ERSKINE CHAMBERS

1 Paper Buildings
Temple
London
EC4Y 7EP

Tel: +44 (0) 20 7242 5532

clerks@erskinechambers.com
www.erskinechambers.com

clerks@erskinechambers.com

Peter Arden KC

Call: 1983 Silk: 2006

Peter is a leading silk for insolvency and restructuring, corporate and commercial work.

Since taking silk, he has been instructed in connection with many of the major insolvencies and restructurings during this period – for example, T&N/Federal Mogul, HIH Insurance, Eurotunnel, Landsbanki, Kaupthing, MF Global, Co-Operative Bank, the Marme group, the Steinhoff group and Thomas Cook. He has a substantial and continuing involvement in Lehman, appeared for the successful appellant in Bresco v Lonsdale in the Supreme Court, was instructed in connection with the AirAsia X scheme in Malaysia, many of the recent substantial retail CVAs and restructuring plans, and the Petropavlovsk administration and schemes.

The subject-matter of the cases in which Peter has been involved has been extensive. Many are multi-jurisdictional and have given rise to novel issues of cross-border insolvency law; those arising out of the financial crisis raised complex questions about the regulation and practice of financial institutions, the restructuring of those institutions under existing and then new regimes, and the content and effect of financial instruments, derivatives and other securities; and the most recent cases involve difficult issues about the proper scope of existing and new restructuring procedures. Inevitably, most also involved the application of more general principles of corporate and corporate insolvency law, including for example those relating to capital maintenance and corporate governance.

Much of Peter's insolvency and restructuring work requires him to deal with issues which are of a commercial nature; for example, conflicts of laws, the law and practice relating to financial institutions and financial instruments, including derivatives, note and bond issues, consent exchanges, client money and assets, and the interpretation of finance leases and analogous instruments. Further, many of the cases involve complex issues of company law - for example, relating to capital maintenance and corporate governance. These areas – commercial and company law – are also ones in which Peter has a strong practice independently of his insolvency and restructuring work, and he is a member of the editorial board of Gore-Browne on Companies.

Peter Arden KC

A substantial element of Peter's work relates to multi-jurisdictional or offshore matters including, for example, in relation to proceedings in the US Bankruptcy Court, the Bermuda Supreme Court, the Cayman Islands Grand Court (FSD), the Malaysian High Court, the Eastern Caribbean Supreme Court, the Bahamas Supreme Court and the Reykavik District Court.

Cases in Peter's areas of practice in which he has been instructed include the following:

Restructuring & Insolvency

- Corporate restructuring: schemes, restructuring plans and voluntary arrangements
- Administration and special administration regimes
- Company winding up: creditors and members
- Cross-border restructuring and insolvency
- Notes and securities litigation
- Contentious insolvency : e.g. adjustment of transactions; enforcement of directors' duties

Peter's expertise in this area is well known, and he has been involved in most of the major insolvencies and insolvent restructurings over the years. His instructions have included matters relating to cases such as Federal-Mogul, HIH Insurance, Eurotunnel, Lehmans, the Icelandic banks, Travelodge, MF Global, and the Co-Operative Bank, and most recently Cineworld, Superdry and Lietzenburger . Many of those matters have included an international or cross-border element.

Particular cases in which Peter has been instructed include the following:

Cine-UK Limited [2024] Acting for two sets of landlords who, on various grounds, opposed the sanctioning of the Cineworld restructuring plans. Commercial deals were reached with the landlords shortly before the sanction hearing in September 2024.

C-Retail Limited (Superdry) [2024] Acting for the landlords of the largest Superdry store who voted against and opposed the sanction of the Superdry restructuring plan. A commercial deal was reached between the company and the landlords shortly before the meetings which were held in June 2024.

Re the Payment and Electronic Money Institution Insolvency Regulations 2021 [2024] Advising the joint liquidators of a company in connection with a proposed application for the appointment of special administrators under the Regulations.

PCF Bank Limited / PCF Group [2024] Advising the boards of this banking group in connection with the liquidation of the group companies and the steps required under the Banking Act 2009; advising on solvency issues in the context of potential liabilities arising out of the use of discretionary commission arrangements in motor finance arrangements; appearing for PCF Bank in its successful application for the consent of the Court to it going into CVL.

Project Lietzenburger Strabe Holdco SARL [2024] Acting for a holder of a significant part of the junior debt in connection with its opposition to this restructuring plan and parallel proceedings taking place in Germany and Luxembourg.

Mobile Telecommunications Company KSCP v HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud [2023 and continuing] Acting for Prince Hussam in this long-running commercial dispute, at present involving a petition by MTC for a bankruptcy order to be made against the Prince.

Digicel Group Holdings Limited [2023] (Bermuda Commercial Court) Advising the company – the Bermuda holding company within the Digicel group - in connection with a scheme of arrangement being proposed between the company and certain of its creditors as part of a wider group restructuring. The convening and sanction hearings took place in August and October 2003 before the Commercial Court in Bermuda.

Link Fund Solutions Limited [2023] Advising the Financial Services Compensation Scheme in connection with the scheme of arrangement being proposed by the company - the independent authorised corporate director of the LF Woodford Equity Fund which was sponsored and managed by Woodford Investment Management Limited. The Fund was suspended in mid-2019 and winding up commenced in early 2020. The scheme is a redress scheme and followed an investigation by the FCA and a conditional settlement between the FCA, the company and the company's parent. The convening hearing took place in early October 2023: [2023] EWHC 2641 (Ch).

