

TEAM Treuhand GmbH: Preliminary analysis of the resolution subjects proposed by 3W Power S.A. for voting without holding a meeting from 12 to 14 December 2016

- Protective shield proceedings in self-administration for AEG Power Solutions GmbH judicially approved
- TEAM Treuhand GmbH gives bondholders further information on the resolution proposals to be voted on without a meeting being held

Berlin, 12 December 2016. On 22 November 2016, 3W Power S.A., Luxembourg, listed on the general standard of the Frankfurt Stock Exchange (ISIN LU1072910919 / WKN A114Z9), has applied for protective shield proceedings (*Schutzschirmverfahren*) for its loss-making subsidiary AEG Power Solutions GmbH based in Warstein-Belecke, Germany. AEG Power Solutions GmbH is a guarantor for the repayment of a bond 2014/2019 (ISIN DE000A1ZJZB9 / WKN A1ZJZB) issued by 3W Power S.A. (the “**2014/2019 Bond**”). This application was approved by the competent local court of Arnsberg on 22 November 2016. Dr Rainer Eckert from Eckert Rechtsanwälte was appointed as court-appointed custodian.

Under the terms of the bond (the “**Terms and Conditions**”), TEAM Treuhand GmbH is the common representative for the bondholders (the “**Common Representative**”). The insolvency court of Arnsberg, Germany, has therefore appointed TEAM Treuhand GmbH as a member of the creditor committee on behalf of the bond-holders.

Protective shield proceedings under German law are a special form of insolvency proceedings. They enable the restructuring of a business under court supervision which is at the time of the application not insolvent. The management remains in control as a self-administrator, but is supervised by a court-appointed custodian for purposes of creditor protection. In addition, the court has appointed a creditor committee which also has supervisory tasks and works closely with the custodian.

In light of the protective shield proceedings at AEG Power Solutions GmbH, on 25 November 2016 3W Power S.A. called on the bondholders of the 2014/2019 Bond (“**Bondholders**”) to cast their votes without a meeting being held. We refer to the subjects proposed for resolution by 3W Power S.A. in the Federal Gazette on 25 November 2016 (“**Resolution Proposal**”). TEAM Treuhand GmbH is holding intensive talks with all those involved and will rigorously audit and support the reorganisation efforts in the interests of the Bondholders. The current status of the proceedings and the information available to TEAM Treuhand GmbH only permit a very provisional appraisal of the proposed resolution subjects. TEAM Treuhand GmbH hereby gives the Bondholders certain background information on the current situation. It advises the Bondholders to gather comprehensive information before the vote.

Legal and financial background

On 22 November 2016, 3W Power S.A. applied for protective shield proceedings under self-administration for its lossmaking subsidiary AEG Power Solutions GmbH. This application was approved by the competent local court of Arnsberg on the same day. In addition, the court has appointed a creditor committee. AEG Power Solutions GmbH operates one of the five production plants of the AEG Power Solutions Group. The German subsidiary is to be further reorganised within the protective shield proceedings. The aim is to make the subsidiary leaner, boost profitability and restructure assets and liabilities. The protective shield proceedings apply only to the German subsidiary. The business activities of AEG Power Solutions are to continue as normal. The appointed creditor committee of which the Common Representative of the 2014/2019 Bond, TEAM Treuhand GmbH, is a member follows the development closely.

The protective shield proceedings for AEG Power Solutions GmbH has to be seen as part of the overall restructuring of the 3W Power Solutions Group as a whole. In light of this, 3W Power S.A. has decided to invite the Bondholders to vote without holding a meeting and ask them to support the protective shield proceedings and the concentration of AEG Power Solutions Group on its core business by (i) deciding on the capitalisation and thus deferral of all future interest payments until the end of the term of the 2014/2019 Bonds, (ii) granting additional flexibility with regard to allowing the take-up of new financial resources, and (iii) deciding on other adjustments.

On 23 November 2016, 3W Power S.A. announced that an agreement had been reached in principle on the terms for the take-up of new finance. The financial resources are to be a revolving credit facility of €5.5 million at the level of 3W Power S.A. and debtor-in-possession (DIP) facility of €9.5 million at the level of AEG Power Solutions GmbH. Interest of 9.5% is to be charged on the financing, which is to be collateralised with assets of the group. It is to be provided by existing stakeholders. The financial resources are to be used to support the reorganisation of AEG Power Solutions GmbH, which is in protective shield proceedings.

