

26 April 2018

C/13/16/41-S

ADVICE REGARDING COMPOSITION PLAN EX ART. 140 DBA

by

MR. J.R. BERKENBOSCH Q.Q. BANKRUPTCY TRUSTEE
IN THE BANKRUPTCY OF OI BRASIL HOLDINGS COÖPERATIEF U.A.
Established in Amsterdam

1. INTRODUCTION

- 1.1 This is the written advice (the **Advice**) of Mr. J.R. Berkenbosch of Jones Day, Amsterdam in his capacity as bankruptcy trustee (the **Bankruptcy Trustee**) in the bankruptcy (the **Bankruptcy**) of Oi Brasil Holdings Coöperatief U.A. (**Oi Coop**), ex article 140 Dutch Bankruptcy Act (**DBA**) regarding the draft composition plan dated 10 April 2018, as proposed by Oi Coop to its ordinary creditors in the Bankruptcy (the **Composition Plan**).
- 1.2 Pursuant to article 140 DBA, the Bankruptcy Trustee must present a written advice on the Composition Plan at the meeting of creditors, which shall be held at the Amsterdam District Court (the **Dutch Court**) on June 1st, 2018 at 1:30 pm (the **Meeting**). The Bankruptcy Trustee gave notice of this Advice in the ninth notice to creditors of 13 April 2018 and in the information memorandum (the **Information Memorandum**) that was sent to all holders of notes that have been issued by Oi Coop (the **Noteholders**).
- 1.3 With this Advice, the Bankruptcy Trustee aims to provide Oi Coop's creditors with his independent opinion on the content and the feasibility (*aannemelijkheid*) of the Composition Plan, also in light of the below mentioned homologation requirements.
- 1.4 It is the duty of the Bankruptcy Trustee to act in the interest of Oi Coop's creditors. However, this Advice needs to present a balanced view between the interest of Oi Coop and its creditors. With these duties in mind, the Bankruptcy Trustee has prepared this Advice. Please note that it is the responsibility of each individual creditor to form their independent opinion on (the merits of) the Composition Plan and (if required) obtain legal advice.
- 1.5 If the Composition Plan is approved at the Meeting, the Dutch Court will be asked to homologate the Composition Plan, which requires the Dutch Court to review *inter alia* whether:
- (a) the value of the assets of the bankruptcy estate does not substantially exceed the value offered through the Composition Plan;
 - (b) the performance of the Composition Plan is sufficiently safeguarded; and
 - (c) the Composition Plan is not concluded under the influence of fraudulent acts, favorable treatment of one or more creditors or other unfair means, regardless whether the bankrupt debtor or any other party cooperated therein.
- 1.6 The Composition Plan, the RJ Plan (as defined below), the Information Memorandum, the Bankruptcy Trustee's public reports and other relevant documents regarding the Bankruptcy can be found on the website of the Bankruptcy Trustee: <http://www.oibrasilholdingscoop-administration.com>. Moreover, Oi Coop is obliged to deposit the Composition Plan with the court registry of the Dutch Court at least eight days prior to the Meeting.
- 1.7 Capitalized terms that have not been defined in this Advice, should be interpreted within their meaning as provided in the Composition Plan.

2. THE COMPOSITION PLAN

The RJ Plan in the RJ

- 2.1 Oi Coop is part of a group of companies that operates in the telecommunications sector (the **Oi Group**), primarily in Brazil. On 20 June 2016, Oi Coop and certain of its group companies (together referred to as the **RJ Debtors**) filed for *recuperação judicial* (**RJ**) in Brazil.
- 2.2 As part of the RJ process, Oi Coop and the RJ Debtors were required to prepare and submit a restructuring plan to their creditors (the **RJ Plan**) which was subsequently approved at a general creditors meeting held on 19 and 20 December 2017 (**General Creditors Meeting**) and confirmed by the 7th Corporate Court of the Judicial District of the Capital of Rio de Janeiro, Brazil (the **Brazilian Court**) on 8 January 2018. The RJ Plan became effective as of 5 February 2018 following its required publication in the Brazilian Court gazette.

