

FILED

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No. 2018-010


ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

**IN THE SUPREME COURT
REPUBLIC OF THE MARSHALL ISLANDS**

HIGHLAND FLOATING RATE OPPORTUNITIES FUND; HIGHLAND
GLOBAL ALLOCATION FUND; HIGHLAND LOAN MASTER FUND, L.P.;
HIGHLAND OPPORTUNISTIC CREDIT; AND NEXPOINT CREDIT
STRATEGIES FUND,
Plaintiffs-Appellants,

v.

DRYSHIPS INC.; OCEAN RIG INVESTMENTS INC.; TMS OFFSHORE
SERVICES LTD.; SIFNOS SHAREHOLDERS INC.; AGON SHIPPING INC.;
ANTONIOS KANDYLIDIS; AND GEORGE ECONOMOU,
Defendants-Appellees.

On Appeal from the High Court No. 2017-198
Carl B. Ingram, Chief Justice, Presiding

**APPELLEES' APPENDIX
VOLUME 2 OF 3 (S.A.375 – S.A.493)**

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27	Exhibit C: Highland Notice of Removal of Trustee and Appointment of Successor Trustee (Feb. 28, 2017)	S.A. 577
28	Exhibit D: Agreement of Resignation, Appointment and Acceptance of Trustee (June 2, 2017)	S.A. 583

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29	Reply Declaration of Caroline Moran in Support of Defendants' Motion to Dismiss, filed January 29, 2018	S.A. 608
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Exhibit G



THE PRESERVED CLAIMS TRUST DEED

- (1) OCEAN RIG UDW INC.
- (2) AGON SHIPPING INC.
- (3) OCEAN RIG INVESTMENTS INC.

and

**PRESERVED CLAIMS TRUST PTC LTD
(Trustee)**

THE PRESERVED CLAIMS TRUST DEED

THIS SETTLEMENT IS MADE THE 22 DAY OF SEPTEMBER 2017

BETWEEN

- (1) **OCEAN RIG UDW INC.**, a company registered by way of continuation as an exempted company in the Cayman Islands with company registration number 310396 and its principal executive office at c/o Ocean Rig Cayman Management Services SEZC Limited, 3rd Floor Flagship Building, Harbour Drive, Grand Cayman, Cayman Islands, ("**UDW**");
- (2) **AGON SHIPPING INC.**, a Republic of the Marshall Islands Corporation ("**Agon Shipping**");
- (3) **OCEAN RIG INVESTMENTS INC.**, a Republic of the Marshall Islands Corporation ("**Ocean Rig Investments**" and, together with UDW and Agon Shipping, the "**Settlers**"); and
- (4) **PRESERVED CLAIMS TRUST PTC LTD**, a private trust company incorporated under the laws of the Cayman Islands with company registration number 325527 with its registered office at Ogier Global (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands ("**Original Trustee**").

WHEREAS:

- (A) UDW has restructured its financial indebtedness pursuant to a scheme of arrangement pursuant to section 86 of the Cayman Islands Companies Law (2016 Revision) between UDW and the relevant Scheme Creditors as described in the explanatory statement issued by the Scheme Companies on 21 July 2017 (the "**Explanatory Statement**").
- (B) It is intended that this settlement be established for the purpose of preserving the Preserved UDW Claims, to the extent that they exist, outside the UDW Scheme.
- (C) Pursuant to the Preserved Claims Assignments, the Preserved UDW Claims have, accordingly, on or prior to the date of this deed been assigned under applicable law by or at the direction of the Settlers to the Original Trustee to be held on trust on the terms of this deed with and subject to its powers and provisions for the achievement of the Purposes.
- (D) This settlement shall be known as The Preserved Claims Trust.

NOW THIS DEED WITNESSES as follows:

1 Definitions

In this settlement:

- 1.1 the definitions set out in Schedule 3 and the Explanatory Statement shall apply but in case of inconsistency, the definitions set out in Schedule 3 shall prevail;

- 1.2 words importing one gender include both other genders;
- 1.3 words in the singular include the plural (and vice versa); and
- 1.4 references to a statute include references to any re-enactment of it (with or without modification).

2 Trust Purposes

- 2.1 The Trustees shall hold the Trust Fund upon trust to further the Purposes.
- 2.2 The Trustees may resolve any uncertainty regarding the Purposes or as to how they are to be furthered.
- 2.3 If the furtherance of the Purposes becomes in whole or in part:
 - (a) impossible or impracticable, or
 - (b) unlawful or contrary to public policy; or
 - (c) obsolete in that, by reason of changed circumstances, the Purposes fail to achieve the general intent of this settlement.

the Trustees may reform the Purposes as they think fit.

3 Duration

- 3.1 This settlement shall continue until the first in time of the following occurrences:
 - (a) the Trustees determine (for whatever reason including but not limited to merits, lack of funding or cost-benefit analysis) that none of the Preserved UDW Claims should be pursued, or pursued any further; or
 - (b) a final Distribution has been made.
- 3.2 In the event that a determination not to pursue or not further to pursue the Preserved UDW Claims is made and/or no Funding Party has contributed funds to the Funding Amount Escrow Account sufficient in the Trustees' absolute discretion to allow pursuit or further pursuit of the Preserved UDW Claims and no other arrangements, acceptable to the Trustees and consistent with the terms of this settlement including but not limited to clause 6 of Schedule 1, have been made for such pursuit:
 - (a) any sum standing in the Funding Amount Escrow Account shall, after provision for all Expenses and the indemnification of all Indemnified Parties, be returned to the Funding Parties on a pro rata basis based on the aggregate amounts they each contributed;
 - (b) any sum standing in the Cash Escrow Account shall be distributed to the Preserved UDW Claims Beneficiaries in accordance with the terms of this settlement;
 - (c) the Preserved UDW Claims shall be deemed to have been irrevocably released and/or dismissed after final adjudication on the merits or with prejudice by the relevant final court of appeal; and

- (d) upon the Trustees giving written notice to UDW and the Enforcers of such determination, this settlement shall forthwith terminate and the Trustees shall thereupon be entirely discharged from the trusts created by this settlement.

4 Enforcers

- 4.1 Upon and with effect from the Restructuring Effective Date, Estera Enforcers (Cayman) Limited, Estera Protectors (Cayman) Limited and Estera Services (Cayman) Limited, being three representatives appointed by the Ad Hoc Steering Committee, shall be the Initial Enforcers until at least three representatives selected in accordance with clause 4.3 have accepted in writing their appointment as Enforcers of this settlement.
- 4.2 As soon as at least three persons have accepted their appointment as Enforcers under clause 4.3, the Initial Enforcers shall cease to be Enforcers.
- 4.3 Following the Restructuring Effective Date, each of the largest three Lender Appointing Persons (calculated on the Restructuring Effective Date in accordance with the mechanism set out in clause 19.1.8 of the New UDW Articles), the Supporting 2017 Notes Creditors and Highland shall each have the right to appoint an Enforcer with a right to enforce the terms of this settlement provided that no person so appointed pursuant to this clause who has not accepted his appointment within two weeks of the Restructuring Effective Date shall be an Enforcer.
- 4.4 The Enforcers shall act by majority vote.
- 4.5 Each Enforcer (other than an Initial Enforcer) may:
- (a) at the written direction of the party who appointed them, appoint a replacement Enforcer to act as Enforcer in their place; or
 - (b) revocably (at any time before it takes effect) or irrevocably, nominate a person to become an Enforcer in their place, in the future.
- 4.6 A person ceases to be an Enforcer (including an Initial Enforcer) in the event of:
- (a) death;
 - (b) resignation on not less than two months' prior written notice to the Trustees and any other Enforcers (unless the Trustees and the Enforcers, if any, agree to a shorter or no notice period);
 - (c) refusal, unfitness or incapacity to act; or
 - (d) bankruptcy or commencement of liquidation or dissolution (in the case of a company).
- 4.7 If at any time, there is no Enforcer who meets the requirements of section 100(4)(c) of the Trusts Law, the Trustees may appoint one or more persons as Enforcers on such terms as they think fit.

5 Powers of Management and Administration

- 5.1 The powers of management and administration conferred on the Trustees by Schedule 1 or by law may be used only in furtherance of the Purposes and the Trustees shall have no liability, if acting in good faith, for leaving any such powers wholly unexercised throughout the entire duration of this settlement.
- 5.2 For the avoidance of doubt and without limitation of clause 5.1, it is expressly declared that
- (a) the availability of powers of management and administration shall imply no duty on the Trustees to invest or improve the Trust Fund, or to consider doing so, other than is

expressly set out in the Purposes and the Trustee may leave any sums paid into an Escrow Account in such Escrow Account without more; and

- (b) the Trustees may not exercise any power of management or administration to assign, transfer or otherwise dispose of the Preserved UDW Claims or any interest therein other than as may be required:
 - (i) upon a change of Trustees; or
 - (ii) in order to give effect to a funding arrangement provided that the Trustees shall have power in this regard only if they have in good faith formed the view that the relevant Preserved UDW Claim has potential merit and may in all the circumstances properly be pursued.

6 Power to Amend

- 6.1 Subject to clause 6.3 the Trustees may, by deed amend, alter, rescind add to or vary any provision of this settlement, including this clause.
- 6.2 The Trustees shall make any amendments or additions to this deed that are required by law.
- 6.3 The Trustees will give the Enforcers at least 28 days' notice of any proposed amendment to this settlement under clause 6.1 or 6.2.

7 Nature of Preserved UDW Claims Beneficiaries' Interests

- 7.1 It is hereby declared for the avoidance of doubt that, this settlement being a trust exclusively for the achievement of purposes established under the STAR Law, no Preserved UDW Claims Beneficiary has a transmissible interest under this settlement.
- 7.2 A Preserved UDW Claims Beneficiary may instruct the Trustees to pay any Distribution, to which the UDW Claims Beneficiary may be entitled, to some other person by providing the Trustee with written instructions.

8 Execution in counterparts and conditionality

- 8.1 This deed may be executed in counterparts each of which shall be an original and when taken together shall form one and the same document.
- 8.2 The schedules hereto form part of this deed.
- 8.3 Notwithstanding the dating of this deed as at the date of execution and delivery by the parties, the delivery of this deed by each party is conditional upon and effective only as at the Restructuring Effective Date.

9 Governing Law

- 9.1 Cayman Islands law governs this settlement. The Cayman Islands courts have exclusive jurisdiction in relation to all matters concerning this settlement and any proceedings involving rights, powers or obligations under this settlement.
- 9.2 The STAR Law shall apply to every trust, power and provision of this settlement.
- 9.3 The Trustees may by deed from time to time change:

- (a) the governing law of this settlement; and
- (b) the courts which have exclusive jurisdiction in relation to any matter concerning this settlement and any proceedings involving rights or obligations under this settlement;

provided, in each case, that the terms of this settlement and the rights and obligations created by it will substantially be given effect after the change as they are as at the date hereof under Cayman Islands law.

Schedule 1

Administrative Provisions

1 Additional Powers

1.1 *General power of management and disposition*

The Trustees may without further authorisation effect any transaction relating to the management or disposition of Trust Property as if the Trustees were absolutely entitled to it.

1.2 *Borrowing*

The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property. The Trustees may subject to the terms of this settlement enter into funding arrangements with respect to the Preserved UDW Claims and any investigation in relation thereto as they see fit on such terms as they see fit, including, for the avoidance of doubt, third party funding arrangements on terms that a portion of the Preserved UDW Claims Proceeds be paid to persons other than the Preserved UDW Claims Beneficiaries.

1.3 *Income and Capital*

- (a) The Trustees are under no duty to procure distributions from a company in which they are interested.
- (b) The Trustees may pay taxes and other expenses out of capital or income whether or not they would otherwise be so payable.
- (c) Generally, the Trustees are under no duty to treat all Preserved UDW Claim Beneficiaries equally or maintain a balance between conflicting interests of Preserved UDW Claim Beneficiaries.
- (d) Income may be set aside and invested to answer any liabilities which in the opinion of the Trustees ought to be borne out of income or to meet depreciation of the capital value of any Trust Property.

1.4 *Application of trust capital as income*

The Trustees may apply Trust Property as if it were income arising in the current year.

1.5 *Delegation*

A Trustee or the Trustees jointly may delegate any or all of their functions arising under this settlement on such terms as to remuneration and other matters as they think fit.

1.5 *Nominees and custodians*

- (a) The Trustees may appoint a person to act as their nominee in relation to such of the assets of this settlement as they may determine. They may take such steps as are necessary to secure that those assets are vested in the nominee.

- (b) The Trustees may appoint a person to act as custodian in relation to such of the assets of this settlement as they may determine. The Trustees may give the custodian custody of the assets and any documents or records concerning the assets. The Trustees are not obliged to appoint a custodian of securities payable to bearer, unless required to do so by law.
- (c) The Trustees may appoint a person to act as nominee or custodian on such terms as to remuneration and other matters as they may think fit.

1.7 *Place of administration*

The Trustees may carry on the administration of this settlement anywhere they think fit.

1.8 *Indemnities*

The Trustees may indemnify any Person for any liability relating to this settlement.

1.9 *Receipt by charities and unincorporated associations*

Where Trust Property is to be paid or transferred to a charity or unincorporated association, wherever established, the receipt of its treasurer or appropriate officer shall be a complete discharge to the Trustees.

1.10 *Power to insure*

The Trustees may insure Trust Property for any amount against any risk.

1.11 *Power to compromise claims*

The Trustees may pursue, prosecute, release, compromise, abandon or submit to arbitration any claim or other matter relating to this settlement.

1.12 *Release of Powers*

The Trustees and any other Fiduciary may by deed release wholly or in part any of their rights or functions and (if so expressed) so as to bind their successors.

1.13 *Waiver*

The Trustees may waive the payment of income before it becomes due.

1.14 *Insurance Policies*

The Trustees may take out policies of insurance, including policies for the benefit of its officers and directors, and pay premiums of any insurance policies out of the Trust Fund or its income as they see fit.

1.15 *Power to pay taxes*

The Trustees may pay taxes or duties assessed in any jurisdiction on the Trustees, or Trust Property, whether or not such taxes or duties are recoverable from the Trustees.

1.16 *Ancillary powers*

The Trustees may do anything which is incidental or conducive to the achievement of the Purposes, including without limitation the power to invest any funds under their control.

2 **Disclaimer**

A Person may disclaim his or her interest in this settlement wholly or in part.

3 **Apportionment**

Income and expenditure shall be treated as arising when payable, and not from day to day, so that no apportionment shall take place.

4 **Conflicts of interest**

4.1 A Trustee, its officers or directors may:

- (a) enter into a transaction with the Trustees;
- (b) be interested in an arrangement in which the Trustees are or might have been interested; or
- (c) act (or not act) in any other circumstances;

even though his or her fiduciary duty under this settlement conflicts with other duties or with his or her personal interest.

5 **Absolute discretion clause**

The powers of the Trustees are exercisable:

- 5.1 at their absolute discretion; and
- 5.2 from time to time as occasion requires.

6 **Remuneration of Fiduciaries**

6.1 A Fiduciary acting in a professional capacity is entitled to receive remuneration out of the Trust Fund for any services that he or she provides to or on behalf of this settlement, including services which a layman could have provided personally:

- (a) in accordance with any agreement in effect from time to time between the Fiduciary and UDW;
- (b) subject to that, in accordance with his or her standard terms and conditions in force from time to time; and
- (c) subject to that, which is reasonable.

- 6.2 Notwithstanding paragraph 6.1 of this Schedule, where a Trustee is a private trust company, it shall be entitled to charge as remuneration for its services as trustee, and pay out of the Trust Fund or the income of the Trust Fund as it sees fit, any sums which it has agreed to pay to its directors as remuneration for their services as set out in any PTC Director Services Engagement Letter.
- 6.3 For the purpose of paragraph 6.1, a Fiduciary acts in a professional capacity if he or she acts in the course of a profession or business which consists of or includes the provision of services in connection with:
- (a) the management or administration of trusts generally or a particular kind of trust; or
 - (b) any particular aspect of the management or administration of trusts generally or a particular kind of trust.
- 6.4 A Trustee may make arrangements to remunerate himself or herself for work done out of the Trust Fund or the income of the Trust Fund.

7 Commissions and bank charges

A Person may retain any reasonable commission or profit in respect of any transaction or service relating to this settlement even though that commission or profit was procured by an exercise of fiduciary powers (by that Person or some other Person) provided that:

- 7.1 the Person would in the normal course of business receive and retain the commission or profit on such transaction or service; and
- 7.2 the receipt of the commission or profit is disclosed to the Trustees.

8 Exclusion of liability and indemnity

- 8.1 An Indemnified Party shall not be liable for any Liability to the Trust Fund or to any third party claiming any entitlement or interest under this settlement, unless that loss was caused by his or her own actual fraud or wilful default.
- 8.2 An Indemnified Party is entitled to be indemnified from the Trust Fund in respect of any and all Liabilities incurred in his or her capacity as such unless they were caused by his or her own actual fraud or wilful default.
- 8.3 The indemnities and exclusion of liability under this paragraph 8 shall survive beyond termination of this settlement.

9 Appointment and Retirement of Trustees

- 9.1 A trustee may be appointed under s.4(1) Trusts Law (2011 Revision) in place of more than one trustee.
- 9.2 Remaining out of the Cayman Islands shall not be a ground for the replacement or removal of a trustee under the statutory power.

9.3 Any number of additional trustees may be appointed provided that at all times (so long as Cayman Islands law so requires) at least one of the Trustees is a trust corporation.

10 No duty to consider exercise of powers to override STAR

No Fiduciary shall have any duty to consider exercising any power so as to override any of the Purposes or to cause this settlement to cease to be subject to the STAR Law in any respect.

Schedule 2
Business Plan

1 The Purposes of this settlement

- 1.1 The general purpose of this settlement is to provide a mechanism for the investigation and, if thought fit, prosecution of the Preserved UDW Claims, and the distribution of any Preserved UDW Claims Proceeds net of Expenses to the Preserved UDW Claim Beneficiaries in accordance with the terms of this settlement.
- 1.2 In furtherance of the foregoing objective,
- (a) the Trustees will within the Investigation Period assess and report to the Enforcers upon the merits of the Preserved UDW Claims, based on the strength and likely value of such claims, the likely cost of successfully bringing such claims to a conclusion, and, if applicable and considered appropriate by the Trustees, to determine a strategy for prosecuting such Preserved UDW Claims; and
 - (b) the Trustees shall make continuing good faith efforts to execute the Purposes, make timely distributions, and not unduly prolong the duration of this settlement.
- 1.3 Without limiting the general purpose of this settlement, the particular purposes of this settlement are as follows:
- (a) to investigate during the Investigation Period with reasonable expediency the Preserved UDW Claims to determine in respect of each relevant alleged cause of action whether it should be pursued having regard to, in particular, whether it has a reasonable prospect of success, an estimate of the likely quantum of any potentially successful claim, the likelihood of recovery, the likely timescale of any recovery, and an estimate of the likely costs that will be incurred in relation to the pursuit thereof; and
 - (b) if so determined, to pursue, prosecute, release, settle, or abandon any Preserved UDW Claim as the Trustees may be advised or otherwise think fit and in relation to any Preserved UDW Claim which is pursued, if the Preserved UDW Claim is successful and damages are awarded or a settlement is negotiated and recovered, to make a Distribution therefrom in accordance with the terms of this settlement.
- 1.4 In furtherance of the Purposes, the Trustees shall have the power to:
- (a) appoint such Trustee Professionals as they may from time to time consider necessary or useful to assist them in furthering the Purposes and to remunerate any such Trustee Professionals for their services; and to indemnify them with respect to all Expenses, out of the Trust Fund or the income of the Trust Fund;
 - (b) commence proceedings in any jurisdiction without the need to obtain an order from the Grand Court of the Cayman Islands authorising such and, for the avoidance of doubt, the Trustees shall be entitled, in respect of the costs of any such proceedings (including adversarial costs awarded against them) to be indemnified out of the Trust Fund save where such costs are the result of the Trustees' own actual fraud or wilful default; and
 - (c) treat the Preserved UDW Claims Beneficiaries of record as the sole persons beneficially entitled to receive any Distributions.
- 1.5 The following provisions shall govern the Escrow Accounts:

- (a) As soon as practically possible after this settlement shall take effect (which, for the avoidance of doubt, will not be earlier than the Restructuring Effective Date), the Trustees shall establish the Funding Amount Escrow Account;
- (b) In addition to the Funding Amount, any payments made by a Funding Party shall be paid into the Funding Amount Escrow Account;
- (c) Expenses may be paid out of the Escrow Accounts entirely at the Trustees' discretion;
- (d) If the Trustees determine that there is a reasonable prospect of Preserved UDW Claims Proceeds being received by the Trustees, the Trustees shall establish a Cash Escrow Account (if not already established) and such account shall be designated as a trust account;
- (e) The Trustee shall credit any Preserved UDW Claims Proceeds or Accruals to the Cash Escrow Account;
- (f) Promptly after the Funding Amount Escrow Account ceases to have any cash in it and there is no reasonable prospect of any Funding Party providing additional amounts the Trustees shall arrange for the Funding Amount Escrow Account to be closed;
- (g) Promptly after any Cash Escrow Account ceases to have any cash in it by virtue of a final Distribution being made or there being no reasonable prospect of any further Distribution being credited to the account, the Trustees shall arrange for the Cash Escrow Account to be closed.

1.6 The following provisions shall govern payment of any Distributable Amounts:

- (a) Prior to making a Distribution, the Trustees shall, in their sole discretion, determine the amount of cash available for distribution in excess of current and anticipated Expenses;
- (b) Before any Distributions can be paid to the general body of Preserved UDW Claim Beneficiaries, the Trustees shall first apply any cash available for distribution to repay in full any funding provided by a Funding Party;
- (c) After any Funding Party has been reimbursed, the Trustees may make a Distribution by paying to each Preserved UDW Claims Beneficiary its pro rata portion of the Distributable Amount calculated by reference to the amount of such Preserved UDW Claims Beneficiary's UDW Scheme Claim as at the Record Time;
- (d) The Trustees shall have discretion as to the timing and frequency of any Distribution;
- (e) No payment of fractional dollars will be made under this deed. Whenever any payment of a fraction of a dollar under this deed would otherwise be required, the actual distribution made shall reflect a rounding down of such fraction to the nearest whole dollar. The aggregate amount of the retained fractional distributions from the distribution amount shall be held as part of the Trust Fund and otherwise available for use in accordance with the terms of this settlement;
- (f) The Trustees shall not be required to make a Distribution to any Preserved UDW Claims Beneficiary (i) if the amount to be distributed to a Preserved UDW Claims Beneficiary on the particular distribution date is less than \$100.00, unless such distribution constitutes the final distribution to such Preserved UDW Claims Beneficiaries, or (ii) the amount of the final distribution to such Preserved UDW Claims Beneficiaries is less than \$25.00, in which case such distribution shall be paid by the Trustees to a Charity of their choice;
- (g) Preserved UDW Claims Beneficiaries who change addresses (including email addresses) must notify the Trustees of such change of address in writing by any of the methods set forth in paragraph 1.7 of this Schedule, failing which, in the event their new address cannot be discovered after reasonable and proportionate steps, any obligation to them under this settlement ceases.

- (h) Each Preserved UDW Claims Beneficiary will receive its pro rata share of any Distribution net of any applicable taxes (including, without limitation, any withholding taxes).
- (i) In the event that the Distributable Amounts are greater than the total aggregate amount of the Preserved UDW Claim Beneficiaries' UDW Scheme Claims, then after the final Distribution has been made, any sum standing in the Funding Amount Escrow Account and/or Cash Escrow Account shall, after provision for any Expenses and provision for the indemnification of all Indemnified Parties, be transferred to UDW.

1.7 Notices may be (i) delivered by hand, (ii) by email; or (iii) sent by facsimile transmission to the recipient at the address or facsimile number as follows:

- (a) If to UDW at the address provided for UDW in the Explanatory Statement;
- (b) If to the Enforcers, using the contact details provided in their appointment letter or as otherwise notified to the Trustees and UDW;
- (c) If to the Preserved UDW Claim Beneficiaries, through the Information Agent Website; and
- (d) If to the Trustees, at:

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or at such other address, email address or facsimile number as one party may have notified to the other parties in writing in accordance with this clause.

