

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 74 OF 2012

IN THE MATTER OF SECTIONS OF THE COMPANIES LAW (2011 REVISION)

AND

IN THE MATTER OF ERC IRELAND PREFERRED EQUITY LIMITED



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WINDING UP PETITION

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To the Grand Court:

The humble petition of ERC Ireland Preferred Equity Limited shows that:

1. ERC Ireland Preferred Equity Limited (the "**Company**") was incorporated on 17 February 2006 with registration number 162664. It is an exempted company under the laws of the Cayman Islands.
2. The registered office of the Company is situated at P.O. Box 10240 GT, 3<sup>rd</sup> Floor Queensgate House, 113 South Church Street, George Town, Grand Cayman.
3. The authorised share capital of the Company is €500,000,000 divided into 50,000,000,000 ordinary shares with a nominal value of €0.01 each.
4. The Company has 214,306,430 ordinary shares in issue, which shares are fully paid or credited as fully paid and are held by ERC Ireland Finance Limited as the sole shareholder.
5. The objects for which the Company was established are unrestricted and as more particularly set out in its Memorandum of Association.

6. The Company has insufficient assets to be able to pay its debts. The Company is also insolvent on a balance sheet basis. In the premises, the Company is insolvent and should be wound up and/or it is just and equitable that the Company be wound up.

### **Background**

7. The Company and related Cayman companies are members of the circom Group (the “**Group**”) which contains 45 companies. The Group is the leading provider of fixed-line telecommunications services in Ireland with approximately 2.4 million fixed-line telephone access channels in service as at 30 June 2011. The Group also operates a mobile division which includes Meteor Mobile Communications Limited (“**Meteor**”) and emobile. The Group is the third largest mobile operator in Ireland in terms of subscriber numbers with approximately 20% market share. The Group operates predominantly in Ireland but also has certain operations in the UK, Luxembourg and the USA. The Group’s holding companies are based in the Cayman Islands.
8. The Group has almost 5,500 employees. The main operating companies in the Group are Meteor and eircom Limited (“**eircom**”) which together generate approximately 90% of the Group’s turnover. The Group is the principal provider of fixed line telecommunications services in Ireland with approximately 68% market share. The Group is also the leading provider of fixed line broadband services with approximately 53% fixed line market share and approximately 510,000 retail customers as of 30 June 2011. In addition the Group owns and operates Ireland’s wire telecommunications infrastructural network. A number of other providers access the Group’s infrastructure in order to provide competing services to their customers. In particular, the Group is the leading provider of copper wire communications for the so-called “last mile” to customer’s homes and premises and substantially all telecommunications apparatus in Ireland including the Group’s competitors rely to some extent on access to this network. The Group’s fixed line customer base at March 2011 comprised 912,000 consumers,

129,000 small and medium businesses, 240 of Ireland's largest private sector companies and a multitude of contracts with various government departments and agencies (including the HSE, Garda Siochana, the Department of Social Protection and the Revenue Commissioners). The Group also supplies large corporate and governmental bodies with information and communication technology services ranging from Public Switch Telephone Network fixed lines to next generation services such as virtual private networks and hosted and managed network services.

9. The Group was originally owned and operated by the Department of Posts and Telegraphs in Ireland. Following a governmental review in the 1970s a decision was taken that the Post and Telecommunications Operations be separated from the Department of Posts and Telegraphs. An Post and Board Telecom Eireann were set up as commercial state owned companies and in 1984 Board Telecom Eireann took over the National Telecommunications System in Ireland. In July 1999 the Irish Government privatised An Post and Board Telecom Eireann and deregulated the industry. An Post and Board Telecom Eireann changed its name to eircom and was floated on the Irish, London and New York stock exchanges by way of an initial public offering. At the time of the flotation, the net debt (i.e. total debt less cash at bank) in the Group was less than €500 million.
10. In November 2001, eircom plc was acquired by the Valentia consortium for approximately €3 billion. eircom plc delisted from the Irish, London and New York stock exchanges and became a wholly owned subsidiary of Valentia Telecommunications Limited. This acquisition was funded by way of loans of €2.2 billion and equity of approximately €0.8 billion. As a result, the bank debt in the Group at 31 March 2000 stood at approximately €2.1 billion notwithstanding the sale in 2001 of Eircell, the Group's mobile business, to Vodafone plc.
11. The Group completed a second Initial Public Offering in March 2004 when eircom Group plc, a company incorporated in England, was floated on the Irish and London stock exchanges. The net debt of the Group on 31 March 2004 was

approximately €1.96 billion. In December 2005 the Group re-entered the mobile communications market through the acquisition of Meteor Mobile Communications Limited from Western Wireless for approximately €412 million.

