# decision

**AMSTERDAM DISTRICT COURT**

Civil Law Division

insolvency number: 13/61 S
judgment date: 9 May 2014

PLAZA CENTERS N.V. , a
public limited-liability
company with its registered
offices in Amsterdam,
(hereinafter referred to as: Plaza Centers)
counsel: *mr.* N.A.W. Tollenaar and *mr.* K.M. Sixma in Amsterdam
and
*mr. drs.* Jean Leon Marcel GROENEWEGEN,
in his capacity as administrator in the provisional suspension of payment proceedings of Plaza Centers
(hereinafter referred to as: the administrator),
choosing its address for service in Amsterdam,
counsel: *mr. drs.* J.M.L. Groenewegen in Amsterdam,

filed a petition dated 29 April 2014 requesting the district court to apply section 225 of the Bankruptcy Act

1. Course of the proceedings.

1.1 By order of this court dated 18 November 2013 Plaza Centers was granted provisional suspension of payments with appointment of the administrator in that capacity and *mr.* L. van Berkum as supervisory judge.
The court determined the ultimate date for submission of claims to be 3 April 2012 and date of the consultation and voting on the proposed composition to be 17 April 2014.

1.2 By court order dated 11 March 2014 the date for the submission of the claims was set at 12 June 2014 and the date of the consultation and voting on the proposed composition was set at 26 June 2014.

1.3 The court has directed that the petition will be decided on without examination at thehearing.
The court holds the view that the examination of the petition at the hearing has no added value as, on the one hand, the petition was filed by the administrator and Plaza Centers jointly and with the consent of the supervisory judge and, on the other hand, determining and summoning the possible interested parties, who are primarily located in Israel and Poland and, for the greater part not known by name, is not possible within a reasonable term.
The date of the decision was set at 9 May 2014. The court, for the sake of time, decided on the petition orally. This order is the written record of the said decision.

Grounds of the decision

2.1 Below, the court reproduces and endorses the body of the application in its entirety:

1. **Introduction**

1.1. By decision of 18 November 2013, Your Court granted the Company provisional suspension of payments, appointing the Administrator and Supervisory Judge in their respective capacities. A copy of the District Court's decision of 18 November 2013 is attached as Exhibit 1.

1.2. At the same time as submitting the petition for suspension of payments, the Company filed a draft composition with the court registry of this District Court.

1.3. On provisionally granting the suspension of payments, the District Court determined, pursuant to section 255, paragraph 1 of the Bankruptcy Act, that the hearing referred to in section 218, Bankruptcy Act, would not be held, that claims had to be submitted to the Administrator no later than on 3 April 2014, and that on 17 April 2014 the consultation and voting on the proposed composition would be held in the presence of the Supervisory Judge.

1.4. In its decision of 11 March 2014, the Court directed, while withdrawing the dates stated above under 1.3, that the claims had to be submitted to the Administrator by no later than on 12 June 2014 and that on 26 June 2014, at 10 a.m. the consultation and voting on the proposed composition would take place in the presence of the Supervisory Judge. A copy of the Court's decision of 11 March 2014 is attached as Exhibit 2.

1.5. Since the granting of the provisional suspension of payments, the Company has consulted with representatives of the most significant creditors/creditor groups to present and explain the proposed composition. The Bond Trustees (as defined hereinafter), who represent the interests of the Israeli Bondholders (as defined hereinafter), and are therefore representative of the largest group of creditors, were important parties to these discussions.

1.6. In March 2014, the Company reached an agreement with the Bond Trustees on the key commercial terms of the proposed composition.

1.7. The result of the negotiations with the Bond Trustees will lead to an amendment of the composition originally offered. The amended composition will be filed with the court registry of the District Court shortly, and notified to the creditors through the appropriate channels.

1.8. The manner in which (i) claims must be submitted and (ii) votes must be cast in respect of the proposed composition in the present provisional suspension of payment proceedings has some complications in relation to the Polish and Israeli Bonds (as defined hereinafter). These are related to i) the legal structure and the specific nature of the Israeli Bonds and particularly the role and function of the Bond Trustees, and ii) the tradeability of the Polish and Israeli Bonds.

1.9. With the current petition, the Court is requested to create provisions that eliminate these complications and ensure that a careful and fair process for the submission of claims and voting on the composition proposed by the Company, is possible.

1.10. We will first present a summary of the debts of the Company. Subsequently, we will address the aspects of Dutch law in regard to the submission of claims and voting on the proposed composition that are relevant for the evaluation of the present petition.

1.11. Next, the categories of claims will be identified, along with the complications for each with regard to the submission of claims and the voting on the submitted claims in the relevant category and which provisions are sought to remedy them. This petition then concludes with a remark about the timeline.

2. **Overview of the liabilities of the Company**

2.1. Overview

2.1.1. A list of the Company's unsecured debts is attached as **Exhibit 3**.
The unsecured claims can be categorized into four groups, as follows:

i) Claims under the Israeli Bonds (as defined hereinafter)

ii) Claims under the Polish Bonds (as defined hereinafter)

iii) Guarantee Claims (as defined hereinafter)

iv) Other claims

2.2. Claims under the Israeli Bonds

2.2.1. In Israel, Plaza Centers issued two series of notes under Israeli law.
These were:

a) 245,170,166 Series A bonds with a face value of NIS 1 (one New Israeli Shekel) each, with an interest of 4.5%, and which must be redeemed in semi-annual redemption payments, for the last time on 31 December 2017 (the "Series A Bonds"), and

b) 508,442,675 Series B bonds with a face value of NIS 1 (one New Israeli Shekel) each, with an interest of 5.4%, and which must be redeemed in semi-annual redemption payments, for the last time on 31 July 2015 (the "Series B Bonds").

The Series A Bonds and the Series B Bonds are referred to jointly as the "Israeli Bonds". The holders of the Israeli Bonds are referred to as the "Israeli Bondholders".

