

Clarifications for 2022 Fletcher Moot Problem

1. Does the Model Law on Enterprise Groups form part of the scope of this problem?

No.

2. Did Wonderphone communicate to Geldbank, its creditors, and the public that it was moving its books and records and directors to Mercuria?

This information is not part of the record available to the Nuzilian court.

3. Was Wonderphone obliged to have informed Geldbank that it was moving its books and records and directors to Mercuria?

This information is not part of the record available to the Nuzilian court. Wonderphone was contractually prohibited from moving its COMI or registered office without Geldbank's express written consent.

4. Did Geldbank have any knowledge that Wonderphone's operations were moving to Mercuria?

This information is not part of the record available to the Nuzilian court. It can be assumed that Geldbank did not give express written consent to Wonderphone moving its COMI or registered office.

5. Are there any terms in the Term Loan agreement that require Wonderphone to inform Geldbank about the shifting of directors?

This information is not part of the record available to the Nuzilian court. Wonderphone was contractually prohibited from moving its COMI or registered office without Geldbank's express written consent.

6. Who is the beneficiary of the Wonderphone shares that Huang holds in trust?

This information is not part of the record available to the Nuzilian court and is, in any event, irrelevant to the issues which the court has to decide.

7. Is Huang one of the directors of Wonderphone? If so, did he know that Geldbank chose to contract with Wonderphone on the basis of Nuzilian law because it provides better protection for creditors?

This information is not part of the record available to the Nuzilian court.

8. According to Wonderphone's articles of association, was Huang's agreement needed for Wonderphone moving its books, records and day-to-day business operation to Mercuria?

No.

9. When were all 2 of the directors (before Andy Artful's arrival) based in and working in FF (as seen in [8])? Was it since the incorporation of Wonderphone, or in the late 1990s or even after the expansion in the early 2000s?

Wonderphone's seat is in Germany and has been in Germany since the company was incorporated. At least two directors have been based in Germany throughout the company's life.

10. Why did Wonderphone not consider restructuring in Germany?

This information is not part of the record available to the Nuzilian court.

11. Why did Wonderphone not change the seat in its articles of association?

This information is not part of the record available to the Nuzilian court.

12. Where is Wonderphone's board of directors currently located?

There is no further information about the directors and the conduct of board meetings beyond that stated in the record.

13. Where is the majority of Wonderphone's staff located? Have there been any changes after Andy Artful's arrival?

There is no further information about the location of Wonderphone's employees beyond that stated in the record. There have been no changes since Artful's appointment.

14. Where are Wonderphone's overall corporate headquarters currently located at?

There is no further information about the locus of Wonderphone's activities and governance beyond that stated in the record.

15. Where are Wonderphone's accounting functions and financial operations currently located?

There is no further information about the locus of Wonderphone's activities and governance beyond that stated in the record.

16. When did Wonderphone shift its directors and books to Mercuria after Andy Artful was appointed?

The books and records were moved to Mercuria after Artful's appointment and before Wonderphone filed for administration in Mercuria as clearly stated in the record.

17. Where are Wonderphone's principal assets located — Germany, Nuzilia or Mercuria? Have there been any changes after Andy Artful's arrival?

There is no further information about the locus of Wonderphone's assets beyond that stated in the record. There have been no changes since Artful's appointment.

18. What law governs Wonderphone's contracts with its other creditors?

This information is not part of the record available to the Nuzilian court.

19. Were the other banks offered the same terms as Geldbank in the Plan? – was what the other banks received different from what Geldbank had received?

The banks all form part of one class as clearly stated in the record. Wonderphone offered all members of the class, including Geldbank, the same terms.

20. Were there any other banks that disagreed with the Plan/disputing the jurisdiction of the Plan? If so, how many disputed the judgement and on what grounds?

Geldbank is the main dissenter, hence this litigation. Otherwise, the facts are as stated in the record.

21. For solving the problem about COMI, we would like to know on which date Andy Artful got appointed as a director and chief operating officer (paragraph 15, p. 7).

It can be inferred from the facts as stated that Artful was appointed some time between Wonderphone encountering financial difficulties in early 2021 and its entry into administration in Mercuria.

22. In this context, we also found it important to know on which date the process of moving Wonderphone's books and records started and ended (as mentioned in paragraph 15, p. 7). Also, may we assume that all factors that were not expressly mentioned to have shifted to Mercuria remained in Frankfurt? For example, bank accounts?