1.8 A notice sent by facsimile transmission shall be deemed to have been served at the time of transmission. A notice delivered by hand shall be deemed to have been served at the time of delivery. In proving service of the same it will be sufficient to prove, in the case of a notice delivered, that such notice was properly addressed and sent by email or delivered by hand and, in the case of a facsimile transmission, that such facsimile was duly transmitted to the facsimile number referred to in the preceding clause.

2 The Settlers obligations in relation to achievement of the Purposes

- 2.1 Within 7 days of being notified by the Trustees of the opening of the Funding Amount Escrow Account, UDW shall pay the Funding Amount into the Funding Amount Escrow Account.
- 2.2 UDW shall promptly upon request by the Trustees procure that the Information Agent makes available to the Trustees all information relating to the identity of the UDW Scheme Creditors and a certificate from the Information Agent or UDW as to the identity of the UDW Scheme Creditors shall be determinative.
- 2.3 With effect from the Restructuring Effective Date, UDW, Ocean Rig Investments and Agon Shipping agree that any legal privilege including but not limited to legal advice privilege, litigation privilege or client attorney privilege (collectively, the "Privileges") attaching to any documents or communications (whether written or oral) delivered to the Trustees shall automatically vest in, and be available for assertion by, the Trustees and, to the extent necessary and possible under applicable law, shall be assigned to the Original Trustee.
- 2.4 The Trustees shall not be obliged to hand over or disclose to any Preserved UDW Claim Beneficiary any document or work product (electronic or otherwise) to which Privilege attaches, or any other document.

- 2.5 The assignment to the Original Trustee of the Privileges shall not operate as a waiver of other privileges possessed or retained by UDW, Ocean Rig Investments and Agon Shipping (as applicable) and the Trustees shall not waive any Privileges with respect to any documents or communications subject to Privileges transferred hereunder without UDW, Ocean Rig Investments and Agon Shipping's consent.
- 2.6 UDW, Ocean Rig Investments and Agon Shipping will, upon reasonable request of the Trustees, execute, acknowledge, and deliver such further instruments and do such further acts as may be reasonably necessary to issue the Report or prosecute the Preserved UDW Claims.
- 2.7 UDW, Ocean Rig Investments and Agon Shipping shall, cooperate in all reasonable respects with the Trustees' prosecution of the Preserved UDW Claims and shall not take any action or omit to take any action if such action or omission could reasonably be said to interfere or to be likely to interfere at some future point in time with the investigation or prosecution of the Preserved UDW Claims.
- 2.8 On or as soon as practicable after the Restructuring Effective Date, UDW, Ocean Rig Investments and Agon Shipping, shall provide the Trustees with reasonable access to the books and records and reasonably requested information belonging to UDW, Ocean Rig Investments and Agon Shipping (as applicable) and/or its subsidiaries concerning the Preserved UDW Claims (including those maintained in electronic format and original documents) whether held by UDW, Ocean Rig Investments and Agon Shipping (as applicable), their respective agents, advisors, attorneys, accountants or other professional hired by UDW, Ocean Rig Investments and Agon Shipping (as applicable).

Schedule 3

"**Accruals**" means any interest, dividends, distributions (or any other rights or benefits) paid to the Trustees from time to time in respect of the Distribution;

"**Ad Hoc Steering Committee**" means certain funds or accounts managed by Avenue Capital Group, Blue Mountain Capital Management LLC, Elliott and Lion Point that are parties to the Restructuring Support Agreement dated 23 March 2017,

"**Business Plan**" means the business plan set out in Schedule 2;

"**Cash Escrow Account**" means the cash account which may be established in the name of the Trustees (or their nominees) for the purpose of receiving and holding any Distributions or Accruals;

"**Charitable**" means exclusively charitable under Cayman Islands law; and "**Charity**" means any company, body or trust established for Charitable purposes;

"**Distribution**" means any distribution of any Distributable Amounts to be made to the Preserved UDW Claim Beneficiaries under the terms hereunder;

"**Distributable Amounts**" means any Preserved UDW Claims Proceeds to be distributed by the Trustees net of any Expenses;

"**Draft Complaint**" means the draft complaint comprising Exhibit A to the Limited Objection of Highland Capital Management LLP to the Motion for (I) *ex parte* Emergency Relief and (II) Provisional Relief pursuant to 11 U.S.C ss 1519, 1521 (a) (7), and 362, filed on March 31, 2017 in the United States Bankruptcy Court Southern District of New York, in the matter of Ocean Rig UDW Inc., et al., Case No. 17-10736 (MG);

"**Enforcers**" means the persons holding office as such under this settlement, each of whom shall be an enforcer for the purposes of the STAR Law; and "**Enforcer**" means any one of them;

"**Escrow Accounts**" means the Cash Escrow Account and the Funding Amount Escrow Account;

"**Expenses**" means all fees, costs, liabilities, obligations or expenses incurred by the Trustees or Trustee Professionals in the course of carrying out their role herein and in relation to this settlement;

"**Fiduciary**" means a Person subject to fiduciary duties under this settlement;

"**Funding Amount**" means USD1.5million

"Funding Amount Escrow Account" means an account opened by the Trustees in which the Funding Amount and any additional subsequent amounts provided by any Funding Party are deposited which will be used to pay any Expenses;

"Funding Party" means UDW and/or any Preserved UDW Claim Beneficiary or its nominee and/or any third party litigation funder which is providing funding in an amount sufficient to fund pursuit of the Preserved UDW Claims and to the extent that more than one party seeks to become the Funding Party the Trustees may choose the Funding Party;

"Highland" means Highland Floating Rate Opportunities Fund, Highland Global Allocation Fund, Highland Opportunistic Credit Fund, Highland Master Fund, L.P., and NexPoint Credit Strategies Fund, acting through their manager Highland Capital Management LP;

"Indemnified Parties" means the Trustees, their employees, officers, directors and Trustee Professionals;

"Initial Enforcers" means the persons not numbering more than three selected to be and having accepted appointment as the Enforcers on and with effect from the Restructuring Effective Date in accordance with clause 4.1;

"Investigation Period" means the period of 1 year beginning on the Restructuring Effective Date, or such other period as the Trustees may reasonably determine is necessary for the purposes of investigating the Preserved UDW Claims;

"Liabilities" means any debt, claim, loss, liability or obligation whatsoever whether it is present, future, prospective or contingent, known or unknown, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money or the performance of an act or obligation and whether it arises at common law, in equity or by statute, in the Cayman Islands or in any other jurisdiction, or in any other manner whatsoever

"Person" includes a person anywhere in the world, a Fiduciary, and a corporation;

"Preserved Claims Assignments" means the Cayman Islands law, Marshall Islands law and New York law governed assignment agreements whereby UDW, Agon Shipping Inc. and Ocean Rig Investments Inc. assign the Preserved UDW Claims to the Original Trustee to be held on trust on the terms of this deed;

"Preserved UDW Claim Beneficiaries" means all Scheme Creditors who can prove to the reasonable satisfaction of the Trustees, that they were UDW Scheme Creditors at the Record Time;

"Preserved UDW Claims" means any causes of action held by UDW, Agon Shipping Inc. and/or Ocean Rig Investments Inc. arising out of the circumstances identified in the Draft Complaint and

any causes of action which arise from dividend payments paid by UDW during the period October 2014 to June 2015;

"Preserved UDW Claims Proceeds" means any monetary realization from a Preserved UDW Claim;

"PTC Director Services Engagement Letter" means a letter setting out the terms of service, including remuneration, of any director of any private trust company appointed or proposed to be appointed as a trustee of this settlement, as amended from time to time;

"Purposes" means the general and particular purposes of this settlement identified in clause 1 of the Business Plan;

"Report" means the report to the Enforcers envisaged by Schedule 2, paragraph 1.2 (a);

"STAR Law" means Part VIII of the Trusts Law;

"Supporting 2017 Notes Creditor Group" means Archview Investment Group LP, Brigade Capital Management LP, Caspian LP and Hof Hooreneman Bankiers NV;

"trust corporation" has the same meaning it has in the STAR Law;

"Trustee Professionals" means professionals, officers, employees, and other persons, including but not limited to lawyers, managers, consultants, accountants, technical, financial, or investment advisors or managers, attorneys, agents or brokers, corporate fiduciaries, depositories or distribution agents;

"Trustees" means the Original Trustee or the trustees of this settlement for the time being;

"the Trust Fund" means:

- (a) property transferred to the Trustees to hold on the terms of this settlement;
- (b) all property from time to time representing the above; and
- (c) Preserved UDW Claims Proceeds

"Trust Property" means any property comprised in the Trust Fund; and

"Trusts Law" means the Trusts Law (2011 Revision).

EXECUTED AS A DEED by)
OCEAN RIG UDW INC. (IN PROVISIONAL)
LIQUIDATION))
a Cayman Islands corporation acting by)

[Handwritten signature]

SIMON APPELL or ELEANOR FISHER as JOINT
PROVISIONAL LIQUIDATORS as agents without
personal liability,
in the presence of:

Witness signature: *W.R.*

Name (print): WILLIAM JONES

Address: 89 Nexus Way, Camana Bay
Grand Cayman, Cayman Islands, KY1-9009

EXECUTED AND DELIVERED AS A DEED by
AGON SHIPPING INC.

AGON SHIPPING INC.

By: _____
Name: Dr. Renato Cefai
Title: Director of Omega Services Limited, Sole
Director and Secretary of Agon Shipping Inc.

EXECUTED AND DELIVERED AS A DEED by
OCEAN RIG INVESTMENTS INC.

OCEAN RIG INVESTMENTS INC.

By: _____
Name: Dr. Renato Cefai
Title: Director of Omega Services Limited, Sole
Director and Secretary of Ocean Rig
Investments Inc.

EXECUTED AS A DEED by)
OCEAN RIG UOW INC. (IN PROVISIONAL)
LIQUIDATION))
a Cayman Islands corporation acting by)

SIMON APPELL or ELEANOR FISHER as JOINT
PROVISIONAL LIQUIDATORS as agents without
personal liability,
in the presence of:


Witness signature;

Name (print):

Address:

EXECUTED AND DELIVERED AS A DEED by
AGON SHIPPING INC.

AGON SHIPPING INC.

By: 
Name: Dr. Renato Cefai
Title: Director of Omega Services Limited, Sole
Director and Secretary of Agon Shipping Inc.

Dr. RENATO CEFAL
DIRECTOR
OMEGA SERVICES LIMITED
5/1 MERCHANTS STREET
VALLETTA VLT 1171

EXECUTED AND DELIVERED AS A DEED by
OCEAN RIG INVESTMENTS INC.

OCEAN RIG INVESTMENTS INC.

By: 
Name: Dr. Renato Cefai
Title: Director of Omega Services Limited, Sole
Director and Secretary of Ocean Rig
Investments Inc.


Dr. RENATO CEFAL
DIRECTOR
OMEGA SERVICES LIMITED
5/1 MERCHANTS STREET
VALLETTA VLT 1171

EXECUTED AND DELIVERED AS A DEED by
PRESERVED CLAIMS TRUST PTC LTD

acting by SIMON APPELL or ELEANOR FISHER

as DIRECTOR in the presence of:



Witness signature: 

Name (print): WILLIAM JONES

Address: 89 NEXUS Way, Canana Bay
Grand Cayman, Cayman Islands, KY1-9009

I,, hereby accept my appointment as an Initial Enforcer of this settlement

.....

Name:

Date:

I,, hereby accept my appointment as an Initial Enforcer of this settlement

.....

Name:

Date:

EXECUTED AND DELIVERED AS A DEED by
PRESERVED CLAIMS TRUST PTC LTD

acting by SIMON APPELL or ELEANOR FISHER

as DIRECTOR in the presence of:

Witness signature:

Name (print):

Address:


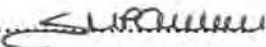
For and on Behalf of
I, Estera Enforcers (Cayman) Limited
I,, hereby accept my appointment as an Initial Enforcer of this
settlement


.....

Name: FIONA CEARLIN / SAMANTHA POWELL

Date:

For and on Behalf of
I, Estera Protectors (Cayman) Limited
I,, hereby accept my appointment as an Initial Enforcer of this
settlement


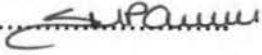

.....

Name: FIONA CEARLIN / SAMANTHA POWELL

Date:

For And On Behalf of
Esteria Services (Cayman) Limited

I, hereby accept my appointment as an Initial Enforcer of this
settlement


..... 

Name: FIONA CRELIN / SAMANTHA POWELL

Date:

Exhibit 15

Exhibit H

PART L
UDW SCHEME

IN THE MATTER OF OCEAN RIG UDW INC.

(IN PROVISIONAL LIQUIDATION)

– and –

IN THE MATTER OF THE COMPANIES LAW (2016 Revision)

SCHEME OF ARRANGEMENT

(under section 86 of the Companies Law (2016 Revision))

BETWEEN

OCEAN RIG UDW INC.

(IN PROVISIONAL LIQUIDATION)

AND

THE UDW SCHEME CREDITORS

(as hereinafter defined)

PRELIMINARY

RECITALS

(A) UDW DETAILS

UDW is a company registered by way of continuation as an exempted company in the Cayman Islands with company registration number 310396 and its principal executive office at c/o Ocean Rig Cayman Management Services SEZC Limited, 3rd Floor Flagship Building, Harbour Drive, Grand Cayman, Cayman Islands and registered office at c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

The common stock of UDW is currently listed on the NASDAQ on the Global Select Market. The NASDAQ previously indicated an intention to suspend trading and to delist UDW's common stock. UDW appealed the delisting action and received a conditional exception staying the delisting of its common stock subject to certain conditions, including the Restructuring becoming effective on or before 25 September 2017 and

UDW demonstrating compliance with all initial listing requirements for NASDAQ at such time. Following an annual general meeting of shareholders held on 24 April 2017, the authorised share capital of UDW was increased to one trillion (1,000,000,000,000) common shares of a par value of US\$0.01 each and five hundred million (500,000,000) preferred shares of a par value of US\$0.01 each.

(B) THE EXISTING DEBT

The Group issued the following Existing Debt:

- (a) the 2019 Notes, issued by UDW, with an outstanding principal value of approximately US\$131.0 million (plus accrued interest);
- (b) the 2017 Notes, issued by DRH, with an outstanding principal value of approximately US\$459.7 million (plus accrued interest);
- (c) the DFH Credit Facility borrowed by DFH and DP (as joint and several borrowers), with an outstanding principal value of approximately US\$1.83 billion (plus accrued interest); and
- (d) the DOV Credit Facility borrowed by DOV and DVP (as joint and several borrowers), with an outstanding principal value of approximately US\$1.27 billion (plus accrued interest).

UDW has provided guarantees in relation to each of the 2017 Notes, the DFH Credit Facility and the DOV Credit Facility.

The 2019 Notes were issued by UDW pursuant to the 2019 Notes Indenture and the 2017 Notes were issued by DRH pursuant to the 2017 Notes Indenture. The 2019 Notes and the 2017 Notes are held under an arrangement whereby:

- (a) the 2019 Notes and 2017 Notes have been issued in global form of the Global Note initially being deposited with the 2019 Notes Common Depository and the 2017 Notes Common Depository (respectively) under electronic systems designed to facilitate paperless transactions of dematerialised securities; and
- (b) such electronic systems involve interests in the 2019 Notes and the 2017 Notes (respectively) being held by Account Holders. Each Account Holder may be holding its interests in the 2019 Notes and 2017 Notes on behalf of itself as a UDW Scheme Creditor and/or (directly or indirectly) for one or more other UDW Scheme Creditors.

The 2019 Notes and the 2017 Notes will remain in global form for the purposes of this UDW Scheme. The 2017 Notes Trustee and the 2019 Notes Trustee are not UDW Scheme Creditors for the purposes of this UDW Scheme.

(C) PURPOSE OF THE SCHEMES AND THE RESTRUCTURING

The Restructuring comprises four separate but connected schemes of arrangement: this UDW Scheme; the DFH Scheme; the DOV Scheme and the DRH Scheme.

The Schemes if approved, will restructure the Existing Debt as follows:

(a) in accordance with the terms of this UDW Scheme, each UDW Scheme Creditor will release its UDW Scheme Claims and its UDW Ancillary Scheme Claims in exchange for its UDW Scheme Creditor Entitlements;

(b) in accordance with the DFH Scheme, each DFH Scheme Creditor will:

(i) transfer a portion of its DFH Scheme Claims (being the DFH Transfer Portion) to UDW in exchange for its DFH New Share Entitlement; and

(ii) release a portion of its DFH Scheme Claims (being the DFH Release Portion) in exchange for its DFH Cash Entitlement and DFH New Loan Entitlement,

provided that the sum of: (i) the DFH Transfer Portion; and (ii) the DFH Release Portion, of each DFH Scheme Creditor shall together be equal to that DFH Scheme Creditor's DFH Scheme Claims;

(c) in accordance with the DOV Scheme, each DOV Scheme Creditor will:

(i) transfer a portion of its DOV Scheme Claims (being the DOV Transfer Portion) to UDW in exchange for its DOV New Share Entitlement; and

(ii) release a portion of its DOV Scheme Claims (being the DOV Release Portion) in exchange for its DOV Cash Entitlement and DOV New Loan Entitlement,

provided that the sum of: (i) the DOV Transfer Portion; and (ii) the DOV Release Portion, of each DOV Scheme Creditor shall together be equal to that DOV Scheme Creditor's DOV Scheme Claims; and

(d) in accordance with the DRH Scheme, each DRH Scheme Creditor will release its DRH Scheme Claims in exchange for its DRH Scheme Creditor Entitlements.

The Restructuring has been promulgated by the Scheme Companies, acting by and under the authority of the JPLs, and includes various measures which are intended to ensure that UDW and the Group can continue to operate as a going concern.

Each of the UDW Scheme, the DFH Scheme and the DOV Scheme is inter-conditional upon each other and each must be approved by the relevant Scheme Creditors at the relevant Scheme Meeting and sanctioned by the Cayman Court in order for any of them to become effective. The DRH Scheme is conditional upon: (i) the DRH Scheme being approved by the DRH Scheme Creditors at the DRH Scheme Meeting and sanctioned by the Cayman Court; and (ii) each of the UDW Scheme, the DFH Scheme and the DOV Scheme being approved at the relevant Scheme Meeting and sanctioned by the Cayman

Court, in order for the DRH Scheme to become effective. If each of this UDW Scheme, the DFH Scheme and the DOV Scheme is sanctioned but the DRH Scheme is not sanctioned, the Restructuring will proceed without the DRH Scheme.

(D) **BINDING ON THIRD PARTIES**

Pursuant to the Group Undertaking and the Information Agent Undertaking, the Scheme Companies (on behalf of each member of the Group) and the Information Agent have undertaken to be bound by and perform the terms of this UDW Scheme and insofar as is applicable, to execute or procure to be executed all such documents, and to do or procure to be done all such acts and things, that are consistent with and reasonably required for the purposes of giving effect to this UDW Scheme.

Pursuant to the DFH Administrative Agent Undertaking, the DOV Administrative Agent Undertaking, the DFH Collateral Agent Undertaking, the DOV Collateral Agent Undertaking, the New Administrative Agent Undertaking, the New Collateral Agent Undertaking and the Holding Period Trustee Undertaking, the DFH Administrative Agent, the DOV Administrative Agent, the DFH Collateral Agent, the DOV Collateral Agent, the New Administrative Agent, the New Collateral Agent and the Holding Period Trustee (as applicable) have agreed, upon instructions from UDW (acting by its directors, the JPLs or other duly appointed representatives) or if applicable, the relevant Agent, to execute or procure to be executed all such documents and do or procure to be done all such acts and things, that are consistent with and reasonably required for the purposes of giving effect to the terms of this UDW Scheme that apply to them.

THIS UDW SCHEME

1. DEFINITIONS

1.1 In this scheme of arrangement terms used but not defined shall have the meaning given to them in the explanatory statement issued by the Scheme Companies dated 21 July 2017 pursuant to Order 102, Rule 20(4) of the Cayman Islands Grand Court Rules 1995 (Revised Edition) (the "**Explanatory Statement**").

2. INTERPRETATION

In this UDW Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) a company is a "subsidiary" of another company, its "holding company", if that other company (a) holds a majority of the voting rights in it; (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in it, or it is a subsidiary of a company that is itself a direct or indirect subsidiary of that other company;
- (b) references to 'recitals', 'clauses' and 'schedules' are references to the recitals, clauses and schedules of this UDW Scheme;

- (c) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (d) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (e) headings are for ease of reference only and shall not affect the interpretation of this UDW Scheme;
- (f) to the extent that there shall be any conflict of inconsistency between the terms of this UDW Scheme and the Explanatory Statement then the terms of this UDW Scheme will prevail;
- (g) references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced, and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (h) references to US\$ are references to the lawful currency of the United States;
- (i) references to a 'person' includes references to an individual, firm, partnership, company, corporation, other legal entity, unincorporated body of persons or any state or state agency;
- (j) references to times and dates are to times and dates in the Cayman Islands; and
- (k) 'including', 'includes' and 'included' shall be construed without limitation.

3. APPLICATION AND EFFECTIVENESS OF THE UDW SCHEME

- 3.1 This UDW Scheme will become effective in accordance with its terms on the UDW Lodgement Date.
- 3.2 The compromise and arrangement effected by this UDW Scheme shall apply to all UDW Scheme Claims and any UDW Ancillary Scheme Claims and shall be binding on all UDW Scheme Creditors.
- 3.3 Subject to clause 22 of this UDW Scheme, in the event that the Restructuring Effective Date has not occurred on or before the Longstop Date, the terms of, and obligations on the parties under or pursuant to this UDW Scheme shall lapse and all compromises and arrangements provided by this UDW Scheme shall have no force or effect.

4. RESTRUCTURING EFFECTIVE DATE

- 4.1 The Restructuring Effective Date will occur upon the Business Day on which UDW gives notice to the Scheme Creditors through the Information Agent Website that the following conditions have been satisfied or waived (as applicable) in accordance with clause 4.2, provided that the DFH Scheme Conditions and the DOV Scheme Conditions have also been satisfied or waived (as applicable):

- (a) the UDW Sanction Order has been granted;
- (b) the UDW Lodgement Date has occurred;
- (c) the Restructuring Support Agreement Conditions have been satisfied or waived;
- (d) each UDW Restructuring Document, other than the UDW 2017 Notes Release and the UDW 2019 Notes Release, has been executed (as applicable) and has either become effective in accordance with its terms or is being held in escrow pursuant to the terms of this UDW Scheme;
- (e) the Majority Supporting Lenders have confirmed that each of the conditions precedent contained in section 5 of the New Credit Agreement have been satisfied or waived (as applicable) or will be satisfied on the Restructuring Effective Date by virtue of completion of the Scheme Steps;
- (f) the Chapter 15 Orders have been granted (other than in respect of the DRH Scheme);
- (g) each director of UDW has executed an Indemnification Confirmation Agreement and delivered it to UDW to be held in escrow pursuant to the terms of this UDW Scheme;
- (h) the organisational documents of each of the Material UDW Subsidiaries have been amended to include an express provision prohibiting such subsidiary from taking any action not in accordance with the New UDW Articles;
- (i) the Security Deposit (as defined in the Master Services Agreement) has been paid into escrow in accordance with the terms of the Master Services Agreement and the Management Services Escrow Agreement; and
- (j) the Insider Trading Policy has been adopted by UDW,

(each a "**UDW Scheme Condition**" and, together, the "**UDW Scheme Conditions**").

4.2 The requirement for the UDW Scheme Conditions from (and including) 4.1(f) to (and including) 4.1(j) to be satisfied for the Restructuring Effective Date to occur may be waived with the consent of (i) UDW and (ii) the holders of a simple majority by value of the UDW Scheme Claims.

5. RELEASE OF UDW SCHEME CLAIMS AND UDW ANCILLARY SCHEME CLAIMS

5.1 On the Restructuring Effective Date, subject to the occurrence of the UDW Scheme Steps, each UDW Scheme Creditor will release fully and absolutely its UDW Scheme Claims and any UDW Ancillary Scheme Claims in exchange for its UDW Scheme Creditor Entitlements.

- 5.2 Following the absolute release of the UDW Scheme Claims and UDW Ancillary Scheme Claims pursuant to clause 5.1, no UDW Scheme Creditor shall have any remaining interest in or entitlement to any UDW Scheme Claims or UDW Ancillary Scheme Claims.
- 5.3 Nothing in this clause 5 shall release or otherwise affect any Preserved UDW Claims.