Hartley Pensions Limited [2023] Acting on behalf of a substantial financial services group with a significant number of clients who were members of pension schemes operated by HPL which went into administration in July 2023.

Venator Materials PLC [2023] Advising a group of shareholders in connection with the effect of a US plan, confirmed by the US Bankruptcy Court (Southern District of Texas) in July 2023, which purported to extinguish the equity interests of the shareholders and to approve the issue, resignation and repurchase of shares by way of implementation of the restructuring contemplated by the plan.

Carillion Group [2023] Advising the liquidator and special managers of a number of companies within the Carillion group in connection with the application and effect of set-off in respect of the various accounts and banking facilities operated by those companies.

Petropavlovsk PLC [2022-2023] Acting on behalf of the administrators of the company, which was a listed company carrying on a substantial gold-mining business in Russia, and its Channel Islands' finance subsidiaries in connection with:

• The administration applications which were made in July and December 2022.

• The application for directions for permission to sell the company's Russian businesses which was heard in August 2022: [2022] EWHC 2097 (Ch).

• The schemes of arrangement proposed by the companies pursuant to which the proceeds of the sale were to be distributed by way of payment in full of the companies' external debts. The convening hearings took place in December 2022 - [2022] EWHC 3448 (Ch) - and the schemes were sanctioned in early 2023: [2023] EWHC 264 (Ch).

• Further proceedings, most recently in November 2023, dealing with distributions and the working out of the schemes.

New Look Retailers Limited [2021-2022] Peter was instructed by various institutional landlords in this challenge to New Look's CVA which largely directed at compromising the company's existing and future property liabilities.

The first instance judgment was handed down in mid-2021: [2021] EWHC 1209 (Ch). The challenge was dismissed but permission to appeal was given. The case settled very shortly before the appeal was due to commence in early 2022. The first instance judgment is the leading authority on retail CVAs and more generally on fairness issues arising in contested restructurings.

Regis UK Limited [2021-2022] This case overlapped with New Look and was heard by the same judge. It again involved a challenge to a retail CVA with judgment being handed down shortly after the New Look judgment. The challenge in Regis was successful and the CVA was revoked: [2021] EWHC 1294 (Ch). There was no appeal from the substantive order but a costs issue, between the successful landlords and the nominee/supervisors, was the subject of an appeal (permission for which was given by the Court of Appeal). That appeal settled, again very shortly before the appeal was due to start in mid-2022.

LB Holdings Intermediate 2 Limited – subordinated debt priority disputes [2017-2022] These issues first emerged towards the end of 2017 and concerned the relative priority as between various classes of subordinated creditors with claims against various Lehman entities and whose claims arose under the terms of agreements intended to form a part of the regulatory capital of the Lehman group. Peter acted for the administrators of LBHI2 including appearing at the trial at first instance and the subsequent appeal to the Court of Appeal: [2018] EWHC 1681 (Ch), [2020] EWHC 1681 (Ch), [2021] EWCA Civ 1523, [2022] 8 WLUK 318.

AirAsia X Berhad [2021] (Malaysian High Court) Advising the company, which was undergoing a substantial restructuring via a scheme of arrangement in Malaysia, in relation to a number of issues arising out of the scheme proceedings including in relation to English law aircraft lease and sale contracts, and to the calculation of claims arising in respect of long-term liabilities. The scheme was eventually approved and sanctioned by the Malaysian court in late 2021.

National Car Parks Limited [2021] Here, NCP was promoting a Part 26A plan, principally but not exclusively in order to compromise its liabilities to landlords. The plan was opposed by a number of landlords on various grounds. Peter acted for a group of the opposing landlords. Directions for the calling of meetings, and for an expedited sanction hearing, were made at the convening hearing in mid-2021: [2021] EWHC 1653 (Ch). In the event, NCP withdrew the plan prior to the meetings.

AWH Fund Limited [2021] (Supreme Court of the Bahamas) Advising in relation to claims arising in the liquidation of the AWH Fund.

Bresco Electrical Services Ltd v Michael J Lonsdale (Electrical) Ltd [2018-2020] (UK Supreme Court) Appearing for Bresco's liquidator (and the successful party) in these proceedings before the Court of Appeal and then the Supreme Court in proceedings dealing with the interface between insolvency proceedings, construction contracts and adjudication provisions, and insolvency set-off. [2019] EWCA Civ 27, [2020] UKSC 25.

Homebase, Regis, Giraffe/Ed's Diner, Debenhams, Monsoon/Accessorize, Cotswold, Timberland, Itsu, Pizza Express, Clarks Shoes and Moss Bros [2018-2022] Acting on behalf of landlords in these restructuring, all involving the use of CVAs. Some of these matters settled before the issue of proceedings – the remainder during the course of the proceedings.

Lehman Brothers International (Europe) [2018]. Peter was instructed on behalf of the administrators of LB Holdings Intermediate 2 Limited, LBIE's immediate parent, in connection with the scheme proposed by LBIE's administrators providing for the compromise and discharge of outstanding claims and the distribution of the surplus. Amongst other things, the scheme raised important issues as to class composition and fairness. The

convening hearing took place in June 2018 - [2018] EWHC 1854 (Ch) and the scheme was sanctioned in July: [2018] EWHC 1980 (Ch).

