OUTER HOUSE, COURT OF SESSION

[2026] CSOH 105

P1287/25
P1230/25

OPINION OF LORD LAKE

In the Notes by

ALISTAIR BEVERIDGE AND OTHERS

Noters

for orders in terms of paragraphs 55, 61 and 65(3)(b) of Schedule B1 to the Insolvency Act 1986

in respect of BUPL REALISATIONS LIMITED

Noters: O'Brien KC, Roxburgh; Brodies LLP
First Respondent (Global Premium Brands LLC): McBrearty KC, Young; Harper Macleod LLP
Second Respondent (Vesta Development Austra GmbH): McKenzie KC; MBM Commercial LLP

21 October 2026

[1] This opinion concerns two applications for directions by the administrators of BUPL Realisations Limited ("the Company"). The Noters are the administrators of the Company. The Company was formerly known as Barony Universal Products Limited. It carried on the business of manufacture, marketing and export of aerosols. The immediate parent of the Company was CALM Singularity Limited, a company incorporated in Cyprus. It has held all the shares in the Company since 4 March 2025 and 98% of the shares since 9 March 2022. Prior to 9 March 2022 the Company was part of the Arnest Group, the parent company of which is JSC Arnest ("Arnest"), a Russian company.

[2] On 26 March 2021, the Company entered into Facility Agreements referred to in the petition as the Euro Facility Agreement and the Sterling Facility Agreement ("the Facilities Agreements"). The former was for €10,180,275.22 and the latter was for £18,750,000. It is agreed that these agreements were arm's length bona fide commercial transactions in the normal course of business and that there was nothing improper or illegal in the Company entering into them. The Facility Agreements were later amended. The lender under these agreements was VTB Bank JSC ("VTB"), a state-owned Russian bank. Arnest guaranteed the obligations of the Company in terms of these agreements. It is agreed that they were not entered into for the purpose or with the object of circumventing any sanctions.

[3] In 2019 the Russia (Sanctions) (EU Exit) Regulations 2019 were made in the United Kingdom and, on 24 February 2022, VTB was made a designated person in terms of the Regulations following Russia's attack in Ukraine that month. This means that they became subject to their asset freeze provisions which have the effect that, unless a licence was granted or if it falls within an exception, there is a prohibition on making funds or economic resources to them either directly or indirectly. It was therefore unlawful to make payments to them of sums falling due under the Facility Agreements and no such payments were made.

[4] On 30 September 2025, on a petition at the instance of CALM Singularity Limited, an administration order was made in respect of the Company. It is common ground that in the period since the administration order was made:

(a) The business of the Company has been sold to KDC UK Holdings Limited ("KDC"), a United Kingdom subsidiary of Knowlton Development Corporation Inc, a Canadian company. This was achieved by an agreement

transferring the business and most to the assets to a new company and sale of the shares in that new company.

(b) The proceeds of sale exceeded the value of all creditors' claims submitted to the Company and adjudicated as valid leaving an excess that falls to be distributed to its shareholder.

[5] Global Premium Brands LLC ("GPB") is a company incorporated in the Emirate of Sharjah, United Arab Emirates. It claims to have succeeded to VTB's interest as creditor under the facilities agreements and therefore to be a creditor of the Company. This is on the basis that (1) Arnest had guaranteed the obligations of the Company to VTB under the Facilities Agreements, (2) in implement of its guarantee obligations, Arnest had discharged the debt outstanding under the Facilities Agreements and, as a result, was subrogated to the rights that VTB had against the Company, and (3) Arnest assigned these rights to GPB in terms of an assignment contract dated 28 September 2023. When signed, the assignment contract initially specified a consideration of $1m but this was modified the following day so that the consideration payable to Arnest would be increased by 90% of the extent to which monies received by GPB pursuant to the assigned rights exceeds $1m. Some revisions were made to the dates for payment but these are not material for present purposes. GPB has supplied documents to the Noters who have averred that they appear to vouch their status as a creditor of the Company and the assignment of the rights is not in dispute. The Noters have adjudicated the claim and held that GPB are creditors of the Company for the sum claimed. The narrative in this paragraph is not disputed.

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[6] An issue arose as to the lawfulness of making payments to GPB. The Noters therefore presented a Note in the administration process seeking a direction in terms of paragraph 63 of Schedule B1 to the Insolvency Act 1986 that making any payment to GPB would be prohibited by the 2019 Regulations. GPB are the respondents to that Note.

Previous consideration of the 2019 Regulations

[7] The background to and genesis of the 2019 Regulations is set out in detail in the decision of Sir Julian Flaux C in *PJSC National Bank Trust* v *Mints* [2023] EWCA Civ 1132, [2024] KB 559, paras [4] to [10]. The approach of the Regulations is to cast a wide net prohibiting payments but with a "safety valve" of a licensing system (*Constitution Aircraft Leasing (Ireland) 3 Ltd* v *UniCredit Bank GmbH* v *London Branch* [2026] UKSC 10, [2026] 1 WLR 1522, paras [76] and [77]). In *Phillips* v *Secretary of State for Foreign, Commonwealth and Development Affair*s [2024] EWHC 32 (Admin), [2024] 1 WLR 2227 Johnson J said:

> "…the purpose of the Regulations is to encourage 'Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine.' The ambition, scale and importance of that purpose would be undermined by an unduly narrow interpretation of the substantive provisions"

[8] The parts of the Regulations that are a concern to the Noters are Regulations 12, 13 and 19. These are in the following terms:

> **"12.— Making funds available to designated person**
>
> (1) A person ('P') must not make funds available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.
>
> (2) Paragraph (1) is subject to Part 7 (Exceptions and licences).
>
> (3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) The reference in paragraph (1) to making funds available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person."