6. ENTITLEMENT OF UDW SCHEME CREDITORS

- 6.1 UDW Scheme Creditor Entitlements will only be issued to a UDW Scheme Creditor (or its Nominated Recipient(s)) on the Restructuring Effective Date (or in relation to New Non-Marginable Shares as soon as reasonably practicable following the UDW EGM) if the UDW Scheme Creditor is either: (i) a UDW Cash Option Participant; (ii) not a Disqualified Person or a Prohibited Transferee; or (iii) is a Disqualified Person or Prohibited Transferee but has nominated one or more Nominated Recipient(s) to receive all its UDW New Share Entitlements, and in each case:
- (a) the Information Agent has received a validly completed Account Holder Letter and/or Lender Claim Letter (as applicable) and a validly completed Confirmation Form from that UDW Scheme Creditor and its Nominated Recipient(s) (if applicable) prior to the Submission Deadline (or such later time as the Information Agent may decide in its absolute discretion); and
 - (b) the UDW Scheme Creditor and its Nominated Recipient(s) (if applicable) have provided all documentation or information reasonably requested by any relevant Agent or Scheme Company for the purposes of any "Know Your Customer" checks required to distribute UDW Scheme Creditor Entitlements to the relevant UDW Scheme Creditor or Nominated Recipient (as applicable).
- 6.2 Subject to clause 12 and the other terms of this UDW Scheme, no UDW Scheme Creditor shall have any entitlement to receive any consideration in relation to its UDW Scheme Claims other than under clause 6.1.
- 6.3 Each UDW Scheme Creditor who (i) is not a Disqualified Person or a Prohibited Transferee and (ii) is a Disqualified Person or a Prohibited Transferee but who nominates one or more Nominated Recipient(s) to receive all its UDW Scheme Creditor Entitlements, agrees that it and/or its Nominated Recipient(s) (as applicable) will, subject to such UDW Scheme Creditor (and Nominated Recipient if applicable) complying with the requirements set out in clause 6.1:
- (a) become a holder of its UDW New Share Entitlements on the Restructuring Effective Date; or
 - (b) if it is a UDW Cash Option Participant, receive its UDW Cash Option Entitlements on the Restructuring Effective Date.
- 6.4 Fractions of UDW New Share Entitlements will not be allotted and will be rounded down to the nearest whole share.

6.5 Fractions of UDW Cash Option Entitlements will be rounded down to the nearest US\$1.

7. DETERMINATION OF UDW SCHEME CLAIMS

7.1 Subject to clause 7.2 below, the UDW Scheme Creditors entitled to receive UDW Scheme Creditor Entitlements under this UDW Scheme are the UDW Scheme Creditors as at the Entitlement Record Time and each UDW Scheme Creditor's UDW Scheme Creditor Entitlements will be determined based on its UDW Scheme Claims as at the Entitlement Record Time.

7.2 The JPLs may (but shall have no obligation to do so), in their absolute discretion and subject to the receipt of such written supporting evidence as they may reasonably require, agree to recognise the assignment or transfer of UDW Scheme Claims after the Entitlement Record Time for the purposes of determining UDW Scheme Creditor Entitlements, provided that any recognition of assignments or transfers of UDW Guarantee Claims pursuant to this clause 7.2 shall only be effective if such assignment or transfer is also recognised for the purposes of determining, as applicable, DOV Scheme Creditor Entitlements under the DOV Scheme (if such UDW Guarantee Claims relate to the DOV Scheme); and/or DFH Scheme Creditor Entitlements under the DFH Scheme (if such UDW Guarantee Claims relate to the DFH Scheme); and/or the DRH Scheme Creditor Entitlements under the DRH Scheme (if such UDW Guarantee Claims relate to the DRH Scheme), in each case in accordance with the terms of the relevant Scheme.

8. PROVISION OF INFORMATION BY UDW SCHEME CREDITORS

8.1 Account Holder Letters, Lender Claim Letters and Confirmation Forms (as applicable) submitted by or on behalf of UDW Scheme Creditors shall be submitted in accordance with the instructions set out in the Account Holder Letter, Lender Claim Letter and Confirmation Form (as applicable).

8.2 Whether an Account Holder Letter, Lender Claim Letter or Confirmation Form (as applicable) has been validly completed shall be determined by the Information Agent at its discretion, provided that, if the Information Agent determines that an Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) has not been validly completed, it will comply with clause 8.3.

8.3 If the Information Agent determines that an Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) has not been validly completed, it shall promptly prepare a written statement setting out the basis for its determination and send that statement by electronic mail to the party that provided such Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable). A UDW Scheme Creditor may resubmit such Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) together with such additional information as reasonably requested by the Information Agent.

9. OBLIGATIONS OF UDW

The:

- (a) issuance or distribution of the UDW Scheme Consideration; and
- (b) execution of the UDW Restructuring Documents,

shall satisfy all of UDW's obligations to issue or distribute the UDW Scheme Creditor Entitlements to the UDW Scheme Creditors under this UDW Scheme.

10. GRANT OF AUTHORITY IN FAVOUR OF UDW TO EXECUTE THE RESTRUCTURING DOCUMENTS

10.1 Each UDW Scheme Creditor hereby irrevocably authorises and instructs UDW and appoints UDW as its agent and attorney (acting by its directors, the JPLs or other duly appointed representatives) on and from the UDW Lodgement Date, to enter into, execute and deliver as a deed (as applicable), on its behalf, without discretion, the UDW Restructuring Documents (including, without limitation, the UDW Deed of Covenant and Release) and such other documents required to implement the Restructuring.

10.2 Notwithstanding and without prejudice to the generality of clause 10.1, upon the UDW Lodgement Date each UDW Scheme Creditor hereby irrevocably authorises and instructs UDW, and appoints UDW as its agent and attorney (acting by its directors, the JPLs or other duly appointed representatives) to, without discretion:

- (a) issue a confirmation to the 2019 Notes Common Depository to cancel the 2019 Notes on its receipt of corresponding instructions to that effect from the relevant Clearing Systems on the Restructuring Effective Date;
- (b) deliver the 2019 Notes Trustee Instruction to the 2019 Notes Trustee;
- (c) deliver the UDW 2017 Notes Trustee Instruction to the 2017 Notes Trustee;
- (d) deliver the UDW DFH Administrative Agent Instruction to the DFH Administrative Agent; and
- (e) deliver the UDW DOV Administrative Agent Instruction to the DOV Administrative Agent.

10.3 The UDW Restructuring Documents executed on behalf of the UDW Scheme Creditors by UDW pursuant to clause 10.1 will become effective when they are delivered or released from escrow, in each case in accordance with clause 12.4, whereupon they shall be unconditionally and irrevocably binding on all UDW Scheme Creditors who are party to such UDW Restructuring Document.

10.4 The authorities granted by or pursuant to this clause 10 shall be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

- 10.5 UDW hereby undertakes that it shall, and shall procure that its direct and indirect subsidiaries shall:
- (a) as soon as reasonably practicable following the UDW Lodgement Date, take all steps to enter into, execute and (as necessary) deliver as a deed (or otherwise) any UDW Restructuring Document and such other documents that are required to give effect to the Restructuring; and
 - (b) take all other steps as are required to give effect to the Restructuring.
- 10.6 UDW shall cease to be the agent and attorney of each UDW Scheme Creditor under clauses 10.1 and 10.2 upon completion of all of the UDW Scheme Steps (other than in connection with the authority to sign the UDW Shareholder Proxies on behalf of any UDW Scheme Creditor whose New UDW Shares have been placed into the Holding Period Trust, with such authority ceasing on the date of the UDW EGM) or if this UDW Scheme lapses in accordance with clause 22.

11. UNDERTAKINGS FROM UDW SCHEME CREDITORS

Each UDW Scheme Creditor (for itself and, to the extent that it has authority to do so, its Nominated Recipient(s), if any) hereby on and from the Restructuring Effective Date:

- (a) irrevocably ratifies and confirms any act which UDW, the JPLs, the Agents and any of their officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers may lawfully do or cause to be done or purport to do in accordance with the terms of this UDW Scheme; and
- (b) undertakes to UDW, the JPLs, the Agents and any of their officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers and their respective Affiliates, directors, managers and officers to treat all of its UDW Scheme Claims as having been waived, cancelled or released in consideration for its UDW Scheme Creditor Entitlements pursuant to this UDW Scheme whether or not the UDW Scheme Creditor has had its UDW Scheme Creditor Entitlements issued and/or paid to it, its Nominated Recipient(s) or the Holding Period Trustee.

12. TRUST IN RELATION TO UDW SCHEME CREDITOR ENTITLEMENTS

- 12.1 If a UDW Scheme Creditor (or its Nominated Recipient(s)) is not issued its UDW Scheme Creditor Entitlements pursuant to clause 6.1, the relevant UDW Scheme Creditor Entitlements will be issued to the Holding Period Trustee on the Restructuring Effective Date, who will hold such UDW Scheme Creditor Entitlements (the "**Trust Consideration**") on trust pursuant to the Holding Period Trust Agreement for the relevant UDW Scheme Creditor until the expiry of the Holding Period.

12.2 Pursuant to the Holding Period Trust Agreement, the Holding Period Trustee shall, if instructed by the Information Agent before the expiry of the Holding Period (acting on the instructions of a UDW Scheme Creditor entitled to Trust Consideration):

- (a) distribute; or
- (b) sell and distribute the net proceeds arising from the sale of,

the Trust Consideration it holds on behalf of a UDW Scheme Creditor to that relevant UDW Scheme Creditor and/or its Nominated Recipient(s), provided that the relevant UDW Scheme Creditor and/or its Nominated Recipient(s) (as applicable) has:

- (a) delivered a validly completed Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) to the Information Agent; and
- (b) provided all documentation or information reasonably requested by any relevant Agent or Scheme Company for the purposes of any "Know Your Customer" checks required to distribute UDW Scheme Creditor Entitlements to the relevant UDW Scheme Creditor or Nominated Recipient (as applicable).

12.3 Neither the Holding Period Trustee nor any person other than the relevant UDW Scheme Creditor shall at any time whatsoever, either present or future, have any beneficial interest in the Trust Consideration, until the expiration of the Holding Period. Any interest, dividends, distributions, repayments or prepayments (or any other rights or benefits) paid to the Holding Period Trustee from time to time in respect of Trust Consideration shall form part of the Trust Consideration and be dealt with in accordance with the terms of the Holding Period Trust Agreement.

12.4 If at the expiration of the tenth Business Day following the expiration of the Holding Period, the Holding Period Trustee has not received an instruction in accordance with the Holding Period Trust Agreement in respect of any remaining property in the Trust Fund, the Holding Period Trustee and UDW shall, and is irrevocably authorised and instructed by each relevant Trust Scheme Creditor (as defined in the Holding Period Trust Agreement) to sell, cancel, waive, release or transfer to any Scheme Company any property in the Trust Fund (as applicable and at the direction of UDW). The proceeds of any such sale, and any remaining cash constituting the Trust Consideration may be paid to any Scheme Company or to a charity selected by UDW.

13. UDW SCHEME STEPS

13.1 As soon as possible following the UDW Sanction Order Date, subject to the occurrence of the DFH Sanction Order Date and the DOV Sanction Order Date, UDW will file the UDW Sanction Order with the Registrar of Companies.

13.2 UDW will take all reasonable steps to ensure that the Chapter 15 Enforcement Hearing will be held as soon as possible following the UDW Lodgement Date.

- 13.3 As soon as possible following the UDW Lodgement Date, subject to the occurrence of the DFH Lodgement Date and the DOV Lodgement Date, UDW will:
- (a) notify UDW Scheme Creditors through the Information Agent Website that the UDW Lodgement Date has occurred;
 - (b) acting through the Chapter 15 Representative, attend the Chapter 15 Enforcement Hearing to seek the Chapter 15 Enforcement Order;
 - (c) acting on behalf of the UDW Scheme Creditors pursuant to the grant of authority given under clause 10 of this UDW Scheme, deliver:
 - (i) the 2019 Notes Trustee Instruction to the 2019 Notes Trustee;
 - (ii) the UDW 2017 Notes Trustee Instruction to the 2017 Notes Trustee;
 - (iii) the UDW DFH Administrative Agent Instruction to the DFH Administrative Agent; and
 - (iv) the UDW DOV Administrative Agent Instruction to the DOV Administrative Agent;
 - (d) acting on its own behalf, and acting on behalf of the UDW Scheme Creditors pursuant to the grant of authority given under clause 10 of this UDW Scheme, execute the UDW Restructuring Documents to which UDW and the UDW Scheme Creditors (as applicable) are party and hold such executed documents in escrow until the Restructuring Effective Date;
 - (e) notify the Holding Period Trustee that the UDW Lodgement Date has occurred; and
 - (f) procure that each member of the Group promptly executes the UDW Restructuring Documents which they are party to and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date.
- 13.4 Upon receipt of the 2019 Notes Trustee Instruction, the 2019 Notes Trustee shall be irrevocably instructed and authorised to, and shall promptly and without discretion, execute the UDW Restructuring Documents to which it is a party (including, without limitation, the UDW 2019 Notes Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date, save that to the extent that the 2019 Notes Trustee does not execute the Restructuring Documents the UDW Scheme Steps shall proceed and the effect of this UDW Scheme shall not be affected in any way.
- 13.5 Upon receipt of the UDW 2017 Notes Trustee Instruction, the 2017 Notes Trustee shall be irrevocably instructed and authorised to, and shall, promptly and without discretion:
- (a) execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW 2017 Notes Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date; and

- (b) execute and deliver the UDW 2017 Notes Collateral Agent Instruction to the 2017 Notes Collateral Agent,

save that to the extent that the 2017 Notes Trustee does not execute the Restructuring Documents the UDW Scheme Steps shall proceed and the effect of this UDW Scheme shall not be affected in any way.

- 13.6 Upon receipt of the UDW DFH Administrative Agent Instruction, the DFH Administrative Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion:

- (a) execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW DFH Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date; and
- (b) execute and deliver the UDW DFH Collateral Agent Instruction to the DFH Collateral Agent.

- 13.7 Upon receipt of the UDW DOV Administrative Agent Instruction, the DOV Administrative Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion:

- (a) execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW DOV Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date; and
- (b) execute and deliver the UDW DOV Collateral Agent Instruction to the DOV Collateral Agent.

- 13.8 Upon receipt of the UDW 2017 Notes Collateral Agent Instruction, the 2017 Notes Collateral Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion, execute the UDW Restructuring Documents to which it is party (including, without limitation the UDW 2017 Notes Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date, save that to the extent that the 2017 Notes Collateral Agent does not execute the Restructuring Documents the UDW Scheme Steps shall proceed and the effect of this UDW Scheme shall not be affected in any way.

- 13.9 Upon receipt of the UDW DFH Collateral Agent Instruction, the DFH Collateral Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion, execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW DFH Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date.

- 13.10 Upon receipt of the UDW DOV Collateral Agent Instruction, the DOV Collateral Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion, execute the UDW Restructuring Documents to which it is party (including,

without limitation, the UDW DOV Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date.

13.11 Upon notification that the UDW Lodgement Date has occurred, the Holding Period Trustee shall promptly and without discretion execute the Holding Period Trust Agreement and deliver the same to UDW to be held in escrow until the Restructuring Effective Date.

13.12 On the Restructuring Effective Date, promptly after UDW notifies the UDW Scheme Creditors through the Information Agent Website that the Restructuring Effective Date has occurred, the following UDW Scheme Steps shall occur in the following order:

- (a) UDW shall date and release the executed Holding Period Trust Agreement from escrow and it shall become effective;
- (b) The UDW Cash Option Entitlements shall be paid to the UDW Cash Option Participants and/or their Nominated Recipient(s) who are entitled to receive their UDW Cash Option Entitlements, in each case pursuant to clause 6.1.
- (c) The UDW New Share Entitlements shall be issued to Marginable Participants only by UDW instructing the Transfer Agent to issue the New Marginable Shares to: (i) the relevant brokers or custody accounts identified in the Account Holder Letter or Lender Claim Letter of the UDW Scheme Creditors and/ or their Nominated Recipients who are Marginable Participants and who are entitled to receive their UDW New Share Entitlements; and (ii) the Holding Period Trustee in respect of those UDW Scheme Creditors who are not entitled to receive their UDW New Share Entitlements, in each case pursuant to clause 6.1. The Transfer Agent shall confirm that such New Marginable Shares have been issued to such broker and custody accounts in accordance with any valid instructions received by it.
- (d) UDW shall date and release from escrow the executed Governance Agreements for each recipient of New Marginable Shares which has previously delivered a signature page to a Governance Agreement and each such Governance Agreement shall become effective.
- (e) UDW shall date and release the Indemnification Confirmation Agreements and UDW Deed of Covenant and Release from escrow and they shall each become effective.
- (f) UDW shall terminate any existing management services agreement(s) and date and release the Master Services Agreement, Management Services Power of Attorney and Individual Management Services Agreements from escrow, and they shall each become effective.
- (g) UDW will issue the MEP to be held as necessary stock until they are allocated to TMS in accordance with the terms of the Master Services Agreement.

- (h) UDW shall date and release the Preserved Claims Assignments and the Preserved Claims Trust Deed from escrow and they shall become effective.
- (i) UDW shall execute the UDW Shareholder Proxies.
- (j) UDW shall date and release the UDW Releases from escrow and they shall each become effective.
- (k) UDW shall instruct the Clearing Systems to:
 - (i) debit the Book-Entry Interests relating to the 2019 Notes from the custody account of each UDW Scheme Creditor that is a 2019 Notes Creditor (or its Account Holder, as applicable) and to credit or cause to be credited to the custody account of UDW, the Book-Entry Interests in an amount equal to that debited from the Book-Entry Interests of each UDW Scheme Creditor's custody account being a 2019 Notes Creditor; and
 - (ii) authorise the cancellation of the Group's Book-Entry Interests relating to the 2019 Notes held in the Group's custody account or the Group's Account Holder's custody account.

13.13 Following the completion of the UDW Scheme Steps on the Restructuring Effective Date:

- (a) UDW shall promptly enter into a Lender Appointing Person Indemnification Agreement for each Lender Appointing Person and a Director Indemnification Agreement for each new director of UDW.
- (b) The Information Agent shall provide each UDW Scheme Creditor and/or any Nominated Recipient(s) with copies of the executed UDW Restructuring Documents they are party to via the Information Agent Website.
- (c) UDW will to the extent not already done convene the UDW EGM on not less than 21 days' notice and within 45 days of the Restructuring Effective Date to approve and adopt the New UDW Articles.
- (d) Promptly following the adoption of the New UDW Articles and the resolutions to create the New Non-Marginable Shares at the UDW EGM, UDW shall instruct the Transfer Agent to issue the New Non-Marginable Shares through the relevant brokers or custody accounts identified in the Account Holder Letters or Lender Claim Letters (as applicable) of the UDW Scheme Creditors and/or their Nominated Recipient(s) who: (i) are entitled to receive their UDW New Share Entitlements pursuant to clause 6.1; and (ii) are Non-Marginable Participants. In the event that the relevant resolutions to create the New Non-Marginable Shares are not adopted at the UDW EGM, any Non-Marginable Participants may elect to receive, or nominate a Nominated Recipient to receive, their UDW New Share Entitlements in the form of New Marginable Shares by submitting an updated Account Holder Letter and/or Lender Claim Letter to the Information Agent, which, to be validly completed, need not include Part 5 of the Account Holder

Letter or Part 7 of the Lender Claim Letter. UDW shall instruct the Transfer Agent to issue New Marginable Shares to such UDW Scheme Creditors and/or their Nominated Recipient(s) promptly after the Information Agent receives such validly completed Account Holder Letter and/or Lender Claim Letter.

- (e) UDW shall date and release from escrow the executed Governance Agreements for each recipient of New Non-Marginable Shares which has previously delivered a signature page to a Governance Agreement and each such Governance Agreement shall become effective.
- (f) The JPLs shall promptly apply to the Cayman Court for discharge of their appointment and of the Winding Up Petition relating to UDW.

14. RELEASES

14.1 With effect from the Restructuring Effective Date, each UDW Scheme Creditor and UDW (for its own behalf and on behalf of its subsidiaries) to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, acquit, forgive, and discharge unconditionally each of the Protected Parties from any and all Claims and/or Liabilities arising or resulting from the Protected Parties' involvement in the negotiation, execution, performance or implementation of the Schemes, the Restructuring or the Restructuring Support Agreement, subject to clause 16 in relation to the JPLs only, except for Claims and/or Liabilities arising out of:

- (a) any matter, act, omission, transaction, event, occurrence, cause or thing whatsoever directly or indirectly relating to the Group (including, but not limited to, the New Finance Documents) arising or taking place after the Restructuring Effective Date;
- (b) any fraud, gross negligence or wilful default;
- (c) any breach by a Protected Party of its express obligations or representations in the Restructuring Support Agreement, this UDW Scheme or the UDW Restructuring Documents;
- (d) any Preserved UDW Claims; or
- (e) any Liabilities owed to UDW as Lender under the DFH Amended and Restated Credit Agreement and the DOV Amended and Restated Credit Agreement.

14.2 The parties to this UDW Scheme may not by agreement rescind or vary any term of this clause 14 with respect to a Protected Party without the consent of such Protected Party.

15. STAY OF PROCEEDINGS

With effect from completion of the Restructuring Effective Date, each UDW Scheme Creditor hereby irrevocably covenants with UDW for the benefit of UDW and each of the

Protected Parties, to the extent permitted by law, subject to clause 16 in relation to the JPLs only:

- (a) not to bring or continue, or instruct, direct or authorise any other person to bring or continue any Proceedings, other than any Allowed Proceedings, against any of the Protected Parties in respect of any UDW Scheme Claims or UDW Ancillary Scheme Claims or otherwise to assert any UDW Scheme Claims or UDW Ancillary Scheme Claims against any of the Protected Parties;
- (b) not to bring any Proceedings, other than any Allowed Proceedings, against any Protected Party which imposes or attempts to impose upon any of them any Claim or Liability whatsoever in connection with the implementation of the Schemes, and/or the Restructuring;
- (c) not to bring any Proceedings, other than any Allowed Proceedings, against any Protected Party on the basis that any conditions or requirements for that Protected Party taking any action in accordance with, or pursuant to, this UDW Scheme, the Restructuring or instructions given to that Protected Party in connection with the Restructuring, have not been satisfied or were not met in full;
- (d) not to make, demand or institute (or threaten to institute) any Proceedings against the Agents in connection with this UDW Scheme or the Restructuring, other than an Allowed Proceeding;
- (e) not to prove, or seek to prove, in the insolvencies of any member of the Group (if any insolvency occurs) in respect of any UDW Scheme Claims or UDW Ancillary Scheme Claims; and
- (f) to treat the UDW Scheme Claims as having been fully and absolutely released on and from the Restructuring Effective Date,

save that this clause 14.2 shall not apply to any Preserved UDW Claims or, in the event that the DRH Sanction Order is not granted, the 2017 Notes Creditors with respect to the DRH Silo only.

16. THE JPLS

- 16.1 Notwithstanding clause 13.13(f) and clause 14.2, the JPLs act as agents for and on behalf of UDW and, subject to clause 16.2, neither they nor any of their firms or affiliated firms, nor any of their or their firms' or affiliated firms' officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers shall incur any liability whatsoever (in respect of any of the obligations undertaken by UDW, or in respect of any failure on the part of UDW to perform or comply with any such obligations, or under any associated arrangements or negotiations, or under any document entered into pursuant to this UDW Scheme, or howsoever otherwise).

- 16.2 Notwithstanding clause 13.13(f) and clause 14.2, the JPLs, their firms and affiliated firms, and any of their or their firms' or affiliated firms' officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers shall not incur any liability whatsoever under this UDW Scheme nor in relation to any related matter or claim, whether in contract, tort (including negligence) or restitution or by reference to any other remedy or right in any jurisdiction or forum except for any claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct.
- 16.3 The exclusions of liability set out in this UDW Scheme shall arise and continue notwithstanding the termination of the agency of the JPLs or their discharge from office as joint provisional liquidators of this UDW Scheme before or after the Restructuring Effective Date and shall operate as a waiver of any claims in tort as well as under contract.
- 16.4 Each of the JPLs' firms, affiliated firms, and any of their or their firms' or their affiliated firms' officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers shall be entitled to rely on and enjoy the benefit of this clause 16 as if they were a party hereto.
- 16.5 Any joint provisional liquidator of UDW appointed after the date of this UDW Scheme shall be entitled to rely on and enjoy the benefit of this clause 16 as if they were a party hereto.
- 16.6 Nothing in this UDW Scheme shall require the JPLs to take any action which would breach any applicable law or regulation.