See 16. above. You can draw whatever reasonable inferences from the facts that you see fit.

23. Furthermore, we noted that the Mercurian Court held that the Court had jurisdiction (see paragraph 22, p. 9). Did the Mercurian Court raise the question of whether the COMI of Wonderphone was situated in Mercuria? If so, did the Mercurian Court find the COMI of Wonderphone to be situated in Mercuria?

The Mercurian court determined that it had jurisdiction under Mercurian law based on there being sufficient links with Mercuria as stated. Whether, based on those links, Wonderphone's COMI is in Mercuria is one of the issues that the Nuzilian court is asked to resolve.

24. Apart from that, paragraph 22 mentions that Geldbank entered a limited appearance. What does this entail exactly?

Geldbank sought only to challenge the Mercurian court's jurisdiction in relation to Wonderphone under section 111 of the Mercurian law. Geldbank took no other substantive point on the merits or otherwise of the Plan.

25. Paragraph 22 also mentions that a meeting took place that voted to approve the Plan. On what date did this meeting take place? And can we assume that the date on which the Mercurian Court sanctioned the plan is 30 June 2021?

The meeting took place after Wonderphone entered administration and before the sanction hearing. The obvious inference from paragraph 22 of the judgment is that the Mercurian court

entered its order sanctioning the Plan on 30 June 2021.

26. Regular practice entails that Swap Agreements are covered by the ISDA Master Agreement (or any other similar agreement dealing with OTC derivatives). Is that the same case for this Swap Agreement between Wonderphone and Geldbank?

This information is not part of the record available to the Nuzilian court.

27. Were any insolvency-related restrictions introduced in Germany, Mercuria or Nuzilia in connection with the COVID-19 pandemic (e.g. moratorium to initiate bankruptcy cases upon the creditors' petition etc.)?

This information is not part of the record available to the Nuzilian court and has no bearing on the issues.

28. Whether it is an undisputed fact that there are the more favorable restructuring possibilities under Mercurian law (par. 37)? Is there any chance that a reorganization can successfully be achieved under German law or Nuzilian law?

Geldbank does not concede that Mercuria was the only jurisdiction in which Wonderphone could successfully restructure.

29. Where does Geldbank conduct its primary business?

Geldbank is a German bank with branch offices all over the world including in Mercuria and Nuzilia.

30. Which creditors voted at the meeting convened by the Companies Court of Mercuria for the ratification of the Mercurian Plan?

The facts are as stated in paragraph 22 of Judge Solomon's judgment. A sufficient number of creditors by number and value as prescribed by Mercurian law voted in favour of the Plan.

31. In which year was the regional headquarter of Wonderphone established in Mercuria?

There is no further information beyond that stated in the record.

32. While it is known that 3 out of the 7 bank creditors were from Mercuria, where were the other creditors based?

This information is not part of the record available to the Nuzilian court.

33. Are the debts of all 7 of Wonderphone's bank lenders governed by a law other than Mercurian law?

This information is not part of the record available to the Nuzilian court.

34. What is the time period specified in the Plan by which Geldbank is required to pay USD 80 million to Wonderphone? Is it a one-time payment?

The Plan restructures the loan that Wonderphone owes to Geldbank. Under Mercurian law that debt cannot be reduced or eliminated by set off. The Plan contains no provisions concerning payment of the Swap Debt. Geldbank is subject to a judgment of the Mercurian court to pay the

Swap Debt in full and the issue is whether the Nuzilian court should allow the judgment to be enforced in Nuzilia.

35. Where are the family trusts holding Wonderphone registered?

This information is not part of the record available to the Nuzilian court and has no bearing on the issues.

36. What is the difference between the percentage share of Wonderphone's market in Asia, Mercuria, and Nuzilia as compared to its market in Europe?

This information is not part of the record available to the Nuzilian court.

37. Was Wonderphone prohibited from changing its COMI without Geldbank's prior written consent under the express terms of the Term Loan Agreement? If not, was there a secondary agreement?

This is the obvious inference from the facts as stated.

38. How soon after the shifting of Wonderphone's corporate headquarters to Mercuria were the administration proceedings filed?

As can clearly be inferred from the facts as stated, the appointment of Artful and the shifting of the corporate headquarters to Mercuria must have taken place some time within the first quarter of 2021.