"13.— Making funds available for benefit of designated person

(1) A person ('P') must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Paragraph (1) is subject to Part 7 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(3A) The reference in paragraph (1) to making funds available to any person for the benefit of a designated person includes making funds available for the benefit of a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person (and references to designated person in paragraph (4) are to be read accordingly).

(4) For the purposes of this regulation—
(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
(b) 'financial benefit' includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible."

"19.— Circumventing etc prohibitions

(1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly)—
(a) to circumvent any of the prohibitions in regulations 11 to 18C, or
(b) to enable or facilitate the contravention of any such prohibition.

(2) A person who contravenes the prohibition in paragraph (1) commits an offence."

[9] While those provisions deal with criminal sanctions there is also the possibility of the imposition of a civil monetary penalty. The Policing and Crime Act 2017, section 146, empowers the Treasury to impose a monetary penalty if it is satisfied on the balance of

probabilities that a person has breached a prohibition imposed under financial sanctions legislation - a term that includes the 2019 Regulations. Significantly, subsection (1A) states:

> "In determining for the purposes of subsection (1) whether a person has breached a prohibition, or failed to comply with an obligation, imposed by or under financial sanctions legislation, any requirement imposed by or under that legislation for the person to have known, suspected or believed any matter is to be ignored."

This has the effect that a monetary penalty could be imposed if funds were made available to a designated person, either directly or indirectly, even if the person making them available did not know or have cause to suspect they were so making funds available. This is clearly a very broad power. In *Hellard* v *OJSC Rossiysky Kredit Bank* [2024] EWHC 1783 (Ch), [2025] 1 WLR 297 it was labelled "Kafkaesque" by the judge but it was noted that it was an indicator of the seriousness with which the government took the sanctions and the need to ensure that they bite. The statements in this regard are consistent with comments in *Thomas* v *PJSC National Bank Trust* [2025] EWHC 75 (Ch), [2025] BPIR 589 and *UniCredit Bank GmbH, London Branch* v *Constitution Aircraft Leasing (Ireland) 3 Ltd* [2026] UKSC 10.

The direction sought

[10] The direction sought by the Noters is as follows:

> "that the noters should proceed on the basis that making any payment to Global Premium Brands LLC, … ('GPB') in respect of its claim in the administration of BUPL Realisations Ltd (in administration) … ('the Company') as successor in title to VTB Bank (public joint-stock company) ('VTB') would contravene regulation 19 of the Russia (Sanctions) (EU Exit) Regulations 2019 or otherwise be prohibited by those Regulations unless made in accordance with the terms of a licence granted in terms of regulation 64 of those Regulations".

[11] Despite the reference to payment being prohibited by the 2019 Regulations, the Noters do not seek a declarator of unlawfulness. Instead they seek a direction that the Noters should proceed *as if* it was the position that the payments were unlawful.

The Noters' concerns and the response

[12] The difficulty faced by the Noters is that they do not wish to commit an offence under the 2019 Regulations. As officers of the court, that is a perfectly proper concern for them to have. Their apprehension is that the payments they make to GPB may reach VTB and that, if that happens, they will have indirectly made funds available to a sanctioned person. They would like to be protected from the risks to them that might follow from that. The concern of the Noters arises from the fact that 90% of any payments to GPB in excess of $1m will be paid to Arnest and that, if Arnest are indebted to VTB, such payments will be used directly or indirectly to reduce that indebtedness. The Noters are concerned that, in this situation, they will indirectly be making funds available to VTB. The Noters also express concern that GPB is a UAE company and that monies to enable it to pay an instalment of the consideration to Arnest payable under the assignment contract came from a Serbian company. They state that both UAE and Serbia are "recognised as places of incorporation for sanctions evasion". However, other than making that statement they do not seek to develop the point any further. GPB contend that there is no merit in these concerns and that there is no material before the court to support a finding either that GPB intends to or is obliged to pass funds to VTB or that Arnest intend to pass any funds that it receives from GPB to VTB.