2.2.2. The Series A Bonds were issued pursuant to a Trust Deed dated 4 July 2007, as amended pursuant to Amendment No. 1 dated 31 January 2008 (Annex 4, hereinafter referred to as the: the "Series A Trust Deed").

2.2.3. The Series B Bonds were issued pursuant to a Trust Deed dated 31 January 2008, as amended pursuant to Amendment No. 1 of 17 February 2008 (Exhibit **5** hereinafter referred to as the: "Series B Trust Deed", and jointly with the Series A Trust Deed as the "Trust Deeds").

2.2.4. The Israeli Bonds are listed on the Tel Aviv Stock Exchange (TASE).

2.2.5. Under the Series A Trust Deed, the company under Israeli law, Hermetic Trust (1975) Ltd, acts as trustee for the holders of the Series A Bonds. Under the Series B Trust Deed, the company under Israeli law, Reznik Paz Nevo Trusts Ltd acts as trustee for the holders of the Series B Bonds. Both companies are hereinafter jointly referred to as: the "**Bond Trustees**".

2.2.6. At the date of commencement of the provisional suspension of payment proceedings, (18 November 2013) an amount equivalent to EUR 63 million[1] was outstanding under the Series A Bonds. As per the date of commencement of the provisional suspension of payment proceedings an amount equivalent to EUR 128 million[2] was outstanding under the Series B Bonds. These amounts include the interest due, on the relevant bonds up to the date of commencement of the provisional suspension of payment proceedings, including the applicable indexation on account of inflation adjustment.

2.2.7. As of the date of commencement of the proceedings, the total amount outstanding under the Israeli Bonds, of €191 million, represents approximately 78% of all the Company's unsecured debts of approximately €245 million.[3]

2.3. Claims by virtue of the Polish Bonds

2.3.1. In Poland, the Company issued a series of bonds under Polish law. It concerns 600 bonds with a face value of PLN 100,000 each, with an interest of 4.5%, which should have been redeemed by a lump-sum payment on 18 November 2013 (the "Polish Bonds"). The Polish Bonds were issued pursuant to the ***offering memorandum*** of 16 November 2010 (**Exhibit 6**, hereinafter: the "**Offering Memorandum**").

2.3.2. The Polish Bonds are listed on the Warsaw Stock Exchange in Poland. Unlike the Israeli Bonds, the Polish Bonds have no "trustee" or equivalent figure.

2.3.3. As per the date of commencement of the proceedings (18 November 2013) the sum outstanding under the Polish Bonds amounted to the equivalent of EUR 14.9 million[4]. This represents approximately 6% of all the Company's unsecured debts.

2.4. Guarantee claims

2.4.1. Apart from a loan for the financing of an aeroplane, the Company did not take any bank loans itself. All bank loans concluded by the Plaza Centers group were concluded by the Company's group companies. For the claims under the loans granted, the financiers in many cases obtained security from the group companies (i.e.: mortgage rights on the real estate for the benefit of which the specific financing had been raised).

2.4.2. For some of the group companies loans, Plaza Centers acted as guarantor for part or for all of the financier's claim against the relevant group company (the "Guarantee Claims"). Most claims under these guarantees are not yet exigible or are conditional in nature. In many cases, the realization and the size of the claim depend on the amount of any shortfall in recovery there is from the specific group company should the specific financier proceed to recover its claim from the security provided to it.

2.4.3. The total amount of potential Guarantee Claims is currently estimated at a nominal amount of approximately EUR 37 million. This represents approximately 15% of the Company's total unsecured debt. This nominal amount is not necessarily equal to the amount for which the Guarantee Claims can be admitted subject to the applicable verification rules.

2.5. Other claims

2.5.1. The most significant other unsecured debt of the Company is a debt owed under a loan for the financing of the purchase of an aeroplane. During the provisional suspension of payments, the Company's aeroplane was sold to a third party with the consent of the Administrator and the financier (GEFA Gesellschaft für Absatzfinanzierung

[1] calculated on the basis of the applicable exchange rate on that date

[2] Idem

[3] Assuming that the Guarantee Claims can be estimated at a face value of approximately EUR 37 million.

[4] This is the total outstanding amount including accrued interest calculated on basis of the exchange rate on the date of the commencement of the proceedings.

mbH (SG)) which had a right of mortgage on the aeroplane. The net sales proceeds were used to repay part of the debt to the financier. The residual debt to the financier currently amounts to approximately EUR 1.2 million (approximately 0.5% of the total unsecured debt burden of the Company).

2.5.2. The Company's other debts are primarily debts to group companies. These amount to a total amount of EUR 782,186, being approximately 0.3% of the total unsecured debt burden of the Company).

3. **Relevant aspects of Dutch law regarding the filing of claims and voting**

3.1. Dutch law applicable (*lex concursus*)

3.1.1. Pursuant to section 4 of the European Insolvency Regulation ("EIR", EC 1346/2000), the rules of Dutch law apply as the law of the state of the opening of the proceedings (***lex concursus).***

3.1.2. The provisions of Dutch bankruptcy law govern: (a) the submission, validation and acceptance of claims and (b) the conditions for and the consequence of termination of the proceedings through a composition (in respect of (a), see section 4(1) sub h EIR and in respect of (b) see section 4(1) sub j EIR).

3.1.3. As such, Dutch bankruptcy law determines (i) which parties may submit their claims, and how they must do so, (ii) which parties are permitted to vote on the composition and for what amount, and (iii) how the votes must be counted.

3.1.4. Dutch bankruptcy law is applicable to the submission of claims and voting procedure, notwithstanding the fact that a significant portion of claims against the Company, including the claims under the issued bonds, are governed by foreign law.

The majority requirement of section 268 Bankruptcy Act

3.1.5. Pursuant to section 268(1) of the Dutch Bankruptcy Act, the acceptance of the composition requires (i) the approval of a simple majority of the recognized and admitted creditors in attendance at the meeting (the "**Head Count**"), whose (ii) claims together represent at least one-half of the amount of the recognized and admitted claims (the "**Majority in Amount Requirement**").

