

THE HIGH COURT

2023 No. 139 COS

BETWEEN:

IN THE MATTER OF

BARRYROE OFFSHORE ENERGY PUBLIC LIMITED COMPANY

AND IN THE MATTER OF

PART 10 OF THE COMPANIES ACT 2014

EXPLANATORY MEMORANDUM FOR THE PROPOSALS FOR A SCHEME OF ARRANGEMENT

BETWEEN

**BARRYROE OFFSHORE ENERGY PUBLIC LIMITED COMPANY (IN EXAMINATION UNDER
PART 10 OF THE COMPANIES ACT 2014)**

AND

ITS RESPECTIVE MEMBERS AND CREDITORS

Dated 28 September 2023

KIERAN WALLACE

Examiner
Interpath Advisory
6 Fitzwilliam Square E
Dublin 2
D02 Y447

EXPLANATORY MEMORANDUM

1 INTRODUCTION

- 1.1 This is an Explanatory Memorandum in relation to Barryroe Offshore Energy Public Limited Company (in Examination under part 10 of the Companies Act 2014) (the **Company**) pursuant to Section 540(11) of the Companies Act 2014 (the Act).
- 1.2 By way of background, on 21 July 2023, a petition was presented to place the Company into Examinership. I was appointed Examiner of the Company on 31 July 2023 following confirmation by the High Court.
- 1.3 As required by the Companies Act 2014 (the “**Act**”), I have formulated proposals for a Scheme of Arrangement for the Company (the **Proposals**). I am also required by the Act to forward this Explanatory Memorandum to each member and creditor.
- 1.4 This Explanatory Memorandum provides a summary of the Proposals and their effect on the various classes of members and creditors of the Company and should be read in conjunction with the Proposals. In formulating the Proposals, I have attempted to treat each separate class of creditors on a fair and equitable basis having regard to the current trading position of the Company and the relative amounts which the Creditors would receive on a winding up.
- 1.5 Capitalised terms used but not defined in this Explanatory Memorandum shall have the same meaning ascribed to them as in the Proposals. In the event of any ambiguity or difference between the terms of this Explanatory Memorandum and the Proposals, the terms of the Proposals shall apply.

2 NOTICE OF MEETINGS OF THE MEMBERS AND CREDITORS, AND PROXIES

- 2.1 I also enclose notice and proxy forms for the relevant meetings for the class or classes of members or creditors, which you are entitled to attend. The meetings will be held on 24 October 2023 at the time and address set out in the notice.
- 2.2 I will act as Chairman of the meetings and you may, if you so wish, appoint me as your proxy. If so appointed, I will vote in favour of the Proposals unless otherwise instructed.
- 2.3 You can lodge your vote without physically attending the Meeting. If you are a member, you can do so by submitting the proxy form before 4.00pm on 23 October 2023 online at www.eproxyappointment.com or by post (to be received before 4.00pm on 23 October 2023) to Computershare, 3100 Lake Drive, Citywest Business Campus, Dublin 24, D24 AK82. If you are a creditor, you can vote by emailing a completed copy of one of the enclosed proxy forms before 4.00pm on 23 October 2023 to barryroe@interpathadvisory.com or by post (to be received before 4.00pm on 23 October 2023) to Interpath Advisory, 6 Fitzwilliam Square East, Dublin 2, D02 Y447. It is recommended that members and creditors vote in this manner, in advance of the meeting.

3 CREDITOR CLAIMS

- 3.1 I would like to draw your attention to the amount at which your claim is stated at Appendix 6 of the Proposals.
- 3.2 The Proposals contain a procedure applicable to parties wishing to make a claim which the Company did not, at the time the Proposals were formulated, accept or accept in full, whether or not such parties were listed in the appendices to the Proposals. If a party wishes to make such a claim, it is required to follow the procedures set out in the Proposals.

4 SUMMARY OF PROPOSALS

4.1 Subject to the approval of the Proposals, the Investor is making funds available to facilitate the payment of a dividend (as set out in greater detail below and in the Proposals) to certain classes of Creditors of the Company.

