utilised for the distribution of the PSL referred to in paragraph 108.4; and
 - 112.2 Issue relevant notices to Scheme Creditors in the Gazette and, to the extent practicable (in consultation with i2 as the Information Agent) make announcements via appropriate publications in Russia (including for example Interfax, a leading Russian regulatory news service), which will be in Russian.
- 113 We will discuss these matters further with i2 following their appointment as information agent, and update the Court with any further steps they recommend at the first hearing. However, based on my experience of interacting with Scheme Creditors since our appointment as Administrators of the Parent, and my discussions to date with PLC's longstanding investor relations team and i2, I am confident that the steps outlined above will be sufficient to bring the formal launch of the Schemes to the attention of the overwhelming majority of the Scheme Creditors.
- 114 Given the advance notice that has already been provided of the intended launch of the Schemes, and the interaction that is already under way between the Scheme Companies, the information agent and Scheme Creditors, I am confident that Scheme Creditors will have a reasonable opportunity to consider the Schemes in advance of Scheme Meetings if they are convened as requested, and that the Scheme Meetings will be representative of Scheme Creditor opinion. I therefore respectfully request that the meetings be convened for 9 January 2023.

K. ARRANGEMENTS FOR MEETINGS AND VOTING

- 115 It is intended that the meetings themselves will be held in hybrid format, as has become increasingly common since the COVID pandemic. There will be a physical location from which the Scheme Meetings will be instigated, at the offices of our solicitors JHA in London, and Scheme Creditors will have the opportunity to attend that location physically if they wish. However, I would anticipate that any Scheme Creditor who

does wish to attend the meeting will do so virtually. Again, the arrangements set out in this section are subject to further discussion with, and receipt of advice from, i2 as information agent.

- 116 A Scheme Creditor will have the option to nominate the Chairman of the Scheme Meeting or the information agent as its proxy to vote in accordance with its wishes; it can also appear in person or appoint a representative to attend the Scheme Meeting, subject to confirmation of that person's identity.
- 117 The virtual meetings will be hosted in conjunction with the information agent, who has significant experience of managing similar processes in other proceedings. Opus also has experience of managing hybrid decision procedures and voting mechanisms under the Insolvency Rules 2016.
- 118 The procedures proposed to be adopted for voting on the Schemes are set out at Section VI of the draft Explanatory Statement. The Scheme Companies have discussed the most appropriate process with the information agent and these discussions are ongoing, but by the time of the convening hearing we will have formulated the procedures set out in the final version of Section VI accordingly based on established market practice and the particular circumstances of the Scheme Companies.
- 119 It is envisaged that the voting procedures will take place substantially electronically. I am aware from the information agent's initial contacts with Euroclear that the Clearing Systems might not be available to the Issuers and the Scheme Creditors in the normal way given the sensitivity surrounding participation in any transactions involving Russian-related issues. I believe that any such reluctance to assist would be misplaced, given that none of the Scheme Companies has itself conducted any business that has in any way infringed or threatened to infringe any Sanctions, and the operating assets of the Group were sold some months ago now. However, we have had to prepare for the contingency that the Clearing Systems will not process instructions in the normal way, and therefore the information agent is available to receive Voting Instructions directly from Scheme Creditors. I anticipate that this will take place by email where required.
- 120 As regards the General Creditors, Opus has already been in contact with all of the General Creditors whom we have been able to identify, and whom we believe constitute the totality of the creditors of the Parent. We will request that General Creditor Proofs

are submitted via email to Opus. General Creditor Proofs will be checked against information already held by the Administrators and the Parent.

121 The Account Holder Letters and the General Creditor Proofs also contain other confirmations requested in connection with the Schemes, such as confirmation as to the eligibility of the Scheme Creditor in question to receive the Scheme Consideration.

122 I therefore respectfully ask the Court to approve the voting procedures to be set out at Section VI of the Explanatory Statement and the forms to be exhibited to the Explanatory Statement at Annexes III and IV. These procedures and materials have been discussed at length between the Scheme Companies, the information agent and legal advisors, and the Scheme Companies respectfully submit that they represent an appropriate mechanism for use with regard to the Schemes.