3.1.6. Under the law that applied until 15 January 2005, any creditor who did not vote in favour of the composition was deemed to have voted against. This rule, however, proved to be an impediment to the approval of a composition in situations in which a large group of creditors did not participate in the vote (for example, out of lack of interest), even in circumstances where the majority of the group of non-participating creditors might well have implicitly been in favour of the composition.

3.1.7. Consequently, by amendment of 15 January 2005 (Act of 24 November 2004***, Bulletin of Acts & Decrees 2004, 615, Parliamentary Documents*** 27 244) this old rule was replaced by the rule of the current section 268(1) of the Bankruptcy Act According to the legislator, in the new system **"only the voting behaviour of the unsecured creditors present at the meeting is relevant; those not appearing do not count." " (Parliamentary Documents II** 1999/2000, 27 244, nr. 3 p. 31).

3.1.8. On 26 June 2014, the date on which the composition proposed by the Company will be put to a vote, the majority both in terms of the number of creditors and the represented amount will have to be accurately determined.

3.2. Special provisions for negotiable debt instruments

3.2.1. In Dutch bankruptcy and suspension of payment proceedings all ordinary unsecured creditors of the debtor are, in principle, entitled to vote. Within the definition of the Bankruptcy Act, the creditor is, in principle, the party who is the legal owner of the claim against the debtor.

3.2.2. In case of listed bonds, however, there are a number of complications. The legal ownership and the beneficial ownership are not always in the hands of the same parties, which can give rise to problems with regard to the voting.

3.2.3. In addition, the bonds are tradable, and it is not always possible or desirable to cease trading once a claim has been submitted. This means that from a practical perspective, it is difficult if not impossible to determine whether the parties voting at the meeting at that moment still hold the relevant bonds. Furthermore, it may be that successive acquirers of a bond that is traded file the same claim multiple times.

3.2.4. In a decision of 23 May 2002, Your District Court ruled in the GTS case (published in JOR 2002/107 with comment by P.M. Veder), that section 225 of the Bankruptcy Act provides a basis to create a provision (if necessary, in departure from the Bankruptcy Act) as to how votes should be counted under section 268 Bankruptcy Act:

> ***"The District Court is, also taking into account the legal literature on this clause and the case law on the Bankruptcy Act in general, of the opinion that in a situation such as this, for which there is no ready-made statutory system available***, section 225 of the Bankruptcy Act provides the authority to depart from the Bankruptcy Act and provide a "tailor-made" ***solution in the interest of the creditors. (...)***
>
> ***That clause offers the basis for a provision stipulating how the votes referred to in section 268 of the Bankruptcy Act should be counted.*** "

3.2.5. In that case, Your Court went on to rule that even if the bondholders are not in possession of bearer certificates, for the application of the Bankruptcy Act the bonds in question are comparable to "bearer certificates" within the definition of section 134, Bankruptcy Act, due to their comparable characteristics, namely the fact that the bondholders are, in principle, anonymous and can negotiate their debt instruments freely. Your Court considered the following among other things:

> *"(…)*
>
> ***An additional factor is that section 134 Bankruptcy Act stipulates that debt claims registered to "bearer" can be admitted, by which each admitted claim to bearer shall be considered as a claim of a separate creditor.***
>
> ***As the applicants rightly state, the issue of the five bond loans through a global note held by clearing organizations, with which registrations can be made on that bond, are comparable to the issue of bearer certificates. Even though the bondholders are not actually in possession of bearer certificates, they nonetheless have a comparable position, in that they are not known to the issuing institution and they can freely negotiate their rights of claim."*** "

The legislative history confirms that the rules in the Bankruptcy Act for bearer documents are related to the essential characteristic of free tradability of bearer documents and offers support for the opinion that a bond, as the modern variety of a bearer document with the same essential characteristic of free tradability, can be considered equivalent to a bearer document in this context. The legislative history shows that the rationale of section 134 Bankruptcy Act is not related to the physical form of the bearer document, but instead to the fact that it concerns a tradable debt instrument, such as a bond loan:

> ***"Subject to applicable law "claims payable to bearer" are validated in the name of the entity who is the holder at the creditors' meeting. The claim therefore always loses its quality of marketability, which exactly is the essence, the characteristic economic and legal function of the bearer document. Said removal of the bearer document's essence should be condemned; think for instance of a bond loan. The trade in bonds is then obstructed as soon as the issuer is in a state of bankruptcy. The draft of section 134 will hopefully bring the desired change, since it gives the holder the option to request validation in the name of "bearer". There is no interest of the bankrupt estate standing in the way of this and the bankruptcy process is not disturbed by it; the owner of the document, on the other hand, benefits greatly from it.***
> ***Once the principle of validation is accepted in the name of bearer, this necessarily entails that each piece, each bond, must be considered as the claim of a separate creditor. This lies in the essence of the bearer document. Each document is meant to be separate. The application thereof can be found in section 82. Here the given provision will also have its effect on a voting in respect of a composition. "*** [5]

3.2.7. In the UPC case, the Supreme Court upheld, among other things, that section 225 allows the District Court to stipulate a so-called "voting record date" as long as the period of time between the voting record date and the date of the vote is not too long.[6] The determination of a voting record date means that only those bondholders who were bondholders on that date (the voting record date) will be allowed to vote. These bondholders may also vote even if they sold their bonds at some point after the voting record date. Parties purchasing a bond after the voting record date therefore acquire a bond without the right to vote on the composition.

4. **Explanation of provisions requested for the Israeli Bonds**

4.1. Legal structure – formal creditorship

4.1.1. The chain of custody of the Israeli Bonds is in essence as follows. For a more detailed account, please see the opinion of the Company's Israeli attorneys of the law firm Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co in Tel Aviv (Exhibit 5).

4.1.2. Plaza Centers registered the Israeli Bonds in the "Noteholders' Register" under the name of a registration company affiliated with Bank Leumi (an Israeli bank). Subject to Israeli law, the registration company is not construed as the bondholder or the holder of any rights under the issued bonds.