[13] To address the Noters' concerns, GPB have provided an affidavit and certified translation from a Ms Alla Naumova, finance and economics director of Arnest, and an affidavit from a Mr Oleg Prokopchuk, managing director and owner of GPB, both dated 10 April 2026. The relevant contents of Ms Naumova's affidavit maybe summarised as follows:

1. When VTB called on Arnest to settle the liability that the Company had to it, it did not have the necessary funds with VTB. Arnest therefore transferred funds held by them with Sberbank. Th affidavit states that these were Arnest's funds and were not borrowed from Sberbank. Once funds were transferred from Sberbank to VTB, Arnest instructed that they be used to purchase Sterling and Euros sufficient to discharge the Company's liability. The converted funds were held in Anest's Euro and Sterling accounts with VTB and VTB were notified by Arnest that they held sufficient funds. VTB then debited the required sums from Arnest's accounts which held credit balances sufficient to clear the Company's debts.
2. Following payment of the Company's debts, Arnest had a cash shortfall and required to obtain a further loan from VTB ("the New Loan"). The agreement for this was concluded on 13 December 2023. The funds drawn under that loan were repaid in full on 17 July 2025.
3. No further sums are payable to VTB under the Facilities Agreements or the New Loan. As Arnest do not owe monies to VTB under either agreement, no funds will be paid to VTB or for their benefit as a result.
4. There is a further Facility Agreement between VTB and Arnest which was concluded on 31 March 2026. This was to refinance loans obtained from third parties and it is not connected to the Facilities Agreements or the New Loan. Arnest will repay that loan from its own funds which is will receive as part of its normal business operations and will not use funds obtained from GPB.
5. The rationale for the arrangement with GPB was that it meant that third parties would not be dealing with a company in Russia which was problematic.

Although not said in the affidavit, it is relevant to state that the fact that monies would be paid by GPB to Arnest is not a problem in relation to UK and EU sanctions because Arnest are not a designated person and are not owned or controlled by a designated person.

[14] The affidavit from Mr Prokopchuk is consistent with what is said by Ms Naumova. It also provides an explanation for the payment made by the Serbian company, Coning PPI. It states that GPB has no obligation to make payment to VTB and had no intention of making such payment. The payments to Arnest of 90% of such sums received in excess of $1m will be made to an account that Arnest holds with Raifeissen Bank and not VTB.

[15] The response from the Noters to the affidavits is that although "their concerns have been reduced to some extent", they remain of the view that the uncertainties are such that directions from the court are necessary. They identify six uncertainties:

1. They have not been provided with vouching for the statement in Ms Naumova's affidavit that the funds Arnest transferred from Sberbank were their own funds and not borrowed.
2. No documentation has been provided for the New Loan or the March 2026 Facility Agreement so the Noters and the court cannot verify the statement that neither is connected with each other or the Facilities Agreements.
3. There is no statement as the source of funds to repay the New Loan. The only vouching shows transfer from another account with VTB but not the source of the funds. This would be important if the repayment was funded by a further loan from VTB or another sanctioned lender as it would indicate an indebtedness such that any further payments to Arnest would be used to make payments to a designated person.

4. Ms Naumova's statement that the New Loan was repaid on 17 July 2025 is contradicted by a statement by GPB in a statement of claim is made in an action in the Arbitrazh Court of Moscow against the Company. There it was stated that it was repaid earlier on 31 March 2025.
5. The third parties who had provided loans to Arnest which were repaid with the 2026 Facilities Agreement are not identified. This is relevant because of point 3 above.
6. It is difficult to assess whether Arnest will be able to repay the 2026 Facility without recourse to payments received from GPB following payments made by the Noters.

[16] The Noters described these points as "uncertainties" and it does not seem to me that they could be stated any higher than that. There does not appear to be any dispute that the sums owed to VTB under the Facilities Agreements have been repaid. Irrespective of the circumstances of the New Loan, there does not seem to be any dispute that it too has been repaid. To the extent that there is an inconsistent document in the action in the Arbitrazh Court of Moscow, the inconsistency is as to the date on which the sum was repaid rather than as whether it was in fact repaid. Although the source of the funds to repay the New Loan is not stated, again it is not disputed that it had been repaid. To suggest that the funds might have been borrowed from another designated person and that repayment of them might be made from funds received by GPB tends towards speculation. The same point arises in relation to the identity of persons who were repaid with funds from the 2026 Facilities Agreement. In the absence of a challenge to the fact that they were repaid, those debts will not be repaid from monies from GPB and it would be speculation to assume that funds to make the repayments were themselves borrowed from a sanctioned entity. As

to repayment of the 2026 Facility and the concern that Arnest might not be able to make payment without recourse to funds paid to them by GPB, to reach this conclusion it is necessary to disregard the sworn affidavit as to the intended source of funds and there is no evidence available to justify such an approach.

[17] Perhaps with these factors in mind, in submissions during the hearing, it was accepted by the Noters that if Ms Naumova's affidavit was accepted at face value, payment to GPB does not fall foul of the Regulations. It was accepted also that if payment was made to Arnest and they later made their own decision to make payments to VTB, that is not a concern of the Noters. For there to be an offence committed by the Noters there would have to be a nexus between a payment to Arnest and a payment to VTB. In my view both these concessions were correctly made. The issue then is whether the Noters have identified anything to demonstrate a nexus between the payments made to GPB/Arnest and payments which will be made to VTB. No basis has been put before me as to why I should not accept the statements made by Ms Naumova in her affidavit. The onus of proof in relation to the application for directions rests on the Noters as the party asserting the proposition that payments would be unlawful. If the contention is that payments ought not to be made to GPB because it would breach the 2019 Regulations, it is incumbent on them to bring material before the court to demonstrate why this is so. If this is not done, an order from the court directing that payment otherwise due to GPB should not be made to them would innovate on the rights of the parties. This approach is consistent with the decision in *Vneshprombank LLC* v *Bedzhamov* [2024] EWHC 1048 (Ch), [2024] 1 WLR 4674. There, the Bank and the defender's trustee in bankruptcy were funded by a third party, A1 LLC. The defender sought a direction to the effect that there was reasonable cause to suspect that A1 LLC was a designated person in terms of the 2019 Regulations and was therefore prohibited from

dealing with funds with consequences for payment and receipt of outstanding costs orders in favour of the Trustee and the making of any future orders in favour of the Bank or Trustee. Cockerill J refused to give the direction sought and in her judgment she noted that the prohibitions in the 2019 Regulations did not bite when there was reasonable cause to suspect that a person was a designated person but only if they actually were so designated (paragraphs 57 - 64).