LB Holdings Intermediate 2 Limited [2017] Acting on behalf of the LBHI2 administrators in this set of applications by which the administrators of various Lehman companies sought directions relating to a proposed compromise of inter-company claims following the hand down of the judgments of the Supreme Court in Waterfall I: [2017] EWHC 2017 (Ch).

LBI Hf (Landsbanki) v MLI and others; Kaupthing ehf v MLI and others [2016-2017] (Reykavik District Court) Appointed by the Icelandic Court as lead assessor, jointly with Professor Andrew Keay, to consider and report on various issues arising in the context of clawback claims in respect of transactions (for the most part redemption of securities) entered into shortly before the collapse of the Icelandic banks. The issues covered by the reports included the law relating to the nature of intermediated securities, the legal effect of the relevant transactions, and (as a consequence of article 30 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions, and its application by a ruling of the EFTA Court) the extent to which those transactions could be set aside in analogous proceedings taking place in England.

BW Estates Ltd [2017] This was an appeal to the Court of Appeal and concerned the validity of an out of court administration appointment. The issues raised on the appeal revolved around the relationship between the articles and the statutory power of appointment, the construction of the relevant articles, the Duomatic principle and associated points: [2017] EWCA Civ 1201.

Lehman Brothers International (Europe): Waterfall IIIA and B [2016-2017] Acting on behalf of the LBHI2 administrators in the Waterfall III proceedings which were intended to deal with LBIE's contributory claim against LBHI2 and the incidence of that claim as between LBHI2 and LBL The trial of Waterfall IIIA took place in February 2017, but the proceedings settled before judgment was handed down and as a consequence of the SCJ judgments in Waterfall I.

T&N Asbestos Trustee Company Limited [2016] This case arose out the long-running T&N matter in which Peter acted for the administrators in a series of reported cases dealing with the issues which arose in the course of the T&N / Federal Mogul restructuring. The company essentially administers the UK asbestos trust which was constituted as a part of the restructuring and deals with the asbestos claims against the relevant T&N companies. As a consequence of various developments taking place in the US and the UK, in particular relating to a £500 million insurance policy against asbestos claims secured by T&N before its collapse, it became necessary to achieve substantial amendments to the trust documentation, for which the court's approval was sought and given: [2016] EWHC 2594 (Ch).

Marme Group / Maud [2014-2016] Acting for an original investor in these wide-ranging and multi-jurisdictional battle for control of the Marme Group and its business. Cases in which Peter appeared include:

• Aabar Block Sarl v Maud [2016] Whether petition should be further adjourned – refused and order granted, but overturned on appeal: [2016] EWHC 1016 (Ch).

• Aabar Block Sarl v Maud [2015] Whether petition should be further adjourned – applicable principles: [2015] EWHC 3681 (Ch).

• Edgeworth Capital Luxembourg Sarl v Maud [2015] Whether a guarantee claim had been extinguished as a consequence of the substantive provisions applicable in foreign insolvency proceedings: [2015] EWHC 3464 (Comm).

• Aabar Block Sarl v Maud [2015] Whether petition should be adjourned to allow for restructuring – applicable principles: [2015] EWHC 2220 (Ch)

• Maud v Libyan Investment Authority [2015] Whether creditor entitled to substituted as petitioner: [2015] EWHC 2093 (Ch).

• Re Maud [2015] Application to set aside a statutory demand: [2015] EWHC 1626 (Ch).

African Minerals Ltd [2015] Peter was instructed on behalf of the administrators of the (Bermudian) company in connection with the threatened sale by a Hong Kong security agent of the company's mining interests in Sierra Leone. Letters of request seeking assistance from the courts of Hong Kong were issued by the English court, after an urgent application for relief by the administrators.

Eiffel Steel Works Limited [2015] Appearing for administrators seeking declarations as to the validity of their appointment where there had arguably been a defect in the appointment process: [2015] EWHC 511 (Ch).

Mediterranean Insurance and Reinsurance Co Ltd [2015] Med Re was a UK reinsurer which carried on business mostly placed by its shareholders who are based in Algeria and Libya. The company had been in run-off, but (possibly due to misfeasance on the part of one of its directors) became insolvent. The company was placed into administration as a matter of urgency. Peter acted for the non-executive directors and the proposed administrators.

Latvijas Krajbanka [2015] Acting for the liquidators of one of the biggest banking collapses in Latvia in connection with the impact of the Reorganisation and Winding Up of Credit Institutions Directive and fraud litigation against a Russian oligarch behind the bank.

Mount Capital Fund Ltd (Eastern Caribbean) [2015] Acting for the liquidators of a feeder fund in connection with statutory and common law claims to recover payments made to investors prior to the collapse of BLMIS.

Pan Ocean Co Ltd [2014] This case concerned difficult issues relating to ipso facto termination clauses in shipping contracts, which were arguably void under Korean law, pursuant to which the company was incorporated and where it was undergoing rehabilitation proceedings. The case gives rises to difficult cross-border issues. Peter was instructed on behalf of the security trustee for a syndicate of lenders: [2014] EWHC 2124 (Ch).

Commonwealth Institute [2014] In this case, Peter was instructed on behalf of the Secretary of State for the Foreign and Commonwealth Office. The judgment followed the hearing of an application for directions to resolve a number of issues arising during the course of the winding up of the Institute's affairs: [2014] EWHC 2218 (Ch).