17. FUTURE LIQUIDATION

This UDW Scheme shall be unaffected by any present or future liquidation of UDW (including, for the avoidance of doubt, any provisional liquidation of UDW) and shall in those circumstances remain in force according to its terms.

18. RELIANCE FOR SECTION 3(A)(10) EXEMPTION

In sanctioning this UDW Scheme, the Cayman Court has been apprised of the fact that UDW will rely on the Cayman Court's ruling with respect to this UDW Scheme for the Section 3(a)(10) exemption under the United States Securities Act of 1933 for the issuance of the UDW New Share Consideration to be distributed to UDW Scheme Creditors in exchange for the UDW Scheme Claims subject to the sanction of this UDW Scheme by the Cayman Court.

19. APPLICATION TO THE CAYMAN COURT FOR DIRECTIONS

Without prejudice to any rights that UDW might otherwise have in connection with this UDW Scheme or any aspect of it, UDW shall be entitled to make an application to the Cayman Court for directions at any time in connection with any matter arising under or in relation to this UDW Scheme.

20. FOREIGN REPRESENTATIVE

Either one of the JPLs shall be authorised to act as the representative of UDW on and in connection with the Chapter 15 Proceedings or any application for recognition and assistance in relation to this UDW Scheme in any jurisdiction and under whatever law.

21. COSTS

UDW (or, to the extent legally permitted, another member of the Group) will pay in full and within a reasonable period all costs, charges, expenses and disbursements incurred by UDW and the JPLs in connection with the negotiation, preparation and implementation of this UDW Scheme as and when they arise, including, but not limited to, the costs of holding the UDW Scheme Meeting, the costs of obtaining the sanction of the Cayman Court and the costs of placing the notices (if any) required by this UDW Scheme.

22. LONGSTOP DATE

22.1 If the Restructuring Effective Date has not occurred by the Longstop Date, the terms of, and the obligations on the parties under, this UDW Scheme shall lapse and cease to have any effect, provided that UDW may, at its discretion, extend the Longstop Date to such later date agreed between UDW and UDW Scheme Creditors constituting a simple majority of UDW Scheme Claims by value at that time, provided that such extension shall only become effective if it is also agreed to by: (i) the DFH Scheme Creditors pursuant to the terms of the DFH Scheme; and (ii) the DOV Scheme Creditors pursuant to the terms of the DOV Scheme.

22.2 If the Restructuring Effective Date has not occurred by the Longstop Date, as may be extended pursuant to clause 22.1 hereof:

(a) the rights and obligations of the UDW Scheme Creditors under the Existing Finance Documents, 2019 Notes Indenture, DFH Credit Facility, DOV Credit Facility and 2017 Notes Indenture shall not be affected and shall remain in full force and effect (and any defaults occurring under the 2019 Notes Indenture, 2017 Notes Indenture, DOV Credit Facility or DFH Credit Facility shall be deemed not to have been waived and any grace period that expired during the duration of this UDW Scheme shall remain expired following the termination of this UDW Scheme); and

(b) any UDW Restructuring Documents held in escrow shall be promptly destroyed.

23. MODIFICATION

UDW may, at or in connection with the UDW Sanction Hearing and with the consent of the holders of a simple majority by value of the UDW Scheme Claims, implement on behalf of all UDW Scheme Creditors any modification of, or addition to, this UDW Scheme and/or the UDW Restructuring Documents or any terms or conditions that the Cayman Court may think fit to approve or impose and which would not directly or

indirectly have a material adverse effect on the rights or interests of UDW Scheme Creditors, or any UDW Scheme Creditor, under this UDW Scheme.

24. EXERCISE OF DISCRETION

24.1 Where, under or pursuant to any provision of this UDW Scheme, a matter is to be determined by:

- (a) UDW, it shall be determined by its directors, the JPLs or other duly appointed representatives; or
- (b) the Information Agent, it shall be determined in its discretion in such manner as it may consider fair and reasonable and after consultation with the Advisers to the Ad Hoc Group.

24.2 If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the implementation of this UDW Scheme in accordance with the UDW Scheme Steps, it shall be determined by the directors of UDW and the JPLs in such manner as they shall consider to be fair and reasonable and their decision shall, insofar as permitted by law, be final and binding on all concerned.

25. PERFORMANCE OF OBLIGATIONS ON DATES OTHER THAN A BUSINESS DAY

If any obligation is to be performed under the terms of this UDW Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

26. NOTICE

26.1 Any notice or other communication to be given under or in connection with this UDW Scheme (a "**Notice**") shall be in the English language in writing and shall be signed by or on behalf of the person giving it. A Notice may be delivered personally or sent by email, fax, pre-paid recorded delivery or international courier to the address or email address as set out below (or as may be notified by notice to UDW Scheme Creditors from time to time) or in relation to any Notice to be given to the UDW Scheme Creditors only:

- (a) through the Clearing Systems in relation to the 2017 Notes Creditors or the 2019 Notes or to the relevant Account Holders;
- (b) through the DFH Administrative Agent in relation to DFH Lenders under the DFH Credit Facility;
- (c) through the DOV Administrative Agent in relation to the DOV Lenders under the DOV Credit Facility; or
- (d) in each case, the Information Agent Website, and marked for the attention of the relevant person as agreed between the parties.

26.2 A Notice shall be deemed to have been received:

- (a) at the time of delivery if delivered personally;
- (b) at the time of transmission if sent by e-mail;
- (c) at the time of transmission if sent through the Clearing Systems;
- (d) at the time of being published if made through the Information Agent Website (in relation to UDW Scheme Creditors);
- (e) two (2) Business Days after the time and date of posting if sent by pre-paid recorded delivery; or
- (f) three (3) Business Days after the time and date of posting if sent by international courier,

provided that if deemed receipt of any Notice occurs after 6:00 p.m. or is not on a Business Day, deemed receipt of the Notice shall be 9:00 a.m. on the next Business Day. References to time in this clause are to local time in the country of the addressee.

26.3 The addresses for Notices are as follows:

- (a) in the case of UDW:

FAO Iraklis Sbarounis, c/o Ocean Rig Cayman Management Services SEZC Limited, 3rd Floor Flagship Building Harbour Drive, Grand Cayman, Cayman Islands

Email: ocrcayman@ocean-rig.com

Copied to:

- (i) Information Agent

FAO Ocean Rig Processing, c/o Prime Clerk LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022

Phone: +1 855-631-5346 (toll-free US and Canada)
+1 917-460-0913 (International)

Email: oceanrigteam@primeclerk.com

and

- (ii) JPLs

Eleanor G. Fisher

Kalo (Cayman) Limited, 38 Market Street, 2nd Floor, Suite 4208, Camana Bay, Grand Cayman, KY1-9006, Cayman Islands

Email: oceanrig@kaloadvisors.ky

Fax: +1 345 946 0082

Simon Appell

AlixPartners Services UK LLP, 6 New Street Square, London EC4A 3BF,
United Kingdom

Email: oceanrig@alixpartners.com

Fax: +44 20 7098 7401;

- (b) in the case of a UDW Scheme Creditor:
 - the Information Agent Website;
 - sent through the Clearing Systems to the relevant Account Holders;
- (c) in the case of any other person, any address set forth for that person in any agreement entered into in connection with this UDW Scheme.

26.4 In proving service, it shall be sufficient proof, in the case of a notice sent by post, that the envelope was properly stamped, addressed and posted.

26.5 The accidental omission to send any notice, written communication or other document in accordance with clauses 26.1 to 26.4 of this UDW Scheme, or the non-receipt of any such notice by any UDW Scheme Creditor, shall not affect the provisions of this UDW Scheme.

26.6 UDW shall not be responsible for any loss or delay in the transmission of any notices, other documents or payments posted by or to any UDW Scheme Creditors (or their Nominated Recipient(s)) which shall be posted at the risk of such UDW Scheme Creditors (or their Nominated Recipient(s)).

27. THIRD PARTIES

27.1 Subject to clause 27.2, no person who is not a party to this deed has any right under the Cayman Islands Contracts (Rights of Third Parties) Law 2014 (as amended from time to time) to enforce any of its terms.

27.2 The JPLs and the Protected Parties may enforce this deed in accordance with the Contracts (Rights of Third Parties) Law 2014 (as amended from time to time).

28. GOVERNING LAW AND JURISDICTION

28.1 This UDW Scheme and any non-contractual obligations arising out of or in connection with this UDW Scheme shall be governed by, and this UDW Scheme shall be construed in accordance with, the laws of Cayman Islands. The Cayman Court shall have exclusive

jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of this UDW Scheme or its implementation or out of any action taken or omitted to be taken under this UDW Scheme or in connection with the administration of this UDW Scheme.

- 28.2 Each of the UDW Scheme Creditors irrevocably submits to the jurisdiction of the Cayman Court for the purposes of clause 28.1, provided, however, that nothing in this clause 28 shall affect the validity of other provisions governing law and jurisdiction as between UDW and any of the UDW Scheme Creditors, whether contained in any contract or otherwise.

Exhibit 16

Exhibit I

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 101 OF 2017 (RPJ)

In Open Court
4, 5 and 6 September 2017
Before the Honourable Mr Justice Parker

**IN THE MATTER OF SECTION 86 OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF OCEAN RIG UDW INC. (IN PROVISIONAL LIQUIDATION)**

ORDER



UPON hearing the Petition presented herein by Ocean Rig UDW Inc. (in provisional liquidation) (the "**Petitioner**") on 22 May 2017

AND UPON reading the affidavits set out in the Schedule annexed to this Order and the respective exhibits thereto

AND UPON hearing Leading Counsel for the Petitioner, Leading Counsel for the Ad Hoc Group, Leading Counsel for Highland Capital Management LP, Counsel for the Joint Provisional Liquidators and Counsel for the DRH Group

THIS COURT HEREBY SANCTIONS the Scheme of Arrangement, a copy of which is annexed hereto, pursuant to section 86(2) of the Companies Law (2016 Revision) so as to be binding on the Petitioner and the Scheme Creditors (as defined therein)

AND IT IS HEREBY ORDERED AND DIRECTED AS FOLLOWS:

- 1 The Petitioner do deliver a sealed copy of this Order to the Registrar of Companies.
- 2 Costs reserved pending further Order.
- 3 The Petitioner, the Ad Hoc Group and the Joint Provisional Liquidators shall file and serve any written submissions relating to costs within 10 days of the date of this Order.

4 Highland Capital Management LP shall file and serve any response to such written submissions within 10 days of those submissions being filed.

DATED this 15 day of September 2017

FILED this 15 day of September 2017



THE HONOURABLE JUSTICE PARKER

THIS ORDER is filed by Maples and Calder, attorneys for the Petitioner, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/GWB/190688.05/52063203)

Schedule

- 1 First and Second Affidavits of Eleanor G Fisher sworn on 24 May and 2 July 2017;
- 2 First Affidavit of Nollaig Murphy sworn on 24 May 2017;
- 3 First Affidavit of Stephen C Ashley sworn on 25 May 2017;
- 4 First, Second and Third Affidavits of Antonios Kandylidis sworn on 21 June, 2 July and 24 August 2017;
- 5 Expert Opinions of Allan L Gropper sworn on 22 March, 2 July and 23 August 2017;
- 6 Expert Opinion of Dennis J Reeder sworn on 22 March 2017;
- 7 Expert Opinion of Vincent R Vroom sworn on 4 May 2017;
- 8 First and Second Affidavits of Jon M. Poglitsch sworn on 20 June and 10 August 2017;
- 9 First Affidavit of Bradley A Robins sworn on 20 June 2017;
- 10 Expert Opinion of Basil M Karatzas sworn on 20 June 2017;
- 11 Expert Opinion of Paul N Silverstein sworn on 20 June 2017;
- 12 First Affidavit of Chad Griffin sworn on 2 July 2017;
- 13 First and Second Affidavits of Stephen Phillips sworn on 30 June and 17 August 2017;
- 14 First and Second Affidavits of James Daloia sworn on 30 June and 17 August 2017;
- 15 First and Second Affidavits of John Pike sworn on 2 July and 24 August 2017;
- 16 First and Second Affidavits of Rachel Baxendale sworn on 7 July and 24 August 2017,
- 17 First Affidavit of Scott Ellington sworn on 15 August 2017;
- 18 First and Second Affidavits of Simon Appell sworn on 17 August and 24 August 2017;



- 19 First Affidavit of Phillip Zeigler sworn on 24 August 2017;
- 20 Expert Opinion of Erland Bassoe sworn on 23 August 2017;
- and the exhibits thereto



THIS ORDER is filed by Maples and Calder, attorneys for the Petitioner, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CJM/GWB/190688.05/52063203)

IN THE MATTER OF OCEAN RIG UDW INC.

(IN PROVISIONAL LIQUIDATION)

– and –

IN THE MATTER OF THE COMPANIES LAW (2016 Revision)

SCHEME OF ARRANGEMENT
(under section 86 of the Companies Law (2016 Revision))

BETWEEN

OCEAN RIG UDW INC.

(IN PROVISIONAL LIQUIDATION)

AND

THE UDW SCHEME CREDITORS

(as hereinafter defined)

PRELIMINARY

RECITALS

(A) UDW DETAILS

UDW is a company registered by way of continuation as an exempted company in the Cayman Islands with company registration number 310396 and its principal executive office at c/o Ocean Rig Cayman Management Services SEZC Limited, 3rd Floor Flagship Building, Harbour Drive, Grand Cayman, Cayman Islands and registered office at c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

The common stock of UDW is currently listed on the NASDAQ on the Global Select Market. The NASDAQ previously indicated an intention to suspend trading and to delist UDW's common stock. UDW appealed the delisting action and received a conditional exception staying the delisting of its common stock subject to certain conditions, including the Restructuring becoming effective on or before 25 September 2017 and

UDW demonstrating compliance with all initial listing requirements for NASDAQ at such time. Following an annual general meeting of shareholders held on 24 April 2017, the authorised share capital of UDW was increased to one trillion (1,000,000,000,000) common shares of a par value of US\$0.01 each and five hundred million (500,000,000) preferred shares of a par value of US\$0.01 each.

(B) THE EXISTING DEBT

The Group issued the following Existing Debt:

- (a) the 2019 Notes, issued by UDW, with an outstanding principal value of approximately US\$131.0 million (plus accrued interest);
- (b) the 2017 Notes, issued by DRH, with an outstanding principal value of approximately US\$459.7 million (plus accrued interest);
- (c) the DFH Credit Facility borrowed by DFH and DP (as joint and several borrowers), with an outstanding principal value of approximately US\$1.83 billion (plus accrued interest); and
- (d) the DOV Credit Facility borrowed by DOV and DVP (as joint and several borrowers), with an outstanding principal value of approximately US\$1.27 billion (plus accrued interest).

UDW has provided guarantees in relation to each of the 2017 Notes, the DFH Credit Facility and the DOV Credit Facility.

The 2019 Notes were issued by UDW pursuant to the 2019 Notes Indenture and the 2017 Notes were issued by DRH pursuant to the 2017 Notes Indenture. The 2019 Notes and the 2017 Notes are held under an arrangement whereby:

- (a) the 2019 Notes and 2017 Notes have been issued in global form of the Global Note initially being deposited with the 2019 Notes Common Depository and the 2017 Notes Common Depository (respectively) under electronic systems designed to facilitate paperless transactions of dematerialised securities; and
- (b) such electronic systems involve interests in the 2019 Notes and the 2017 Notes (respectively) being held by Account Holders. Each Account Holder may be holding its interests in the 2019 Notes and 2017 Notes on behalf of itself as a UDW Scheme Creditor and/or (directly or indirectly) for one or more other UDW Scheme Creditors.

The 2019 Notes and the 2017 Notes will remain in global form for the purposes of this UDW Scheme. The 2017 Notes Trustee and the 2019 Notes Trustee are not UDW Scheme Creditors for the purposes of this UDW Scheme.

(C) PURPOSE OF THE SCHEMES AND THE RESTRUCTURING

The Restructuring comprises four separate but connected schemes of arrangement: this UDW Scheme; the DFH Scheme; the DOV Scheme and the DRH Scheme.

The Schemes if approved, will restructure the Existing Debt as follows:

- (a) in accordance with the terms of this UDW Scheme, each UDW Scheme Creditor will release its UDW Scheme Claims and its UDW Ancillary Scheme Claims in exchange for its UDW Scheme Creditor Entitlements;
- (b) in accordance with the DFH Scheme, each DFH Scheme Creditor will:
 - (i) transfer a portion of its DFH Scheme Claims (being the DFH Transfer Portion) to UDW in exchange for its DFH New Share Entitlement; and
 - (ii) release a portion of its DFH Scheme Claims (being the DFH Release Portion) in exchange for its DFH Cash Entitlement and DFH New Loan Entitlement,

provided that the sum of: (i) the DFH Transfer Portion; and (ii) the DFH Release Portion, of each DFH Scheme Creditor shall together be equal to that DFH Scheme Creditor's DFH Scheme Claims;

- (c) in accordance with the DOV Scheme, each DOV Scheme Creditor will:
 - (i) transfer a portion of its DOV Scheme Claims (being the DOV Transfer Portion) to UDW in exchange for its DOV New Share Entitlement; and
 - (ii) release a portion of its DOV Scheme Claims (being the DOV Release Portion) in exchange for its DOV Cash Entitlement and DOV New Loan Entitlement,

provided that the sum of: (i) the DOV Transfer Portion; and (ii) the DOV Release Portion, of each DOV Scheme Creditor shall together be equal to that DOV Scheme Creditor's DOV Scheme Claims; and

- (d) in accordance with the DRH Scheme, each DRH Scheme Creditor will release its DRH Scheme Claims in exchange for its DRH Scheme Creditor Entitlements.

The Restructuring has been promulgated by the Scheme Companies, acting by and under the authority of the JPLs, and includes various measures which are intended to ensure that UDW and the Group can continue to operate as a going concern.

Each of the UDW Scheme, the DFH Scheme and the DOV Scheme is inter-conditional upon each other and each must be approved by the relevant Scheme Creditors at the relevant Scheme Meeting and sanctioned by the Cayman Court in order for any of them to become effective. The DRH Scheme is conditional upon: (i) the DRH Scheme being approved by the DRH Scheme Creditors at the DRH Scheme Meeting and sanctioned by the Cayman Court; and (ii) each of the UDW Scheme, the DFH Scheme and the DOV Scheme being approved at the relevant Scheme Meeting and sanctioned by the Cayman

Court, in order for the DRH Scheme to become effective. If each of this UDW Scheme, the DFH Scheme and the DOV Scheme is sanctioned but the DRH Scheme is not sanctioned, the Restructuring will proceed without the DRH Scheme.

(D) **BINDING ON THIRD PARTIES**

Pursuant to the Group Undertaking and the Information Agent Undertaking, the Scheme Companies (on behalf of each member of the Group) and the Information Agent have undertaken to be bound by and perform the terms of this UDW Scheme and insofar as is applicable, to execute or procure to be executed all such documents, and to do or procure to be done all such acts and things, that are consistent with and reasonably required for the purposes of giving effect to this UDW Scheme.

Pursuant to the DFH Administrative Agent Undertaking, the DOV Administrative Agent Undertaking, the DFH Collateral Agent Undertaking, the DOV Collateral Agent Undertaking, the New Administrative Agent Undertaking, the New Collateral Agent Undertaking and the Holding Period Trustee Undertaking, the DFH Administrative Agent, the DOV Administrative Agent, the DFH Collateral Agent, the DOV Collateral Agent, the New Administrative Agent, the New Collateral Agent and the Holding Period Trustee (as applicable) have agreed, upon instructions from UDW (acting by its directors, the JPLs or other duly appointed representatives) or if applicable, the relevant Agent, to execute or procure to be executed all such documents and do or procure to be done all such acts and things, that are consistent with and reasonably required for the purposes of giving effect to the terms of this UDW Scheme that apply to them.

THIS UDW SCHEME

1. DEFINITIONS

- 1.1 In this scheme of arrangement terms used but not defined shall have the meaning given to them in the explanatory statement issued by the Scheme Companies dated 21 July 2017 pursuant to Order 102, Rule 20(4) of the Cayman Islands Grand Court Rules 1995 (Revised Edition) (the "Explanatory Statement").

2. INTERPRETATION

In this UDW Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) a company is a "subsidiary" of another company, its "holding company", if that other company (a) holds a majority of the voting rights in it; (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in it, or it is a subsidiary of a company that is itself a direct or indirect subsidiary of that other company;
- (b) references to 'recitals', 'clauses' and 'schedules' are references to the recitals, clauses and schedules of this UDW Scheme;

- (c) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (d) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (e) headings are for ease of reference only and shall not affect the interpretation of this UDW Scheme;
- (f) to the extent that there shall be any conflict of inconsistency between the terms of this UDW Scheme and the Explanatory Statement then the terms of this UDW Scheme will prevail;
- (g) references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced, and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (h) references to US\$ are references to the lawful currency of the United States;
- (i) references to a 'person' includes references to an individual, firm, partnership, company, corporation, other legal entity, unincorporated body of persons or any state or state agency;
- (j) references to times and dates are to times and dates in the Cayman Islands; and
- (k) 'including', 'includes' and 'included' shall be construed without limitation.

3. APPLICATION AND EFFECTIVENESS OF THE UDW SCHEME

- 3.1 This UDW Scheme will become effective in accordance with its terms on the UDW Lodgement Date.
- 3.2 The compromise and arrangement effected by this UDW Scheme shall apply to all UDW Scheme Claims and any UDW Ancillary Scheme Claims and shall be binding on all UDW Scheme Creditors.
- 3.3 Subject to clause 22 of this UDW Scheme, in the event that the Restructuring Effective Date has not occurred on or before the Longstop Date, the terms of, and obligations on the parties under or pursuant to this UDW Scheme shall lapse and all compromises and arrangements provided by this UDW Scheme shall have no force or effect.

4. RESTRUCTURING EFFECTIVE DATE

- 4.1 The Restructuring Effective Date will occur upon the Business Day on which UDW gives notice to the Scheme Creditors through the Information Agent Website that the following conditions have been satisfied or waived (as applicable) in accordance with clause 4.2, provided that the DFH Scheme Conditions and the DOV Scheme Conditions have also been satisfied or waived (as applicable):

- (a) the UDW Sanction Order has been granted;
- (b) the UDW Lodgement Date has occurred;
- (c) the Restructuring Support Agreement Conditions have been satisfied or waived;
- (d) each UDW Restructuring Document, other than the UDW 2017 Notes Release and the UDW 2019 Notes Release, has been executed (as applicable) and has either become effective in accordance with its terms or is being held in escrow pursuant to the terms of this UDW Scheme;
- (e) the Majority Supporting Lenders have confirmed that each of the conditions precedent contained in section 5 of the New Credit Agreement have been satisfied or waived (as applicable) or will be satisfied on the Restructuring Effective Date by virtue of completion of the Scheme Steps;
- (f) the Chapter 15 Orders have been granted (other than in respect of the DRH Scheme);
- (g) each director of UDW has executed an Indemnification Confirmation Agreement and delivered it to UDW to be held in escrow pursuant to the terms of this UDW Scheme;
- (h) the organisational documents of each of the Material UDW Subsidiaries have been amended to include an express provision prohibiting such subsidiary from taking any action not in accordance with the New UDW Articles;
- (i) the Security Deposit (as defined in the Master Services Agreement) has been paid into escrow in accordance with the terms of the Master Services Agreement and the Management Services Escrow Agreement; and
- (j) the Insider Trading Policy has been adopted by UDW,

(each a "UDW Scheme Condition" and, together, the "UDW Scheme Conditions").

- 4.2 The requirement for the UDW Scheme Conditions from (and including) 4.1(f) to (and including) 4.1(j) to be satisfied for the Restructuring Effective Date to occur may be waived with the consent of (i) UDW and (ii) the holders of a simple majority by value of the UDW Scheme Claims.

5. RELEASE OF UDW SCHEME CLAIMS AND UDW ANCILLARY SCHEME CLAIMS

- 5.1 On the Restructuring Effective Date, subject to the occurrence of the UDW Scheme Steps, each UDW Scheme Creditor will release fully and absolutely its UDW Scheme Claims and any UDW Ancillary Scheme Claims in exchange for its UDW Scheme Creditor Entitlements.