4.1.3. This registration company registered the bonds in its books in the name of the TASE (Tel Aviv Stock Exchange) clearing house. In the books of the TASE clearing house, the Israeli Bonds are registered in the names of the members of TASE (the TASE members). TASE Members are mostly banks.

4.1.4. Subject to Israeli law, parties holding bonds in a security account with a TASE Member are formally considered to be the "bondholders" as also defined in Israeli securities law (hereinafter the "**Official Bondholders**").

4.1.5. These Official Bondholders hold the legal title to the claims against the issuing institution (in this case the Company) under the issued bonds. As such, they are the creditors of the company under the issued bonds.

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[3] History of the Bankruptcy Act: Van der Feltz, II, page 133 et seq.

[6] See Supreme Court, 26 August 2003, NJ 2004/549 (Intercomm/UPC).

4.1.6. References in this petition to Israeli Bondholders are always construed as references to the Official Bondholders of the Israeli Bonds within the meaning of the sentence above.

4.1.7. The Official Bondholders may hold the bonds (i) for their own account or (ii) as a so-called prime broker for the account of a third party. The relationship between the prime broker and the third party is mutually arranged between parties in a private agreement. The issuing company is usually not a party to such agreement. By virtue of such a private agreement, the third party does not become an Official Bondholder under Israeli law. The third party does not acquire any rights under the bonds against the issuing institution.

4.1.8. Since the Official Bondholders are formally creditors of the Company, only the Official Bondholders are authorized to submit claims in the Dutch suspension of payments procedure to the administrator and to vote on a proposed composition.

4.1.9. In principle thisis in line with the law and common practice in Israel and does not result in any problems in the present Dutch suspension of payments (insofar as the Israeli Bonds can be treated as bearer certificates within the meaning of section 82 in conjunction with 134 in conjunction with 260(2) Bankruptcy Act for the application of section 268 Bankruptcy Act, see more below).

4.2. Position and role of the Bond Trustees

4.2.1. Unlike the “Indenture Trustees” of the bonds under American law that were involved in the aforementioned UPC case, the Bond Trustees are not the legally entitled parties to the claim for payment against the company under the issued bonds.

4.2.2. The Bond Trustees' primary task is to represent the interests of the Israeli Bondholders. The rationale of the Israeli legislator was that the interests of bondholders cannot adequately be represented on an individual basis due to the disproportionate ratio between the time and expense involved in doing so and the comparatively small interest that each individual bondholder has. By creating the bond trustee and placing the representation of the interests of the bondholders collectively with that role, the legislator's intent was to save costs while ensuring a reasonable representation of interests.
The following passage cited from the Israeli legislative history in respect of the relevant regulations clarifies the background of installing the position of bond trustee (non-official translation):

> ***“The large dispersion of holders of certificates of indebtedness and the fact that usually each of them holds certificates of indebtedness in a small rate compared to the scope of a given series (and in the case in which holders are institutional entities, the holdings also represent a small amount of their holdings portfolio), they lack an incentive to invest resources and attention required to monitor their investment. Imposing this role on the trustee instead of its performance by each of the holders may lead to saved costs and more efficient protection of the interests of the holders with the issuer. The significance of the trustee’s role is even more sharpened in light of the credit crisis which has recently plagued the world’s economies and the local market.”***

4.2.3. Under Israeli law, bonds cannot be issued without appointing a bond trustee with the task of representing the interests of the collective bondholders.

[7] The Securities Law Bill (Amendment No. 48) (Certificates of Indebtedness), 5772-2011, Government Bill – 628, 19th of Cheshvan 5772, November 11, 11.201

4.2.4. In the Anglo-Saxon system, "Trustees" of bonds generally have the sole task of holding certain legal instruments in order to provide a certain structure to the chain of custody. They do not have an active role in the exercise of the rights attached to the bonds or the representation of the bondholders' interests.

4.2.5. The role of the Israeli Bond Trustees is just the opposite. Legally, they do not have a claim for payment against the issuing institution, but they do actively represent the interests of the bondholders.

4.3. Voting under Israeli law and custom

4.3.1. In Israel, only theOfficial Bondholders can vote during bondholders' meetings. The Official Bondholders must for that purpose submit evidence that they held the relevant bonds in a securities account with a TASE Member on a pre-determined record date.

4.3.2. If a third party for whose account a prime broker holds bonds as Official Bondholder, desires to cast a vote, said third party requires a proxy from its prime broker as the Official Bondholder for that purpose. The third party who desires to vote on behalf of its prime broker, must also provide the aforementioned evidence that its prime brokeris the legally entitled party to the bonds in question or was the legally entitled party on the record date. An alternative is that the prime broker can vote in conformity with the instructions of the investors for whose account it holds the bonds.

4.3.3. It is possible that a prime broker simultaneously holds bonds for the account of several third parties. In Israel this does not give rise to any problems during voting, because votes in respect of bonds under Israeli law are counted the same way as bearer certificates are counted in the Netherlands (section 82 in conjunction with 134 Bankruptcy Act): a separate vote is attributed to each bond. Consequently, a prime broker (either or not represented by proxy) is able to cast different votes in respect of the bonds that it holds for different investors. In case only one indivisible vote would have been attributed to each Official Bondholder, this would be impossible.

4.3.4. At creditors' meetings (in which other creditors than bondholders of a specific series also participate), the vote is usually conducted as follows. The bond trustees organise so-called "pre-meetings" to inform the bondholders about the subject of the voting (in the present case: the restructuring proposal of the Company, shaped by the offered composition). Normally, voting does not take place during the meeting itself. After closing of the physical meeting, Official Bondholders can vote by sending a completed voting form to the bond trustees, enclosing documentation of their bondholder status on the record date.

4.3.5. In order to avoid confusion on the relevant terminology here, it is worth noting that the "voting in the pre-meeting" as referred to in Israeli practice must be interpreted rather broadly. The pre-meeting is considered to last until the moment at which the voting forms must be submitted, which is normally a few days after the end of the actual meeting. A bondholder is considered to have cast a vote "at the pre-meeting" even if such bondholder did not attend the actual meeting itself, but only provided the bond trustee with the required voting form afterwards.

