# Zlomrex International Finance S.A. – completion of restructuring via Scheme of Arrangement

On 4 February 2014, our client, Zlomrex International Finance S.A. ("**ZIF**"), completed the restructuring of its approximately €118 million senior secured high yield notes due 2014 (the "**Existing High Yield Bonds**"). ZIF, a company incorporated in France, is a financing vehicle for the Cognor group, one of the largest suppliers (by volume) of scrap metal, the second largest seller of semi-finished steel products and the fifth largest seller (by volume) of finished steel products in Poland. The restructuring is a further example of the effectiveness of an English law scheme of arrangement ("**scheme**") to restructure New York law-governed high yield indebtedness. The restructuring of New York law governed high yield notes through the certainty of the scheme process has come to the fore recently, including with respect to the completion of the successful restructuring of Magyar Telecom B.V. This is an extremely hot topic in current restructurings such as, New World Resources plc and Yüksel, on which White & Case has had leading roles, amongst others.

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## Key Points

- The scheme was proposed in tandem with a consensual exchange solicitation which required the support of at least 95% in value of Existing High Yield Bonds to be capable of implementation. In each case, ZIF proposed the exchange of Existing High Yield Bonds for *pro-rata* holdings of new New High Yield Bonds and Exchangeable Notes (described further below). The requirement for a "parallel" path to implement the restructuring enabled the debtor to manage stakeholders through the restructuring process with maximum flexibility on the part of both creditors and the company.
- While ZIF achieved a very high level of support for the exchange solicitation (approximately 93.51% in aggregate principal amount of Existing High Yield Bonds), the restructuring was ultimately implemented via the scheme, which was sanctioned by the English High Court on 14 January 2014.
- While ZIF considered its ability to implement a restructuring of the Existing High Yield Bonds under a variety of different jurisdictions including French and/or Polish law, the English law scheme or consensual exchange solicitation provided the greatest certainty of outcome for all stakeholders.
- As ZIF is a financial holding company with no trading activities, a move of its "centre of main interests" ("**COMI**") from France to England was viable. The move of "COMI" to England allowed ZIF to access English law restructuring processes including a scheme of arrangement pursuant to Part 26 of the Companies Act 2006. Establishing COMI was one significant component in demonstrating the "sufficient connection" that allowed ZIF to propose a UK scheme of arrangement to beneficial owners of the Existing High Yield Bonds and also in recognition proceedings in the United States under Chapter 15 of the US Bankruptcy Code ("**Chapter 15**").
- Even in circumstances where the connection to the UK is not immediately apparent, these restructurings demonstrate that the English law scheme of arrangement is an important part of a debtor's negotiating and implementation toolkit.

## Background

The group's primary activities are the buying, processing, refining and selling of scrap metal and non-ferrous scrap, the processing of scrap metal into steel billets, and the processing of steel billets into finished products for sale. The challenging market environment in recent years led to a decrease in sales and profitability, with steel producers across Europe having to reduce production as a result of lower demand and lower prices for steel in the key European steel consuming sectors (including automobiles and construction). Against that backdrop, ZIF sought to propose the Restructuring to assist in stabilising the Group's business in the medium to long term, in particular given the maturity of the Existing High Yield Bonds in February 2014.

## Commercial Agreement

ZIF commenced negotiations with certain large holders of Existing High Yield Bonds in early 2013, with the aim of ensuring, through a restructuring of the Existing High Yield Bonds, that the Group could operate as a going concern into the future. The restructuring proposal negotiated by ZIF and its advisers involved the exchange of Existing High Yield Bonds for a *pro-rata* percentage of new senior secured high yield bonds due 2020 (the "**New High Yield Bonds**") and exchangeable notes due 2021 (the "**Exchangeable Notes**"), to be issued by a newly-incorporated English financial holding company ("**Newco**"). Noteholders' claims in respect of Existing High Yield Bonds were exchanged for an equivalent amount of New High Yield Bonds and Exchangeable Notes on a ratio of 80:20.

The €100,348,109 New High Yield Bonds benefit from a security package including pledges over shares in the issuer and a number of guarantors in the Cognor group, as well as mortgage security interests and registered pledges in substantially all of the non-current assets of certain members of the Cognor group. Interest on the New High Yield Bonds is payable in cash or, in the first two years after the date of issue, in "PIK".

The €25,087,003 Exchangeable Notes give holders the right to exchange such notes for shares in Cognor S.A., the listed Polish parent company of the Cognor group. The Exchangeable Notes are only exchangeable for cash in certain limited circumstances. The Exchangeable Notes give Newco the right to elect to pay interest in "PIK" until maturity.

## Jurisdiction to Implement a Scheme of Arrangement

It is well-established that companies incorporated overseas can avail of a scheme if they can demonstrate a "sufficient connection" to the UK. This is required for an English court to exercise its jurisdiction to grant an order allowing the relevant company to convene a meeting of its creditors and ultimately, if approved by the requisite majorities of such creditors, to sanction the scheme. In recent years, the English courts have demonstrated a flexible approach to "sufficient connection" when considering the ability of companies incorporated overseas to propose schemes of arrangement (see, for example, the *WIND Hellas*, *Primacom* and *Magyar Telecom* restructurings). At a hearing on 26 November 2013, Mann J. noted several of the steps taken to move ZIF's COMI to England and held that those steps also went towards establishing sufficient connection. Mann J. was therefore satisfied that there was jurisdiction to sanction a scheme if all the other factors justified making such an order. ZIF was granted permission to convene a meeting of persons with a beneficial interest as principal in the Existing High Yield Bonds ("**Note Creditors**").

The steps which a debtor may need to take in order to consider a shift of its COMI will vary according to the individual debtor and group profile. In the case of ZIF, the steps included: (i) appointment of directors resident in the United Kingdom,
(ii) registration as an overseas company with the Registrar of Companies at Companies House in the UK, and (iii) carrying out the administrative functions and principal discussions and restructuring negotiations with Note Creditors from the UK.

## Note Creditor Approval and Scheme Sanction

At a meeting of Note Creditors on 8 January 2014, convened in accordance with the Companies Act 2006 in order to consider ZIF's scheme proposal, 92.2% in value of the Note Creditors voted at the Scheme Meeting (in person or by proxy) and of those voting, 100% both by value and number voted in favour of the scheme. On 14 January 2014, Mann J. granted an order sanctioning the scheme.

## Chapter 15 Proceedings

At a hearing on 27 January 2014, the United States Bankruptcy Court for the Southern District of New York considered ZIF's application for recognition of the scheme in the United States as a "foreign main proceeding". The Bankruptcy Court granted the relief sought and this was a significant step in the restructuring as Note Creditors are permanently enjoined from commencing or continuing any proceedings in relation to their Existing High Yield Bonds.

## Conclusions

This restructuring is another example of the flexibility of the English law scheme of arrangement as a tool to implement complex cross-border restructurings, including the restructuring of New York law governed high yield bonds. ZIF achieved an exchange of 100% of the Existing High Yield Bonds notwithstanding the diversity and fragmentation of the noteholder base.

While the jurisdictional basis for a scheme of arrangement proposed by a company incorporated outside England is now relatively well-established, the restructuring of the debt of a French-incorporated issuer with its COMI in England and which is part of a group with its operational headquarters in Poland is a new departure in this area of law.

We expect the scheme of arrangement to continue to be attractive to stakeholders as an efficient, transparent and predictable means of implementing a complex debt restructuring.