5.2 Following the absolute release of the UDW Scheme Claims and UDW Ancillary Scheme Claims pursuant to clause 5.1, no UDW Scheme Creditor shall have any remaining interest in or entitlement to any UDW Scheme Claims or UDW Ancillary Scheme Claims.

5.3 Nothing in this clause 5 shall release or otherwise affect any Preserved UDW Claims

6. ENTITLEMENT OF UDW SCHEME CREDITORS

6.1 UDW Scheme Creditor Entitlements will only be issued to a UDW Scheme Creditor (or its Nominated Recipient(s)) on the Restructuring Effective Date (or in relation to New Non-Marginable Shares as soon as reasonably practicable following the UDW EGM) if the UDW Scheme Creditor is either: (i) a UDW Cash Option Participant; (ii) not a Disqualified Person or a Prohibited Transferee; or (iii) is a Disqualified Person or Prohibited Transferee but has nominated one or more Nominated Recipient(s) to receive all its UDW New Share Entitlements, and in each case:

(a) the Information Agent has received a validly completed Account Holder Letter and/or Lender Claim Letter (as applicable) and a validly completed Confirmation Form from that UDW Scheme Creditor and its Nominated Recipient(s) (if applicable) prior to the Submission Deadline (or such later time as the Information Agent may decide in its absolute discretion); and

(b) the UDW Scheme Creditor and its Nominated Recipient(s) (if applicable) have provided all documentation or information reasonably requested by any relevant Agent or Scheme Company for the purposes of any "Know Your Customer" checks required to distribute UDW Scheme Creditor Entitlements to the relevant UDW Scheme Creditor or Nominated Recipient (as applicable).

6.2 Subject to clause 12 and the other terms of this UDW Scheme, no UDW Scheme Creditor shall have any entitlement to receive any consideration in relation to its UDW Scheme Claims other than under clause 6.1.

6.3 Each UDW Scheme Creditor who (i) is not a Disqualified Person or a Prohibited Transferee and (ii) is a Disqualified Person or a Prohibited Transferee but who nominates one or more Nominated Recipient(s) to receive all its UDW Scheme Creditor Entitlements, agrees that it and/or its Nominated Recipient(s) (as applicable) will, subject to such UDW Scheme Creditor (and Nominated Recipient if applicable) complying with the requirements set out in clause 6.1:

(a) become a holder of its UDW New Share Entitlements on the Restructuring Effective Date; or

(b) if it is a UDW Cash Option Participant, receive its UDW Cash Option Entitlements on the Restructuring Effective Date.

6.4 Fractions of UDW New Share Entitlements will not be allotted and will be rounded down to the nearest whole share.

6.5 Fractions of UDW Cash Option Entitlements will be rounded down to the nearest US\$1.

7. DETERMINATION OF UDW SCHEME CLAIMS

7.1 Subject to clause 7.2 below, the UDW Scheme Creditors entitled to receive UDW Scheme Creditor Entitlements under this UDW Scheme are the UDW Scheme Creditors as at the Entitlement Record Time and each UDW Scheme Creditor's UDW Scheme Creditor Entitlements will be determined based on its UDW Scheme Claims as at the Entitlement Record Time.

7.2 The JPLs may (but shall have no obligation to do so), in their absolute discretion and subject to the receipt of such written supporting evidence as they may reasonably require, agree to recognise the assignment or transfer of UDW Scheme Claims after the Entitlement Record Time for the purposes of determining UDW Scheme Creditor Entitlements, provided that any recognition of assignments or transfers of UDW Guarantee Claims pursuant to this clause 7.2 shall only be effective if such assignment or transfer is also recognised for the purposes of determining, as applicable, DOV Scheme Creditor Entitlements under the DOV Scheme (if such UDW Guarantee Claims relate to the DOV Scheme); and/or DFH Scheme Creditor Entitlements under the DFH Scheme (if such UDW Guarantee Claims relate to the DFH Scheme); and/or the DRH Scheme Creditor Entitlements under the DRH Scheme (if such UDW Guarantee Claims relate to the DRH Scheme), in each case in accordance with the terms of the relevant Scheme.

8. PROVISION OF INFORMATION BY UDW SCHEME CREDITORS

8.1 Account Holder Letters, Lender Claim Letters and Confirmation Forms (as applicable) submitted by or on behalf of UDW Scheme Creditors shall be submitted in accordance with the instructions set out in the Account Holder Letter, Lender Claim Letter and Confirmation Form (as applicable).

8.2 Whether an Account Holder Letter, Lender Claim Letter or Confirmation Form (as applicable) has been validly completed shall be determined by the Information Agent at its discretion, provided that, if the Information Agent determines that an Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) has not been validly completed, it will comply with clause 8.3.

8.3 If the Information Agent determines that an Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) has not been validly completed, it shall promptly prepare a written statement setting out the basis for its determination and send that statement by electronic mail to the party that provided such Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable). A UDW Scheme Creditor may resubmit such Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) together with such additional information as reasonably requested by the Information Agent.

9. OBLIGATIONS OF UDW

The:

- (a) issuance or distribution of the UDW Scheme Consideration; and
- (b) execution of the UDW Restructuring Documents,

shall satisfy all of UDW's obligations to issue or distribute the UDW Scheme Creditor Entitlements to the UDW Scheme Creditors under this UDW Scheme.

10. GRANT OF AUTHORITY IN FAVOUR OF UDW TO EXECUTE THE RESTRUCTURING DOCUMENTS

10.1 Each UDW Scheme Creditor hereby irrevocably authorises and instructs UDW and appoints UDW as its agent and attorney (acting by its directors, the JPLs or other duly appointed representatives) on and from the UDW Lodgement Date, to enter into, execute and deliver as a deed (as applicable), on its behalf, without discretion, the UDW Restructuring Documents (including, without limitation, the UDW Deed of Covenant and Release) and such other documents required to implement the Restructuring.

10.2 Notwithstanding and without prejudice to the generality of clause 10.1, upon the UDW Lodgement Date each UDW Scheme Creditor hereby irrevocably authorises and instructs UDW, and appoints UDW as its agent and attorney (acting by its directors, the JPLs or other duly appointed representatives) to, without discretion:

- (a) issue a confirmation to the 2019 Notes Common Depository to cancel the 2019 Notes on its receipt of corresponding instructions to that effect from the relevant Clearing Systems on the Restructuring Effective Date;
- (b) deliver the 2019 Notes Trustee Instruction to the 2019 Notes Trustee;
- (c) deliver the UDW 2017 Notes Trustee Instruction to the 2017 Notes Trustee;
- (d) deliver the UDW DFH Administrative Agent Instruction to the DFH Administrative Agent; and
- (e) deliver the UDW DOV Administrative Agent Instruction to the DOV Administrative Agent.

10.3 The UDW Restructuring Documents executed on behalf of the UDW Scheme Creditors by UDW pursuant to clause 10.1 will become effective when they are delivered or released from escrow, in each case in accordance with clause 12.4, whereupon they shall be unconditionally and irrevocably binding on all UDW Scheme Creditors who are party to such UDW Restructuring Document.

10.4 The authorities granted by or pursuant to this clause 10 shall be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

- 10.5 UDW hereby undertakes that it shall, and shall procure that its direct and indirect subsidiaries shall:
- (a) as soon as reasonably practicable following the UDW Lodgement Date, take all steps to enter into, execute and (as necessary) deliver as a deed (or otherwise) any UDW Restructuring Document and such other documents that are required to give effect to the Restructuring; and
 - (b) take all other steps as are required to give effect to the Restructuring.
- 10.6 UDW shall cease to be the agent and attorney of each UDW Scheme Creditor under clauses 10.1 and 10.2 upon completion of all of the UDW Scheme Steps (other than in connection with the authority to sign the UDW Shareholder Proxies on behalf of any UDW Scheme Creditor whose New UDW Shares have been placed into the Holding Period Trust, with such authority ceasing on the date of the UDW EGM) or if this UDW Scheme lapses in accordance with clause 22.

11. UNDERTAKINGS FROM UDW SCHEME CREDITORS

Each UDW Scheme Creditor (for itself and, to the extent that it has authority to do so, its Nominated Recipient(s), if any) hereby on and from the Restructuring Effective Date:

- (a) irrevocably ratifies and confirms any act which UDW, the JPLs, the Agents and any of their officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers may lawfully do or cause to be done or purport to do in accordance with the terms of this UDW Scheme; and
- (b) undertakes to UDW, the JPLs, the Agents and any of their officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers and their respective Affiliates, directors, managers and officers to treat all of its UDW Scheme Claims as having been waived, cancelled or released in consideration for its UDW Scheme Creditor Entitlements pursuant to this UDW Scheme whether or not the UDW Scheme Creditor has had its UDW Scheme Creditor Entitlements issued and/or paid to it, its Nominated Recipient(s) or the Holding Period Trustee.

12. TRUST IN RELATION TO UDW SCHEME CREDITOR ENTITLEMENTS

- 12.1 If a UDW Scheme Creditor (or its Nominated Recipient(s)) is not issued its UDW Scheme Creditor Entitlements pursuant to clause 6.1, the relevant UDW Scheme Creditor Entitlements will be issued to the Holding Period Trustee on the Restructuring Effective Date, who will hold such UDW Scheme Creditor Entitlements (the "Trust Consideration") on trust pursuant to the Holding Period Trust Agreement for the relevant UDW Scheme Creditor until the expiry of the Holding Period.

12.2 Pursuant to the Holding Period Trust Agreement, the Holding Period Trustee shall, if instructed by the Information Agent before the expiry of the Holding Period (acting on the instructions of a UDW Scheme Creditor entitled to Trust Consideration):

- (a) distribute; or
- (b) sell and distribute the net proceeds arising from the sale of,

the Trust Consideration it holds on behalf of a UDW Scheme Creditor to that relevant UDW Scheme Creditor and/or its Nominated Recipient(s), provided that the relevant UDW Scheme Creditor and/or its Nominated Recipient(s) (as applicable) has:

- (a) delivered a validly completed Account Holder Letter, Lender Claim Letter and/or Confirmation Form (as applicable) to the Information Agent; and
- (b) provided all documentation or information reasonably requested by any relevant Agent or Scheme Company for the purposes of any "Know Your Customer" checks required to distribute UDW Scheme Creditor Entitlements to the relevant UDW Scheme Creditor or Nominated Recipient (as applicable).

12.3 Neither the Holding Period Trustee nor any person other than the relevant UDW Scheme Creditor shall at any time whatsoever, either present or future, have any beneficial interest in the Trust Consideration, until the expiration of the Holding Period. Any interest, dividends, distributions, repayments or prepayments (or any other rights or benefits) paid to the Holding Period Trustee from time to time in respect of Trust Consideration shall form part of the Trust Consideration and be dealt with in accordance with the terms of the Holding Period Trust Agreement.

12.4 If at the expiration of the tenth Business Day following the expiration of the Holding Period, the Holding Period Trustee has not received an instruction in accordance with the Holding Period Trust Agreement in respect of any remaining property in the Trust Fund, the Holding Period Trustee and UDW shall, and is irrevocably authorised and instructed by each relevant Trust Scheme Creditor (as defined in the Holding Period Trust Agreement) to sell, cancel, waive, release or transfer to any Scheme Company any property in the Trust Fund (as applicable and at the direction of UDW). The proceeds of any such sale, and any remaining cash constituting the Trust Consideration may be paid to any Scheme Company or to a charity selected by UDW.

13. UDW SCHEME STEPS

13.1 As soon as possible following the UDW Sanction Order Date, subject to the occurrence of the DFH Sanction Order Date and the DOV Sanction Order Date, UDW will file the UDW Sanction Order with the Registrar of Companies.

13.2 UDW will take all reasonable steps to ensure that the Chapter 15 Enforcement Hearing will be held as soon as possible following the UDW Lodgement Date.

- 13.3 As soon as possible following the UDW Lodgement Date, subject to the occurrence of the DFH Lodgement Date and the DOV Lodgement Date, UDW will:
- (a) notify UDW Scheme Creditors through the Information Agent Website that the UDW Lodgement Date has occurred;
 - (b) acting through the Chapter 15 Representative, attend the Chapter 15 Enforcement Hearing to seek the Chapter 15 Enforcement Order;
 - (c) acting on behalf of the UDW Scheme Creditors pursuant to the grant of authority given under clause 10 of this UDW Scheme, deliver:
 - (i) the 2019 Notes Trustee Instruction to the 2019 Notes Trustee;
 - (ii) the UDW 2017 Notes Trustee Instruction to the 2017 Notes Trustee;
 - (iii) the UDW DFH Administrative Agent Instruction to the DFH Administrative Agent; and
 - (iv) the UDW DOV Administrative Agent Instruction to the DOV Administrative Agent;
 - (d) acting on its own behalf, and acting on behalf of the UDW Scheme Creditors pursuant to the grant of authority given under clause 10 of this UDW Scheme, execute the UDW Restructuring Documents to which UDW and the UDW Scheme Creditors (as applicable) are party and hold such executed documents in escrow until the Restructuring Effective Date;
 - (e) notify the Holding Period Trustee that the UDW Lodgement Date has occurred; and
 - (f) procure that each member of the Group promptly executes the UDW Restructuring Documents which they are party to and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date.
- 13.4 Upon receipt of the 2019 Notes Trustee Instruction, the 2019 Notes Trustee shall be irrevocably instructed and authorised to, and shall promptly and without discretion, execute the UDW Restructuring Documents to which it is a party (including, without limitation, the UDW 2019 Notes Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date, save that to the extent that the 2019 Notes Trustee does not execute the Restructuring Documents the UDW Scheme Steps shall proceed and the effect of this UDW Scheme shall not be affected in any way.
- 13.5 Upon receipt of the UDW 2017 Notes Trustee Instruction, the 2017 Notes Trustee shall be irrevocably instructed and authorised to, and shall, promptly and without discretion:
- (a) execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW 2017 Notes Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date; and

- (b) execute and deliver the UDW 2017 Notes Collateral Agent Instruction to the 2017 Notes Collateral Agent,

save that to the extent that the 2017 Notes Trustee does not execute the Restructuring Documents the UDW Scheme Steps shall proceed and the effect of this UDW Scheme shall not be affected in any way.

- 13.6 Upon receipt of the UDW DFH Administrative Agent Instruction, the DFH Administrative Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion:

- (a) execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW DFH Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date; and
- (b) execute and deliver the UDW DFH Collateral Agent Instruction to the DFH Collateral Agent.

- 13.7 Upon receipt of the UDW DOV Administrative Agent Instruction, the DOV Administrative Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion:

- (a) execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW DOV Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date; and
- (b) execute and deliver the UDW DOV Collateral Agent Instruction to the DOV Collateral Agent.

- 13.8 Upon receipt of the UDW 2017 Notes Collateral Agent Instruction, the 2017 Notes Collateral Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion, execute the UDW Restructuring Documents to which it is party (including, without limitation the UDW 2017 Notes Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date, save that to the extent that the 2017 Notes Collateral Agent does not execute the Restructuring Documents the UDW Scheme Steps shall proceed and the effect of this UDW Scheme shall not be affected in any way.

- 13.9 Upon receipt of the UDW DFH Collateral Agent Instruction, the DFH Collateral Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion, execute the UDW Restructuring Documents to which it is party (including, without limitation, the UDW DFH Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date.

- 13.10 Upon receipt of the UDW DOV Collateral Agent Instruction, the DOV Collateral Agent shall be irrevocably instructed and authorised to, and shall, promptly and without discretion, execute the UDW Restructuring Documents to which it is party (including,

without limitation, the UDW DOV Release) and deliver such executed documents to UDW to be held in escrow until the Restructuring Effective Date.

- 13.11 Upon notification that the UDW Lodgement Date has occurred, the Holding Period Trustee shall promptly and without discretion execute the Holding Period Trust Agreement and deliver the same to UDW to be held in escrow until the Restructuring Effective Date.
- 13.12 On the Restructuring Effective Date, promptly after UDW notifies the UDW Scheme Creditors through the Information Agent Website that the Restructuring Effective Date has occurred, the following UDW Scheme Steps shall occur in the following order:
- (a) UDW shall date and release the executed Holding Period Trust Agreement from escrow and it shall become effective;
 - (b) The UDW Cash Option Entitlements shall be paid to the UDW Cash Option Participants and/or their Nominated Recipient(s) who are entitled to receive their UDW Cash Option Entitlements, in each case pursuant to clause 6.1.
 - (c) The UDW New Share Entitlements shall be issued to Marginable Participants only by UDW instructing the Transfer Agent to issue the New Marginable Shares to: (i) the relevant brokers or custody accounts identified in the Account Holder Letter or Lender Claim Letter of the UDW Scheme Creditors and/ or their Nominated Recipients who are Marginable Participants and who are entitled to receive their UDW New Share Entitlements; and (ii) the Holding Period Trustee in respect of those UDW Scheme Creditors who are not entitled to receive their UDW New Share Entitlements, in each case pursuant to clause 6.1. The Transfer Agent shall confirm that such New Marginable Shares have been issued to such broker and custody accounts in accordance with any valid instructions received by it.
 - (d) UDW shall date and release from escrow the executed Governance Agreements for each recipient of New Marginable Shares which has previously delivered a signature page to a Governance Agreement and each such Governance Agreement shall become effective.
 - (e) UDW shall date and release the Indemnification Confirmation Agreements and UDW Deed of Covenant and Release from escrow and they shall each become effective.
 - (f) UDW shall terminate any existing management services agreement(s) and date and release the Master Services Agreement, Management Services Power of Attorney and Individual Management Services Agreements from escrow, and they shall each become effective.
 - (g) UDW will issue the MEP to be held as necessary stock until they are allocated to TMS in accordance with the terms of the Master Services Agreement.

- (h) UDW shall date and release the Preserved Claims Assignments and the Preserved Claims Trust Deed from escrow and they shall become effective.
- (i) UDW shall execute the UDW Shareholder Proxies.
- (j) UDW shall date and release the UDW Releases from escrow and they shall each become effective.
- (k) UDW shall instruct the Clearing Systems to:
 - (i) debit the Book-Entry Interests relating to the 2019 Notes from the custody account of each UDW Scheme Creditor that is a 2019 Notes Creditor (or its Account Holder, as applicable) and to credit or cause to be credited to the custody account of UDW, the Book-Entry Interests in an amount equal to that debited from the Book-Entry Interests of each UDW Scheme Creditor's custody account being a 2019 Notes Creditor; and
 - (ii) authorise the cancellation of the Group's Book-Entry Interests relating to the 2019 Notes held in the Group's custody account or the Group's Account Holder's custody account.

13.13 Following the completion of the UDW Scheme Steps on the Restructuring Effective Date:

- (a) UDW shall promptly enter into a Lender Appointing Person Indemnification Agreement for each Lender Appointing Person and a Director Indemnification Agreement for each new director of UDW.
- (b) The Information Agent shall provide each UDW Scheme Creditor and/or any Nominated Recipient(s) with copies of the executed UDW Restructuring Documents they are party to via the Information Agent Website.
- (c) UDW will to the extent not already done convene the UDW EGM on not less than 21 days' notice and within 45 days of the Restructuring Effective Date to approve and adopt the New UDW Articles.
- (d) Promptly following the adoption of the New UDW Articles and the resolutions to create the New Non-Marginable Shares at the UDW EGM, UDW shall instruct the Transfer Agent to issue the New Non-Marginable Shares through the relevant brokers or custody accounts identified in the Account Holder Letters or Lender Claim Letters (as applicable) of the UDW Scheme Creditors and/or their Nominated Recipient(s) who: (i) are entitled to receive their UDW New Share Entitlements pursuant to clause 6.1; and (ii) are Non-Marginable Participants. In the event that the relevant resolutions to create the New Non-Marginable Shares are not adopted at the UDW EGM, any Non-Marginable Participants may elect to receive, or nominate a Nominated Recipient to receive, their UDW New Share Entitlements in the form of New Marginable Shares by submitting an updated Account Holder Letter and/or Lender Claim Letter to the Information Agent, which, to be validly completed, need not include Part 5 of the Account Holder

Letter or Part 7 of the Lender Claim Letter. UDW shall instruct the Transfer Agent to issue New Marginable Shares to such UDW Scheme Creditors and/or their Nominated Recipient(s) promptly after the Information Agent receives such validly completed Account Holder Letter and/or Lender Claim Letter.

- (e) UDW shall date and release from escrow the executed Governance Agreements for each recipient of New Non-Marginable Shares which has previously delivered a signature page to a Governance Agreement and each such Governance Agreement shall become effective.
- (f) The JPLs shall promptly apply to the Cayman Court for discharge of their appointment and of the Winding Up Petition relating to UDW.

14. RELEASES

14.1 With effect from the Restructuring Effective Date, each UDW Scheme Creditor and UDW (for its own behalf and on behalf of its subsidiaries) to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, acquit, forgive, and discharge unconditionally each of the Protected Parties from any and all Claims and/or Liabilities arising or resulting from the Protected Parties' involvement in the negotiation, execution, performance or implementation of the Schemes, the Restructuring or the Restructuring Support Agreement, subject to clause 16 in relation to the JPLs only, except for Claims and/or Liabilities arising out of:

- (a) any matter, act, omission, transaction, event, occurrence, cause or thing whatsoever directly or indirectly relating to the Group (including, but not limited to, the New Finance Documents) arising or taking place after the Restructuring Effective Date;
- (b) any fraud, gross negligence or wilful default;
- (c) any breach by a Protected Party of its express obligations or representations in the Restructuring Support Agreement, this UDW Scheme or the UDW Restructuring Documents;
- (d) any Preserved UDW Claims; or
- (e) any Liabilities owed to UDW as Lender under the DFH Amended and Restated Credit Agreement and the DOV Amended and Restated Credit Agreement.

14.2 The parties to this UDW Scheme may not by agreement rescind or vary any term of this clause 14 with respect to a Protected Party without the consent of such Protected Party.

15. STAY OF PROCEEDINGS

With effect from completion of the Restructuring Effective Date, each UDW Scheme Creditor hereby irrevocably covenants with UDW for the benefit of UDW and each of the

Protected Parties, to the extent permitted by law, subject to clause 16 in relation to the JPLs only:

- (a) not to bring or continue, or instruct, direct or authorise any other person to bring or continue any Proceedings, other than any Allowed Proceedings, against any of the Protected Parties in respect of any UDW Scheme Claims or UDW Ancillary Scheme Claims or otherwise to assert any UDW Scheme Claims or UDW Ancillary Scheme Claims against any of the Protected Parties;
- (b) not to bring any Proceedings, other than any Allowed Proceedings, against any Protected Party which imposes or attempts to impose upon any of them any Claim or Liability whatsoever in connection with the implementation of the Schemes, and/or the Restructuring;
- (c) not to bring any Proceedings, other than any Allowed Proceedings, against any Protected Party on the basis that any conditions or requirements for that Protected Party taking any action in accordance with, or pursuant to, this UDW Scheme, the Restructuring or instructions given to that Protected Party in connection with the Restructuring, have not been satisfied or were not met in full;
- (d) not to make, demand or institute (or threaten to institute) any Proceedings against the Agents in connection with this UDW Scheme or the Restructuring, other than an Allowed Proceeding;
- (e) not to prove, or seek to prove, in the insolvencies of any member of the Group (if any insolvency occurs) in respect of any UDW Scheme Claims or UDW Ancillary Scheme Claims; and
- (f) to treat the UDW Scheme Claims as having been fully and absolutely released on and from the Restructuring Effective Date,

save that this clause 14.2 shall not apply to any Preserved UDW Claims or, in the event that the DRH Sanction Order is not granted, the 2017 Notes Creditors with respect to the DRH Silo only.

16. THE JPLS

- 16.1 Notwithstanding clause 13.13(f) and clause 14.2, the JPLs act as agents for and on behalf of UDW and, subject to clause 16.2, neither they nor any of their firms or affiliated firms, nor any of their or their firms' or affiliated firms' officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers shall incur any liability whatsoever (in respect of any of the obligations undertaken by UDW, or in respect of any failure on the part of UDW to perform or comply with any such obligations, or under any associated arrangements or negotiations, or under any document entered into pursuant to this UDW Scheme, or howsoever otherwise).