Co-Operative Bank Plc [2013] Peter was instructed by the trustee of various notes and other securities in relationship to the bank's proposed scheme of arrangement, and bond and securities exchange: [2013] EWHC 4072 and 4074 (Ch) (convening) and [2014] EWHC 4397 (Ch) (sanction).

MF Global UK Ltd [2013] In this case, the court considered the relationship between distributions under CASS and those as against the general estate of an investment firm subject to a special administration regime: [2013] EWHC 2556 (Ch).

Danka Business Systems Plc [2012-2013] Acting for the liquidators in this case, at first instance and on appeal, which considered the proper approach of liquidators to claims under long-term indemnities given in share-sale agreements, and whether the liquidators should reserve or were at liberty to distribute on the basis of their estimate of the value of the claims: [2012] EWHC 579 (Ch) and [2013] EWCA Civ 92.

Harvey v Dunbar Assets Plc [2013] This appeal related to bankruptcy proceedings where the debtor, a guarantor, contended that his guarantee was vitiated by the forgery of a signature of another guarantor, and where the Court of Appeal had to consider and apply the proper approach to the construction of guarantees: [2013] EWCA Civ 952.

Smeaton v Equifax Plc [2013] An appeal concerning the nature and extent of the duties of credit reference agencies to ensure the accuracy of information maintained by them – here, relating to bankruptcy: [2013] EWCA Civ 108.

McGuinness v Norwich & Peterborough Building Society [2011] A bankruptcy appeal, dealing with the nature of a claim by a creditor against a guarantor and whether it could form the basis of a petition: [2011] EWCA Civ 1286.

White v Davenham Trust Ltd [2011] An appeal relating to statutory demands, and whether a guarantor could require the creditor to bring into account security provided by the principal debtor: [2011] EWCA Civ 747.

Energy Holdings (No 3) Ltd [2010] A TXU related matter, dealing with the relationship between the establishment of claims under a CVA and parallel proceedings in a foreign court: [2010] EWHC 788 (Ch).

Kelly v Inflexion Fund 2 Ltd [2010] Acted for the administrators in this case which concerned the right of a secured creditor to participate in the prescribed part: [2010] EWHC 2989 (Ch).

Mourant & Co Trustees Ltd v Sixty UK Ltd [2010] Appeared for the landlords in this successful challenge to a retailer's CVA: [2010] EWHC 1890 (Ch).

Kaupthing Capital Partners II Master LP Inc [2010] Acting for Kaupthing Bank hf and the Icelandic public employees' pension fund in this challenge to the appointment of administrators over a limited partnership, on the basis that its COMI was not in England and that on other grounds the appointment was defective. [2010] EWHC 836 (Ch).

HIH Casualty & General Insurance Ltd [2008] (House of Lords) One of first cases to come before the UK's highest court dealing with the nature and extent of the English's court's power and duty to assist foreign office-holders; here, at common law and under s 426. [2008] UKHL 21.

Hill v Haines [2007] Peter acted on behalf of the trustee in bankruptcy at first instance and on appeal in this adjustment of prior transactions case arising out of a consent order made in family proceedings. [2007] EWCA Civ 1284.

Sirius International Insurance Co (Publ) v FAI General Insurance Ltd [2004] (House of Lords) The House of Lords upheld the claims of a Swedish reinsurer against an insolvent Australian insurance company: [2004] UKHL 54.

T&N Ltd / Federal Mogul Inc (various jurisdictions) [2004 to 2008] Asbestos insolvencies involving numerous hearings before US and UK courts; courts' approach to judicial communications; proving in respect of foreign

torts; whether claim in tort provable before damage; schemes of arrangement, comparators and third parties; rights of pension trustees; claims' handling under asbestos policy and insurance related issues; CVAs for asbestos claimants and others. Cases include:

- **Re Federal-Mogul Aftermarket UK Ltd [2008]** The court determined that the supervisors of a CVA were bound to accept the pension scheme actuary's quantification of contingent liabilities arising out of the withdrawal of a number of companies from the relevant pension scheme: [2008] EWHC 1099 (Ch).
- **Re T&N Ltd [2006]** The court decided that its permission was not required for service outside the jurisdiction of notices of meetings to consider CVA proposals: [2006] EWHC 842 (Ch).
- **Re T&N Ltd [2005]** The English court determined that a settlement agreement would not breach the terms of a reinsurance contract: [2005] EWHC 2991 (Ch).
- **Re T&N Ltd [2005]** The English court determined a number of issues relating to the proper treatment of US asbestos claims, including as to the application of the PIL (MP) Act 1996, whether the claims would be governed by English law and, if exceptionally they were governed by US law, whether damages would be quantified by reference to English law: [2005] EWHC 2990 (Ch).
- **Re T&N Ltd [2005]** Directions were given to the administrators as to the status of asbestos claimants and in particular those whose claims were tortious – whether and if so in what circumstances were such claimants "creditors" for the purposes of schemes and CVAs, to what extent were their claims provable and, to the extent that they were not, whether there was breach of the HRA 1998: [2005] EWHC 2870 (Ch).
- **Re T&N Ltd [2004]** Whether or not the English court should enter into discussions with the US court on matters of controversy between the parties which might subsequently come before the English court for decision: [2004] EWHC 2878 (Ch).
- **Hearn / Champion Pensions Ltd v Bell [2004]** Directions given to the trustees of the Champion pension scheme as to the steps that they should take in relation to the US plan: [2004] EWHC 2803 (Ch).
- **Freakley v Centre Reinsurance International Ltd [2004]** Directions given as to the effect to the US plan so far as it affected insurance and reinsurance arrangement made by the company and whether the terms of the US plan were effective: [2004] EWHC 2740 (Ch).
- **Alexander Forbes Trustee Services Ltd v Jackson [2004]** Trustees of the T&N retirement benefit scheme directed to be at liberty to vote against and oppose the US plan: [2004] EWHC 2448 (Ch).
- **Re T&N Ltd [2004]** Directions sought by the administrators in circumstances where a US plan envisaged that the company would give effect to the plan by schemes and CVAs in the UK but where the administrators had formed the view that any such schemes or CVAs would be unfair and incompatible with UK insolvency and pensions law: [2004] EWHC 2361 (Ch).
- **Re T&N Ltd [2004]** Whether administrators could properly serve notice of withdrawal of the company from a retirement benefits scheme: [2004] EWHC 1680 (Ch).