[18] Although in that case the reasonable cause for suspicion was directed to the status of a party whereas here it is directed to the issue of whether a payment may be made in future to or for the benefit of a designated person, I consider the decision is of assistance. The prohibitions in the Regulations do apply if there is reasonable cause to suspect that payment will be so made. Nonetheless, I consider that the point made by Cockerill J that the scope of application of the Regulations should not be widened by judicial interpretation applies. As noted in para [7] above, Regulations have been drafted in deliberately wide terms in an attempt to secure their objective. For that reason, the prohibitions which Parliament has enacted should be fully enforced by the courts. It would be a different matter, however, for the courts to seek to extend the prohibitions to render illegal acts which are otherwise lawful commercial acts. It is not competent for a court to do that.

A competency issue

[19] Although GPB responded to the substantive issues raised by the Noters, they also contend that the Note process is inappropriate to resolve an issue which would deny them a substantive right to payment. It is useful to consider this issue before turning to whether a direction should or should not be given.

[20] GPB contend that directions are available for matters of procedure and the exercise of discretionary power, but that this is a hard-edged dispute of fact and law for which directions are not applicable. In support of this argument, they cited but did not refer me in detail to *In re Petropavlosk plc* [2022] EWHC 2097 (Ch), *Joy Manufacturing Holdings Ltd Pension and Life Assurance Scheme Trustees, Petitioners* 2000 SLT 843, MacFadyen (Edition), *Court of Session Practice*, H[5] and *Renyana-Stahl Anstalt* v *MacGregor* 2001 SLT 1247. *Petropavlosk* also concerned the 2019 Regulations. The judge considered that if there was real doubt whether the step that the administrator proposes taking would breach a legal prohibition the court would have to consider particularly carefully whether it is right to authorise the administrator to act in the manner proposed and it might be appropriate to withhold authorisation (paragraph 80). *Joy Manufacturing* is authority for the proposition that where a trustee has a discretion it is not possible for it to be surrendered to the court. Court of Session Practice, paragraph H[5] and *Renyana-Stahl* address the distinction between petition procedure and court actions initiated by summons in the Court of Session. The point to be taken from these authorities was not made clear but I take it to be that what the Noters seek here can only properly be determined in an action initiated by a summons. In response, the Noters cited the following cases: *Administrator of Dawson International PLC, Noter* [2018] CSOH 52, 2018 SLT 1000, *Hellard , Thomas , Hooley Petitioner* [2019] CSIH 40, 2019 SC 632, and *R (Rusbridger)* v *Attorney General* [2003] UKHL 38, [2004] 1 AC 357.

[21] Standing the terms of paragraph 63 of Schedule B1 to the 1986 Act, there can be no doubt that an administrator is entitled to apply to the court for directions. In *Dawson International*, Lord Clark noted that in terms of paragraph 63 the entitlement of an applicant in this regard is to seek a direction in connection with his functions as an administrator and that in considering whether this test was met, it was necessary first to identify which

function of the administrator a proposed direction was said to be in connection with, and then to consider whether there was the required connection. In this instance, the direction concerns making payments to creditors of the Company. I consider that this is a function of the administrator and the direction is squarely concerned with it. It does not follow from this, however, that a direction will be given on any matter with a connection with the administrator's function. This too was recognised in *Dawson International*.

[22] In *Rossiysky Kredit Bank*, directions were sought by trustees in a personal bankruptcy under the Insolvency Act, section 303 (a power similar to Schedule B1, paragraph 63), but they also sought declarations in addition or as an alternative. The issues raised included (1) whether specified creditors in the bankruptcy were caught by the prohibitions in the 2019 Regulations, (2) if so, whether it was lawful for the trustees to accept votes from those creditors, and (3) if the creditors were caught by the Regulations, whether in carrying out their duties, the trustees were providing financial services in breach of the Regulations. The first issue arose out of a concern on the trustees' part that the specified creditors would become owned, held or controlled by the Russian President or the Central Bank of the Russian Federation both of whom were designated persons for the purposes of the 2019 Regulations and would thereby themselves become subject to the prohibitions. In relation to this first issue of whether creditors were subject to the prohibitions in the 2019 Regulations, as the matter of ownership and control of the creditors was a question of fact, the court decided that it was not in a position to make a ruling to the effect sought. Also, it was not appropriate to make a declaration to the effect that the trustees could not be said to know or have reasonable cause to suspect that funds and economic resources were held or controlled by a designated person even although there was no evidence to the contrary. There were several reasons for this. The first was, again, that the issue of ownership and