4.3.6. For the bondholders who have submitted a voting form, the bond trustees cast votes in accordance with the voting instructions on the form. In a number of recent cases, the bond trustees also cast votes for all bondholders who did not issue a voting instruction. In such cases, the Israeli court determines in advance in what way the bond trustees will vote for the non-participating bondholders. Usually, the way in which the bond trustees vote for the non-participating bondholders is based on the outcome of the voting of the ones who did vote.

4.3.7. The Israeli Court Motion and the Israeli Court Order

4.3.8. Even though the voting procedure for the purposes of the Dutch suspension of payment proceedings is governed by Dutch law (*lex concursus*), the Bond Trustees wish to follow a voting procedure as closely as possible in accordance with Israeli law and Israeli practice.

4.3.9. On 3 April 2014, the Bond Trustees filed a request with the Israeli court for a provision that the Bond Trustees must be allowed to (i) submit claims in the Dutch suspension of payment of the Company and (ii) vote about the composition offered by the Company on behalf of the Israeli Bondholders, in the manner proposed by them.

4.3.10. The Bond Trustees refer to this petition as the "Israeli Court Motion". An English translation thereof is attached as Exhibit 8.

4.3.11. In the voting procedure proposed by the Bond Trustees, there would be a pre-meeting in Israel in which the Bond Trustees would inform the Israeli Bondholders of the content and merits of the composition offered, giving them an opportunity of several days after the actual meeting to submit a voting proxy to the Bond Trustees containing voting instructions (hereinafter the "Voting Proxies"). The actual meeting would be followed within a few days by the submission of Voting Proxies (hereinafter referred to as the "Pre-Meeting").

4.3.12. The Bond Trustees vote for the Israeli Bondholders in accordance with the instructions received in the Voting Proxies. For the Israeli Bondholders who do not vote, the Bond Trustees propose voting in accordance with the results of the vote of the Israeli Bondholders who did vote at the Pre-Meeting (in the broader sense).

4.3.13. In the proposed voting procedure, the Israeli Bondholders who hold Israeli Bonds as prime broker for one or more third parties would vote in conformity with the instructions of the underlying third parties, or provide a proxy to the third parties to vote on the bonds in question on their behalf (by issuing a Proxy to the Bond Trustees on the prime broker's behalf or by appearing directly in the Dutch proceedings on behalf of the prime broker).

4.3.14. On 13 April 2014, the Israeli court granted the Israeli Motion as requested by the Bond Trustees (the so-called "Israeli Court Order"). An English translation thereof is attached as **Exhibit 9.**

4.3.15. Very briefly put, the Israeli court determined:

- the Bond Trustees are authorized on behalf of all Israeli Bondholders to submit claims in the Dutch suspension of payment proceedings and to vote on their behalf (including on behalf of the Israeli Bondholders who do not actively vote)

- the Bond Trustees are authorized to vote "in favour" and "against" on behalf of all Israeli Bondholders in the same proportion as the group of Israeli Bondholders who voted at the Pre-Meeting (in the broader sense);

- if the Dutch court allows the Israeli Bondholders to submit claims directly and vote in the Dutch proceedings, the Bond Trustees will not submit any claims and will cast no votes for the Israeli Bondholders who participated directly in the Dutch proceedings (to avoid double counting);

- if the Dutch court determines that the Bond Trustees may only vote for the Israeli Bondholders who appeared at the Pre-Meeting and/or who provided Voting Proxies, the Bond Trustees will only submit claims and cast votes in Dutch proceedings for the Israeli Bondholders who voted at the Pre-Meeting and/or who provided the Bond Trustees with Voting Proxies.

4.3.16. Prior to the submission of the Israeli Court Motion, the Bond Trustees and the Company consulted with each other on the voting procedure desired by the Bond Trustees. In this regard, the Company is willing to cooperate with a voting procedure for the Israeli Bonds that follows Israeli practice as closely as possible, insofar as this is compatible with the Dutch system and does not infringe upon the rights that creditors may exercise directly in the Dutch proceedings.

4.3.17. In the opinion of the Company and the Administrator, the Israeli Court Order cannot simply be implemented in the Dutch proceedings as is, and requires further elaboration and refinement on certain points; this is one of the reasons behind the submission of the present petition to this court.

4.4. <u>The request to Your Court</u>

4.4.1. In the opinion of the Company and the Administrator, the Israeli Court Motion and the Israeli Court Order derived from it offer the Dutch court sufficient leeway to define a voting procedure compatible with Dutch law, with some refinement and further elaboration on the points identified below.

***(i) Right to vote directly***

4.4.2. The Company is of the opinion that every Israeli Bondholder must be entitled to submit his or her own claim and vote in the Dutch suspension of payment proceedings directly. The Israeli Court Order allows this option. The Israeli Court Order cannot and must not prevent creditors from exercising their rights under Dutch law in the Dutch proceedings.

***(ii) Treatment of bonds as "bearer certificates" for the purpose of section 268 Bankruptcy Act***

4.4.3. The proposed method of voting does not present any issues for the application of the Majority in Amount Requirement.

4.4.4. Without further determination, the proposed method of voting gives rise to two issues in respect of the counting of the votes: (i) in case of voting for non-participating bondholders it is not possible to establish the number of creditors in the application of the Head Count of section 268 Bankruptcy Act, and (ii) third parties on whose account prime brokers hold Israeli Bonds, cannot cast separate votes.

4.4.5. For the application of the Required Majority in Number (the head count), the difficulty exists that the number of Israeli Bondholders who do not cast a vote at all, neither through the Bond Trustees (in the context of the Pre-Meeting with a Proxy) nor in the Dutch proceedings directly (the “Non-Participating Bondholders”), cannot be easily determined. This passive group does not come forward, and remains unknown.

4.4.6. For the determination of the headcount of the Non-Participating Bondholders, the Israeli Court Order defers to what the Dutch court decides in this regard. See paragraph b2 of the Israeli Court Order.