The Composition Plan in the Bankruptcy

- 2.3 As part of the Oi Group’s global restructuring, Oi Coop proposed the Composition Plan to its ordinary creditors as part of the Bankruptcy.
- 2.4 Oi Coop’s proposal entails that the Composition Plan will effectively ‘mirror’ and be consistent in all material respects with the terms of the RJ Plan, such that implementation of the RJ Plan in Brazil will effectively also constitute implementation of the Composition Plan. The terms of the Composition Plan therefore entail that Oi Coop’s ordinary creditors are offered exactly that which is provided for in the RJ Plan as modified and confirmed by the Brazilian Court as applicable to these creditors, under the same terms and conditions as set out in the RJ Plan.
- 2.5 The Main Creditors are offered several options under the RJ Plan, as described in detail in paragraph 4 of the RJ Plan. If and when the Dutch Court’s decision regarding homologation of the Composition Plan becomes final and binding, the Main Creditors are bound to the Standstill Period, during which they *inter alia* cannot enforce their claims against Oi Coop or other claim relating to such claims.
- 2.6 The Composition Plan provides for full payment of creditors of Other Unsecured Non-Preferred Claims, i.e. trade claims of essential service providers that originate from after the opening of the RJ Proceedings (and are not pre-petition claims included as part of the RJ Plan). The Composition Plan notes that these trade claims represent *de minimis* amounts compared to the total amount of claims owed by Oi Coop.
- 2.7 Payment of the intercompany claim of Dutch group company Portugal Telecom International Finance B.V. (**PTIF**) for the amount of approximately EUR 3,8 billion (the **PTIF Claim**) will be deferred for 45 years, after which the respective claim should be repaid in 5 annual, equal and successive instalments. The PTIF Claim may be settled, however, at Oi S.A.’s discretion, with alternative settlement forms, including but not limited to the offsetting, as provided for by the law.
- 2.8 In addition, the Composition Plan provides that if the RJ is irrevocably terminated and converted into a Brazilian bankruptcy proceeding (*falência*) and implementation of the RJ Plan as proposed in the Composition Plan is rendered impossible, Oi Coop must liquidate its assets and distribute the proceeds amongst the Main Creditors.

2.9 All creditors of Oi Coop have been informed of the Composition Plan and the Meeting on which it will be brought to a vote. With regard to certain specific aspects of the Composition Plan and the Meeting relating to the Noteholders, a more extensive clarification on the Meeting and the voting procedure has been provided in the Information Memorandum.

3. THE ADVICE: NEUTRAL

3.1 The Bankruptcy Trustee is not in a position to offer a substantiated advice on the Composition Plan for the reasons set out below. Therefore, the Bankruptcy Trustee issues a **neutral** advice to Oi Coop's creditors in regard to the Composition Plan.

Absence of objective liquidation analysis

3.2 Ernst & Young Brazil (together with Ernst & Young Netherlands **EY**), in cooperation with Ernst & Young Netherlands, prepared a financial analysis of both the liquidation and going concern value of Oi Coop (the **Financial Analysis**). The Financial Analysis is enclosed to the Composition Plan as Annex G.

3.3 The Bankruptcy Trustee understands the Financial Analysis to conclude that the restructuring as offered under the Composition Plan and the RJ Plan provides a higher return to the Plan Creditors than a liquidation scenario in the Netherlands (if the Composition Plan is either rejected by the Plan Creditors or not homologated by the Dutch Court) or in the Netherlands and Brazil (if a Termination Event occurs).

3.4 The Bankruptcy Trustee received the Financial Analysis on 7 April 2018, which was subsequently presented by EY. This was shortly before the preparations for this Advice. The Bankruptcy Trustee did not have the required information, time or means to make an independent financial analysis or assess the Financial Analysis in detail.

3.5 EY prepared the Financial Analysis on instructions by Oi S.A. and as advisor of Oi S.A. In drafting the Financial Analysis, EY relied on the legal opinions provided by (the lawyers of) the Oi Group, Oi S.A. in particular, and did not make any independent legal assessment.