Smith (Administrator of Cosslett (Contractors) Ltd v Bridgend CBC [2001] (House of Lords) Acting for the Council in this appeal to the House of Lords which concerned the proper characterisation of a charge over a substantial industrial washing plant and the effect of the avoiding provision applicable to unregistered floating charges: [2001] UKHL 58.

Corporate

- Corporate reorganisations
- Schemes and restructuring plans
- Capital reductions
- Directors' Duties
- Shareholder's rights
- Corporate finance

The principal focus of Peter's practice is on businesses that are insolvent or experiencing financial difficulties. In that context, many of the cases in which Peter is instructed involve complex issues of company law – for example, relating to capital maintenance and corporate governance – or corporate and financial restructuring, for example, by way of schemes of arrangement or contractual mechanism.

Together with the matters referred to under restructuring and insolvency, further examples of matters in which Peter has been instructed include the following:

Cine-UK Limited [2024] Acting for two sets of landlords who, on various grounds, opposed the sanctioning of the Cineworld restructuring plans. Commercial deals were reached with the landlords shortly before the sanction hearing in September 2024.

C-Retail Limited (Superdry) [2024] Acting for the landlords of the largest Superdry store who voted against and opposed the sanction of the Superdry restructuring plan. A commercial deal was reached between the company and the landlords shortly before the meetings which were held in June 2024.

Re AB [2024] Advising on the scope and application of disclosure requirements under the Takeover Code in the context of criminal proceedings in the US arising out of a substantial takeover.

Project Lietzenburger Strabe Holdco SARL [2024] Acting for a holder of a significant part of the junior debt in connection with its opposition to this restructuring plan and parallel proceedings taking place in Germany and Luxembourg.

Digicel Group Holdings Limited [2023] (Bermuda Commercial Court) Advising the company – the Bermuda holding company within the Digicel group - in connection with a scheme of arrangement being proposed between the company and certain of its creditors as part of a wider group restructuring. The convening and sanction hearings took place in August and October 2003 before the Commercial Court in Bermuda.

Link Fund Solutions Limited [2023] Advising the Financial Services Compensation Scheme in connection with the scheme of arrangement being proposed by the company - the independent authorised corporate director of the LF Woodford Equity Fund which was sponsored and managed by Woodford Investment Management Limited. The Fund was suspended in mid-2019 and winding up commenced in early 2020. The scheme is a redress scheme and followed an investigation by the FCA and a conditional settlement between the FCA, the company and the company's parent. The convening hearing took place in early October 2023: [2023] EWHC 2641 (Ch).

Re a Company [2023] Advising the board on the accounting treatment of preference shares and whether they should be accounted for within equity or as a liability.

Re a Company [2023] Advising private equity investors on the terms of exit provisions and priorities as between investors and management.

Petropavlovsk PLC [2022-2023] Acting on behalf of the administrators of the company, which was a listed company carrying on a substantial gold-mining business in Russia, and its Channel Islands' finance subsidiaries in connection with:

- The administration applications which were made in July and December 2022.
- The application for directions for permission to sell the company's Russian businesses which was heard in August 2022: [2022] EWHC 2097 (Ch).

- The schemes of arrangement proposed by the companies pursuant to which the proceeds of the sale were to be distributed by way of payment in full of the companies' external debts. The convening hearings took place in December 2022 - [2022] EWHC 3448 (Ch) - and the schemes were sanctioned in early 2023: [2023] EWHC 264 (Ch).
- Further proceedings, most recently in November 2023, dealing with distributions and the working out of the schemes.

AirAsia X Berhad [2021] (Malaysian High Court) Advising the company, which was undergoing a substantial restructuring via a scheme of arrangement in Malaysia, in relation to a number of issues arising out of the scheme proceedings including in relation to English law aircraft lease and sale contracts, and to the calculation of claims arising in respect of long-term liabilities. The scheme was eventually approved and sanctioned by the Malaysian court in late 2021.

National Car Parks Limited [2021] Here, NCP was promoting a Part 26A plan, principally but not exclusively in order to compromise its liabilities to landlords. The plan was opposed by a number of landlords on various grounds. Peter acted for a group of the opposing landlords. Directions for the calling of meetings, and for an expedited sanction hearing, were made at the convening hearing in mid-2021: [2021] EWHC 1653 (Ch). In the event, NCP withdrew the plan prior to the meetings.

Re a Company [2019] Advising on the issue as to whether the grant of guarantees and security by one group company in favour of another group company amounts to a distribution, and the conflicting views on the issue published by the ICAEW and, jointly, by the Law Society CLC and the CLLS.