4.4.7. The most obvious way to solve the anonymous bondholders issue with regard to the head count is to treat the bonds, for the purpose of section 268 Bankruptcy Act as

bearer certificates in accordance with section 82 in conjunction with 134 Bankruptcy Act (section 134 Bankruptcy Act also applies in case of a suspension of payment pursuant to section 260(2) Bankruptcy Act).

4.4.8. Except for the fact that bonds are nowadays "dematerialized" and no longer represented by physical documents, they have all the essential features of bearer bonds: in principle the bondholders are anonymous and the documents are freely tradable.

4.4.9. The legislator did not intend to obstruct the tradability of the bearer bonds. Since each bearer bond effectively qualifies as one vote, no division of votes occurs within the meaning of section 81(2) Bankruptcy Act through the transfer of bearer bonds to several parties, which could otherwise obstruct the tradability.

4.4.10. Similar to the way in which Dutch law attributes one vote to each bearer bond, the Israeli law likewise attributes one vote to each Israeli Bond.

4.4.11. In the above-mentioned GTS case (JOR 2002/107), Your Court previously ruled that even though the bondholders do not have any bearer certificates in their possession, they can nevertheless be equated to holders of bearer certificates, because materially they take a similar position in the sense that in principle they are not known to the issuing institution and they can freely trade their right of claim.

4.4.12. Treating the issued bonds as bearer certificates would easily solve the problem of establishing the number of creditors for the application of the Head Count in the voting regarding the Non-Participating Bondholders. The number of votes of the Non-Participating Bondholders would then simply equal the number of bonds this group represents. That can easily be established, because the total number of bonds issued by the Company is known for the two series of the Israeli Bonds.

4.4.13 When treating the issued bonds as bearer certificates, the percentage of voters in favour and voters against would in number equal the percentage of voters in favour and voters against in amount.

4.4.14. The treatment of the issued bonds as bearer certificates also solves the second problem, namely the problem that investors that hold bonds through a prime broker can otherwise not (through the prime broker who asks voting instructions from them for that purpose) vote separately, while these investors are economically no different from investors that hold bonds without the intervention of a prime broker.

4.4.15. The Company is aware that some Israeli Bondholders act as prime brokers (for instance Morgan Stanley and Goldman Sachs) and hold bonds for third-parties. However, it is not exactly known to the Company how many and exactly which investors hold bonds through intervention of a prime broker.

4.4.16 In case the issued bonds are not treated as bearer certificates, each prime broker could only cast one vote as an Official Bondholder and consequently as a formal creditor. In principle, this single vote is indivisible (cf. section 81(2) Bankruptcy Act). This would mean that the underlying investors that hold bonds through a prime broker, would not be able to have a separate vote cast (through the prime broker).

4.4.17 Conversely, if the issued bonds are treated as bearer certificates, this would allow a prime broker to cast a vote for each bond in conformity with the voting instruction of the economically entitled investor, either through the internal voting instruction of the investor in question for "its" bonds or by issuing a proxy to the investor in question for "its" bonds. Investors holding bonds through a prime broker can subsequently cast a vote materially on the same basis as investors who hold bonds without the intervention of a prime broker.

4.4.18. A fictitious calculation example is attached to this petition as Annex 10 which clarifies the operation of the system proposed here.

4.4.19. Pursuant to the above, the Company requests Your Court to rule that in respect of the submission and voting the bonds issued by the Company are (by analogy) treated as bearer certificates within the meaning of section 82 in conjunction with 134 in conjunction with 260(2) Bankruptcy Act, whereby each bond represents a separate creditor.

***(iii) Determination of "voting record date"***

4.4.20. As explained above, because the bonds remain negotiable even after submission of a claim in the suspension of payment proceedings, determining whether the bondholders who have submitted the claims still hold those bonds on the date of the vote is not a simple matter, nor can it be ruled out that subsequent bondholders might submit a claim more than once based on the same bond.

4.4.21. The Company therefore requests this court to determine a Voting Record Date stipulating that only those persons who can furnish documentation that on the voting record date they held bonds issued by the Company are authorized to directly or indirectly submit claims based on those bonds and to vote in the Dutch suspension of payment proceedings.

4.4.22. The Company requests this court to set the Voting Record Date at **Monday 2 June 2014**.

4.4.23. As already stated, in the UPC decision the Supreme Court determined that setting a voting record date is permitted as long as the time between this date and the date of the vote is "not excessively long". 8

4.4.24. Should the Voting Record Date be determined on the proposed date and the creditors are informed of the contents of the requested decision given by Your Court (and therefore of the Voting Record Date), the bondholders have sufficient opportunity after the Voting Record Date to acquire evidence of their bondholdership prior to the Pre-Meeting. The Pre-Meeting would take place on 5 June 2014, leaving only 5 business days before the final date for submitting claims, on 12 June 2014. The period between the final date for submitting claims, 12 June 2014, and the creditors' meeting on 26 June 2014, is exactly the legally required minimum of 14 days (see sections 255 (1) and 263 Bankruptcy Act).

4.5. Summary of the proposed Israeli voting procedure

4.5.1. First and foremost, it must be stressed that bondholders will be adequately notified in advance of the proposed voting procedure. Notifications are first of all given via the so-called MAGNA system. This is the official public system of the Israeli Securities Authority (ISA) for communication between investors and companies whose securities are listed on the Tel Aviv Stock Exchange (TASE). In addition, the voting procedure to be followed will be published on the Plaza Centers website. Notification through the MAGNA System is deemed to be an adequate form of notification. This will adequately safeguard that the bondholders are notified of the submission and voting procedures to be followed sufficiently in advance, or at least make it easy for them to obtain this information for themselves, and understand that if they do not cast a vote themselves the Bond Trustees will be authorized to cast a vote for them. In this context, the Company also refers to the opinion of its Israeli lawyers attached as **Annex 7**.

[8] Supreme Court, 26 August 2003, NJ 2004, 549 (UPC).