control was also one of fact. The second was that the order sought touched on criminal liability and the Office for Financial Sanctions Implementation ("OFSI"), the prosecuting authority in relation to the issue, did not support it. It was concluded that the circumstances were not sufficiently exceptional to warrant breach of the principle established in *Imperial Tobacco Ltd* v *Attorney General* [1981] AC 718 that it is only in exceptional circumstances that a civil court can make a declarator that conduct is lawful. The third reason was that the point was peculiar to the trustees and was not of further general interest. The fourth reason was that the court intended to give direction to the trustees. The court was willing to grant a declaration in relation to the second issue as to whether it could accept votes from creditors as it was an issue of law and was one of general interest. The directions given were that they should deal with the creditors on the understanding that they are neither designated persons nor owned or controlled by any designated person and on the basis that they have no knowledge and no grounds for reasonable suspicion to the contrary, but that they should undertake enhanced monitoring of the position prior to making any distribution to verify that it had not changed. The first three reasons given for not making a declaration identified by the court are relevant to the directions sought by the Noters but the case does illustrate that in some circumstances it is appropriate to give directions such as those sought here.

[23] In *Thomas*, the court again noted that giving directions might be an alternative to the declaration sought and considered that where matters were fact sensitive, giving directions was preferable to making a declaration that no crime was being committed. The court recognised that the trustees were not seeking to pass a commercial decision to the court but were simply seeking to understand the law and obtain comfort on a matter of real significance to them in view of the criminal sanctions that could apply. The decision in *Rusbridger* was referred to in the decision in *Rossiysky* and *Thomas* and, in similar vein to the

decision in *Imperial Tobacco*, that it would only be in exceptional circumstances that a court would grant a declarator that conduct was lawful. It was not clear what point the Noters sought to take from this case.

Conclusion

[24] The Noters seek a direction that they should proceed on the basis that the 2019 Regulations prohibit payment to GPB. For the reasons I have set out above, I do not consider that such a direction is justified. Although the Noters have raised their concerns, they have not put any material before the court that would support a conclusion that they have a reasonable cause to suspect that in making the payment they would be indirectly making funds available to or for the benefit of a sanctioned person. It does not suffice that they have concerns. The Act requires "reasonable cause" for a suspicion before the prohibition arises. In my view there is nothing which could be said to amount to reasonable cause for any suspicion that something will take place that amounts to them indirectly making funds so available.

[25] In relation to the Policing and Crime Act 2017, section 146, it only disapplies the knowledge requirement. It remains a requirement for any action to be taken that the funds have been made available to or for a sanctioned person directly or indirectly. As I note above, I consider that the concession is rightly made on behalf of the Noters that if a person to whom they made payment later decides to make payment to a designated person, that would not mean that the Noters had made payment or made funds available indirectly to that person. This means that even leaving aside the knowledge requirement of the 2019 Regulations, the Noters would not be in breach of the prohibition and should have no basis to fear imposition of a civil penalty. Although I consider that the circumstances are

such that I ought not to give the direction sought in the Note, it does not follow that I can make a direction as sought by the Noters on an alternative basis that payment will be lawful. This is partly because this would cut across the jurisdiction of the prosecuting authorities who are not parties to this action. In any event, it would not have effect to bind them. It would be inconsistent with *Imperial Tobacco* and *Rusbridger*. I am not in a position where I can be confident I have all the facts which could have a bearing on that issue. I can proceed only on what I am told is the position. Nonetheless, if it is comfort that the Noters seek, the conclusion that I have been able to express on the material they have provided ought to assist.

Canadian sanctions

[26] During the hearing the Noter made reference to further concerns they have regarding the effect of Canadian sanctions on payments due to be made. Arnest are not designated in terms of the 2019 Regulations but are so in the Canadian equivalent - the Special Economic Measures (Russia) Regulations SOR/2014-58, sections 1-11. It was said that there was a need to present a Note seeking directions on this issue. A draft Note was available. It is surprising that despite this, no such Note has been presented between the date of the hearing and the issue of this opinion. Although the Noters made some reference to arguments in respect of the effect of the Canadian sanctions in their Note of Arguments for the hearing on this Note, as the issue has not formally been put before me, I do not consider that it is appropriate that I express any views on them.

Note P1287-26

Background, Note and answers

[27] As noted above, the Noters concluded an agreement for the sale of the business of the Company as a result of which they hold sufficient funds to pay creditors in full and to make a payment to shareholders. On 7 October 2025, the Noters issued a Statement of Proposals to the creditors of the Company under paragraph 49(1) of Schedule B1 (the "Statement of Proposals"). This recorded that the secured creditor had been paid in full from the proceeds of sale and that it was not expected that the Company would have preferential creditors. Most of the trade and business debts had been assumed by the purchaser of the business and the proceeds of sale available after paying the secured creditors are sufficient to meet the liabilities to the remaining ordinary creditors in full.

