

COURT SANCTIONS SCHEMES OF ARRANGEMENT WHERE GOVERNING LAW CHANGED TO ENGLISH LAW

Barry Isaacs QC and **Adam Goodison** today represented nine companies in the Apcoa Parking group which had applied for the sanction of schemes of arrangement under Part 26 of the Companies Act 2006. **Simon Mortimore QC** represented a number of supporting creditors. The applications were heard by Mr Justice Hildyard in the Companies Court, Chancery Division, High Court of Justice.

Most of the Companies' indebtedness is governed by a Facilities Agreement, which was originally subject to German law and the exclusive jurisdiction of the Courts of Frankfurt/Main. The governing law and jurisdiction were recently changed to English law and jurisdiction by a majority vote, in accordance with the amendment provisions in the Facilities Agreement. The purpose of the change was to allow the Companies to propose schemes of arrangement. The principal term of the schemes extended the repayment date of the Companies' indebtedness under the Facilities Agreement.

A number of the Companies are incorporated in countries outside the UK (namely Germany, Austria, Belgium, Norway and Denmark); and they have no assets or operations in the UK. The Court received expert evidence of foreign law, to the effect that the change of governing law and jurisdiction, and the schemes themselves, would be likely to be recognised in the countries in which those Companies are incorporated. The Court determined that a sufficient connection with this jurisdiction existed for the invocation of the scheme jurisdiction. The Court also exercised its discretion, having regard to the facts, in favour of sanctioning the schemes.

This is an important decision for the UK restructuring market, because it extends the reach of schemes of arrangement as a flexible restructuring tool in relation to foreign companies. In particular, it shows that the Court may sanction a scheme of arrangement where the company's only connection with this jurisdiction results from a change to the company's loan documents by a majority vote.