

## Trident Microsystems (Far East) Limited FSD 1 2012 (PCJ)

- 1 Trident Microsystems Inc. ("**TMI**") was a Delaware company whose shares were listed on NASDAQ. It was the ultimate holding company of the Trident Group ("**Group**"). TMI's primary asset was its shares in its wholly-owned subsidiary Trident Microsystems (Far East) Ltd ("**TMFE**") a Cayman Islands company.
- 2 The numerous operating, manufacturing, and distributing companies within the Group were all direct or indirect subsidiaries of TMFE, and they were carrying on business in the US and in various jurisdictions in Europe and Asia. The business of the Group was the development and sale of microchips and related software for use in home-entertainment systems. The Group did not manufacture its own products. Instead, the Group focused on research and development and the manufacturing process was carried out under licence by third parties. The Group as a whole employed approximately 1,100 people worldwide.
- 3 In addition to acting as an intermediate holding company, TMFE owned the large majority of the Group's intellectual property rights, the majority of its licence agreements with third-party manufacturers, was the contracting counterparty for third-party supply contracts, and provided treasury and administrative functions for the Group. TMFE had directors but no employees or premises, and contracted with other Group companies to provide services by and to TMFE. TMFE had substantial liabilities to third-party suppliers and to companies within the Group, including TMI.
- 4 In 2011 the financial position of the Group, and in particular TMFE and TMI, became increasingly distressed. By January 2012 TMFE had become cash-flow insolvent (but was thought to be balance-sheet solvent); TMI had also become cash-flow insolvent.
- 5 Prior to the commencement of insolvency proceedings, it was recognised that TMFE's assets and contractual rights and obligations would be key to any restructuring of the Group. Given the global nature of TMFE's assets and obligations, an automatic stay on proceedings against TMFE pursuant to a US Chapter 11 proceeding would only be sufficient to protect TMFE against unsecured creditors seeking to enforce their rights in relation to its US assets, against US unsecured creditors seeking to enforce their rights against its assets outside of the US, and (potentially) against unsecured creditors seeking to enforce their rights against assets located in jurisdictions that had adopted the Model Law. However, to protect against non-US unsecured creditors seeking to enforce their rights in other jurisdictions, a stay would be required in the Cayman Islands.
- 6 On 4 January 2012 TMFE and TMI filed jointly for Chapter 11 relief pursuant to the US Bankruptcy Code in the US Bankruptcy Court for the District of Delaware ("**Delaware Court**"). On the same day, TMFE filed a winding up petition and applied for the appointment of joint provisional liquidators ("**JPLs**") in the Grand Court ("**Cayman Court**"). On 11 January 2012, the Cayman Court appointed JPLs. Thereafter these two insolvency proceedings were then run in parallel with the benefit of an automatic stay on proceedings in each jurisdiction.

- 7 Due to the complexity of TMFE's business and its importance to the Group as a whole, the JPLs considered that it was important for TMFE's directors to remain fully engaged in the day-to-day running of TMFE (and through it, of TMFE's subsidiaries), to assist with the negotiations with potential purchasers of Group's business units, and implementing the eventual sale of those units, albeit subject to the overall supervision of the JPLs.
- 8 The Order appointing the JPLs made provision for the division of responsibilities between the JPLs and the directors. It provided that the directors could continue to operate the business of TMFE on a daily basis but that the JPLs nevertheless had a supervisory role and overall responsibility. It provided for regular meetings between the JPLs and the directors. That is, to the extent possible, the Order sought to replicate the debtor-in-possession provisions made by the Delaware Court in TMFE's Chapter 11 proceedings.
- 9 To ensure that TMFE's Cayman insolvency proceedings and its Chapter 11 proceedings were co-ordinated as closely as possible, both Courts were asked to approve a cross-border protocol. At a joint telephone hearing of the Cayman Court and the Delaware Court on 25 January 2012 both Courts approved a protocol.
- 10 The protocol set out the key issues where immediate co-ordination were required, for example:
- 10.1 Substantial sales of business units would have to be approved by each Court. On any application for the sale of substantial assets TMFE would first seek the approval of the Delaware Court and, if the Delaware Court approved the sale its approval would be conditional upon obtaining the Cayman Court's approval, whereupon the JPLs would then apply to the Cayman Court for its approval. The reason for giving initial priority to the Delaware Court was that more than half of the Group's patents and other registered IP assets were registered in the US in name of TMFE;
  - 10.2 The JPLs and TMFE/TMI would file reports with both the Cayman Court and the Delaware Court at regular intervals;
  - 10.3 Identical creditors' committees for TMFE were established in both proceedings;
  - 10.4 The JPLs would hold weekly conference calls with the creditors' committee;
  - 10.5 TMI, the JPLs and the directors agreed to meet on a weekly basis to discuss operations.
- The protocol would be kept under review and would be modified as necessary from time to time.
- 11 Four of the Group's business units were sold during the provisional liquidation. The procedure outline above was used in each case. The sales of the two larger business units were the subject of auctions (one with, and one without, a 'stalking horse' bidder), and the Delaware Court and Cayman Court were asked to approve both the bidding and auction process and the subsequent sales.