- 16.2 Notwithstanding clause 13.13(f) and clause 14.2, the JPLs, their firms and affiliated firms, and any of their or their firms' or affiliated firms' officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers shall not incur any liability whatsoever under this UDW Scheme nor in relation to any related matter or claim, whether in contract, tort (including negligence) or restitution or by reference to any other remedy or right in any jurisdiction or forum except for any claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct.
- 16.3 The exclusions of liability set out in this UDW Scheme shall arise and continue notwithstanding the termination of the agency of the JPLs or their discharge from office as joint provisional liquidators of this UDW Scheme before or after the Restructuring Effective Date and shall operate as a waiver of any claims in tort as well as under contract.
- 16.4 Each of the JPLs' firms, affiliated firms, and any of their or their firms' or their affiliated firms' officers, directors, former directors, employees, partners, members, agents, attorneys, financial advisers or other professionals, representatives and advisers shall be entitled to rely on and enjoy the benefit of this clause 16 as if they were a party hereto.
- 16.5 Any joint provisional liquidator of UDW appointed after the date of this UDW Scheme shall be entitled to rely on and enjoy the benefit of this clause 16 as if they were a party hereto.
- 16.6 Nothing in this UDW Scheme shall require the JPLs to take any action which would breach any applicable law or regulation.

17. FUTURE LIQUIDATION

This UDW Scheme shall be unaffected by any present or future liquidation of UDW (including, for the avoidance of doubt, any provisional liquidation of UDW) and shall in those circumstances remain in force according to its terms.

18. RELIANCE FOR SECTION 3(A)(10) EXEMPTION

In sanctioning this UDW Scheme, the Cayman Court has been apprised of the fact that UDW will rely on the Cayman Court's ruling with respect to this UDW Scheme for the Section 3(a)(10) exemption under the United States Securities Act of 1933 for the issuance of the UDW New Share Consideration to be distributed to UDW Scheme Creditors in exchange for the UDW Scheme Claims subject to the sanction of this UDW Scheme by the Cayman Court.

19. APPLICATION TO THE CAYMAN COURT FOR DIRECTIONS

Without prejudice to any rights that UDW might otherwise have in connection with this UDW Scheme or any aspect of it, UDW shall be entitled to make an application to the Cayman Court for directions at any time in connection with any matter arising under or in relation to this UDW Scheme.

20. FOREIGN REPRESENTATIVE

Either one of the JPLs shall be authorised to act as the representative of UDW on and in connection with the Chapter 15 Proceedings or any application for recognition and assistance in relation to this UDW Scheme in any jurisdiction and under whatever law.

21. COSTS

UDW (or, to the extent legally permitted, another member of the Group) will pay in full and within a reasonable period all costs, charges, expenses and disbursements incurred by UDW and the JPLs in connection with the negotiation, preparation and implementation of this UDW Scheme as and when they arise, including, but not limited to, the costs of holding the UDW Scheme Meeting, the costs of obtaining the sanction of the Cayman Court and the costs of placing the notices (if any) required by this UDW Scheme.

22. LONGSTOP DATE

22.1 If the Restructuring Effective Date has not occurred by the Longstop Date, the terms of, and the obligations on the parties under, this UDW Scheme shall lapse and cease to have any effect, provided that UDW may, at its discretion, extend the Longstop Date to such later date agreed between UDW and UDW Scheme Creditors constituting a simple majority of UDW Scheme Claims by value at that time, provided that such extension shall only become effective if it is also agreed to by: (i) the DFH Scheme Creditors pursuant to the terms of the DFH Scheme; and (ii) the DOV Scheme Creditors pursuant to the terms of the DOV Scheme.

22.2 If the Restructuring Effective Date has not occurred by the Longstop Date, as may be extended pursuant to clause 22.1 hereof:

(a) the rights and obligations of the UDW Scheme Creditors under the Existing Finance Documents, 2019 Notes Indenture, DFH Credit Facility, DOV Credit Facility and 2017 Notes Indenture shall not be affected and shall remain in full force and effect (and any defaults occurring under the 2019 Notes Indenture, 2017 Notes Indenture, DOV Credit Facility or DFH Credit Facility shall be deemed not to have been waived and any grace period that expired during the duration of this UDW Scheme shall remain expired following the termination of this UDW Scheme); and

(b) any UDW Restructuring Documents held in escrow shall be promptly destroyed.

23. MODIFICATION

UDW may, at or in connection with the UDW Sanction Hearing and with the consent of the holders of a simple majority by value of the UDW Scheme Claims, implement on behalf of all UDW Scheme Creditors any modification of, or addition to, this UDW Scheme and/or the UDW Restructuring Documents or any terms or conditions that the Cayman Court may think fit to approve or impose and which would not directly or

indirectly have a material adverse effect on the rights or interests of UDW Scheme Creditors, or any UDW Scheme Creditor, under this UDW Scheme.

24. EXERCISE OF DISCRETION

24.1 Where, under or pursuant to any provision of this UDW Scheme, a matter is to be determined by:

- (a) UDW, it shall be determined by its directors, the JPLs or other duly appointed representatives; or
- (b) the Information Agent, it shall be determined in its discretion in such manner as it may consider fair and reasonable and after consultation with the Advisers to the Ad Hoc Group.

24.2 If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the implementation of this UDW Scheme in accordance with the UDW Scheme Steps, it shall be determined by the directors of UDW and the JPLs in such manner as they shall consider to be fair and reasonable and their decision shall, insofar as permitted by law, be final and binding on all concerned.

25. PERFORMANCE OF OBLIGATIONS ON DATES OTHER THAN A BUSINESS DAY

If any obligation is to be performed under the terms of this UDW Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

26. NOTICES

26.1 Any notice or other communication to be given under or in connection with this UDW Scheme (a "Notice") shall be in the English language in writing and shall be signed by or on behalf of the person giving it. A Notice may be delivered personally or sent by email, fax, pre-paid recorded delivery or international courier to the address or email address as set out below (or as may be notified by notice to UDW Scheme Creditors from time to time) or in relation to any Notice to be given to the UDW Scheme Creditors only:

- (a) through the Clearing Systems in relation to the 2017 Notes Creditors or the 2019 Notes or to the relevant Account Holders;
- (b) through the DFH Administrative Agent in relation to DFH Lenders under the DFH Credit Facility;
- (c) through the DOV Administrative Agent in relation to the DOV Lenders under the DOV Credit Facility; or
- (d) in each case, the Information Agent Website, and marked for the attention of the relevant person as agreed between the parties.

26.2 A Notice shall be deemed to have been received:

- (a) at the time of delivery if delivered personally;
- (b) at the time of transmission if sent by e-mail;
- (c) at the time of transmission if sent through the Clearing Systems;
- (d) at the time of being published if made through the Information Agent Website (in relation to UDW Scheme Creditors);
- (e) two (2) Business Days after the time and date of posting if sent by pre-paid recorded delivery; or
- (f) three (3) Business Days after the time and date of posting if sent by international courier,

provided that if deemed receipt of any Notice occurs after 6:00 p.m. or is not on a Business Day, deemed receipt of the Notice shall be 9:00 a.m. on the next Business Day. References to time in this clause are to local time in the country of the addressee.

26.3 The addresses for Notices are as follows:

- (a) in the case of UDW:

FAO Iraklis Sbarounis, c/o Ocean Rig Cayman Management Services SEZC Limited, 3rd Floor Flagship Building Harbour Drive, Grand Cayman, Cayman Islands

Email: ocrcayman@ocean-rig.com

Copied to:

- (i) Information Agent

FAO Ocean Rig Processing, c/o Prime Clerk LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022

Phone: +1 855-631-5346 (toll-free US and Canada)
+1 917-460-0913 (International)

Email: oceanrigteam@primeclerk.com

and

- (ii) JPLs

Eleanor G. Fisher

Kalo (Cayman) Limited, 38 Market Street, 2nd Floor, Suite 4208, Camana Bay, Grand Cayman, KY1-9006, Cayman Islands

Email: oceanrig@kaloadvisors.ky

Fax: +1 345 946 0082

Simon Appell

AlixPartners Services UK LLP, 6 New Street Square, London EC4A 3BF,
United Kingdom

Email: oceanrig@alixpartners.com

Fax: +44 20 7098 7401;

- (b) in the case of a UDW Scheme Creditor:

the Information Agent Website;

sent through the Clearing Systems to the relevant Account Holders;
- (c) in the case of any other person, any address set forth for that person in any agreement entered into in connection with this UDW Scheme.

26.4 In proving service, it shall be sufficient proof, in the case of a notice sent by post, that the envelope was properly stamped, addressed and posted.

26.5 The accidental omission to send any notice, written communication or other document in accordance with clauses 26.1 to 26.4 of this UDW Scheme, or the non-receipt of any such notice by any UDW Scheme Creditor, shall not affect the provisions of this UDW Scheme.

26.6 UDW shall not be responsible for any loss or delay in the transmission of any notices, other documents or payments posted by or to any UDW Scheme Creditors (or their Nominated Recipient(s)) which shall be posted at the risk of such UDW Scheme Creditors (or their Nominated Recipient(s)).

27. THIRD PARTIES

27.1 Subject to clause 27.2, no person who is not a party to this deed has any right under the Cayman Islands Contracts (Rights of Third Parties) Law 2014 (as amended from time to time) to enforce any of its terms.

27.2 The JPLs and the Protected Parties may enforce this deed in accordance with the Contracts (Rights of Third Parties) Law 2014 (as amended from time to time).

28. GOVERNING LAW AND JURISDICTION

28.1 This UDW Scheme and any non-contractual obligations arising out of or in connection with this UDW Scheme shall be governed by, and this UDW Scheme shall be construed in accordance with, the laws of Cayman Islands. The Cayman Court shall have exclusive

jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of this UDW Scheme or its implementation or out of any action taken or omitted to be taken under this UDW Scheme or in connection with the administration of this UDW Scheme.

- 28.2 Each of the UDW Scheme Creditors irrevocably submits to the jurisdiction of the Cayman Court for the purposes of clause 28.1, provided, however, that nothing in this clause 28 shall affect the validity of other provisions governing law and jurisdiction as between UDW and any of the UDW Scheme Creditors, whether contained in any contract or otherwise.

Exhibit 17

Exhibit J

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 100, 101, 102 and 103 OF 2017 (RPJ)

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)

AND

IN THE MATTERS OF OCEAN RIG UDW INC., DRILL RIGS HOLDINGS INC.,
DRILLSHIPS FINANCING HOLDINGS INC. AND DRILLSHIPS OCEAN VENTURES
INC., (EACH IN PROVISIONAL LIQUIDATION)

OPEN COURT

Appearances:

On behalf of the Scheme Companies:

Mr Daniel Bayfield QC of South Square.

Instructed by Ms Caroline Moran, Ms Sherice Arman,

Mr Nick Herrod, Mr Christian La-Roda Thomas and

Ms Grace Boos of Maples and Calder

On behalf of the Joint Provisional Liquidators:

Ms Rachael Reynolds and Mr William Jones of Ogier.

Instructed by the Joint Provisional Liquidators.

On behalf of Highland Capital Management LLP:

Mr Michael Todd QC of Erskine Chambers.

Instructed by Mr Stephen Leontsinis and

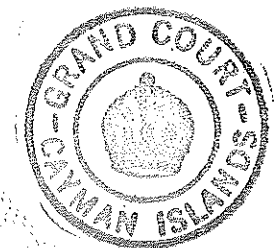
Ms Heather Froude of Collas Crill

On behalf of Ad Hoc Group of Supporting Creditors

Mr Antony Zacaroli QC of South Square.

Instructed by Mr Tony Heaver-Wren,

Mr David Bulley and Mr Jeremy Snead of Appleby.



**On behalf of Archview Investment Group LP, Brigade
Capital Management LP, Hof Hooreneman Banklers NV
and Caspian Capital LP.**

Mr Mark Goodman and Mr Hamid Khanbhai
of Campbells

On behalf of 2019 Notes Trustee

Mr Ben Hobden of Conyers Dill & Pearman (appearing at
convening hearing and watching brief only at sanction).

Before: The Hon. Justice Parker

Heard: Convening hearing: 11, 12, 13 July 2017
Sanction hearing: 4, 5, 6 September 2017

Draft Judgment
Circulated: 13 September 2017

Judgment Delivered: 18 September 2017

HEADNOTE

Schemes of arrangement-class composition-convening hearing considerations-
Section 86 Companies Law (2016 Revision)-Practice Direction (No 2) of 2010-
sanction hearing considerations.

JUDGMENT



Introduction

1. *The first part of this decision concerns the convening hearing and whether each of the Scheme Companies has a single class of scheme creditor. The second part of this decision concerns whether the Schemes proposed should be sanctioned. Since objection has been made at both stages and I have*

heard argument at both stages, it is now convenient to give my reasons on both matters in one judgement.

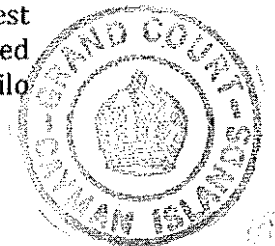
Part 1.

2. Ocean Rig UDW Inc (UDW), Drillships Financing Holding Inc (DFH), Drillships Ocean Ventures Inc (DOV) and Drillships Rigs Holdings Inc (DRH) are each in provisional liquidation. They present four Petitions and Summonses for determination by the Court as the Scheme Companies. UDW is a Cayman Islands incorporated company. DFH, DOV and DRH are direct wholly owned Marshall Islands subsidiaries of UDW (together the Silo companies). The Scheme Companies are members of the Ocean Rig Group (the Group), an offshore ultra-deepwater drilling contractor that is publicly listed on the NASDAQ.
3. On 24 March 2017, each of the Scheme Companies presented winding up petitions to the Grand Court of the Cayman Islands and filed applications seeking the appointment of the joint provisional liquidators (JPLs). The Group is in severe financial distress. This has resulted from a lengthy depression in the global oil and gas markets which has rendered it unable to service its very substantial debt.
4. McMillan J made orders dated 27 March 2017 with respect to each of the Scheme Companies appointing the JPLs and determining that each of the Companies is insolvent or likely to become insolvent .
5. The Scheme Companies represented by Mr Bayfield QC are promoting four separate interlinked Schemes of Arrangement with their largest financial creditors in order to compromise over US \$3.69 billion of New York law governed debt so as to return the Group to solvency. The purpose of the restructuring is to de-leverage the Group and allow it to continue as a going concern.

More specifically:

- DFH seeks to compromise its secured term loans with \$1.83 billion plus accrued interest outstanding.
- DOV seeks to compromise its secured term loans with \$1.27 billion plus accrued interest outstanding.
- DRH seeks to compromise its secured notes with \$459.7million plus accrued interest outstanding.
- UDW seeks to compromise its unsecured notes with \$131 million plus accrued interest outstanding, and its unsecured guarantees over the debt of the Silo companies.

The principal liabilities of UDW comprise the \$131 million plus interest owed to the senior unsecured 2019 Note holders and \$3.56 billion owed pursuant to the UDW guarantees of the indebtedness of the Silo



companies. The guarantees granted by UDW in support of the debt of the Silo companies are secured over the shares in the Silo companies, which have a single shareholder, UDW.

The creditors who fall to be dealt with comprise by the UDW Scheme compromise:

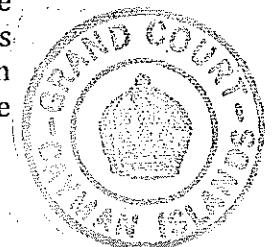
-Those persons having guarantee claims against UDW pursuant to the DRH indenture dated 20 September 2012 also known as 2017 Notes holders.

-Those persons having guarantee claims against UDW pursuant to the terms of the DFH Credit Facility and guarantee agreement dated 12 July 2013.

-Those persons having guarantee claims against UDW pursuant to the terms of the DOV Credit Facility and guarantee agreement dated 25 July 2014.

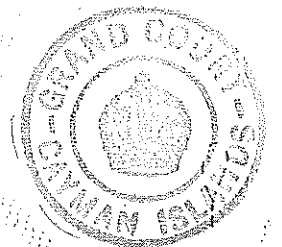
-The holders of the 7.25% senior unsecured notes due 30 April 2019 issued by UDW pursuant to an indenture dated 26 March 2014 known as the 2019 Notes holders.

6. It is worth noting that the 2019 Notes are unsecured, structurally subordinated at the bottom of the capital structure, and represent a very small proportion (approximately 4%) of UDW's (and the Group's) financial indebtedness.
7. The Schemes have the overwhelming support of the Scheme creditors. More than 90% of the Scheme creditors have agreed to the terms of a restructuring support agreement (RSA) to vote in favour of the Schemes.
8. The Schemes propose in essence that the Group's debt is exchanged for a mixture of (mostly) equity, a smaller debt burden, and cash. The vast majority of the value of the Group is in the Silo companies, predominantly within the DFH and DOV silos.
9. The JPLs, represented by Ms Reynolds, who have looked in detail at the merits of the restructuring and have been intimately involved in all aspects of it, support the four Schemes and a single class in respect of all of them, including the UDW Scheme, as do the Ad Hoc Group (a group of Scheme creditors holding in aggregate the majority of the Group's debt), who are represented by Mr Zacaroli QC.
10. If the restructuring should fail for any reason it is accepted that the Scheme Companies will go into liquidation and there would be a Group-wide insolvency causing winding up and other insolvency proceedings in the various jurisdictions in which the Group subsidiaries operate. There would also likely be enforcement by the secured lenders over the assets of the Group. More specifically no value would be realised by UDW from its ownership of the Silo companies on a liquidation whereas on the



restructuring as proposed, UDW would have a substantial going concern value.

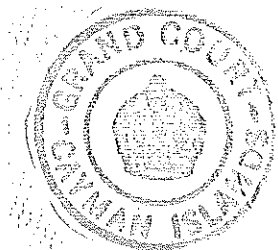
11. In other words the alternative to the Schemes will involve inevitably the liquidation of the Group and enforcement of security by creditors which it is accepted would result in value destruction generally for all creditors.
12. FTI Consulting has produced a liquidation analysis which appears in the Explanatory Statement. They confirm that a liquidation will involve a likely breakup of the Group and a distressed sale of its assets which would inevitably lead to a substantial destruction of the value of the Group, as compared to its value as a going concern. The survival of the Group's business depends upon the Group being released from the enormous debt burden under which it operates and the restructuring is premised on the assumption that the Group's business will remain viable in the medium to long-term if it is allowed to trade through the financial difficulties which have meant that it has been unable to service its debt.
13. The Scheme Consideration payable to those creditors who are eligible to receive it has been determined by a detailed allocation and valuation methodology, which was prepared by Evercore and is set out in the Explanatory Statement. In essence the allocation and valuation of the Scheme Consideration in each of the Schemes is based on the distributable value of each Scheme Company on a going concern basis and the values have been calculated by reference to the estimated enterprise value of the Silo companies and the non-silo subsidiaries and the projected cash balances of the Scheme Companies under the Group's business plan. For that purpose Evercore produced a value for each silo on a going concern basis using a discounted cash flow methodology.
14. The estimated recovery for Scheme Creditors under the Schemes is appreciably higher in each case than the estimated recovery the creditors would receive on a liquidation. The Explanatory Statement details and compares recoveries for Scheme Creditors under the proposed Schemes and recoveries on a liquidation of the Scheme Companies.
15. Those are the essential features of this case which have relevance to the matters the Court needs to consider when dealing with the matters proposed by the Scheme Companies.
16. I bear in mind that it is well established that in the context of schemes of arrangements the creditors are likely to be the best judges of what is in their commercial interests and in this case the Schemes had, prior to the convening hearing, already achieved over 90% levels of support of the Scheme creditors of each of the Scheme Companies.



17. Each of the four Scheme Companies seeks liberty to convene a single class meeting of its Scheme creditors to consider and, if thought fit, to approve the Scheme proposed by those companies.

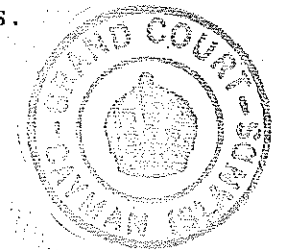
Objections raised by Highland

18. There is no objection taken to the proposal that, in relation to each of the Silo companies' Schemes, there is a single class of Scheme Creditor. However, funds managed by Highland Capital Management LP (Highland), represented by Mr Todd QC, oppose one of the Schemes, the UDW Scheme. This is so notwithstanding that if the UDW Scheme becomes effective, Highland would also fare better than on a liquidation.
19. Highland holds 56.5% of the outstanding 2019 Notes issued by UDW and is in that capacity an unsecured creditor of UDW in the amount of \$ 74,122,000. This represents approximately 2% of the total amount of the claims of UDW's Scheme Creditors.
20. The grounds of Highlands's opposition fell into two categories. First class composition and second, other grounds upon which the court unquestionably would decline to sanction the UDW Scheme (also referred to as blots).
21. Although the principal purpose of the convening hearing is to consider issues of class composition I was invited to consider broader questions of fairness and jurisdiction, and I did so. Whilst I heard substantial argument about the merits and fairness of the proposed Scheme, these matters are ordinarily to be dealt with at the sanction stage and not at the convening stage-see *Telewest* [2004] BCLC 342 at p 14 per Richards J.
22. A significant feature of Highlands's objection to being forced into a single class involves a draft Complaint which alleges that UDW and/or certain of its subsidiaries had improperly or fraudulently transferred property to related third parties and that such transactions should be set aside as fraudulent conveyances under the New York Debtor and Creditor Law.
23. Highland argues that the effect of the UDW Scheme is to remove entirely its status as a creditor of UDW and hence its ability to bring those claims. It wishes to pursue those claims in preference to accepting the UDW Scheme. It asserts that the Preserved Claims Trust (PCT) suggested as the way of dealing with these claims by the JPLs, is an inadequate and unfair replacement to its own draft Complaint which it wishes to bring against, among others, Mr Economou, the CEO and Chairman of UDW, and Mr Kandylidis, the President and CFO of UDW.
24. The PCT is intended to preserve the alleged claims of UDW and its relevant subsidiaries against third parties for the benefit of all UDW Scheme Creditors in order that they can be investigated and, if thought

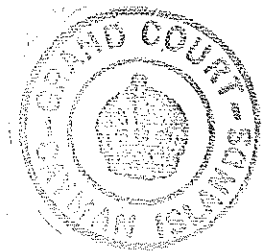


meritorious, pursued. The UDW Scheme therefore involves, as a condition, the settlement of a trust by UDW and certain subsidiaries of claims against third parties.

25. Mr Todd QC in order to make good his submission that a single class for the UDW meeting was not appropriate argued that the creditor rights under the 2019 Notes are very different from the creditor rights under the UDW guarantee Schemes. Moreover he says that the UDW Scheme treats the 2019 Notes creditors differently from the UDW guarantee Scheme Creditors who are given significant and, he argues, unfair advantages and/or inducements. Those identified include in particular consent fees, director appointment rights and the payment of professional fees incurred by the two groups of creditors who have assisted the Scheme Companies to date in connection with the restructuring.
26. He goes on to assert that the Schemes grant the DFH and DOV Scheme Creditors security over currently unencumbered assets held outside of the respective debt silos, but do not grant any such security to the 2019 Notes holders.
27. He says that the 2019 Notes holders should therefore form a separate class to the UDW guarantee Scheme creditors because their rights to be released or varied, and the new rights which the UDW Scheme grants, are materially different.
28. Mr Todd QC relied on a number of points (which were set out in the first affidavit of Mr Poglitsch) including that: the UDW Scheme is the product of a commercial negotiation that excluded Highland; a proposal that Highland had put forward had been rejected without good reason; there was unequal treatment between Highland and the other 2019 Notes holders as compared with the UDW guarantee Scheme Creditors who are given significant and unfair advantages; the PCT takes away rights of Highland and is in any case inadequate to deal with the matters alleged by Highland in its draft Complaint.
29. The convening hearing, which lasted for 3 days, was therefore taken up with a detailed consideration of those points in connection with the UDW Scheme in particular.
30. Mr Bayfield QC for the Scheme Companies rejects all of these arguments. He submits that the Court should Order that the Scheme meetings be convened and that UDW has only one class of Scheme Creditor. He submits that the court should only deal with the issues raised by Highland which can be said to go to class composition or with any issue which is a "showstopper" in the sense of creating such inherent unfairness, that it would be a waste of time proceeding to convene the Scheme meetings .