As AEG Power Solutions GmbH, which is in protective shield proceedings, is a major subsidiary of 3W Power S.A., serious consequences of the protective shield proceedings for the Bondholders cannot be ruled out. In a corporate group there are normally close connections between the group companies, such as financing and trade relationships. In such set-ups, it cannot be ruled out that the insolvency of a major subsidiary can also lead to a crisis at other subsidiaries. In light of this, the stabilisation, restructuring and reorganisation of AEG Power Solutions GmbH is to be supported in principle. The Bondholders would contribute to the reorganisation by adopting the requested resolution to allow in particular for the take-up of the financial resources required for the reorganisation. However, the proposed resolution involves considerable drawbacks, as

the interest owed is to be deferred to the end of the term and the collateral provided for the Bondholders is diluted. As a fee for such deferral and capitalization of the interest the Bondholders shall, according to the Resolution Proposal, receive a one-time payment of 4% of the principle amount of the bond at the end of its term.

So far, the Common Representative does not have enough information on the possible impact of the protective shield proceedings on the level of AEG Power Solutions GmbH on the group as a whole and thus on 3W Power S.A. We assume that 3W Power S.A. will be unable to settle the receivables from the 2014/2019 Bond if there is a possible repayment. In light of this, rejecting the Resolution Proposal entails considerable risks, especially since there is not yet enough information to check the value and enforceability of the collateral provided to the Bondholders.

Analysis of the subjects of the resolutions

The subjects proposed for resolution are, in particular, a partial amendment to the Terms and Conditions and certain authorisations of the Common Representative. We refer to the exact wording of the Resolution Proposal by 3W Power S.A. in the Federal Gazette on 25 November 2016 (“Resolution Proposal”).

- **Amendments of the interest rate.** Currently the Terms and Conditions specify that the interest rate on the 2014/2019 Bond will rise annually, from 4% p.a. in the first year of the term, by two percentage points a year to 12% in the fifth year of the term. For the current third year of the term, i.e. in the terminology used in the Terms and Conditions, for the 5th and 6th half-yearly interest period, an interest rate of 8% p.a. was thus specified. This interest rate is now to be amended according to the Resolution Proposal so that for the 5th interest period, 4% interest is to be paid (not per annum but for the 5th half-yearly interest period) and for the 6th interest period, 8% interest is to be paid (again, not per annum but for the 6th half-yearly interest period). As a result, for the full third year of the term, the interest rate is to be raised from 8% to 12%. A corresponding increase in the interest rate by 4 percentage points for the current interest period on the €14 million convertible bond 2015/2020 was proposed to the creditors by 3W Power S.A. as issuer.
- **Deferral of interest payment.** So far, the Terms and Conditions have specified that the interest be paid half-yearly in arrears. According to the proposed amendment, from 28 February 2017 as the next interest payment date, a deferral of all interest payments should take place. The interest is to be capitalised instead, i.e. added to the principle amount in each case, and paid at the end of the term. Due to the capitalisation of interest, the issuer would be required to pay compound interest, which is problematic under German law.

- Option of further Securable Financial Indebtedness.** The Terms and Conditions already allow the issuer or its subsidiaries to take on “Securable Financial Indebtedness”, meaning working capital facilities with a term of twelve months and a volume of up to €20 million. The Terms and Conditions allowed for collateral security to be provided for this Securable Financial Indebtedness. The Resolution Proposal now specifies that the Securable Financial Indebtedness should also include an debtor-in-possession (DIP) facility to be granted in the insolvency proceedings of AEG Power Solutions GmbH. A term of up to three years is also to be permitted. In addition, according to the Resolution Proposal, the option of securing the Securable Financial Indebtedness with priority over the receivables from the 2014/2019 Bond should be allowed. In this case, the Bondholders and their security, such as the guarantees provided in their favour by certain subsidiaries, would be subordinated to the creditors from the Securable Financial Indebtedness. In a future security case, the existing securities could be considerably undermined. The provision of “Additional Security” is to be permitted, although these should primarily serve to secure claims from Securable Financial Indebtedness, but also be available to the Bondholders on a subordinate basis. The corresponding arrangements are to be implemented in an intercreditor agreement or an amended security trust agreement. It remains to be reviewed whether provision of Additional Security for the Bondholders is possible in a legally secure manner.
- Waiver of termination rights.** The Terms and Conditions specify certain termination rights, especially under Sec. 8(a)(i) Variant 2 (“the Issuer [...] fails to provide interest within 30 days from the relevant due date”), under Sec. 8(a)(ii) (“the Guarantors fails to pay amounts payable under the relevant guarantees within 30 days after the relevant due date”) or under Sec. 8(a)(v) (“the Issuer or AEG Power or a Major Subsidiary states in writing that it is unable to pay its debts as they become due (*Cessation of payment*)”), which would allow the Bondholders currently to terminate due to the protective shield proceedings or a possible non-payment of interest on the 2014/2019 Bond on 28 February 2017. The Resolution Proposal specifies that the Bondholders, especially with regard to the resolutions to be passed by the creditors’ meeting on the amendments to the Terms and Conditions and the protective shield proceedings at AEG Power Solutions GmbH, waive these and any statutory termination rights, for example due to a deterioration of its financial state. The waiver of termination rights also applies in the event of a reduction in the level of liability from the guarantee provided by AEG Power Solutions GmbH resulting from the protective shield proceedings.
- Authorisation of the Common Representative.** According to the Terms and Conditions, the Common Representative has the tasks and powers granted to it by law or the Bondholders by majority vote. According to the Resolution Proposal, the Common Representative is to be granted extensive powers for the purpose of