12. In August 2006 the Group was acquired by BCM Ireland Holdings Limited a subsidiary of Babcock & Brown Capital Limited, an Australian investment fund listed on the Australian Stock Exchange, which was subsequently renamed eircom Holdings Limited in 2009. Babcock & Brown paid approximately €2.3 billion for the shares in eircom Group plc and in addition repaid the existing loans and convertible preference shares of the Group totalling approximately €2.5 billion.
13. In January 2010 the Group was acquired by Emerald Communications (Cayman) SPC (“**ECC**”), a company controlled by Singapore Telecommunications (“**STT**”) and then eircom ESOP Trustee Limited (“**ESOP**”). On the acquisition of the Group by STT and ESOP, the Group was taken private again and delisted from the Australian Stock Exchange. The current owners of the Group are STT and the Employee Share Ownership Trust. (“**ESOT**”). STT and the ESOT’s ownership is 65/35% through Emerald Communications (Singapore) Pte Limited on STT’s behalf and ESOP on ESOT’s behalf.
14. The key operating companies in the Group are eircom, Meteor and Irish Telecommunications Investments Ltd (“**ITI**”).

#### **Indebtedness of the Cayman holding companies**

15. There are three key Cayman holding companies in the Group in respect of which winding up petitions have been presented:
  - (a) The Company - the issuer of PIK notes due in 2017 issued by the Company pursuant to an indenture dated 24 November 2006 between, among others, the Company, The Bank of New York as Trustee, Registrar, Transfer Agent, Principal Paying Agent and Calculation Agent and The Bank of New York (Luxembourg) S.A. as Luxembourg Paying Agent and Transfer Agent (the “**PIK Indenture**”);

- (b) ERC Ireland Holdings Limited (“**ERCIH**”) - the original borrower of the senior debt pursuant to a Senior Facilities Agreement dated 22 May 2006 (as amended pursuant to an amendment and restatement agreement dated 16 August 2006 and as further amended pursuant to three amendment agreements dated 3 April 2007, 20 May 2007 and 24 June 2008) between, among others, ERCIH, the various borrowers and guarantors named therein and J.P. Morgan Europe Limited as Agent and Security Trustee (the “**SFA**”); and
  - (c) ERC Ireland Finance Limited (“**ERCIF**”) - the issuer of Floating Rate Notes (“**FRNs**”) due in 2016 pursuant to an indenture dated 18 August 2006 between, among others, ERCIF, The Bank of New York as Trustee, Registrar, Transfer Agent, Principal Paying Agent and Calculation Agent and J.P. Morgan Europe Limited as Security Agent (the “**FRN Indenture**”).
16. The Company is 100% beneficial owner of ERCIF. The Company itself is owned by ERC Ireland Equity SPC.
17. The Group’s debt is subject to the terms of an intercreditor agreement dated 22 May 2006 (as amended pursuant to an amendment and restatement agreement dated 16 August 2006 and as further amended pursuant to an amendment agreement dated 1 September 2006) between, among others, ERCIH, ERCIF, the Senior Lenders (as defined therein) and J.P. Morgan Europe Limited as Senior Agent and Security Trustee (the “**ICA**”).
18. The Group owes €4.08 billion to its financial creditors and cannot generate sufficient revenues to service what it owes. The Group’s existing financing arrangements include:
- (a) the SFA providing for the following facilities (the “**Senior Facilities**”):
    - (i) **Facility A:** a euro-denominated term loan of originally up to €650 million which amortises every three months and matures on

30 September 2013. As at the date of this Petition, Facility A has been fully drawn and the principal amount outstanding is approximately €272 million;

- (ii) **Facility B:** a euro-denominated term loan of originally up to €1,250 million which matures with a bullet repayment on 30 September 2014. Facility B is fully drawn. As at 30 June 2011, a total of €22 million had been repaid in respect of Facility B;
  - (iii) **Facility C:** a euro-denominated term loan of originally up to €1,250 million which matures with a bullet repayment on 30 September 2015. Facility C is fully drawn. As at 30 June 2011, a total of €21 million had been repaid in respect of Facility C;
  - (iv) **Facility D:** a euro-denominated term loan of originally up to €350 million which matures with a bullet repayment on 31 March 2016. Facility D is fully drawn;
  - (v) **Capex Facility:** a euro-denominated capital expenditure facility in an aggregate amount of up to €200 million. The Capex Facility was not drawn and with effect from 17 August 2010 the Capex Facility is no longer applicable;
  - (vi) **Revolving Facility:** a multicurrency revolving credit facility of originally up to €150 million of which approximately €31 million has been utilised at 30 June 2011. Under the terms of the waiver agreement agreed with the Group's Senior Lenders on 15 September 2011, the Group is restricted from issuing further utilisation requests in respect of the Revolving Facility for the duration of the waiver.
- (b) an ancillary facility provided to eircom and ITI by Allied Irish Banks plc in the form of gross/net overdraft facilities. The aggregate principal amount available to eircom and ITI from these overdraft facilities as of 30