4.5.2. Should Your Court grant the present request, the voting procedure for the Israeli Bonds and the anticipated timeline would be essentially the following:

| | |
|---|---|
| 16 May | Anticipated receipt of the presently requested decision pursuant to section 225 Bankruptcy Act |
| 19 May | English translation of the decision pursuant to section 225 Bankruptcy Act available |
| 21 May | Communication to creditors on the Israeli and Dutch decisions and the submission and voting procedures based thereon |
| 2 June | Voting Record Date |
| 5 June | Pre-Meetings in Israel |
| 10 June | Deadline for submission of Voting Proxies to Bond Trustees |
| 11 June | Bond Trustees submit claims for the entire series to the Administrator |
| 12 June | Deadline under section 255, Bankruptcy Act, to submit claims to the Administrator |
| 18 June | Filing of list of recognized anddisputedclaimspursuant to sections259 and 263 Bankruptcy Act to be filed with the court registry of the District Court |
| 26 June | Consultation and voting on the composition; BondTrustees vote in accordance with the instructions received in the Voting Proxies, and vote for the Non-Participating Bondholders as described above and/or in accordance with Your Court's decision. |

4.5.3. With the exception of the dates mentioned under point 4.6.2; 2 June, 12 June, 18 June and 26 June 2014, the dates mentioned above have a preliminary character and are based on the current planning which will possibly still undergo some changes in the course of the further process.

5. **Explanation of stipulations requested for the Polish Bonds**

5.1. Simple structure - bondholders are formal creditors without trustee

5.1.1. Under Polish law, the holder of a securities account in which certain bonds are registered is considered to be the holder of said bonds. A bondholder is, under Polish law, the legally entitled party to the claim against the issuing company by virtue of the bonds. Consequently it is the formal creditor of the company.

5.1.2. The Polish Bonds do not have a trustee or a similar figure. For the Polish Bondholders it is therefore not necessary to take any measures in this respect.

5.1.3. For a more detailed explanation of the legal structure of the Polish Bonds, see the opinion of the Company's Polish attorneys at the law firm of Weil, Gotshal Manges in Warsaw dated 28 April 2014 which opinion is attached as **Exhibit 11**.

5.2. Voting Record Date and treatment as bearer certificates

5.2.1. In case of the Polish Bonds, the free tradability in principle does give rise to a complication, similar to the situation with the Israeli Bonds.

5.2.2. Under Polish law, a bondholder provides the evidence of his bondholder status through a depository certificate (swiadectwo depozytowe). A depository certificate must state a maturity date. As long as this maturity date has not lapsed, the bonds in respect of which the depositary certificate was issued are factually not tradable (which guarantees the accuracy of the certificate).

5.2.3. Determining a Voting Record Datefor the Polish Bonds is therefore not strictly required.

5.2.4. An alternative solution could be to determine that a Polish bondholder is only allowed to the vote in case he provides evidence of his claim by means of a depository certificate which does not expire before the vote on the composition has taken place.

5.2.5. For the purpose of consistency with the treatment of the Israeli Bonds, however, the Company the determination of a Voting Record Date and it requests Your Court to determine a Voting Record Date in respect of the Polish Bonds which falls on the same day as the one for the Israeli Bonds by which date only bondholders who can supply written evidence that they held bonds issued by the Company on the Voting Record Date, are authorized to submit claims based on the bonds in question and vote on them.

5.2.6. With the exception of the fact that they are not embodied in a physical document, the Polish Bonds, described in the Offering Memorandum as "dematerialised bearer bonds" have the same essential characteristics as bearer bonds: the holders are in principle anonymous and the claims are freely tradable. The Israeli Bonds also have these characteristics.

5.2.7. Due to the materially similar characteristics and in view of consistency, the Company requests Your Court to also rule in respect of the Polish Bonds that for the submission and voting, the (Polish) Bonds issued by the Company, are treated as bearer certificates within the meaning of section 268 Bankruptcy Act, in which each bond represents a separate creditor.

5.2.8. Incidentally, the Polish lawyers of the Company have recently learned that the Polish common depository (KDPW), the institution that acts as a custodian of the Polish Bonds, obstructed the trade in the Polish Bonds on the basis of the fact that the maturity date of the Polish Bonds had lapsed. The Polish lawyers of the Company hold the view that there is no legal basis for this obstruction. The obstruction, which is possibly unauthorised or only temporarily, does therefore not affect the petition to Your Court with regard to the Polish Bonds clarified above.

## 6. Timing

6.1. A timeline of the most important steps from now until the completion of the restructuring is submitted as Exhibit 12.

6.2. In order to be able to comply with all steps in time for the creditors' meeting, the decision on this request should be given no later than 16 May 2014, but preferably as soon as possible.

6.3. There is little room for delay after mid-May because, assuming that the Voting Record Date cannot take place later than the end of May, the bondholders must be informed of the Voting Record Date and the voting procedure to be followed with reasonable advance notice. Only after receipt of the decision requested in this petition will the

Company be in a position to communicate the set Voting Record Date and voting procedure to be followed to the bondholders and other creditors.

6.4. The Company understands that it is asking a great deal of Your Court to make a decision in such a short term, and very much appreciates the court's efforts in this regard.

7. **Object of the petition and overview of the requested provisions**

7.1. Based on the foregoing, the Company requests Your Court to determine that:

In regard to the Israeli and Polish Bondholders:

(a) Monday 2 June 2014 shall be construed as the "voting record date", by which date only bondholders who can supply written evidence that on the Voting Record Date they held bonds issued by the Company are authorized to submit claims based on the bonds in question and vote on them;

(b) in respect of submission and voting, the bonds issued by the Company are (by analogy) treated as bearer certificates within the meaning of section 82 in conjunction with 134 in conjunction with 260(2) Bankruptcy Act, whereby each bond is regarded as a separate creditor.