enabling and facilitating the carrying out and execution of the resolution by the Bondholders, in addition to its statutory rights. In particular, it is to be authorised and given power of attorney to represent the Bondholders in all measures, declarations and resolutions if these are necessary or expedient to implement and execute the resolution of the Bondholders and the conclusion, fulfilment and carrying out of the measures provided for therein. This covers, for example, submitting standstill declarations, waiving termination rights, cancelling previously declared terminations, instructing the security trustee and having sole authorisation to assert the rights of the Bondholders from the guarantee submitted by AEG Power Solutions GmbH in the insolvency proceedings over the assets of AEG Power Solutions GmbH. In connection with the above authorisations and powers of attorney of the Common Representative, the Bondholders are not authorised to independently assert their rights. The Common Representative is also to be instructed, authorised and given power of attorney to amend, supplement and adapt the security trust agreement, the guarantees, to negotiate the contracts underlying the transaction securities and the intercreditor agreement and to conclude them with effect for and against all Bondholders.

- **Condition Subsequent.** The resolution shall be under the condition subsequent that the Common Representative notifies the issuer of the occurrence of certain events and of him not having received an instruction to the contrary from Bondholders representing at least one quarter of the outstanding nominal amount of the 2014/2016 Bond. Among such events are in particular that the insolvency plan submitted in the protective shield proceedings is not accepted, that the creditors of the €14 million convertible bond do not agree to the waivers and amendments proposed to them and that by 15 January 2017 the general agreement with the lenders regarding a financing in the amount of at least € 15 million has not been implemented through final and binding contracts.

Overview of the next steps

The vote held without a meeting, to take place in the period between 12 and 14 December 2016 before the notary Dr Christiane Mühe, with official residence in Frankfurt am Main, only has a quorum if the creditors taking part, i.e. the creditors taking part themselves or represented by authorised representatives, represent at least half of the outstanding bond. To be valid, the Resolution Proposal must be passed by a majority of at least 75% of the participating voting rights (qualified majority).

If it is established during the vote held without a meeting that a quorum is not met, a second meeting can be convened to pass a resolution once again. The second meeting has a quorum, although resolutions require a qualified majority to be valid, when those present represent at least 25% of the outstanding debt securities.

Outlook

The current status of the proceedings and the information available to TEAM Treuhand GmbH do not yet allow for any voting recommendation to be made on the proposed resolution subjects. TEAM Treuhand GmbH does not assume that the vote held without a meeting within the period 12 to 14 December 2016 will have a quorum. At the latest by the time of the second meeting to be scheduled, TEAM Treuhand GmbH will publish further information and potentially a voting recommendation.

Disclaimer

This document is solely to inform the Bondholders of the €50 million bond of 3W Power S.A., Luxembourg.

Details about the operations, assets, earnings and financial situation of 3W Power S.A. and its associated enterprises and about the restructuring of AEG Power Solutions GmbH have not been reviewed by the Common Representative as to their accuracy or completeness. The Common Representative assumes no liability as to their accuracy or completeness. Insofar as this document contains details regarding economic outlook, the Common Representative assumes no liability for their actual occurrence.

The Common Representative's liability is limited to wilful intent and gross negligence. The liability amount for gross negligence is limited to ten times its annual remuneration.

The Bondholders are advised to gather comprehensive information themselves and if necessary seek legal, tax and financial advice.

Contact:

TEAM Treuhand GmbH
Charlottenstraße 57
10117 Berlin
Email: tth-3wpower@noerr.com