June 2011 was approximately €3.5 million, £0.5 million and US\$0.5 million respectively. Under the terms of the waiver agreement agreed with the Group's Senior Lenders on 15 September 2011, the Group has agreed not to issue any utilisation request in respect of an ancillary facility for the duration of the period of the waiver;

- (c) €350 million of FRN Notes issued by ERCIF pursuant to the FRN Indenture. The FRN Notes will mature on 18 August 2016. As at 16 April 2012 total FRN Notes in issue amounted to €350 million. The proceeds of the FRN Notes were loaned by the Company to ERCIH by way of intercompany loan (the "**Proceeds Loan**"). The FRN Notes are structurally and contractually subordinated to the Senior Facilities but benefit from guarantees from those Group companies that have also guaranteed the Senior Facilities – eircom, Meteor and ITI. The FRN Notes are secured by a single share pledge granted by the Company over its shares in ERCIH and a first-priority assignment by way of security over the Proceeds Loan;
- (d) €425 million floating rate senior PIK notes issued by ERCIPE, a wholly owned subsidiary of ERC Ireland Equity SPC and 100% parent of ERCIF, pursuant to the PIK Indenture (the "**PIK Notes**"). The PIK Notes will mature on 15 February 2017. As at 16 April 2012 total PIK Notes in issue amounted to €699 million. The PIK Notes are structurally subordinated to the Senior Facilities and the FRN Notes and do not benefit from guarantees or security from the Group; and
- (e) an €85 million term loan facility provided to the Group's joint venture, Tetra Ireland Communications Limited ("**Tetra**") which has which has been fully drawn down as at 30 June 2011. This facility is only available to finance the activities of Tetra. Repayments to 30 June 2011 total approximately €9.5 million and the amount outstanding at 30 June 2011 is €75.5 million.

19. The borrowers in respect of the first lien debt (being the debt under Facility A, Facility B, Facility C, the Capex Facility and the Revolving Facility) and second lien debt (being the debt under Facility D) are ERCIH and ERCL. The first lien debt and second lien debt has been provided by a syndicate of over 200 international banks and a variety of funds. The FRN and PIK notes are largely held by institutional investors across the globe.
20. The PIK notes are due in 2017. The PIK holders are structurally and contractually subordinated to the senior debt and the FRNs. The PIK debt is unsecured. ERCIPE does not trade and has no other material liabilities other than the PIK debt. Interest on the PIK debt is rolled up and added to the principal amount of the PIK debt at the end of each interest period under the PIK indenture (i.e. it is not cash pay interest). The PIK note holders have threatened to present a winding up petition against ERCIPE.
21. The Group is over-leveraged and has lost market share in both the fixed-line and mobile markets as a result of the economic downturn and stiffer competition. These financial circumstances prompted the Group's management to appoint Gleacher Shacklock ("**Gleacher**") as financial advisers in June 2010.
22. In July 2011, the Group recognized a Co-Ordinating Committee representing a group of lenders under the Senior Facilities. The committee currently only includes holders of first lien debt. The current members of the Co-Ordinating Committee are Alcentra, Avoca, Deutsche Bank, GSO, Harbourmaster and SMBC (the "**First Lien Committee**"). Following a vote of the Senior Lender syndicate, the initiative of certain second lien lenders to join the group was rejected. The First Lien Committee together hold approximately 28% of the first lien debt.
23. Certain second lien lenders formed an ad hoc committee (the "**Second Lien Ad Hoc Committee**"). The First Lien Committee has been formally appointed by the Group but the Second Lien Ad Hoc Committee has not.

24. The Company itself does not trade and has no other material liabilities other than its obligations under the FRN Indenture, which it cannot meet. It is also insolvent on a balance sheet basis. The Company's total assets are €9,996. The Company's total liabilities are €706,408,764. Accordingly, there is a *prima facie* case that the Company cannot pay its debts as they fall due.