123 The information agent will also act as voting and tabulation agent with respect to the Schemes, and in that capacity will assist the Chairman of the Scheme Meetings in scrutinising votes case, tabulating the results and reporting those results to the Court in due course.

L. IMPACT OF SANCTIONS

124 The Administrators have given careful consideration to the impact of sanctions legislation on the Schemes. I understand that this will largely be dealt with in submissions, but that the following brief observations may assist the court.

The applicable sanctions regimes

125 I am advised that it may assist the Court for me briefly to set out the relevant sanctions regimes (as we understand them) and our approach to these issues. The Court will readily appreciate that I am not a lawyer, still less a sanctions expert, and the summary of the law that follows is based on legal advice received by the PLC Administrators.

The UK Regulations

126 The Russia (Sanctions) (EU Exit) Regulations 2019 (as amended) (the “**UK Regulations**”) is a statutory instrument made pursuant to the Sanctions and Anti-Money Laundering Act 2018. It applies to (i) all persons who are within, or undertake

activities within, UK territory; and (ii) all UK nationals and UK entities (including their branches) wherever they are in the world. It therefore clearly applies to PLC, to its UK-national officers and employees, and to the Administrators.

127 So far as is relevant, the UK Regulations include asset-freezing measures on designated individuals.

128 As regards the asset freezing measures, I understand that:

128.1 When an individual or entity is sanctioned by the UK, they are typically subjected to an asset freeze. The asset freeze means that persons subject to UK jurisdiction are:

- (i) Prohibited from dealing with funds or economic resources owned, held or controlled by the sanctioned person (i.e. the sanctioned person's assets must be frozen); and
- (ii) Prohibited from making funds or economic resources available (directly or indirectly) to or for the benefit of the sanctioned person.

128.2 Regulations 11 to 15 of the UK Regulations set out the specific provisions of the asset freeze in connection with those individuals and entities designated under the UK Regulations. In particular:

- (i) Regulation 11(4) provides that a person "*deals with*" funds if that person: "*(a) uses, alters, move, transfers or allows access to the funds, (b) deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or (c) makes any other change, including portfolio management, that would enable use of the funds.*"
- (ii) Regulation 11(5) explains that a person "*deals with*" economic resources if that person: "*(a) exchanges the economic resources for funds, goods or services; or (b) uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise).*"

(iii) In terms of making funds available for the benefit of a designated person, Regulation 13(4) explains that: “(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and (b) ‘financial benefit’ includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.”

128.3 Each of the restrictions in Regulations 11 to 15 of the UK Regulations is stated to be “subject to Part 7 (Exceptions and licences)”. Part 7 of the UK Regulations sets out the various exceptions and the circumstances in which licences might be issued (which would allow conduct which would ordinarily breach the relevant provisions of the UK Regulations).

128.4 Regulation 19 of the UK Regulations also prohibits circumvention of the asset freeze provisions and states: “(1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly)— (a) to circumvent any of the prohibitions in regulations 11 to 18A, or (b) to enable or facilitate the contravention of any such prohibition. (2) A person who contravenes the prohibition in paragraph (1) commits an offence.”

The EU Regulations

129 Article 2 of Council Regulation (EU) No 269/2014 the (“**EU Regulations**”) prohibits certain dealings with persons designated thereunder. Article 2 provides as follows:

1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.

US sanctions

130 For completeness, I note that the United States has also imposed asset freezing measures and dealing prohibitions on certain Russian individuals and entities, which are implemented by the US Office of Foreign Assets Control ("**OFAC**"). I do not address these further in this witness statement on the footing that, as set out below, it does not presently appear that any action contemplated by the Schemes would involve any US person, and therefore engage the US sanctions regime or require any interaction with OFAC.