4.2 The proposals include, inter alia, the following provisions in respect of the Creditors of the Company:

4.2.1 The **Preferential Creditor** shall receive **100%** of its pre-petition debt in full and final settlement of the Company's total debt to the Preferential Creditor as stated in Appendix 6 of the Proposals. As such, the Preferential Creditor is not impaired by these Proposals.

4.2.2 The **Unsecured Creditors** shall receive **70%** of their pre-petition debts, as set out in respect of the Unsecured Creditors in Appendix 6 of the Proposals. As such, the Unsecured Creditors are impaired by the Proposals.

4.2.3 Any claim of the **Contingent Decommissioning Creditor** (whether quantified by agreement or upon the determination under the Expert Determination Process set out in clause 6 the Proposals) shall be paid in the amount of 1% of the amount so agreed or determined. As such, the Contingent Decommissioning Creditor is impaired by the Proposals.

5 CONSEQUENCES OF THE PROPOSALS

Dividends will be paid to Creditors in accordance with the terms of the Proposals and shall be in full and final settlement of all claims and entitlements of each Creditor against the Company as of the Petition Date.

6 KEY TERMS OF THE INVESTMENT

6.1 The Examiner has secured investment (the "**Investment**") from Lorsden (Jersey) Limited, a company incorporated in Jersey (registered number: 101680), whose registered office is at 2nd Floor, The Le Gallais Building, 54 Bath Street, St Helier, Jersey, JE1 1FW (the Investor). The Investor is the parent company of Vevan Unlimited Company ("**Vevan**"), which is currently the company's largest shareholder.

6.2 The Investor has agreed to meet the funding requirements of the Scheme of Arrangement and the working capital requirements of the Company.

6.3 On 28 September 2023, an investment agreement was entered into between (1) the Investor; (2) the Company; (3) the Examiner; and (4) Mason Hayes and Curran LLP (as escrow agent only) (the "**Investment Agreement**").

6.4 Investment

6.4.1 Pursuant to the terms of the Investment Agreement, it is agreed that the Investor will make the Investment available to the Company as follows:

- (i) By making available to the Company the Investor Subscription amount of €1,050,000 (the **Investor Subscription Monies**) in the following tranches (i) the Initial Funding of €800,000, lodged by the Investor in the Escrow Account on the date of the Investment Agreement, and (ii) €250,000 to be deposited by the Investor in the Escrow Account on and available in cleared funds not later than 4.00pm on the day preceding the date of the High Court hearing pursuant to Section 541 of the Companies Act by way of subscription for new shares at par, to be allotted to the Investor at Completion; and
- (ii) By making available to the Company, funding in the amount of €5,000,000 on a future date after the date on which the Proposals become binding on the Company and all of the Company's creditors and members in accordance with the provisions of the Act

(the “**Effective Date**”) on agreement of an appropriate business plan. This will be supplemented by substantial additional funds as required to invest in future business plan prospects.

6.5 The Deferred Loan

On 26 September 2023 the Investor advanced a loan (the “**Deferred Loan**”) of €300,000 (the “**Deferred Loan Monies**”) to the Company to enable the Company to fully explore the restructuring options available to it.

In the event that the High Court approves the Scheme, the Deferred Loan Monies shall be capitalised by way of applying them to the subscription for new shares at par. In the event that the Scheme is approved and the Deferred Loan is converted into Investor Shares, the Investor shall have no further recourse or right of recovery against the Company in respect of the Deferred Loan.

In the event that the High Court does not approve the Scheme on or before 6.00pm on the day on which the period of protection under Section 520 of the Act ceases to apply to the Company or 31 October 2023 or such future date as may be agreed between the Investor and the Examiner, whichever is earlier, the Investment Agreement is terminated. In the event of such termination:

- No interest is payable on the Deferred Loan for 12 months following the date on which it was drawn down and simple interest shall be payable at a rate of 12 per cent per year, thereafter; and
- If the Investment Agreement is terminated before the Deferred Loan is converted into shares and in the event that the Company is wound up, the repayment of any part of the Deferred Loan shall be deferred so that no part of it shall be repaid unless the Unsecured Creditors and the Contingent Decommissioning Creditor receive a dividend of 100 per cent on the debt due to them.