31. He goes on to submit that the UDW Scheme provides the same basis of Scheme Consideration to all UDW Scheme Creditors and although the three Silo companies schemes offer different Scheme Consideration to their creditors there is good reason for that in relation to each of those Schemes and that this is not relevant to the assessment of UDW Scheme creditors' rights against UDW in any case.
32. Moreover Mr Bayfield QC argues that the security held by the UDW guarantee Scheme Creditors in respect of their UDW guarantee claims has no value as the shares in the Silo companies are of no value because the Silo companies are each insolvent. The fact that, technically, the UDW guarantee Scheme Creditors are secured and the 2019 Notes claims are unsecured does not fracture the class for this reason. All of the UDW Scheme creditors are effectively unsecured. See *Metinvest* [2017] EWHC 178 (Ch) per Mann J at paragraphs 16 to 18.
33. He says I should not follow the “holistic” approach adopted by Mr Todd QC in his argument as to the assessment of class issues and that I should carefully follow the numerous authorities that he referred me to as to the correct test to apply.
34. Focusing on the UDW Scheme, he submits that it is not a series of linked arrangements, but a single arrangement pursuant to which UDW's creditors, and all of them, have their existing rights against UDW released and receive in return new UDW shares in proportion to the value of their claims against UDW. That is a single arrangement and it gives no rise to any class issues.
35. Likewise the silo Schemes only deal with creditors' claims against the silo not against UDW and in return they distribute Scheme Consideration to compensate the creditors for the rights released and varied by those silo Schemes in each case.
36. So according to Mr Bayfield QC's submissions, which were supported by Mr Zacaroli QC and Ms Reynolds, there should not be two classes of creditor – Highland and the other pure 2019 Noteholders, and the rest, as Mr Todd QC submits.
37. Mr Bayfield QC submits in the alternative that even if I were to adopt the “holistic” approach to the relevant authorities which Mr Todd QC suggests that I should (and which Mr Bayfield QC says is consistent as to the correct approach both in England up to the Court of Appeal, in the Hong Kong Court of Appeal and in this Court) so that I were to aggregate all of the creditors' pre and post-Scheme rights against all of the four companies in the class composition exercise, I would still (applying the correct test) need to go on to determine whether those rights are so dissimilar from one another that the creditors could not consult together with a view to their common interest.



38. He says that the Court should conclude that they could consult together notwithstanding any dissimilarity of rights, because all of the creditors have an interest in the paramount intention of avoiding a liquidation of UDW and the rest of the Group. As the figures show in the liquidation analysis a liquidation outcome would be worse than a Scheme outcome and would be value destructive for everyone.
39. Following the Convening hearing I gave my decision without reasons, in the following terms:

Decision

*As I indicated to the parties at the conclusion of the hearing on 13 July 2017, I give my decision, without reasons at this stage, on the application by the four Scheme Companies (who are members of the Ocean Rig Group, known as UDW, DFH, DOV, and DRH) to convene a **single** meeting of creditors in each Scheme for the purposes of considering and, if thought fit, approving (with or without modification) each of the four Schemes.*

I consider it appropriate to grant the applications of the Scheme Companies, and so Order in accordance with Section 86 of the Companies Law (2016 Revision) and the Practice Direction (No.2 of 2010) that such meetings be convened in accordance with the Directions proposed in the draft Orders.

It is my intention to reserve my reasoned judgement until after the conclusion of the further application to sanction the Schemes.

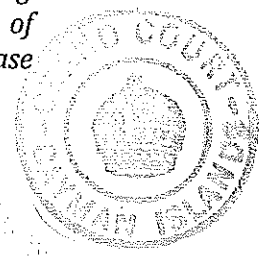
I am presently assigned to hear that application. If for any reason that is to be heard by another Judge, I will of course be willing to provide reasons for his or her consideration in advance."

There now follows the reasons for that decision.

The Law

40. Section 86(1) of the Cayman Islands Companies Law (2016 Revision) provides that :

"Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, or where a company is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or the members of the company or class of members as the case may be to be summoned in such manner as the court directs."



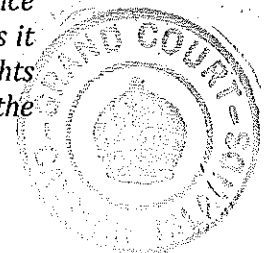
41. Section 86 of the Companies Law is substantially the same as the relevant provisions of the English Companies Act 2006 and is also substantially the same as sections of a number of Commonwealth company statutes. The relevant English and Commonwealth authorities have therefore been applied to Cayman Island schemes of arrangements over many years. As I have said, during the course of the hearing, I was referred to a considerable number of them.
42. Having considered those authorities in detail, the main question I have to decide is whether the proposal to convene a meeting of the single class of creditors in respect of each Scheme is in accordance with the principle that a class must be confined to "those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest". *Sovereign Life Assurance Co v Dodd* [1892] 2 QB 573
43. The function of the court at the convening stage to approve the division of creditors or members into one or more classes for the purposes of voting, is an important part of the procedure because the correct composition of classes goes to jurisdiction and the court will have no discretion to sanction the scheme if the classes are not properly constituted in the first place.
44. This test is also set out set out below in the relevant Cayman Islands Practice Direction (No 2) of 2010.

Paragraph 3.2 provides in material part:

"... In every case the court will consider whether it is appropriate to convene class meetings and, if so, the composition of the classes so as to ensure that each meeting consists of shareholders or creditors whose rights against the company which are to be released or varied under the scheme, or the new rights which the scheme gives in their place, are not so dissimilar as to make it impossible for them to consult together with a view to their common interest." (My emphasis).

45. The principle in Paragraph 3.2 derives from a case decided well over 100 years ago: *Sovereign Life v Dodd* [1892] 2 QB 573 at p 583 per Bowen LJ which has been followed in a number of cases over the years and to some extent clarified.
46. Significantly in the Court of Appeal in *Re Hawk Insurance Co Ltd* [2001] 2 BCLC 480, Chadwick LJ said this at Paragraph 23.

"As I have indicated, I would have regarded it as self-evident, in the absence of authority that the relevant question at the outset is: between whom is it proposed that a compromise or arrangement is to be made? Are the rights of those who are to be affected by the scheme proposed such that the



scheme can be seen as a single arrangement; or is the scheme to be regarded, on a true analysis, as a number of linked arrangements?"

47. He then examined *Sovereign Life* in some detail and decided that the correct analysis was to look first at existing rights which are to be released or varied under the scheme, and then at any new rights which the scheme gives by way of compromise or arrangement to those whose rights are to be released or varied.

"It is in the light of that analysis that the test formulated by Bowen LJ in order to determine which creditors fall into a separate class-that is to say, that a class 'must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest'-has to be applied." Paragraph 30.

48. He went on to say at Paragraph 33:

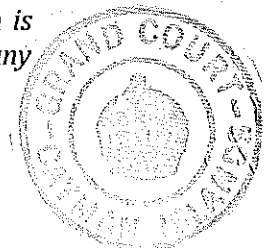
"When applying Bowen LJ's test to the question 'are the rights of those who are to be affected by the scheme proposed such that the scheme can be seen as a single arrangement; or ought it to be regarded, on a true analysis, as a number of linked arrangements?' it is necessary to ensure not only that those whose rights really are so dissimilar that they cannot consult together with a view to a common interest should be treated as parties to distinct arrangements-but also that those whose rights are sufficiently similar to the rights of others that they can properly consult together should be required to do so; lest by ordering separate meetings the court gives a veto to a minority group."

49. In *Apcoa [2014] EWHC 3489 Ch Hildyard*] at p 676 summarised the law as it had developed over the years since *Sovereign Life* as follows:

"The modern approach, which the practice established pursuant to Re Hawk both reflects and requires, is to break the question into two parts, and ask first whether there is any difference between the creditors in point of strict legal right, and only to proceed to the second question, at the convening stage, if there is; and if there is, to postulate, by reference to the alternative if the scheme were to fail, whether objectively there would be more to unite than divide the creditors of the proposed class, ignoring for that purpose any personal or extraneous interest or subjective motivation operating in the case of any particular creditor(s)"

50. Paragraph 3.3 of the Practice Direction provides:

"At the first hearing, the court will also consider any other issue which is relevant to the jurisdiction of the court to sanction the scheme, and any



other issue which, although not strictly going to jurisdiction, is such that it would unquestionably lead the court to refuse to sanction the scheme."

51. It follows, as I have said, that the Court can also deal at the convening hearing with any other matter which would render the procedure inappropriate. So for example if an issue would unquestionably lead the court to decline to sanction the scheme there would be no point in expending the huge amount of time and money in proceeding on an incorrect basis, in circumstances where there is some fundamental "showstopper" or "roadblock": see *Re Indah Kiat International Finance Co BV* [2016] EWHC 246 per Snowden J at p 28.
52. After the meetings have been convened as Ordered by the Court a further application must be made to the court for the sanction of the scheme under section 86 (2) at which stage the court's principal function is to ensure that the scheme does not involve unfair or unreasonable conduct by the majority.
53. This is dealt with at **Part 2** of this judgment and was described by Chadwick LJ in *Re Hawk* as an opportunity for the Court, which is not bound by the outcome of the meeting, to safeguard against majority oppression.
54. In fact, a reasoned opinion by the Court in relation to class composition or jurisdiction at the convening stage only has significant advisory value and is not strictly binding on the Court at the sanction hearing see e.g *Apcoa per Hildyard J*.
55. It is also the case that when comparing the rights that would be released under the Schemes and the rights given to creditors pursuant to the Schemes, regard should be had to the liquidation comparator were the group to become insolvent: see *Telewest (No. 1)* [2005] 1 BCLC 752 per Richards J at p 763 and *Hildyard J in Apcoa at paragraph 109*.
56. It is clear that Hildyard J in *Apcoa* as well as analysing the turnover provisions and lock-up agreement in that case in detail, looked at the imminent insolvency of the group and its consequences and concluded that reasonable creditors would unite around a common cause of avoiding liquidation which would result in the destruction of value for all and a smaller recovery for all than might be achieved through a restructuring. So whilst insolvency being a worst-case scenario should not be used as "a solvent for all class differences" per Hildyard J at paragraph 117, it can be helpful in assessing whether there is an underlying common interest amongst creditors- hence his "more to unite than divide" approach.



57. Importantly in applying the test the court is concerned with the rights (as distinct from interests) between the company and the scheme creditors alone, and not in respect of any third parties.

58. In *UDL Holdings Ltd & Ors* [2002] 1 HKC172 Lord Millett said: at p 27

"The test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their private interests not derived from their legal rights against the company is not a ground for calling separate meetings."

59. *UDL* (being a decision of the Hong Kong Court of Appeal) has been followed by a number of cases including in *Telewest (No1)* [2005] 1BCLC 752 by Richards J and *Apcoa* by Hildyard J.

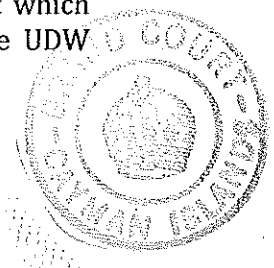
60. Describing the reasons for persons with divergent interests to be allowed to vote as members of the same class for the purpose of ascertaining whether the scheme has been approved by the necessary majority, Lord Millett makes it clear that one of the reasons was to stop a small minority thwarting the wishes of the majority.

"Fragmenting creditors into different classes gives each class the power to veto the scheme and would deprive a beneficent procedure of much of its value. The former danger is averted [the risk of empowering the majority to oppress the minority] by requiring those whose rights are so dissimilar that they cannot consult together with a view to their common interest to have their own separate meetings; the latter by requiring those whose rights are sufficiently similar they can properly consult together to do so..... A company can be regarded as entering into separate but linked arrangements with groups whose members have different rights or who are to receive different treatment. It cannot sensibly be regarded as entering into a separate arrangement with every person or group of persons with his or their own private motives or extraneous interests to consider" At page 184 B-D of UDL.

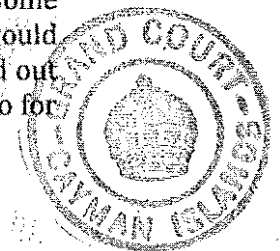
61. Moreover there have been a number of cases where creditors had rights which were different, but which the court held were not so different that they could not consult together: see e.g. *Telewest (No. 1)*.

Decision

62. Having set out the basic legal principles, I will examine the fact specific issues which Highland asserts give rise to separate classes of creditors and to also see whether there are any grounds it has made out which would lead the Court to unquestionably decline to sanction the UDW Scheme.

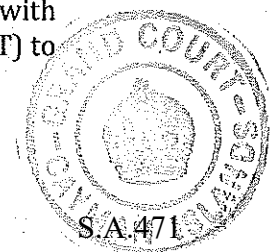


63. I am not persuaded that any of the arguments as to unfairness Mr Todd QC advanced in relation to access to information, the rejection of Highlands's proposal and exclusion from certain negotiations has anything to do with class composition and I do not take him to have submitted that it does. Neither do I regard these matters as potential "showstoppers" or indeed as anything close to being so.
64. I accept Mr Bayfield QC's submissions that the arguments advanced by Highland in relation to existing rights and the rights given to other creditors as a result of the Scheme do not fracture the class. They share a common interest with Highland in avoiding a liquidation.
65. I also accept Mr Bayfield QC's submissions that the position of the UDW guarantee claims creditors does not fracture the class as their security is effectively worthless in the UDW Scheme, based as it is on the value of shares in the Silo companies. Those have in effect no value.
66. Similarly the submission that because the UDW guarantee Scheme Creditors have claims and rights against other entities within the Group (which are secured on the assets of the Silo companies and their subsidiaries) and which the 2019 Notes holders do not have, does not in my view fracture the class because the question of class composition, as I have set out above, needs to be looked at by reference to the existing rights of the UDW creditors against the company (UDW) only: see, for example, *UDL* above.
67. The test that has to be applied is as to *rights* against the scheme company, not as against third parties and not as to *interests*.
68. For example in the Australian case of *Nordic Bank plc v International Harvester Australia Ltd & Anor* [1983] 2 VR 298 approved by Chadwick LJ in *Re Hawk*, dual recourse creditors who could look to the scheme company and another company in satisfaction of their debt did not constitute a separate class from single recourse creditors.
69. As to the inducements which allegedly arise (according to Mr Todd QC) from consent fees paid to some creditors and which were not offered to Highland, it is commonplace in my experience in these complex restructurings for creditors to 'lock up' a vote in favour of a scheme in advance in consideration for a relatively small fee. They are not in my view sufficiently material in this case to fracture the class. The debt after all which is subject to these Schemes is in aggregate almost \$4 billion.
70. In any event they do not constitute a right against UDW. They are paid to give those promoting these complex and expensive Schemes some visibility and certainty as to outcome, not to influence votes which would not otherwise be in favour. Moreover, the consent fees are being paid out of the assets of the Silo companies and are not given as a quid pro quo for



the release or variations of rights at UDW level. They do not make consultation impossible in one class of creditors' meeting. Mr Todd QC's reliance on Richards J's comment in *Telewest (No 1)* at p 769 at paragraph 54 is misplaced because at that stage the judge was dealing with a hypothetical issue and no consent fees were in fact paid in that case. A number of subsequent cases have found that consent fees paid have not fractured the class, mainly on grounds of immateriality.

71. The professional fees reimbursement argument does not assist Mr Todd QC either as again such fees are not material and reasonably in my view, indemnify professional fees incurred to facilitate the restructuring. Likewise, I am not persuaded that the largest shareholder having a right to appoint a director to the board of the company fractures the class because a free-floating right available to any shareholder which sufficient holding does not create a difference in the rights granted by the UDW Scheme.
72. It is important to bear in mind as I have set out above, when considering the objections raised by Highland and in particular the arguments that certain creditors of the Silo companies are getting a better deal than Highland, that as a holder of the 2019 Notes only, it is structurally subordinate to those creditors. Those other creditors have direct claims against the entities within which the substantial part of the Group's value is. They have both guarantee claims against UDW in addition to their direct claims against the Silo companies.
73. The 2019 Notes holders are in a different position having only claims against UDW. It seems to me perfectly reasonable for the Schemes to recognise and give effect to that difference which reflects the economic and legal reality of the Group's debt structure. I believe Mr Todd QC also very fairly recognised this reality.
74. To recognise it does not lead to the conclusion that the creditors of UDW should not be placed into a single class for the purpose of voting on the UDW Scheme. When the UDW guarantee creditors are voting they will not (absent any cogent evidence to the contrary) in my view be voting with an interest adverse to their interests as UDW creditors simply because they have additional interest at Silo levels.
75. Mr Todd QC also fairly accepted the case that the outcome for all creditors in a UDW Scheme is better than an outcome in a UDW liquidation. That of course is subject to the point that Highland wishes to be excluded from the Scheme in order to pursue its own claims.
76. As I have said these allegations concern alleged fraudulent transfers to certain affiliated third parties of UDW and are set out in its draft Complaint. I have already indicated how the JPLs' propose to deal with that - by way of a Trust set up in order to preserve the claims (the PCT) to

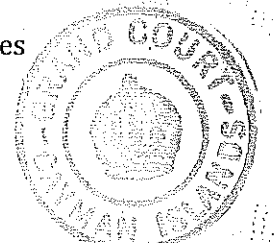


ensure that they may be investigated and if appropriate prosecuted. It also provides the means to ensure that funds are made available for an initial independent investigation of the allegations.

77. It seems to me that by reason of their independence and professional expertise, the JPLs are appropriate people to be directing the independent Trustee's investigations and I take note that they will not be acting in their capacity as provisional liquidators in that regard. It seems to me that no unfairness results from this to Highland as all UDW Scheme creditors will benefit from any recoveries pro-rata in accordance with the amount of their Scheme claims against UDW.
78. The intended claim comprises rights which all UDW Scheme creditors would be able to bring to litigation if so advised. It is not a unique right of Highland alone to bring these claims. The PCT is set up so that if there is any value in the claims, the UDW Scheme creditors would be entitled to share in that value. I do not accept that there is any jurisdictional impediment on UDW's ability to 'scheme' its creditors' rights simply because Highland has identified causes of action comprised in a draft Complaint that it would like to bring for itself.
79. For these reasons, I have found that a single meeting of creditors should be convened for all Schemes and that the arguments Highland put forward as to class composition and to fairness which would leave the court inevitably to decline to sanction the Schemes, should not be accepted.

Part 2

80. Having approved orders dated 20 July 2017, scheme meetings were duly convened in accordance with those orders. The Schemes were approved and the turnout was high - 96%. All of the Silo company Schemes were unanimously approved and only Highland objected to the UDW Scheme.
81. It is also significant that of the 330 UDW Scheme creditors who voted in favour of the UDW Scheme, 8 of them who had no interest in the Silo Schemes (holding about 9% of the debt for which no consideration is due under the Silo Schemes) also did so. Those creditors could be fairly said to be in exactly the same position as Highland (as holding exclusively 2019 Notes and who are not members of, or affiliates of, the Group or the Ad Hoc Group).
82. As I indicated at the outset of this judgment, Highland objects to the sanctioning of the UDW Scheme and at a hearing lasting a further 3 days I heard those objections.
83. Before dealing with those objections I first set out the principles applicable to the sanction of a scheme.



The Law

84. Section 86(2) of the Companies Law provides as follows:

"If a majority in number representing 75% in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or the members or class of members, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company"

85. It is well settled law that the relevant questions for the court at the sanction hearing are:

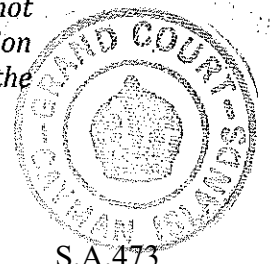
1. whether the scheme company has complied with the terms of the convening order and the statutory requirements of the Companies Law;
2. whether, at the scheme meeting, the class or classes of scheme creditor were fairly represented and the majority acted in a bona fide manner; and
3. whether the scheme is one that an intelligent and honest scheme creditor, acting in respect of its interests, might reasonably approve, such that the court should exercise its discretion to sanction the scheme.

86. The current edition of Buckley on the Companies Acts provides a helpful synopsis of the relevant principles at paragraph 219

"The sanction of the court is not a mere formality although the court has an unfettered discretion as to whether or not to sanction a scheme, it is likely to do so, as long as [the questions set out above] are satisfied."

87. Buckley goes on to state:

"Members and creditors are normally the best judges of what is in their commercial interest and are in a better place than the court to decide where their best interests lie. The test is not whether the opposing members or creditors have reasonable objections to the scheme, because a member or creditor may be equally reasonable in voting for or against the scheme. The court can sanction a scheme notwithstanding that there are members or creditors who sincerely contend that the scheme is unfair. The court is not however bound by the decision of the meeting. A favourable resolution merely represents a threshold which must be surmounted before the

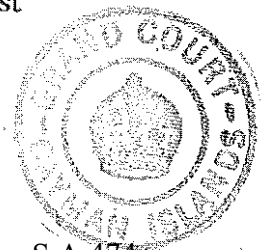


sanction of the court can be sought. Parliament envisaged that the court's discretion whether or not to sanction would be a check or balance on the power of the majority to bind the minority. If the court is satisfied that the meeting is unrepresentative, or that those voting in favour did so with a special interest to promote which differs from the ordinary and independent member of the class, the court will not give effect to the majority's decision. The discretion of the court as to whether or not it should sanction the scheme is important, since once the scheme has been sanctioned it binds all parties, even the dissentients.

And further

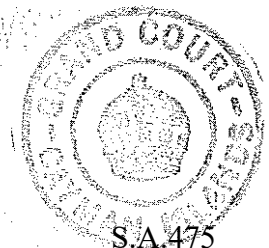
"The court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting. The court will decline to sanction a scheme if the classes have not been properly convened and properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some 'blot' is found in the scheme which had been unobserved when it had been approved by members or creditors, but will otherwise be slow to differ from the meeting. It is not only those matters which had not been appreciated at the time of the meetings which might lead the court to decide not to sanction the scheme, although aspects of the scheme which are perceived as defects by objectors, but which are deliberate and have been made plain, are not capable of being described as a blot on scheme. A scheme could be said to have a blot on it if it did not have the effect that the company and the members or creditors intended. The word blot has been said not to have any inherent meaning and it does not limit the discretion not to sanction a scheme to technical objections that render the scheme unlawful or inappropriate."

88. I take from this formulation and the authorities which give rise to it that the court's function at the sanction stage is to look carefully at the votes cast at the meeting, to ensure compliance with all the formalities, and to see whether the vote taken has been representative of the particular class and bona fide. The objective element to the test is then provided by the court seeing whether the scheme is one which an intelligent and honest creditor, acting in respect of its interest, could vote for.
89. The court should be slow to differ from the vote, recognising that it is the creditors who are clearly the best judges of what is in their commercial interest. However, the court is not a rubber stamp in this regard even where the scheme has the support of an overwhelming majority of the creditors who are to be subject to it. The court can differ from the vote, but only if it is satisfied that an honest, intelligent and reasonable member of the class could not have voted for the scheme, and in that regard the court's own view as to whether the scheme is reasonable or even the best scheme is not relevant.



90. Mr Todd QC relied on a decision of the Guernsey Court of Appeal in *Re Puma Brandenburg* (In the Court of Appeal of Guernsey) Civil Division – Appeal no. 508, 18 May 2017, to the effect that unfair prejudice and oppression as regards Highland, ought to feature as part of the court’s assessment. To the extent that this would require the court to depart from the essential test I have set out above, I am not prepared to do so. Those considerations do not form part of any other authority I have been referred to in this area and they do not in my view form part of the fairness assessment applied to the question of sanction. I do not believe that the distinguished members of the Guernsey Court of Appeal intended to change the settled law in this area, or they would have said so and explained why.
91. There was much debate at the hearing as to the question of whether the class was fairly represented by those who attended the meeting (in person or by proxy) and whether the majority are acting bona fide and not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent.
92. In my view the critical question I have to consider in this regard is whether the majority of the UDW Scheme creditors who voted in favour of the Scheme have overridden the minority by reason of having interests which clash with those of the minority see *Re Alabama New Orleans, Texas and Pacific Junction Railway Company [1891]* 1 Ch 213 and if they did not have those other interests, whether they would not have voted in favour of the UDW Scheme.
93. Put another way, the question is whether the majority was primarily motivated by their own personal and commercial interests derived from the benefits available as guarantee Scheme creditors from the silo Schemes and sought in effect to coerce the minority so as to promote an interest that was adverse to the interests of the class, and were only doing so for that reason, not because they believed that the UDW Scheme was in the best interests of all UDW creditors.
94. The test was put in this way by Hildyard J in *Apcoa* at paragraph 130;

“In particular, if an allegation is made that a creditor had improper regard to interests other than those of the class to which he belonged, it is necessary for there to be a ‘but for’ link between the collateral interest and the decision to vote in the way that he did. The person challenging the relevant vote must therefore show that an intelligent and honest member of the class without those collateral interests could not have voted in the way that he did. It is not sufficient simply to show that the collateral interest is an additional reason for voting in the manner in which he would otherwise have voted.”(my emphasis).