The relevance of sanctions

Convening orders

131 On the basis of our current understanding of the identity and location of Scheme Creditors and that neither the Scheme Companies nor any Scheme Creditor is the subject of Sanctions, I am advised and believe that no sanctions issues arise in relation to the orders sought convening meetings of creditors of the Scheme Companies to consider and vote on the Schemes. In particular, we have investigated to the extent possible whether any Scheme Creditors are situated in the United States, and so far as we have been able to determine, none exists. None of the General Creditors with whom we have been in contact is based in the United States, and our enquiries with the Trustees suggest that no 2022 Notes or 2024 Bonds are held through intermediaries based in the United States. Therefore, we have focused our analysis on the impact of EU and UK Sanctions.

132 However, as referred to above, the Scheme Companies cannot be certain of the present identity and location of every single Scheme Creditor by virtue of the way in which the 2022 Notes and 2024 Bonds are held through the Clearing Systems.

133 As noted above and below, in structuring the Schemes we have had to take account of the possibility that Scheme Creditors emerge who are subject to Sanctions when it comes to making payments. Although I am not currently aware of any Scheme Creditor whose right to even consider and vote on the Schemes might be restricted by Sanctions, it is also prudent to reserve the right to decline to admit a vote from any such Scheme Creditor who does emerge after the Schemes are launched.

- 134 I note that the Chairman of the Scheme Meetings has a broad discretion to admit or reject votes at Scheme Meetings, which would usually be exercised where there was a dispute as to valuation or duplication. I (or any alternative Chairman) would propose to exercise this discretion if there were any doubt about the validity of any vote cast due to the potential impact of Sanctions on any Scheme Creditor.
- 135 In the circumstances set out above, we do not currently seek directions specifically to deal with any potential sanctions issue which may arise. However, we recognise that such an issue may arise in which case a decision will be taken whether it is a matter which can be dealt with by the Chairman of the Scheme Meetings or whether it is appropriate to return to Court for directions. If any situation were to arise in which further directions from the Court were required, such as if any dispute over the validity of any votes were to have a material impact on the turnout of the meeting or whether the resolutions had passed, we would have the ability to adjourn the meeting and return to Court.

Payments pursuant to Schemes

- 136 If the Schemes are approved by creditors and sanctioned by the Court in due course, then it is clear that steps will need to be taken to ensure that no payments thereunder are made to sanctioned persons. As explained above, the way in which the Schemes intend to achieve this is as follows:

136.1 Scheme Creditors will be required, when returning their voting instruction forms, also to furnish details of their identity, including copies of identity documents. They will also be asked to nominate a bank account into which payment could be made if legally permissible.

136.2 The Scheme Companies (acting through their administrators) and the settlement agent will, separately, seek to verify the identity and the sanctions status of each Scheme Creditor on the basis of the information and documentation provided by them.

136.3 Payments will only be made under the Schemes to those Scheme Creditors whom the Scheme Companies and the settlement agent are satisfied it is legally permissible (and practically possible) to make payment.

136.4 Any sums due under the Schemes to Scheme Creditors in respect of which we are not so satisfied will not be made to those Scheme Creditors but will instead be paid to a holding trust. The trustee of the holding trust will hold those funds for the benefit of those Scheme Creditors for a defined period, intended to afford such Scheme Creditors a reasonable opportunity to satisfy the trustee of their ability to receive the funds (including, for example, by nominating alternative bank accounts to which payment could be legally made and/or applying for licences in respect of Sanctions if necessary).

137 We are advised, and believe, that this mechanism will ensure that no economic resources are made available to any sanctioned person while they remain the subject of sanctions.

M. DIRECTIONS SOUGHT

138 I have seen a set of draft orders to be filed with these applications setting out the directions sought. These include detailed directions relating to the conduct and timing and notice of the Scheme Meetings, consistent with the approach I have set out at paragraphs 101 – 123 above.

139 The draft orders also set out a series of steps, with appropriate timings, for the filing of any necessary evidence in respect of the sanction hearing, should the Schemes be approved by the Scheme Creditors. This is to ensure that all matters may be properly put back before the Court at the sanction hearing but with regard to the significant pressures on the Scheme Companies to bring about the effectiveness of the Schemes by the end of January 2023, as I have explained at paragraphs 34 – 55 above.

N. CONCLUSION

140 The Applicants respectfully request that the Court to make the orders sought.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

ALLISTER JONATHAN MANSON

Date: 12 December 2022