[28] The Statement of Proposals notes that as there were sufficient funds to pay all creditors, the Noters were not required to seek a decision from the unsecured creditors as to whether they approve the proposals, unless creditors whose aggregate debts amount to 10% of the total debts of the Company request that approval is given. Such a request was made. A meeting took place to seek approval on 26 November 2025. That meeting was adjourned until 10 December 2025 to enable the Noters to consider modifications which GPB proposed to the Statement of Proposals. The modifications were to the effect that the administrators should file the forms necessary to exit the administration as soon as possible, that they should take no further substantive steps in the administration and that that two insolvency practitioners identified by GPB should be appointed. At the adjourned meeting on 10 December 2025, the Noters advised the creditors that they did not consent to the modifications. Thereafter, the creditors did not approve the Statement of Proposals issues by the Noters on the basis that it was inconsistent with their proposed amendments.

[29] Their proposals having been rejected, the Noters were bound to seek directions from the court and they therefore submitted a further Note (P1287-25) in the administration process seeking directions in the following terms:

> "(ii) to make an order in terms of paragraph 55(2)(e) of Schedule B1 to the Insolvency Act 1986 directing the noters that they should continue to manage the affairs of the Company in accordance with the proposals set out in the statement of proposals issued by the noters as joint administrators of the Company on 7 October 2025 (the '**Statement of Proposals**');
>
> (iii) to make an order in terms of paragraph 55(2)(e) of Schedule B1 to the insolvency Act 1986 that the Statement of Proposals shall be treated as having been approved for the purposes of Schedule B1 to the Insolvency Act 1986;
>
> (iv) to make an order in terms of paragraph 65(3)(b) of Schedule B1 to the Insolvency Act 1986 giving permission to the noters to make a distribution to all of the creditors of the Company".

[30] GPB lodged answers to the Note as did Vesta Development Austria GmbH ("Vesta"). In their answers to the Note, GPB sought that the court should direct the Noter to act in accordance with modified proposals that they had prepared or, alternatively, should make an order under paragraph 55(2) of Schedule B1 to the Insolvency Act 1986 placing the Company in compulsory liquidation and appointing Allister Manson and Mark Harper of Opus Restructuring LLP as joint liquidators. It is apparent that the alternative will produce the same outcome as the principal direction sought. At the hearing, Vesta sought orders similar to those sought by GPB with the difference that they sought a third alternative - that the court should exercise its powers under paragraph 55 of Schedule B1 to replace the current administrators with Mr Manson and Mr Harper.

[31] In outline, GPB argue that the Noters have put themselves in a position of conflict of interest and that a liquidation with a new insolvency practitioner appointed would mean that the Noters' acts could be subject to appropriate scrutiny. They contend that the objectives of the administration have been met and that there is therefore a statutory duty on

the Noters to bring their appointment to an end. They submit that it is significant that the majority of creditors wish the administration to be brought to an end. The Noters argued that the respondents have not established circumstances that would justify the remedy they seek.

Discussion

[32] GPB contends that liquidation of the Company is inevitable as it is the only way that any surplus funds can be distributed to the shareholders. The Noters dispute this and contend that they can distribute directly to the members in reliance on the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018, paragraph 3.11(5). This states:

> "Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, must (unless the articles of the company provide otherwise) be distributed among the members according to their rights and interests in the company."

The Noters rely on the word "must" as indicating that the distribution is mandatory. GPB note that there is no similar provision in the English legislation and argue that this is purely procedural and that if it was contended to confer such a power it would be in the Act rather than the Rules. Although in my view the provision does support the Noters' position that a distribution could be made without a liquidation, it is notable also that in *Re Lehman Bros Europe (in administration) (No 9)* [2018] Bus LR 439, Hildyard J was able to identify a means by which funds could be returned to shareholders without requiring liquidation (paragraph 56). More importantly, however, I do not consider that the issue of whether the remedies sought by the respondents should be granted turns on whether a liquidation will be required at some time in the future. Even if they are correct to state that it will be, it does

not necessarily follow that the circumstances are such that the administration should be brought to an end now.

[33] In relation to the argument that the administration has achieved its objectives and can be brought to a close on that basis, I agree with the submission for the Noters that if this was a reason to take the decision, there would never be a distribution in an administration. The legislation clearly contemplates that administrators will distribute monies realised by them to the creditors as part of the administration. The proposals here included making such payment. Until that stage at least is reached, in my view the purposes of the administration are not exhausted. In addition, I accept what I have been told by the Noters that if there was a change at this stage, it would result in delay in payment of the debts.

[34] When assessing the arguments of GPB and Vesta criticising the Noters and the agreements they have entered into, it should be done having in mind what has been achieved. If agreements had been concluded in terms of which there was little financial benefit to the Company with the result that creditors were not paid or were paid only a portion of what is due, they would clearly be in a position to contend that the administration had been conducted without regard to their interests. The position here is quite different. The proceeds of sale are sufficient to repay all creditors. The extent to which creditors' claims can be met is relevant to evaluating the criticisms of the conduct of those entrusted with management of a company's affairs. This was established at length by the Supreme Court in the context of considering the duties owed by directors to a company in *BTI 2014 LLC* v *Sequana SA* [2024] AC 211. Although the context is different here, the comments made about the different interests that exist and which will be dominant from time to time depending on the financial circumstances of the Company apply here. In my view the passages relied on by both GPB and Vesta in *Nardelli* v *Richardson* [2024] EWHC 2740 (Ch),

paragraph 41, considering to whom the administrators owe duties, are simply a manifestation of the same principles. This applies in particular to the statement in *Nardelli* that, while an administrator must perform their duties in the interests of creditors as a whole, where creditors' interests are not affected either way by a decision, they should perform their functions in the best interests of members as a whole.