95. I do not believe that the cases that Mr Todd QC showed me which preceded this decision meant that Hildyard J was setting out a new test which injected a new 'but for' element. In my view the learned judge was simply rationalising in modern language the test set out in the early authorities.

96. As to what is in the best interests of an intelligent and honest UDW Scheme Creditor, I again bear in mind in this regard that it is well settled that the best judges of what is in the commercial interests of the creditors are of course the creditors themselves see e.g. *In re English Scottish and Australian* [1893] 3 Ch 385 per Lindley LJ:

"If the creditors are acting on sufficient information and with time to consider what they are about, and acting honestly, they are, I apprehend, much better judges of what is to their commercial advantage than the court can be".

97. Hildyard J said this in *Apcoa* paragraph 129:

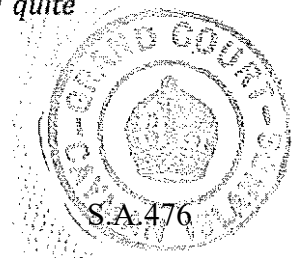
"...the court must give full weight to the decision of the creditors, acting in their capacity as members of the class in which they are voting. It is not sufficient for the court to determine that it would not have reached the same decision as the creditors themselves reached. In the absence of some procedural or jurisdictional hurdle (or of some blot on the face of the scheme itself) the court should only decline to sanction the scheme if an intelligent and honest member of the relevant class acting in respect of his interest could not reasonably have approved it."

98. There was some argument at the hearing as to whether the UDW Scheme meeting was properly held. As to this, the important point is that the meeting must give all creditors the opportunity to attend (in person or by proxy): see *Re Altitude Scaffolding* [2007] 1 BCLC 199 at paragraph 6 (citing *Re Hawk Insurance Co Ltd* [2001] 2 BCLC 480 at paragraph 12 Per Richards J):

"The court directs how the meeting or meetings are to be summoned. It is concerned, at that stage, to ensure that those who are to be affected by the compromise or arrangement proposed have a proper opportunity of being present (in person or by proxy) at the meeting or meetings at which the proposals are to be considered and voted upon."

99. The learned judge went on to say ,(holding that in the context of the scheme of arrangement the word 'meeting ' has its ordinary and natural meaning), at paragraph 18 (p.207):

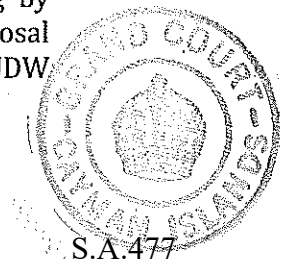
"The fact that in many cases the members of the class do not in any real sense consult together does not mean that the word is to be given a quite different meaning".



100. It is in fact the case, of course, that it is rare for large numbers (in this case hundreds) of creditors to attend scheme meetings in person. That is why the opportunity to have dialogue in advance of the meeting and the fullness and fairness of the Explanatory Statement takes on great practical consequence.

Objections raised by Highland

101. As foreshadowed at the convening hearing Mr Todd QC maintained and elaborated upon many of the points he took earlier at the sanction hearing. This is of course something which he was perfectly entitled to do as broader considerations apply at the sanction stage and because the court is not bound by any decision that is reached at the convening stage. He maintained that the Scheme was unfair and that his client does not wish to be part of the Scheme.
102. The fact that I have determined at the convening hearing that the rights of creditors are not so dissimilar in relation to the UDW Scheme as to make it impossible for them to consult together with a view to their common interest so as to require them to be put into separate classes, does not prevent me from refusing to sanction the Scheme on the basis of any dissimilarities between the rights and interests of those creditors which is established. My discretion as to whether or not to sanction the Scheme is not encumbered by my earlier decision. I considered all of the arguments which by necessity were to some extent repeated afresh.
103. Mr Todd QC referred to a proposal that had been made by Highland that he submitted would be in the best interests of UDW and all of its creditors. This proposal, which would require a modification to the Scheme voted upon, had been rejected by UDW, the JPLs and the Ad Hoc Group for what Mr Todd QC submits were wholly unsatisfactory reasons.
104. He submitted that the court should direct the amendment of the UDW Scheme so as to give effect to this modification and/or to exclude Highland from those creditors of UDW that were bound by the Scheme and/or refuse to sanction the UDW Scheme on the ground that it was unfair to Highland.
105. Highland's proposal he submits seeks to ameliorate the position of Highland so that it is treated fairly. The effect of the UDW Scheme is to remove Highland's status as a creditor capable of pursuing the draft Complaint and the proposal seeks to carve Highland out the UDW Scheme to preserve its standing as a creditor. In return for being carved out, Highland would agree not to collect from UDW any sums due pursuant to the terms of the 2019 Notes or any Scheme Consideration arising by virtue of its rights under those Notes. He submits that if the proposal were accepted or if the court were to impose it on the parties, all UDW



Scheme creditors would be better off. He said that the proposal would not result in any delay, and can be accomplished by a very simple amendment to the Scheme documentation. It does not give Highland any special treatment, and was a genuine effort to resolve the matter. He also submits that the reasons given for the rejection were inadequate. He submits that Highland does not seek to 'hold out' with a view to derailing the Schemes. Rather this shows that what it really wants is to have to play no part in the UDW Scheme because it is unfair to Highland.

106. He also submitted that by the design of those promoting the Schemes none of the silo Schemes could take effect unless the UDW Scheme is approved by its creditors and sanctioned by the court. This is agreed by all parties. This he says gives a collateral motive to those creditors who derive substantial benefits from the silo Schemes when voting in favour of the UDW Scheme. There is of course a high degree of interconnectedness between the Schemes and it is the case that unless the UDW Scheme goes ahead the Group restructuring will not proceed as proposed.
107. He maintains the arguments advanced at the convening hearing concerning consent fees and other benefits under the RSA. He makes the point that his clients were not offered those benefits and points to a stark inequality of treatment. He also complains that the UDW guarantee creditors had already tied themselves to vote in favour of the UDW Scheme by virtue of the RSA so there was no meaningful vote with any integrity.
108. As to the meeting itself he contends that there was no intention on the part of UDW, the JPLs, or the Ad Hoc Group to engage in a dialogue as to the merits of the Scheme or indeed Highland's proposal.
109. He maintained his submission that the unfairness to Highland was a grave and serious one because: the UDW guarantee creditors will receive payments not made available to all UDW Scheme creditors and which were made in order to obtain their support for the UDW Scheme; those creditors therefore had rights and interests which were manifestly at odds with the UDW Scheme creditors as a whole and they were in addition receiving consideration with a view to locking them into the UDW Scheme; so they cannot be said fairly to represent the class of UDW Scheme creditors.
110. In this regard, he relied upon a passage in the judgement of Lord Millett in *UDL* who said it was open to the court at the sanction hearing to:

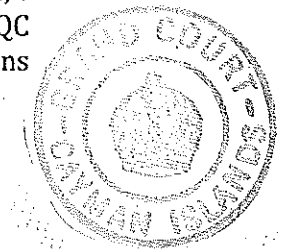
"...discount or disregard altogether the votes of those who, though entitled to vote at a meeting as a member of the class concerned, have such personal or special interests in supporting the proposals that their views cannot be regarded as fairly representative of the class in question."



111. He also relies on Adam J in an Australian case *Chevron* [1963] VR 249 at p.255:

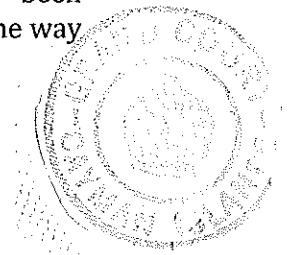
"The true position appears to be that where the members of the class have diverging interests because some have and others have not interests in a company other than as members of the class the court may treat the result of the voting at the meeting of the class as not necessarily representing the views of the class as such, and thus should apply with more reserve in such a case the proposition that the members of a class are better judges of what is to be their commercial advantage than the court can be. Insofar as members of the class have in fact voted for a scheme not because it benefits them as members of the class but because it gives them benefits in some other capacity, their votes would of course, in a sense, not reflect the views of the class as such although they are counted for the purposes of determining whether the statutory majority has been obtained at the meeting of the class".

112. Reliance was also placed upon *Re Dee Valley* [2017] EWHC 184 which confirms that members of the class must vote in the interests of the class as a whole and not in their own specific interests, if they are different from the interests of the class.
113. In this connection, I find that these authorities do not say that there is an inevitability that the votes in such circumstances will be disregarded or discounted where someone has an additional interest. It will turn upon whether the different interests, or the additional interests, are such that the creditor's vote is unrepresentative of the class in question.
114. Mr Todd QC submitted in conclusion that if the court was unable or unwilling to direct the amendment of the UDW Scheme so as to exclude Highland from those creditors that are bound by it, the court should refuse its sanction on the basis it was unfair to Highland. Mr Todd QC went so far as to suggest that Highland was the victim of a discriminatory scheme to eliminate \$131 million of bond debt, leaving certain of UDW's other creditors outside of the Scheme. He suggested that it was unnecessary for there to be a UDW Scheme at all in respect of the 2019 note holders.
115. Mr Bayfield QC makes a number of submissions (dealt with to the extent necessary below) in answer to Mr Todd QC's arguments. He is supported by Mr Zacaroli QC and by Ms Reynolds in relation to these arguments. Mr Zacaroli QC on behalf of the Ad Hoc Group also made separate submissions in relation to Highland's complaint that the Scheme is unfair because it deprives Highland of its ability to pursue the New York Debtor and Creditor Law claims and the effect of the PCT. To avoid repetition, I will deal with Mr Bayfield QC's submissions as adopted by Mr Zacaroli QC and Ms Reynolds in the context of dealing with the issues in my reasons for the decision below.



Decision

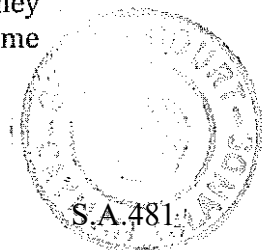
116. As I have said the only challenge in this case is that of Highland to the voting at the UDW Scheme meeting. No challenge has been made in respect of any of the other Scheme meetings, so this decision deals solely with the Highland objection to the UDW Scheme, upon which of course the other Schemes' effectiveness depends, because of their interconnectedness.
117. Dealing first with the lack of engagement arguments, I do not accept Mr Todd QC's submission that the UDW Scheme meeting was in any sense conducted unfairly or inappropriately or outside of the scope of the orders made convening it. He also suggested in argument that the UDW 2019 note holders may have looked at the Explanatory Statement, seen that the requisite majorities were already secured through the RSA and simply decided not to vote against it, as this restructuring was in effect a formality given the 'lock ups' that had been achieved under the RSA. I do not accept that the integrity of the voting has been in any way compromised. The Explanatory Statement carefully set out Highland's objections to the Scheme proposals. Any creditor wishing to support Highland was free to do so. Any creditor wishing to vote no could have done so.
118. Having reviewed the Chairman's report and the transcript of the meeting it is clear that it was fairly chaired by Mr Appell, one of the JPLs, and that all creditors had had an opportunity to participate and were given access to the meeting, including through a telephonic link. People were given a proper opportunity to ask questions and I do not accept that when the Chairman chose to read out the attorneys' correspondence rejecting Highland's proposal he was in any way failing to engage in a dialogue concerning it. He was simply informing the meeting of the recorded positions of the relevant parties. Neither was there any failure to set out the merits of the Scheme, which had been fully and fairly explained in the Scheme documentation, including in particular in the Explanatory Statement.
119. I find that all the formalities were complied with in this case. Highland had attended the meeting by its Chief Legal Officer and did not ask any questions of nor seek to consult with any UDW Scheme Creditor in person or on the telephone. He did ask questions of UDW's representative as to why Highland's proposal had been rejected by UDW, at which point the Chairman read out the relevant letters from the lawyers. I find that all the UDW creditors had the opportunity to access the relevant information and ask questions and consult together. No grounds have been established to show that the validity of the resolutions passed or the way in which the votes were cast should be impugned.



120. I do not accept Mr Todd QC's argument that this was a discriminatory, unlawful Scheme which victimises Highland.

A company is free to select the creditors that it puts a scheme to, including omitting from the scheme creditors who would or might otherwise form part of the class certain creditors, where there is a good commercial reason to do so: see *Garuda [2001] EWCA Civ 1896*. Mr Bayfield QC answers the point in addition by saying that the UDW creditors who are left out of the scheme are service providers that are considered by the company to be essential to the on-going activities of the company and who are being paid in the ordinary course because they continue to supply services for the on-going business. There is no evidence on that point but it seems to me that would be quite normal. The only other creditors who are left out relate to claims which are disputed and are being resolved. That is also quite normal in my experience.

121. As to Mr Todd QC's arguments that the voting had been unrepresentative and/or was affected by special interests, I do not accept that this is the case. It is not enough for him to show that the majority had additional interests which motivated them to vote in favour of the Scheme, as long as they were voting in favour of the Scheme on its merits and **not** against the class. There was no evidence or reasonable inference that I could draw to this effect.
122. It seems to me that the right conclusion is that they were voting in favour because it is a better outcome for them and for all UDW creditors to the alternative liquidation scenario. I am fortified in that view by those creditors in the same category as Highland who also voted in favour of the Scheme. Mr Todd QC has not satisfied me that an intelligent and honest member of the class without those additional interests could not have voted in favour of the Scheme. There is no reason to discount their vote in favour of the UDW Scheme where there are independent and good reasons for voting in favour. In this regard I fully endorse the reasoning of Hildyard J in *Apcoa* and see no reason to depart from it, (as Mr Todd QC would have me do).
123. As I have already said in my reasons dealing with the convening hearing the benefits derived by some creditors in the UDW Scheme reflect the rights of Scheme Creditors and the economic and legal reality and there are no grounds to conclude that the voting was in any sense unfair, unrepresentative or tainted by special interests. I find that the interest of all UDW Scheme Creditors to approve a scheme that is preferable to a liquidation aligns them.
124. I also dealt with my reasons in **Part 1** concerning consent fees at the convening hearing stage. The same reasoning applies to the questions before me concerning sanction. Not only are they not material but they are paid to the guarantee creditors not in their capacity as UDW Scheme



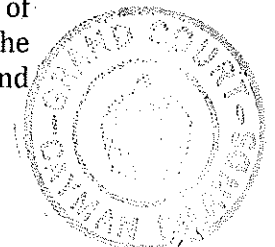
Creditors, but in their capacity as silo creditors. So the question is whether that gives them an additional interest which renders their vote unrepresentative of the class. I do not believe that it does. A consent fee at less than 1% of the principal amount of the debt does not have the effect of persuading a guarantee creditor to support the UDW Scheme in its best interests in circumstances where it could not reasonably otherwise do so. There is no unfairness to Highland, because the money which is being used to pay the consent fees comes out of the silo assets and were it not being paid to guarantee creditors by way of consent fee, it would be paid to them by way of silos Scheme Consideration. Highland has not been deprived of anything by not being offered consent fees and I do not find any unjustified inequality of treatment.

125. As to Highland's complaint, those matters feature claims alleging that wrongs were committed against UDW. There is nothing inherently unfair to Highland in the fact that the Scheme results in **all** creditors losing their ability to pursue these claims themselves. It is clear from the expert evidence served on both sides that all creditors have the same right to bring these claims and it is not a right that only Highland has. I find that the PCT is a much fairer way of dealing with any claims that may properly be asserted against officers of UDW and their affiliate's . It treats all of UDW's Scheme Creditors rateably and does not give any priority to anyone.

126. I take the view that any modification of the Scheme is in any event not open to this court even were I to think (which I do not) that the Highland proposal was a fairer way of proceeding for everyone. This is not only because it is not the role of the court to consider what would be the best scheme upon which there would be differences of view. The role of a court at a sanction hearing is to approve or not the scheme actually put to creditors, not some other scheme and particularly not a scheme which has been rejected by the company and the majority of creditors and the JPLs - see Lloyd J in *Re Equitable Life (no 2)* [2002] 2 BCLC 510 at paragraph 102:


"... It would be quite wrong to use [the provision] so as to foist on a class of creditors something substantially different to what has been approved at the relevant meetings". See also Lord Hoffman's decision in Kempe [1998] 1 WLR 271."

127. The power to amend which exists in the Scheme documentation requires the company's agreement and only deals with amendments which would have no material adverse effect on the interests of Scheme Creditors. There are a number of uncertainties which would arise in any litigation brought by Highland which, depending upon how it proceeds, could well end up with an adverse result for the UDW Scheme Creditors. One of those consequences is a disruption to the on-going management of the Group and another is potential competition between the PCT claims and



any claims Highland might seek to bring. As I said earlier the Trustee as controlled by the JPLs (in their capacity as directors of the Trustee) is well placed to decide upon the right strategy for all UDW creditors in respect of these claims.

128. I find that there has been compliance with the statutory requirements and with the terms of the convening orders in this case. I also find that the votes of the UDW guarantee creditors should not be disregarded or discounted.
130. I find that the UDW Scheme is an arrangement that an honest and intelligent UDW Scheme Creditor acting in its interests might reasonably approve. There is no reason established which gives the court any cause to hesitate in sanctioning the UDW Scheme and indeed all four Schemes. The restructuring of all four Schemes put together is the best way of maximising value for the creditors of the Group. It is based on a fair allocation methodology and it treats all creditors fairly. Under each of the four Schemes the creditors achieve a better result than in a liquidation. That is the position for the UDW 2019 Notes holders and the guarantee Scheme Creditors alike.
131. The vote at the UDW Scheme meeting was overwhelmingly in favour of the UDW Scheme. The purpose of the legislation is to give effect to the views of the large majority required by statute who approve schemes of arrangement, to proceed with implementation (and to release their rights in exchange for scheme consideration) in the manner prescribed, subject to the court's sanction applying the right tests to that exercise. Those tests should not be applied to enable minority creditors who have strongly opposing views to "hold to ransom" or "hold out" against the majority to prevent a scheme from proceeding, or to force a modification of it, or indeed to opt-out.


THE HON RAJ PARKER
JUDGE OF THE GRAND COURT

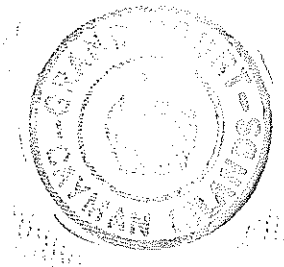


Exhibit 18

Exhibit K

RELEASE OF
NOTES

THIS RELEASE OF NOTES (this “Release”) is made as of September 22 2017 by WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee (in such capacity, the “Trustee”) and by SIMON APPELL and ELEANOR FISHER, as joint provisional liquidators of Ocean Rig UDW Inc. (in provisional liquidation) (the “Issuer”), solely for the purposes of obtaining the benefit of the exclusion of personal liability (the “JPLs”).

RECITALS:

WHEREAS, reference is made to that certain Indenture, dated as of March 26, 2014, by and between the Issuer and the Trustee;

WHEREAS, pursuant to a scheme of arrangement proposed by the Issuer under section 86 of the Companies Law (2016 Revision) of the Cayman Islands (the “UDW Scheme”), the Obligations of the Issuer under the Indenture have been released on the Restructuring Effective Date in consideration for the UDW Scheme Consideration;

WHEREAS, pursuant to the order of the Grand Court of the Cayman Islands dated 15 September 2017 (the “Sanction Order”) and the UDW Scheme, the Trustee is authorized to release the Issuer from its obligations under the Indenture, which the Trustee has agreed to do in accordance with the terms of this Release;

WHEREAS, the UDW Scheme has been recognized as a “foreign main proceeding” and a petition has been filed with the U.S. Bankruptcy Court for an order to give full force and effect to the UDW Scheme under Chapter 15 of the U.S. Bankruptcy Code; and

WHEREAS, the Trustee has received the 2019 Notes Trustee Instruction, pursuant to which the Trustee has been instructed to enter into this Release on behalf of the UDW Scheme Creditors.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

AGREEMENT:

1. Definitions. Capitalized terms used herein and not defined herein shall have the meaning ascribed to such terms in the Indenture or the UDW Scheme, as applicable.

2. Release. Pursuant to the terms of the UDW Scheme, on the Restructuring Effective Date, the Issuer is hereby fully and forever released and discharged from its Obligations under the Indenture and no Person will have any right, power, privilege or interest with respect to such Obligations of the Issuer.

3. JURY TRIAL WAIVER. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION,

PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS RELEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

4. No Liability of Joint Provisional Liquidators. The JPLs act as agents for and on behalf of the Issuer and neither they nor their firm, affiliated firms, employees, advisers, agents, partners, directors, members, officers or representatives shall incur any personal liability whatsoever under this Release, whether in contract, tort (including negligence) or restitution or by reference to any other remedy or right in any jurisdiction or forum by reason of entering into this Release except in the case of its or their fraud, wilful default or wilful misconduct.

5. Governing Law. This Release shall be construed in accordance with and be governed by the law of the State of New York.

6. Submission to Jurisdiction. The parties hereto hereby irrevocably submit to the jurisdiction of the courts of the State of New York and of the United States District Court for the Southern District of New York in any action or proceeding brought against them under this Release and waive any objection that they may now or hereafter have to the laying of venue in any such proceeding. Notwithstanding anything herein to the contrary, the parties hereto may bring any legal action or proceeding in any other appropriate jurisdiction.

7. Counterparts. This Release may be signed in any number of counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Any counterpart delivered by facsimile, PDF or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Release.

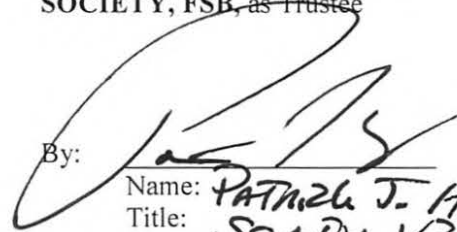
8. Successors and Assigns. The provisions of this Release shall be binding upon the parties and their respective successors and/or assigns.

9. Entire Agreement. This Release constitutes the entire agreement, and supersedes all prior agreements of the parties hereto with respect to the subject matter hereof.

[Remainder of page intentionally left blank; signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Release to be executed by their duly authorized representatives as of the date and year first above written.

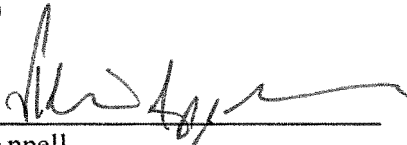
WILMINGTON SAVINGS FUND
SOCIETY, FSB, as Trustee

By: 
Name: *PATRICIA J. Herby*
Title: *Senior Vice President*

AGREED AND ACCEPTED AS OF THE DATE FIRST ABOVE WRITTEN:

**OCEAN RIG UDW INC. (IN
PROVISIONAL LIQUIDATION)**

acting by Simon Appell and Eleanor Fisher
as provisional liquidators (without personal
liability)



Simon Appell

Eleanor Fisher

**OCEAN RIG UDW INC. (IN
PROVISIONAL LIQUIDATION)**

By: _____
Name:
Title: Director

AGREED AND ACCEPTED AS OF THE DATE FIRST ABOVE WRITTEN:

**OCEAN RIG UDW INC. (IN
PROVISIONAL LIQUIDATION)**

acting by Simon Appell and Eleanor Fisher
as provisional liquidators (without personal
liability)

Simon Appell



Eleanor Fisher

**OCEAN RIG UDW INC. (IN
PROVISIONAL LIQUIDATION)**

By: _____

Name:

Title: Director

AGREED AND ACCEPTED AS OF THE DATE FIRST ABOVE WRITTEN:

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Simon Appell

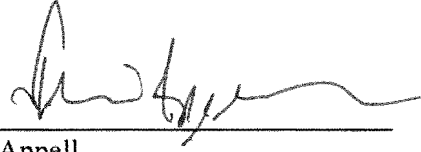
Eleanor Fisher

**OCEAN RIG UDW INC. (IN
PROVISIONAL LIQUIDATION)**

By: _____

Name: John L. Luchs
Title: Director

By the JPLs as provisional liquidators of Ocean
Rig UDW Inc. (in provisional liquidation),
solely for the purposes of obtaining the benefit
of the exclusion of personal liability



Simon Appell

Eleanor Fisher

By the JPLs as provisional liquidators of Ocean
Rig UDW Inc. (in provisional liquidation),
solely for the purposes of obtaining the benefit
of the exclusion of personal liability

Simon Appell



Eleanor Fisher