

RESTRUCTURING & INSOLVENCY

# Scheme of Arrangement of Endo International Public Limited Company

4 MIN READ

On 18 April 2024, the Irish High Court approved the scheme of arrangement of Endo International plc (the **Scheme**).

The Scheme gave effect, as a matter of Irish law, to a wider restructuring, commenced by way of a US Chapter 11 Plan of Reorganization (the **US Plan**), of Endo International plc and certain of its debtor subsidiaries (**Endo**).



The terms of this cross-border restructuring saw the Endo Group’s senior secured lenders becoming the majority owners of its business and assets. Endo’s unsecured creditors (including a variety of litigation, second lien deficiency and unsecured notes claimants) received an entitlement to recover from certain funded trusts established under the US Plan.<sup>1</sup>

While there was no challenge to the Scheme, it did have a number of innovative features, contributing to the evolving and dynamic line of Irish scheme jurisprudence:

<sup>1</sup>As at 31 July 2022, Endo had total assets on a consolidated basis of approximately \$6,330,717,000 and total liabilities on a consolidated basis of approximately \$9,535,279,000, per Exhibit F of the Chapter 11 First Day Declaration.

1. Pro-release approach

Continuing with the approach taken in schemes such as Ballantyne Re plc<sup>2</sup> and Nordic Aviation Capital Designated Activity Company<sup>3</sup>, the Irish High Court reiterated its ‘pro-release’ interpretation of Part 9 of the Companies Act 2014 (the **Act**)<sup>4</sup> in allowing the release of claims against third parties.

Shortly following the Convening Hearing, Endo International plc (the **Scheme Company**) entered into a deed poll of indemnity and contribution, guaranteeing the liabilities of the debtor subsidiaries. Beneficiaries to the deed were entitled to enforce the deed directly against the Scheme Company, making them creditors of the Scheme Company. This ‘single point of entry’ construct via the Scheme Company enabled the implementation in Ireland of a multi-entity, cross-border restructuring, delivering releases in favour of both the Scheme Company and all its debtor subsidiaries.

<sup>2</sup>Re Ballantyne Re: plc [2019] IEHC 407.

<sup>3</sup>Re Nordic Aviation Capital Designated Activity Company [2020] IEHC 445.

<sup>4</sup>The provisions in the Act regarding Part 9 Schemes of Arrangement are largely identical to the English scheme of arrangement provisions under Part 26 of the UK Companies Act 2006.

As part of the Scheme, each scheme creditor (including those that were granted a guarantee claim through the deed poll) granted broad releases and discharges on terms substantially similar in scope to those contained in the US Plan in favour of all debtor subsidiaries in addition to standard exculpation releases in favour of certain non-debtor parties.

2. Two-class scheme for the multi-class US Plan

Creditors split across 20 US Plan classes were schemed in just two scheme classes:

- i. First Lien Scheme Creditors
- ii. General Scheme Creditors

19 of the 20 US Plan classes formed the General Scheme Creditors class, with each of those classes receiving differential treatment in the US Plan through their participation in different trusts or sub-trusts or, in the case of Second Lien and



Unsecured Notes Scheme Creditors, an entitlement to receive a certain amount of “new Endo” equity.

Despite referring to the General Scheme Creditors class as a “rag bag of different interests of creditors” the Irish High Court accepted the Scheme Company’s submission that the differences in treatment or returns to certain types of General Scheme Creditors were not so great that they could not consult together with a view to their common interest in accepting or rejecting the restructuring as a whole.

**3. Provision of Scheme Circular by electronic means**

US Plan voting solicitation and provision of the US Plan Disclosure Statement, via the US Chapter 11 process, was carried out at the same time as, and in unison with, the collection of proxies for voting on the Scheme and the circulation of the Scheme Circular. A streamlined and

efficient process made it clear to Endo’s creditors that a vote in favour of the US Plan was also a vote in favour of the Scheme, without any further steps or formalities being required of creditors.