The Investor Subscription Monies together with the Deferred Loan Monies are referred to as the “**Subscription Monies**”.

6.6 Changes to Shareholding and Directorship of Company

6.6.1 As of the date of this Explanatory Memorandum, the Company has 10,326 shareholders (together “**Vevan**” and the “**Other Shareholders**”).

6.6.2 Pursuant to the terms of the Investment Agreement:

- (i) on the Effective Date, the Company shall issue to the Investor the new shares subscribed for using the Subscription Monies and register the Investor as the holder of such new shares in its register of members and deliver to the Investor a duly executed certificate in respect of such new shares;
- (ii) at any time in the 10 year period after the Effective Date, the Investor will allocate to the shareholders as appearing on the register of members of the Company as at the Petition Date, save for Vevan Unlimited Company (the “**Other Shareholders**”) 5% of any net after-tax profits realised by the Company from the Barryroe field either through its sale or operation (“**the Proposal**”).
- (iii) the Other Shareholders shall not be required to commit additional funds to participate in the Proposal. The documentation giving effect the Proposal will be prepared and distributed to Other Shareholders within 30 working days of the Effective Date.

6.6.3 Pursuant to the terms of the Investment Agreement, the current directors will be replaced on the board by new directors shortly after the Effective Date on a date to be agreed between the current directors and the Investor.

7 CONDITIONS TO COMPLETION OF INVESTMENT

7.1 Completion of the investment is conditional upon the cancellation of all of the issued, allotted and to be issued share capital of the Company in existence as at the Effective Date by order of the Court pursuant to section 541 and / or section 542 of the Act to be made on or around the Effective Date, as provided for in clause 5 of the Proposals ("**the Cancellation**").

7.2 Completion of the Investment is also conditional upon the Proposals being confirmed by order of the Court (**Confirmation Order**) in a final judicial determination pursuant to section 541 of the Companies Act (the **Confirmation Order Condition**).

8 FINANCIAL POSITION AND LIQUIDATION

A Statement of Assets and Liabilities (including contingent and prospective liabilities) of the Company as at the date of the Proposals is attached as Appendix 3 to the Proposals.

The Estimated Financial Outcome on a winding-up of the Company for each class of members and creditors of the Company is attached as Appendix 4 to the Proposals. The Estimated Financial Outcome on a winding up basis shows clearly that the Proposals would be more beneficial to creditors than a winding-up.

9 MATERIAL INTERESTS OF THE DIRECTORS

In accordance with section 540 (11) of the Act, please note that the effect of the Proposals on the interests of the directors is, save as set out in the Proposals, no different to the effect of the like interests of other persons.

10 IMPLEMENTATION

The Proposals contain specific terms for the implementation of the Scheme of Arrangement.

11 CONCLUSION

Please note that this Explanatory Memorandum is intended to be a summary of the Proposals only, for the convenience of Members and Creditors and is not intended to be legally binding or to be relied upon by Members and Creditors. Members and Creditors are therefore advised to read the Proposals in their entirety.

I am of the opinion that the Proposals are in the best interests of the Members and the Creditors of the Company and I recommend them to you for your approval.

KIERAN WALLACE
EXAMINER

Dated 28 September 2023

Dated 28 September 2023

THE HIGH COURT

2023 No. 139 COS

AND

**IN THE MATTER OF
THE COMPANIES ACT 2014**

AND

**IN THE MATTER OF
BARRYROE OFFSHORE ENERGY
PUBLIC LIMITED COMPANY AS A
RELATED COMPANY WITHIN THE
MEANING OF SECTION 517 AND
SECTION 2(10) OF THE
COMPANIES ACT 2014**

**EXPLANATORY MEMORANDUM
FOR THE PROPOSALS FOR A
SCHEME OF ARRANGEMENT**

BETWEEN

**BARRYROE OFFSHORE ENERGY
PUBLIC LIMITED COMPANY
(IN EXAMINATION
UNDER PART 10 OF THE
COMPANIES ACT 2014)**

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