- 12 It was also necessary to give consideration to the process by which unsecured creditors would file their claims against TMFE. It was recognised that it would be unsatisfactory to require creditors to file claims in both TMFE's Chapter 11 proceedings and in the Cayman liquidation. Because the mandatory filing requirements in the Chapter 11 proceedings were more prescriptive in terms of the time by which claims must be filed and of the details required to be filed than the corresponding requirements in the Cayman liquidation, an application was made to both Courts to revise the protocol to permit creditors to file claims in the Chapter 11 proceeding and to treat such claims as having been filed in the Cayman liquidation. The application was granted by both Courts following a joint hearing on 8 June 2012.
- 13 It was expressly acknowledged in the revised protocol and before both Courts that although claims were being filed in both proceedings no adjudication process would be commenced. This was partly because as a matter of Cayman law and procedure it was unlikely to be appropriate for provisional liquidators (as opposed to official liquidators) to adjudicate on claims, i.e. as long as there was a prospect that TMFE might emerge from a provisional liquidation. It was also because it was acknowledged that difficult conflicts of law questions could arise in respect of the validity and priority of claims (especially with respect to the creditor claims against TMFE by other Group companies). It was accepted by both Courts that it would be more efficient to collate the information on TMFE's creditor claims at this stage and then, if and when it became necessary to adjudicate the claims, proposals could be made for that process and appropriate revisions made to the protocol.
- 14 As the asset sales progressed it became clear that it would not be possible to restructure TMFE so as to leave it with a functioning business (and thus emerge from provisional liquidation and Chapter 11), and therefore its remaining business units would have to be sold, and the proceeds distributed to its unsecured creditors. Accordingly, on 8 August 2012 the Cayman Court put TMFE into official liquidation. The Cayman Court appointed the JPLs as TMFE's joint official liquidators ("**JOLs**"). TMFE remained in Chapter 11 in Delaware.
- 15 A further joint telephone hearing took place at which the Delaware Court and the Cayman Court were asked to approve a revised protocol for the purpose of the official liquidation. This protocol reproduced the previous protocol for the purposes of the remaining sales of assets and claims filing. However, it did not deal with the manner by which claims would be adjudicated, challenges to adjudication of claims, or ranking of claims. It was intended that these would be dealt with at a later stage and would be subject to a joint application to both Courts to revise the protocol.
- 16 However, the JOLS, the directors of TMFE and TMI, the creditors' committees of TMFE and TMI, and the equity committee of TMI, subsequently agreed to a proposal by which creditor claims would be compromised pursuant to a plan of liquidation in the Chapter 11 proceedings and that the adjudication process would then take place to give effect to the terms of the plan and pay a dividend to TMFE's creditors.
- 17 The plan of liquidation proposed a 90% return to all of the unsecured, third-party creditors of TMFE. The plan was considered by the Cayman Court and the Delaware Court at a further joint telephone hearing in December 2013 where the Delaware Court confirmed the plan under the Bankruptcy Code and the Cayman Court permitted the official liquidators to compromise the creditor claims under the plan pursuant to section 110(2) and Part 1 of Schedule 3 of the Companies Law.

- 18 At the same hearing, the Cayman Court and the Delaware Court were requested to approve the final protocol for the purpose of implementing an adjudication procedure for creditor claims. Pursuant to the final protocol, the creditor claims against TMFE were to be adjudicated by the JOLs (i.e. the official liquidators would determine whether claims should be allowed or disallowed) while the assets, which were located in the US, would be distributed in accordance with the scheme of priorities set out in the Bankruptcy Code. It also provided that if the JOLs disallowed any creditor's claim, the creditor could exercise his statutory right under Cayman Islands law to challenge the JOLs' decision by an appeal to the Cayman Court but could not challenge it in the Delaware Court. This procedure would allow the JOLs to fulfil their statutory obligation to adjudicate claims and ensure that assets that were subject to the jurisdiction of the Delaware Court were not distributed other than in accordance with Bankruptcy Code priorities.
- 19 Both Courts approved the proposals. Since then, all the creditor claims against TMFE have been finally adjudicated, all the realisable assets of TMFE realised, and the proceeds distributed to creditors according to the priorities set out in the Plan.
- 20 There are still some administrative matters that need to be finalised in relation to the winding down and dissolution of subsidiaries of TMFE. Once these are complete, the JOLs will apply to the Cayman Court for the dissolution of TMFE and for a final decree in the Chapter 11 proceedings.