Creditors were provided with detail on how to access all relevant disclosure and voting materials (including the Scheme Circular) electronically via a QR code or through a dedicated website. While this practice of solicitation may be well established in a US Chapter 11 context (and in a number of recent Irish examinerships)<sup>5</sup>, this was a first in an Irish Part 9 scheme context. This is mainly due to the fact that section 452 of the Act requires a Scheme Circular to be “sent” to each scheme creditor.

In creating a helpful precedent for future schemes with a significant population of creditors<sup>6</sup>, the Irish High Court was satisfied that the provision of an electronic link to the Scheme Circular meant that the Scheme Circular had been “sent”, within the meaning of section 452 of the Act.

**Conclusion**

In circumstances where there is no automatic recognition of US Chapter 11 in many EU countries, including Ireland, a parallel Irish process can play a key role in the implementation of cross-border restructurings involving US Chapter 11. While there have been recent high-profile cases where Irish examinership has been used to this effect, the Endo scheme is the first occasion where an Irish Part 9 scheme of arrangement has been used to compliment a US Chapter 11 Plan and ensure its effectiveness as a matter of Irish law.

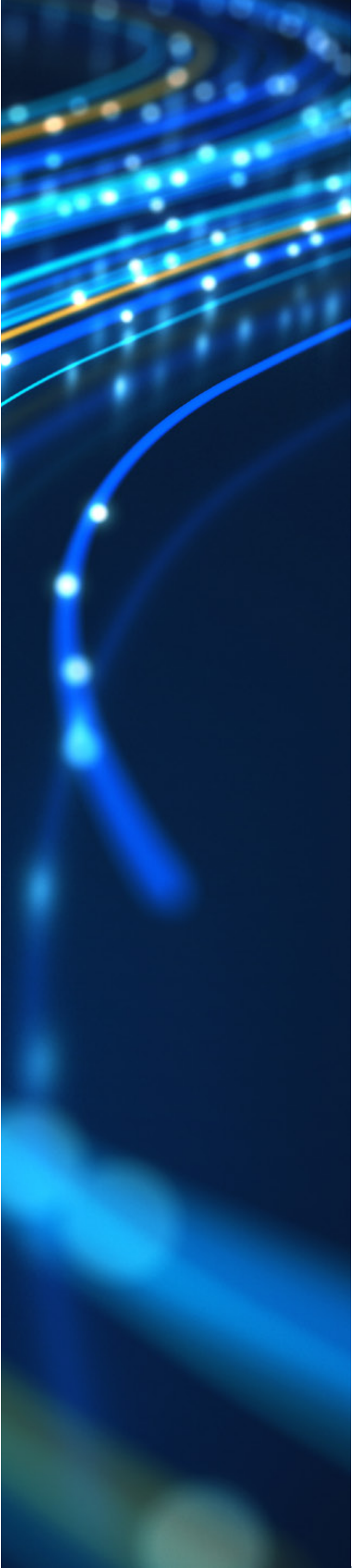
Despite a range of complex issues that arose, the Endo restructuring again demonstrates that the Irish scheme is a process which delivers a predictable and swift outcome, and one which can be successfully implemented in conjunction with a US Plan.<sup>7</sup>

*A&L Goodbody LLP acted for Endo along with Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates, Alvarez & Marsal and PJT Partners.*

<sup>5</sup> In *Re Arctic Aviation* [2020] IEHC 664, *Re Mallinckrodt plc* [2022] IEHC 270; *Re: Mallinckrodt plc* [2023] (unreported)

<sup>6</sup> In the Endo scheme, approximately 975,000 scheme creditors were contacted. The method adopted saved the Scheme Company significant expense and time.

<sup>7</sup> Irish Schemes of Arrangement can avail of EU-wide recognition under the Recast Brussels Regulation and, in the case of the US, under Chapter 15 of the US Bankruptcy Code.





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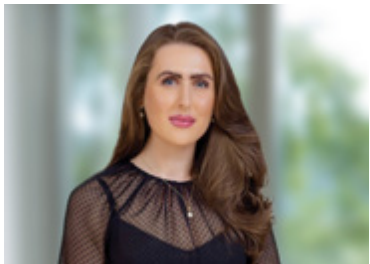
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