Re a Company [2019] Advising the board of a REIT in connection with a potential petition for a winding up under the just and equitable ground, the assessment of distributable reserves, a threatened takeover and the preparation of the board's defence document.

BW Estates Ltd [2017] This was an appeal to the Court of Appeal and concerned the validity of an out of court administration appointment. The issues raised on the appeal revolved around the relationship between the articles and the statutory power of appointment, the construction of the relevant articles, the Duomatic principle and associated points: [2017] EWCA Civ 1201.

Re a Guernsey Company [2017] Instructed by a substantial real estate company in connection with a proposed members' scheme involving a takeover by share buyback. The scheme was contested, both before the bailiff and then on appeal before the Guernsey CA.

Re a Company [2017] Advising in connection with an issue of shares, the establishment of a share premium account, whether the share was or was deemed to be paid up, and as to the consequences and effect generally of the issue.

Co-Operative Bank Plc [2013] Peter was instructed by the trustee of various notes and other securities in relationship to the bank's proposed scheme of arrangement, and bond and securities exchange: [2013] EWHC 4072 and 4074 (Ch) (convening) and [2014] EWHC 4397 (Ch) (sanction).

Litigation and Arbitration

- Shareholder disputes
- Joint venture disputes
- Warranty claims
- Commercial disputes

- Fiduciary obligations

Much of Peter's practice is litigation-based. Although the context in which the litigation takes place is often one of insolvency, the subject matter of the cases covers the broad spectrum of work undertaken in Erskine Chambers. Together with the matters referred to under restructuring and insolvency, and corporate, further examples of matters in which Peter has been instructed include the following:

Mobile Telecommunications Company KSCP v HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud [2023 and continuing] Acting for Prince Hussam in this long-running commercial dispute, at present involving a petition by MTC for a bankruptcy order to be made against the Prince.

IGCF SPV 21 Limited [2022-2023] (Cayman Islands Grand Court) Acting and appearing for group of investors in K-Electric Limited which is the supplier of electricity to Karachi and was privatised in 2005. Proceedings were commenced in Pakistan raising regulatory and corporate issues relating to the company. The Cayman proceedings were for anti-suit injunctions to restrain the prosecution of the Pakistan proceedings which were alleged to be in breach of an investors' agreement.

AWH Fund Limited [2021] (Supreme Court of the Bahamas) Advising in relation to claims arising in the liquidation of the AWH Fund.

Janus Capital Management v Safeguard International [2016] This was a commercial dispute between Janus – a substantial US fund manager – and its payroll provider, Safeguard. Safeguard arranged for the payment of employees worldwide in local currencies and, for these purposes, organised or arranged for the exchange of US$ into those local currencies. Janus contended that Safeguard had arranged the exchange at unreasonably high rates and, further, had taken a commission from the foreign exchange providers. The case was tried in the High Court in May 2016. Peter was instructed on behalf of Janus: [2016] EWHC 1355 (Ch).

Harvey v Dunbar Assets Plc [2013] This appeal related to bankruptcy proceedings where the debtor, a guarantor, contended that his guarantee was vitiated by the forgery of a signature of another guarantor, and where the Court of Appeal had to consider and apply the proper approach to the construction of guarantees: [2013] EWCA Civ 952.

Amazing Global Technologies Ltd, Hall v Prudential Trustee Co Ltd (Eastern Caribbean) [2011] Peter acted for a security trustee – Prudential – on this successful application to strike out a claim against the trustee and receivers appointed by the court on the trustee's application. The action was struck out on merits and forum grounds.

Financial Services

- Prospectus Liability
- Financial promotion
- Financial regulation and enforcement
- Special resolution/special administration regime
- Client money

Peter is frequently instructed in respect of businesses operating in the financial sector. Together with the cases referred to under other practice areas (such as MF Global and the Co-Operative Bank in restructuring and insolvency) further examples of matters in which Peter has been instructed include the following:

Re the Payment and Electronic Money Institution Insolvency Regulations 2021 [2024] Advising the joint liquidators of a company in connection with a proposed application for the appointment of special administrators under the Regulations.

PCF Bank Limited / PCF Group [2024] Advising the boards of this banking group in connection with the liquidation of the group companies and the steps required under the Banking Act 2009; advising on solvency issues in the context of potential liabilities arising out of the use of discretionary commission arrangements in motor finance arrangements; appearing for PCF Bank in its successful application for the consent of the Court to it going into CVL.

Link Fund Solutions Limited [2023] Advising the Financial Services Compensation Scheme in connection with the scheme of arrangement being proposed by the company - the independent authorised corporate director of the LF Woodford Equity Fund which was sponsored and managed by Woodford Investment Management Limited. The Fund was suspended in mid-2019 and winding up commenced in early 2020. The scheme is a redress scheme and followed an investigation by the FCA and a conditional settlement between the FCA, the company and the company's parent. The convening hearing took place in early October 2023: [2023] EWHC 2641 (Ch).

Re Various Insolvency Proceedings [2015]
Acting for various office-holders in connection with the recovery and treatment of compensation for mis-sold interest rate hedging products.

Re Hartmann Capital Ltd [2014]
This is a special administration case, where Peter was asked to advise the administrators in relation to various issues arising during the course of the administration.

Re RSM Tenon PLC [2013]
Advising the purchaser in relation to various issues arising in connection with the sale of this business.