#### **Grounds for the petition**

25. Of late, the Group's revenues have been declining. The principal reasons for this decline include:
- (a) **Economic downturn** - the general economic slowdown has and is causing people to use their phones less.
  - (b) **Fixed line to mobile migration** – more households are cancelling fixed line connections and relying solely on mobile phones, which is impacting in a significantly negative way on the Group's revenues.
  - (c) **Serious inroads are being made by competitors** – UPC are the Group's largest fixed line (voice and mobile) competitor and through a combination of fibre technology and aggressive marketing are significantly increasing their market share at the Group's expense.
  - (d) **Regulatory constraints** – ComReg have imposed a number of onerous obligations on the Group including, for example, the imposition of fixed pricing for eircom's wholesale activities and universal service obligations.
26. However, the most significant difficulty faced by the Group is the level of the historic financial debt burden. Accordingly a comprehensive debt restructuring is required. The Group's revenue has been falling of late and the Group breached a technical covenant under the SFA as the ratio of debt to EBITDA fell outside agreed parameters on 30 June 2011. Unless "cured" this would allow the Group's secured creditors to accelerate the entire secured debt and seek immediate repayment thereof. The Senior Lenders agreed to waive their enforcement rights

in respect of this covenant breach for a period of three months up to 15 December 2011 in return for certain payments. In December 2011 the senior lenders granted an extension to this waiver until 31 January 2012 in consideration for a payment by the Group to the Senior Lenders. In January 2012, the Senior Lenders granted a further extension to the waiver until 31 March 2012 in consideration for a further payment and covenants relating to the provision of certain information to the Senior Lenders.

27. On 28 March 2012, the Senior Lenders to the Group instructed the facility agent under the SFA to terminate the waiver described above. An acceleration notice was served on the Company (the principal borrower under the SFA) which demanded immediate repayment of all amounts due under the first lien debt. Following on from ERCIH and ERCL's inability to meet that demand, demand was made of eircm, Meteor and ITI in respect of their guarantees which they also cannot meet.
28. Despite falling revenues the Group's trading continues to create significant positive cash-flow and EBITDA. A restructuring proposal has therefore been made by the majority in number and value of the first lien lenders, which has been accepted by the majority in number and value of the second lien lenders. That proposal involves a reduction in First Lien debt of €407 million and the writing off of 90% of the Second Lien debt and of 100% of the FRN guarantee liability. The directors of Eircm, Meteor and ITI believe that the proposal can form the basis for a scheme of arrangement and would permit their survival as going concerns.
29. As set out in the foregoing paragraphs:
  - (a) the Company does not trade;
  - (b) the Company has no assets save for its shareholding in ERCIH;
  - (c) the Company is unable to pay its debts without financial assistance from its subsidiaries;

- (d) the Company is unable to meet its obligations under the FRN Indenture and is balance sheet insolvent.
- (e) There is a very real risk that enforcement proceedings will be brought against the Company.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Company be wound up in accordance with the Companies Law (2011 Revision).
2. Tammy Fu of Zolfo Cooper Cayman Islands, P.O. Box 1102, 4<sup>th</sup> Floor, Building 3, Cayman Financial Centre, George Town, Grand Cayman and Alastair Beveridge of Zolfo Cooper LLP, 10 Fleet Place, London EC4M 7RB, United Kingdom be appointed as the joint official liquidators (“**JOLs**”) of the Company with power to act jointly and severally.
3. The JOLs shall not be required to give security for their appointment.
4. The JOLs’ remuneration and expenses be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioner’s Regulations 2008 (as amended) and CWR O.20.
5. The JOLs be authorised to take such steps as may be necessary or expedient for the protection of the Company’s assets, and for that purpose may exercise any of the powers conferred on them by the Court pursuant to section 110(2) and Parts I and II of the Third Schedule of the Companies Law (2011 Revision) without further sanction of the Court or otherwise as the Court may direct.
6. The costs of this Petition shall be paid out of the assets of the Company, as an expense of the liquidation, to be taxed if not agreed.
7. The JOLs be at liberty to appoint counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as

they may think fit and to remunerate them out of the assets of the Company;

8. Such further or other relief be granted as the Court deems appropriate.

**DATED** this 27<sup>th</sup> day of April 2012

  
**HARNEY WESTWOOD & RIEGELS**

**NOTE:** This Petition is not intended to be served on any party.

This Petition was presented by Harney Westwood & Riegels, attorneys for the Petitioner, whose address for service is 3<sup>rd</sup> Floor, Queensgate House, 113 South Church Street, P.O. Box 10240, George Town, Grand Cayman KY1-1002, Cayman Islands (**Ref: MKM/042730.0001**).

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on \_\_\_\_\_ 2012 at \_\_\_\_\_.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.