[35] Although GPB note that there was no marketing or valuation of the Company or its assets prior to the sale of the business, the relevance of that is not clear. As I note above, the monies realised are such that the transactions cannot be said to have resulted in any prejudice to them.

[36] In my view these factors do not carry weight as reasons to bring the administration to an end or to replace the current administrators with ones identified by the respondents. In the circumstances of this case, I recognise that there is scope for the interests of creditors to be affected adversely by the sanctions that are imposed but that is a different matter. That prejudice does not arise from conduct on the part of the Noters but from the 2019 Regulations and the involvement of VTB. GPB claim that the strategy that pre-dated the administration order was designed to avoid paying some creditor claims while benefitting KDC and CALM, the owners of the Company, and they are critical of the actions of the Noters in entering into the SPA. However, to the extent that there is any requirement to avoid paying creditors, it is because of UK legislation to which the Noters are subject. That legislation put the Company in a difficult position even before the administration as it could not make payments to VTB in terms of the Facilities Agreements and it was subject to possible action by them as a result. Section 44 of the Sanctions and Money Laundering Act 2018 ("SAMLA") contains a statutory protection against civil proceedings so that if an act is undertaken in the reasonable belief that the act is in compliance with regulations made

under SAMLA, the person undertaking that act with that belief is not liable to any civil proceedings. However, that provision may only be of assistance to the Company if action were taken against it in which the Courts which would apply the Act. There could be no assurance to the Company that it would only face proceedings in the United Kingdom.

[37] The position may be different in relation to the application of Canadian sanctions. If they apply so as to prevent payment, it may be as a result of the decision to sell to a Canadian company and to make the SPA subject to Canadian Law. As the matter has not been fully argued before me, I am not in a position to give directions as to the effect of Canadian sanctions but it is of note that they do not apply directly to the Noters or the distribution of funds by them. The purchasers of the Company's business have already made payment to the Noters. The issue now is whether there is any restriction on the Noters from making payment to the creditors and shareholders of the Company.

[38] In relation to the argument that it is relevant that a majority in value of the creditors wish the administration to be brought to an end, the present situation is very different from that in *In re PPE Medpro Ltd* [2025] EWHC 3449 (Ch). Although the court there took account of the wishes of a majority of the creditors that the administration should not continue, that was in the context of a significant shortfall of funds. Following the approach in *BTI 2014* or *Nardelli*, it was natural that the emphasis in that situation would be on the wishes and interests of the creditors.

[39] GPB placed emphasis on Clause 6.11(b) in the SPA in terms of which the administrators undertook a personal obligation:

> "to use best efforts to contest any attempt by a creditor in the administration to obtain from a court of competent jurisdiction (a 'Directing Court') an order for the payment of distribution of funds which would result in a breach of Sanctions Law."
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The term "Sanctions Law" is defined to include the law of the UK, EU, US and Canada and "best efforts" is defined to include pursuing all levels of appellant jurisdiction that are available. GPB claimed that in accepting this obligation the Noters had fettered their discretion and undertook to act to the prejudice of the remaining creditors. In response, the Noters drew my attention to Clause 8.2 of the SPA states that:

> "nothing in the SPA shall require, or be construed to require, the Administrators to act, or refrain from acting, in any manner that would cause the Administrators to contravene any applicable law, regulation or duty applicable to the Administrators under the Insolvency Act 1986, any rules, orders or directions of the Scottish Court, or any other law applicable to the Administrators in the performance of their statutory duties."

Although the SPA is subject to Canadian law neither party seeks to establish that, in relation to interpretation of contracts, it is any different to the law of Scotland. The Noters submitted that, by making it clear that the administrators remain bound by their duties and will adhere to directions from this court, Clause 8.2 is sufficient to remove any suggestion that they have fettered their discretion or are in a position of conflict of interest. I accept that submission. If, when read with Clause 8.2, Clause 6.11(b) required the Noters to pursue non-payment irrespective of the merits, that would justify disquiet. The administrators are officers of court and are subject to duties. A commitment to pursue appeals with a view to avoiding payment regardless of their merits would conflict with those duties. It could result in additional expense in the administration and therefore a reduction in the funds available for distribution. However, the obligation applies only when the payment, "*would* result in a *breach* of Sanctions Law" (emphasis added). Mere concerns - reasonable or otherwise - would not be justify contesting attempts of creditors to obtain payments due to them as part of the administration. Any that that did arise under Clause 6.11(b) would be subject to the Noters' duties as administrators. As set out above, I have determined that on

the material put before me, there is no basis for a conclusion that payments to GPB would breach sanctions. The Noters have come to court on this occasion seeking clarification. Clause 6.11(b) gives no justification for taking steps or still less for pursuing appeals if it is not apparent that there would be such a breach. If it was apparent in future that steps were being taken to prevent payment in the absence of a proper basis for concluding that payments would result in a breach, the respondents would be able to bring such conduct before the court. At present, however, it cannot be said that the mere presence of these clauses in the SPA justifies removal of the Noters.