3.6 Moreover, the Financial Analysis is based on certain assumptions, on which the Bankruptcy Trustee has presented alternative views through various petitions in proceedings in Brazil, the United States and the Netherlands. It is unclear under the applicable laws which views hold. For more information on the Bankruptcy Trustee's views, he refers to his public reports. This concerns in particular the assumptions (i) that the liquidation of the RJ Debtors, if bankruptcy proceedings would be opened in Brazil as well, would take place on a substantively consolidated basis, and not on a segregated entity-by-entity basis (ii) that no value should be attributed to the intercompany loans from Oi Coop to Oi S.A. and Oi Móvel S.A. (the **Intercompany Loans**) if Oi Coop's estate is liquidated within the framework of the Bankruptcy, (iii) that the avoidance claims initiated by the Bankruptcy Trustee regarding the Intercompany Loans before the Dutch Court would not result in any additional value with regard to the Intercompany Loans, and (iv) that the Bankruptcy would not be recognized in Brazil and that, within the framework of the Bankruptcy, the Bankruptcy Trustee only has access to assets of Oi Coop to the extent that they are located in the Netherlands.

Composition Plan mirrors the RJ Plan

- 3.7 The Bankruptcy Trustee was not materially involved in the RJ and the discussions between the Oi Group and certain creditor groups that resulted in the RJ Plan. He has not received material insight into how the RJ Plan was developed and only has limited information on the value offered under the RJ Plan.
- 3.8 The consideration under the Composition Plan partially concerns new financial instruments to be issued by Oi S.A. The Bankruptcy Trustee has insufficient information about the financial position of Oi S.A. and the other relevant RJ Debtors to assess the value of the consideration that is offered to Oi Coop's creditors and whether the Oi Group can and will actually perform its obligations under the RJ Plan.
- 3.9 As the Composition Plan 'mirrors' the RJ Plan, the Bankruptcy Trustee is not in a position to provide an informed advice on the Composition Plan.

Additional arrangements with certain creditor groups

- 3.10 The Bankruptcy Trustee has been made aware that the Oi Group and certain creditor groups have entered into and/or are discussing entering into additional arrangements, next to the RJ Plan and thus the Composition Plan (e.g. the Subscription and Commitment Agreement dated 19 December 2017, commonly referred to as the Backstop Agreement and certain settlement discussions regarding advisor fees of creditor groups).
- 3.11 The Bankruptcy Trustee was not materially involved in the development of the RJ Plan, as indicated, nor in the development of these additional arrangements. He is unable to assess whether – and if so to what extent – these arrangements had any relevant effect on the development of the RJ Plan and the Composition Plan.

Management and liquidation after homologation

- 3.12 Creditors should take note of the special arrangements regarding management of Oi Coop's estate once the decision of the Dutch Court concerning homologation has become final and binding. The Composition Plan provides (the directors of) Oi Coop significant discretion after termination of the Bankruptcy (i.e. once the homologation of the Composition Plan by the Dutch Court is final and binding). The directors regain full authority and power over the assets and liabilities of Oi Coop and are no longer supervised by an external party in the Netherlands.

Creditor voting in Brazil

- 3.13 The Bankruptcy Trustee is aware that a significant majority of Oi Coop's creditors has voted in favor of the RJ Plan and the Brazilian Court has already ratified it. By voting in favor of the RJ Plan, these creditors undertook to also vote in favor of the Composition Plan. In light of this obligation, it is likely that these creditors will vote in favor of the Composition Plan.

4. CONCLUSION

- 4.1 The Bankruptcy Trustee is not in a position to give a substantiated advice on the content and the feasibility of the Composition Plan. Pursuant to the Composition Plan, Oi Coop's creditors are offered that which is provided for in the RJ Plan or – in case the RJ Plan fails – what is left in Oi Coop's estate in case of a liquidation of Oi Coop's assets. The Bankruptcy Trustee does not have the required information, time or means to assess the content and consequences of the RJ Plan and thus the Composition Plan. The Bankruptcy Trustee therefore issues a **neutral** advice in regard to the Composition Plan.