Re Kaupthing Singer & Friedlander Ltd [2009]
Advising a financial institution on set-off issues arising in this and related insolvencies.

International and Offshore

A significant part of Peter's practice has a substantial international or cross-border element involving one or more foreign jurisdictions. He is instructed by foreign firms, and has been admitted and appeared before the courts of a number of foreign jurisdictions.

Re AB [2024] Advising on the scope and application of disclosure requirements under the Takeover Code in the context of criminal proceedings in the US arising out of a substantial takeover.

Project Lietzenburger Strabe Holdco SARL [2024] Acting for a holder of a significant part of the junior debt in connection with its opposition to this restructuring plan and parallel proceedings taking place in Germany and Luxembourg.

Mobile Telecommunications Company KSCP v HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud [2023 and continuing] Acting for Prince Hussam in this long-running commercial dispute, at present involving a petition by MTC for a bankruptcy order to be made against the Prince.

Digicel Group Holdings Limited [2023] (Bermuda Commercial Court) Advising the company – the Bermuda holding company within the Digicel group - in connection with a scheme of arrangement being proposed between the company and certain of its creditors as part of a wider group restructuring. The convening and sanction hearings took place in August and October 2003 before the Commercial Court in Bermuda.

Venator Materials PLC [2023] Advising a group of shareholders in connection with the effect of a US plan, confirmed by the US Bankruptcy Court (Southern District of Texas) in July 2023, which purported to extinguish the equity interests of the shareholders and to approve the issue, resignation and repurchase of shares by way of implementation of the restructuring contemplated by the plan.

Petropavlovsk PLC [2022-2023] Acting on behalf of the administrators of the company, which was a listed company carrying on a substantial gold-mining business in Russia, and its Channel Islands' finance subsidiaries in connection with:

- The administration applications which were made in July and December 2022.
- The application for directions for permission to sell the company's Russian businesses which was heard in August 2022: [2022] EWHC 2097 (Ch)
- The schemes of arrangement proposed by the companies pursuant to which the proceeds of the sale were to be distributed by way of payment in full of the companies' external debts. The convening hearings took place in December 2022 - [2022] EWHC 3448 (Ch) - and the schemes were sanctioned in early 2023: [2023] EWHC 264 (Ch).
- Further proceedings, most recently in November 2023, dealing with distributions and the working out of the schemes.

IGCF SPV 21 Limited [2022-2023] (Cayman Islands Grand Court) Acting and appearing for group of investors in K-Electric Limited which is the supplier of electricity to Karachi and was privatised in 2005. Proceedings were commenced in Pakistan raising regulatory and corporate issues relating to the company. The Cayman proceedings were for anti-suit injunctions to restrain the prosecution of the Pakistan proceedings which were alleged to be in breach of an investors' agreement.

AirAsia X Berhad [2021] (Malaysian High Court) Advising the company, which was undergoing a substantial restructuring via a scheme of arrangement in Malaysia, in relation to a number of issues arising out of the scheme proceedings including in relation to English law aircraft lease and sale contracts, and to the calculation of claims arising in respect of long-term liabilities. The scheme was eventually approved and sanctioned by the Malaysian court in late 2021.

AWH Fund Limited [2021] (Supreme Court of the Bahamas) Advising in relation to claims arising in the liquidation of the AWH Fund.

LBI Hf (Landsbanki) v MLI and others; Kaupthing ehf v MLI and others [2016-2017] (Reykavik District Court) Appointed by the Icelandic Court as lead assessor, jointly with Professor Andrew Keay, to consider and report on various issues arising in the context of clawback claims in respect of transactions (for the most part redemption of securities) entered into shortly before the collapse of the Icelandic banks. The issues covered by the reports included the law relating to the nature of intermediated securities, the legal effect of the relevant transactions, and (as a consequence of article 30 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions, and its application by a ruling of the EFTA Court) the extent to which those transactions could be set aside in analogous proceedings taking place in England.

Re a Guernsey Company [2017] Instructed by a substantial real estate company in connection with a proposed members' scheme involving a takeover by share buyback. The scheme was contested, both before the bailiff and then on appeal before the Guernsey CA.

T&N Asbestos Trustee Company Limited [2016] This case arose out the long-running T&N matter in which Peter acted for the administrators in a series of reported cases dealing with the issues which arose in the course of the T&N / Federal Mogul restructuring. The company essentially administers the UK asbestos trust which was constituted as a part of the restructuring and deals with the asbestos claims against the relevant T&N companies. As a consequence of various developments taking place in the US and the UK, in particular relating to a £500 million insurance policy against asbestos claims secured by T&N before its collapse, it became necessary to achieve substantial amendments to the trust documentation, for which the court's approval was sought and given: [2016] EWHC 2594 (Ch).

Marme Group / Maud [2014-2016] Acting for an original investor in these wide-ranging and multi-jurisdictional battle for control of the Marme Group and its business. Cases in which Peter appeared include:

- **Aabar Block Sarl v Maud [2016]** Whether petition should be further adjourned – refused and order granted, but overturned on appeal: [2016] EWHC 1016 (Ch).
- **Aabar Block Sarl v Maud [2015**] Whether petition should be further adjourned – applicable principles: [2015] EWHC 3681 (Ch).
- **Edgeworth Capital Luxembourg Sarl v Maud [2015]** Whether a guarantee claim had been extinguished as a consequence of the substantive provisions applicable in foreign insolvency proceedings: [2015] EWHC 3464 (Comm).
- **Aabar Block Sarl v Maud [2015]** Whether petition should be adjourned to allow for restructuring – applicable principles: [2015] EWHC 2220 (Ch)
- **Maud v Libyan Investment Authority [2015]** Whether creditor entitled to substituted as petitioner: [2015] EWHC 2093 (Ch).
- **Re Maud [2015]** Application to set aside a statutory demand: [2015] EWHC 1626 (Ch).