In regard to the Israeli Bondholders only:

(c) each Israeli Bondholder that holds Israeli Bonds on the established voting record date, will be authorized by virtue of the Israeli Bonds in question to directly submit claims and cast a vote in the Dutch suspension of payment proceedings;

(d) the Bond Trustees are, in principle, authorized to submit claims for all Israeli Bondholders of the relevant series, and to vote on them in the meeting, insofar as Israeli Bondholders do not themselves submit claims and vote in the Dutch proceedings directly.

(e) that the Bond Trustees will vote for every Israeli Bondholder of the relevant series for which they have received a valid Voting Proxy, in accordance with the voting instructions received for the verifiable amount outstanding under Israeli Bonds held by such Israeli Bondholder (on the voting record date);

(f) the Bond Trustees will cast votes for the Non-Participating Bondholders of the relevant series, in the amount that these bondholders represent, in the same proportion "in favour" and "against" as the votes of the Israeli Bondholders who issued a voting instruction to the Bond Trustees;

(g) and conditionally, only if Your Court rules that the Bond Trustees are not at all authorized to submit claims and to vote in respect of the composition on behalf of the Israeli Bond holders that did not issue a Proxy, to determine that the Bond Trustees are then only authorized to submit claims and to vote in respect of the composition for the Israeli Bond holder who provided them with a valid Proxy for that purpose.

2.2 The Court is of the opinion that the request should be granted.

In this context, the Court considers that the interests, especially of the parties who must materially be regarded as the creditors under the bond loans, are served best in this way. Treating the bonds in accordance with the regime for claims payable to bearer of section 134 Bankruptcy Act, results in the closest connection with the position they presently have according to generally accepted standards.

2.3 Close alignment with the decisions of the Israeli Court enables a treatment of the Israeli Bonds that is as much as possible in accordance with the law applicable to the bond loan.

2.4 An opinion of the Polish Law Firm Weil, Gotshal and Manges of 28 April 2014 (hereinafter: the opinion) is added to the petition. The opinion entails the following, insofar as important here:

**[..]**

5. **In respect of legal ownership of the Bonds:**

(a) Pursuant to section 7 item 1 of the Polish Act on Trading in financial Instruments, the rights attached to dematerialised securities (such as the Bonds) accrue as of the moment such securities are first registered in a securities account and shall inure to the benefit of the account holder.

(b) The holders of the securities accounts in which the Bonds are registered are holders of the Bonds. Under the Relevant Polish Law, an entity which is deemed to be a holder (owner) of a bond issued under the Polish Act on Bonds is considered to be a direct creditor in respect of claims towards the issuer incorporated in such bond. Furthermore, notwithstanding the KDPW's approach to the transferability of matured bonds mentioned in section 6 item (a) of 2 this Opinion, the bondholders retain their claims and all other rights under the Bonds (except for the factual lack of transferability, as described in section 6 item (a) of this Opinion).

(c) The Conditions do not provide for the appointment of global representative of the bondholders or other, type of trustee representing the rights of the bondholders in respect of the Bonds.

(d) In order to confirm its status as a holder of the Bonds towards third parties (e.g. other than the investment firm maintaining the securities account of such holder), a bondholder may present a document in paper form issued by the investment firm maintaining its securities accounts only at the request of the given bondholder called a depository certificate ***{swiadectwo depozytowe).***

e) A depository certificate is a formal document the contents of which are regulated under the Polish Act on Trading in financial Instruments confirming that the entity or person shown on such certificate owns securities of the type and number indicated in such certificate. Such certificate must also contain an expiry date (upon such date the certificate expires and does not provide any proof of ownership) set by the account holder in its application to investment firm regarding the issuance of such certificate. Under the Relevant Polish Law, a depository certificate issued in respect of dematerialised securities (e.g. the Bonds) has the effect of blocking such securities from trading (including via private transactions) until the expiry date indicated in the depository certificate (or otherwise until the original certificate is returned to the investment firm which issued it).

The Court is of the opinion that the evidence to be provided by the Polish bondholders concerning the fact that they were the holders of bonds on the "voting record date" (within the meaning of the decision under 3.2(a)), must be provided by demonstrating at the meeting that they hold a valid *depository certificate (swiadectwo depozytowe)* as referred to in paragraph 5.1 of the opinion, showing that they were holders of the bond on 2 June 2014.

## 3 DECISION:

The Court:

3.1 makes, in the provisional suspension of payment proceedings of Plaza Centers, for the benefit of the submission of claims and for the vote on 26 June 2014, the following determinations:

3.2 In regard to the Israeli and Polish Bondholders:

(a) Monday 2 June 2014 shall be construed as the |"voting record date", by which date only bondholders who can supply written evidence that on the Voting Record Date they held bonds issued by Plaza Centers are authorized to submit claims based on the bonds in question and vote on them;

(b) in respect of submission and voting, the bonds issued by Plaza Centers will be (by analogy) treated as bearer certificates within the meaning of section 82 in conjunction with 134 in conjunction with 260(2) Bankruptcy Act, in which each bond represents the claim of a separate creditor.

3.3 In regard to the Israeli Bondholders only:

(c) each Israeli Bondholder that holds Israeli Bonds on the "voting record date", is authorized by virtue of the Israeli Bonds in question to directly submit claims and cast a vote in the Dutch suspension of payment proceedings;

(d) the Bond Trustees are, in principle, authorized to submit claims for all Israeli Bondholders of the relevant series, and to vote on them in the meeting, insofar as Israeli Bondholders do not themselves submit claims and vote in the Dutch proceedings directly.

(e) the Bond Trustees will vote for every Israeli Bondholder of the relevant series for which they have received a valid voting proxy, in accordance with the voting instructions received for the verifiable amount outstanding under Israeli Bonds held by such Israeli Bondholder (on the voting record date);

(f) the Bond Trustees will cast votes for the Non-Participating Bondholders of the relevant series, in the same proportion "in favour" and "against" as the votes of the Israeli Bondholders who issued a voting instruction to the Bond Trustees.

This decision was given by the Mrs. D.H. Marcus, A.W.H. Vink and R.A. Dudok van Heel and was pronounced in public on 9 May 2014 and issued in writing on 14 May 2014.