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NORTH AMERICA/EUROPE

Precedent-Setting Restructuring of CORE Media Group

On April 29, 2016, 19 Entertainment Limited (“19 Entertainment”), a subsidiary of the CORE Media Group, is believed to have become the first English company to obtain recognition under the Cross-Border Insolvency Regulations 2006 (the “CBIRs”) of its U.S. chapter 11 filing as a foreign main proceeding. The CBIRs implement the UNCITRAL Model Law on Cross-Border Insolvency in Great Britain.

19 Entertainment obtained the recognition from the English court on the basis that its center of main interests (“COMI”) is located in the United States. Under the CBIRs, a foreign main proceeding must take place in the jurisdiction in which the debtor has its COMI, and there is a rebuttable presumption that the debtor’s registered office is the location of its COMI. Because 19 Entertainment’s registered office is located in England, Jeremy Cousins QC, sitting as Deputy Judge of the English High Court of

Justice, had to be presented with substantial evidence that the company’s COMI is nevertheless in the United States. Furthermore, that COMI evidence had to be objectively ascertainable by third parties (in essence, the evidence had to constitute information that was publicly available to 19 Entertainment Limited’s creditors).

The recognition of 19 Entertainment’s chapter 11 case became necessary as a matter of urgency after one of its unsecured creditors, Simon Fuller, served a statutory demand for unpaid debts due and owing and threatened to place the company into winding-up proceedings in England unless those debts were paid. In England, a creditor who is undisputedly owed £750 or more can serve a statutory demand on a debtor and, if the statutory demand remains unpaid after 21 days, it constitutes *prima facie* evidence that the company is insolvent and may be wound-up (i.e., liquidated) by the court. Serving a statutory demand is

therefore a tactic commonly deployed by creditors in England to extract payment from a company that wishes to avoid entering into formal insolvency proceedings.

19 Entertainment and its English subsidiaries were originally established by Mr. Fuller and are engaged in the business of owning, producing, developing, and commercially exploiting entertainment content, including the *American Idol* and *So You Think You Can Dance* television series. Although Mr. Fuller retired as CEO and director in 2010, he continued to provide services to 19 Entertainment under a consultancy agreement, and it was in respect of unpaid consultancy fees that Mr. Fuller served the statutory demand.

Once the 21 days had started to tick on the statutory demand, it was vital for the CORE Media Group, including 19 Entertainment, to file for chapter 11 protection. The chapter 11 filing took place on April 28, 2016. 19 Entertainment then applied for relief under the CBIRs to recognize its chapter 11 case as a foreign main proceeding and to obtain additional relief equivalent to the automatic stay in chapter 11, so that Mr. Fuller could not use his unpaid fees as leverage to disrupt the group's chapter 11 proceedings or place 19 Entertainment into liquidation in

the UK. The discretionary relief granted by the English court pursuant to the CBIRs therefore included stays on:

- the enforcement of security over 19 Entertainment's property
- repossession of goods in 19 Entertainment's possession under a hire-purchase agreement
- instituting or continuing any legal process (including arbitrations, other legal proceedings, execution, distress, diligence and other forms of legal process) against 19 Entertainment
- appointing an administrative receiver or administrator in respect of 19 Entertainment
- presenting or proceeding with any winding-up petition in respect of 19 Entertainment

The chapter 11 protection gave 19 Entertainment and the wider CORE Media Group the breathing space necessary to implement a holistic restructuring and preserve value for creditors, rather than a piecemeal liquidation. On October 17, 2016, a chapter 11 plan of reorganization was successfully implemented, pursuant to which the CORE Media Group was significantly de-levered and its lenders took control of the equity.

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