African Minerals Ltd [2015] Peter was instructed on behalf of the administrators of the (Bermudian) company in connection with the threatened sale by a Hong Kong security agent of the company's mining interests in Sierra Leone. Letters of request seeking assistance from the courts of Hong Kong were issued by the English court, after an urgent application for relief by the administrators.

Latvijas Krajbanka [2015] Acting for the liquidators of one of the biggest banking collapses in Latvia in connection with the impact of the Reorganisation and Winding Up of Credit Institutions Directive and fraud litigation against a Russian oligarch behind the bank.

Mount Capital Fund Ltd (Eastern Caribbean) [2015] Acting for the liquidators of a feeder fund in connection with statutory and common law claims to recover payments made to investors prior to the collapse of BLMIS.

Pan Ocean Co Ltd [2014] This case concerned difficult issues relating to ipso facto termination clauses in shipping contracts, which were arguably void under Korean law, pursuant to which the company was incorporated and where it was undergoing rehabilitation proceedings. The case gives rises to difficult cross-border issues. Peter was instructed on behalf of the security trustee for a syndicate of lenders: [2014] EWHC 2124 (Ch).

Amazing Global Technologies Ltd, Hall v Prudential Trustee Co Ltd (Eastern Caribbean) [2011] Peter acted for a security trustee – Prudential – on this successful application to strike out a claim against the trustee and receivers appointed by the court on the trustee's application. The action was struck out on merits and forum grounds.

HIH Casualty & General Insurance Ltd [2008] (House of Lords) One of first cases to come before the UK's highest court dealing with the nature and extent of the English's court's power and duty to assist foreign office-holders; here, at common law and under s 426. [2008] UKHL 21.

Sirius International Insurance Co (Publ) v FAI General Insurance Ltd [2004] (House of Lords) The House of Lords upheld the claims of a Swedish reinsurer against an insolvent Australian insurance company: [2004] UKHL 54.

T&N Ltd / Federal Mogul Inc (various jurisdictions) [2004 to 2008] Asbestos insolvencies involving numerous hearings before US and UK courts; courts' approach to judicial communications; proving in respect of foreign torts; whether claim in tort provable before damage; schemes of arrangement, comparators and third parties; rights of pension trustees; claims' handling under asbestos policy and insurance related issues; CVAs for asbestos claimants and others.

Cases include:

- **Re Federal-Mogul Aftermarket UK Ltd [2008]** The court determined that the supervisors of a CVA were bound to accept the pension scheme actuary's quantification of contingent liabilities arising out of the withdrawal of a number of companies from the relevant pension scheme: [2008] EWHC 1099 (Ch).
- **Re T&N Ltd [2006]** The court decided that its permission was not required for service outside the jurisdiction of notices of meetings to consider CVA proposals: [2006] EWHC 842 (Ch).
- **Re T&N Ltd [2005]** The English court determined that a settlement agreement would not breach the terms of a reinsurance contract: [2005] EWHC 2991 (Ch).
- **Re T&N Ltd [2005]** The English court determined a number of issues relating to the proper treatment of US asbestos claims, including as to the application of the PIL (MP) Act 1996, whether the claims would be governed by English law and, if exceptionally they were governed by US law, whether damages would be quantified by reference to English law: [2005] EWHC 2990 (Ch).
- **Re T&N Ltd [2005]** Directions were given to the administrators as to the status of asbestos claimants and in particular those whose claims were tortious – whether and if so in what circumstances were such claimants "creditors" for the purposes of schemes and CVAs, to what extent were their claims provable and, to the extent that they were not, whether there was breach of the HRA 1998: [2005] EWHC 2870 (Ch).
- **Re T&N Ltd [2004]** Whether or not the English court should enter into discussions with the US court on matters of controversy between the parties which might subsequently come before the English court for decision: [2004] EWHC 2878 (Ch).
- **Hearn / Champion Pensions Ltd v Bell [2004**] Directions given to the trustees of the Champion pension scheme as to the steps that they should take in relation to the US plan: [2004] EWHC 2803 (Ch).
- **Freakley v Centre Reinsurance International Ltd [2004]** Directions given as to the effect to the US plan so far as it affected insurance and reinsurance arrangement made by the company and whether the terms of the US plan were effective: [2004] EWHC 2740 (Ch).
- **Alexander Forbes Trustee Services Ltd v Jackson [2004]** Trustees of the T&N retirement benefit scheme directed to be at liberty to vote against and oppose the US plan: [2004] EWHC 2448 (Ch).
- **Re T&N Ltd [2004]** Directions sought by the administrators in circumstances where a US plan envisaged that the company would give effect to the plan by schemes and CVAs in the UK but where the administrators had formed the view that any such schemes or CVAs would be unfair and incompatible with UK insolvency and pensions law: [2004] EWHC 2361 (Ch).
- **Re T&N Ltd [2004]** Whether administrators could properly serve notice of withdrawal of the company from a retirement benefits scheme: [2004] EWHC 1680 (Ch).

Peter Arden KC

Memberships and publications

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