[40] I would add that there were a number of references in the submissions to fees paid to the Noters in pre-administration costs. I do not consider that these have a bearing on the decision I have to make. They were payable for services instructed by the Company. There is nothing before me to vouch that the fees were unwarranted or excessive.

[41] By way of explanation of the advantages of liquidation, the respondents argue that it would mean that the conduct of the administrators could be reviewed through fresh eyes. They note that it is not necessary for me to reach a conclusion that there is a conflict of interest to mean that this is appropriate and it would suffice that there is a serious issue which ought to be investigated (*BTI 2014 LLC* v *O'Connell* [2025] EWHC 2115 (Ch)). When addressing this issue, the Note of Arguments for GPB states that, "The creditors have an interest in the SPA if the result is that their claims, although entirely legitimate and due, cannot be paid by the noters". For the reasons set out above, as matters stand I do not consider that the effect of the SPA is that GPB's claim cannot be paid. This substantially undermines the claim that there is an issue of conflict of interest to investigate. Taking the matter as a whole, GPB has not satisfied me that there are serious issues for investigation or that, as matters stand, they have reasonable and legitimate concerns.

[42] GPB also argued by reference to *Joint Liquidators of Scottish Coal* v *SEPA* 2014 SC 372 that if liquidators were appointed it would be open to liquidators to decline to perform the contract. As I understood it, this submission was advanced in relation to the restrictions in Clause 6.11(b) of the SPA and was suggested as a means by which the consequences of what were said to be onerous obligations could be avoided. For the reasons I have explained, I do not consider that the obligations are as burdensome as was submitted. Nonetheless, in response the Noters referred me to *Joint Administrators of Rangers Football Club plc, Noters* [2012] SLT 599 where Lord Hodge noted that there had been no instance of a Scottish court requiring an *insolvent* company to perform a contract. I agree that this qualification is important. In departing from the normal rule of Scots law that the primary remedy for a party faced with a future breach of contract is to seek to have the contract obligations performed, Lord Hodge noted that the practical problem was that an insolvent company would not have the funds to comply and that a court would not order specific implement where it was impossible to perform the obligation in question or in circumstances in which it would cause exceptional hardship (para [47]). The position here is different, however, in that there are funds available. I do not consider that it can be concluded that these obligations could necessarily be disclaimed or that bringing about a situation in which that power might exist is a justification for making a winding up order.

[43] Another factor to be considered in whether the company should be put into liquidation is the deadlock that has arisen with the respondents voting against the Noter's proposals and the Noters bring unwilling to adopt any of the respondents' proposals. The Noters seek sanction from the court to proceed in the absence of approval as a means to break the deadlock. The respondents observe that when a Statement of Proposals is not approved, an administrator is obliged to apply for under paragraph 55 of Schedule B1 and

that one of the orders that may be made under paragraph 55 is for the administration to come to an end and liquidation to commence. They note that in *Re Fortuna Fix Ltd* [2020] EWHC 2369 (Ch) the Judge described such an order as "the obvious remedy". While it may be obvious, it is not the only remedy and, to make the point once again, the situation here differs from the majority of administrations in that sufficient funds have been realised to pay all creditors. In *DKLL Solicitors* v *Revenue and Customs Commissioners* [2007] BCC 908 the Judge said that even a majority creditor does not have a veto in relation to implementation of an administrator's proposals. The power to authorise the proposals notwithstanding opposition from a majority of creditors was recognised as being available in *Re Fortuna Fix Ltd* (paragraph 11). In this case, standing my decision that there is no basis in the information presented to me on which I could conclude that payment to GPB would infringe the 2019 Regulations, there will be no prejudice to the respondents in giving the Noters authorisation to proceed with their proposals. Accordingly, I conclude that it is appropriate to authorise the Noters to that effect.

Further submission for Vesta

[44] While counsel for Vesta adopted the arguments that had been advanced for GPB, they made an additional point that the Noters had been proceeding in error in that they had assumed that the whole of the debt claimed by Vesta was derived from their status as an assignee of Arnest. It was for this reason that the whole of the debt had been excluded from the hive down and subsequent transfer to KDC. If it had not been excluded, Vesta pointed out that the debt would have been repaid by now. Counsel for the Noters accepted that this error had occurred. Counsel said that the Noters were keen to see that this element was

paid as soon as possible. This having been represented by counsel in the course of the hearings, I proceed on the basis that it will be carried into effect.

Conclusions and disposal

[45] I do not accept that the Noters have demonstrated that the 2019 Regulations apply such that there is a prohibition on making payments to GPB in respect of their claims in the administration. Accordingly, I refuse the direction sought in the first Note.

[46] In relation to the second Note, I do not consider that it would be appropriate to make an order as sought by the respondents directing the Noters to act in accordance with the modified proposals prepared by the respondents or to make an order placing the Company in compulsory liquidation or to make an order removing the Noters from office as administrators and replacing them with Mr Manson and Mr Harper. Instead, I will direct that the Noters should continue to manage the affairs of the Company and direct that the Statement of Proposals prepared by them should be treated as having been approved and to authorise them to proceed in accordance with its terms.