

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTERS OF:

NORTEL NETWORKS ROMANIA SRL

No. 546 of 2009 / CR-2009-000050

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

**TENTH WITNESS STATEMENT OF
STEPHEN JOHN HARRIS**

I, **STEPHEN JOHN HARRIS** of Ernst & Young LLP, 1 More London Place, London SE1 2AF,
DO STATE as follows:

1. I am a licenced insolvency practitioner and an Associate Partner in the firm of Ernst & Young LLP ("**E&Y**").
2. I was appointed as a joint administrator of Nortel Networks Romania SRL (the "**Company**") on 14 January 2009 together with Alan Robert Bloom, Alan Michael Hudson and Christopher John Wilkinson Hill, of E&Y, pursuant to an Order of Mr Justice Blackburne.
3. Mr Hill has ceased to practice as an insolvency practitioner and gave notice that he was to resign as a joint administrator of the Company on 11 September 2017. Mr Hill formally resigned as a joint administrator on 20 September 2017. Where I use the term "**Joint Administrators**" in relation to matters or events before 20 September 2017, I am referring collectively to myself, Mr Bloom, Mr Hudson and Mr Hill. Where I use this term in relation to matters or events on or after 20 September 2017, I am referring collectively to myself, Mr Bloom and Mr Hudson.
4. I am duly authorised to make this witness statement on behalf of the Joint Administrators in support of our application to extend the terms of office of the Joint Administrators, seeking orders in the following terms:
 - 4.1.1 pursuant to paragraph 76(2)(a) of Schedule B1 to the Act, the Joint Administrators' terms of office as joint administrators of the Company be extended for a period of 6 months so as to expire at 12:01pm on 13 July 2019;

- 4.1.2 the date in paragraph (3) of the Order of Mr Justice Snowden made on 24 August 2018 by which the relevant step required to wind up the Company as referred to in paragraph (1) of that Order is to be completed be further extended to 28 February 2019; and
- 4.1.3 the costs of and incidental to the application be paid as expenses of the administration.
5. Save where I indicate to the contrary, the facts contained in this witness statement are within my own knowledge and are true. Where the facts stated are not within my own knowledge I have identified my sources of information and/or belief.
6. I make reference to other applications by the Joint Administrators currently before the Court in respect of 13 other companies in the Nortel EMEA group (the "**Extension Applications**"). These applications are supported by my ninth witness statement dated 29 November 2018 ("**Harris 9**") and the exhibit marked "**SJH9**". Capitalised words and phrases used in the present statement shall, unless otherwise defined herein, have the same meaning as in Harris 9.
7. There is now produced and shown to me a bundle of documents marked "**SJH10**" to which I shall refer in this witness statement. References in this document to exhibits in SJH9 and SJH10 are in the form [Volume/Tab/Page].
8. The Joint Administrators' term of office and the administration of the Company were extended by Orders of Registrar Derrett on 12 January 2010 and 6 December 2011, by Order of Registrar Baister on 1 November 2013 and by Orders of Mr Justice Snowden on 2 December 2015 and 14 December 2017 ([1/1/1], [1/2/5], [1/3/9], [1/4/13] and [1/5/15] of SJH9 respectively). The Joint Administrators' term of office now expires at 12pm on 13 January 2019.
9. Pursuant to Rule 3.54(2) of the Insolvency (England & Wales) Rules 2016 (the "**Rules**") and for the purposes of this application, this witness statement sets out the reasons why the Joint Administrators are seeking the extension.
10. Nothing in this witness statement is intended, nor should be taken, as a waiver of privilege in relation to matters dealt with in this witness statement.
11. This witness statement is divided into the following sections:
- A. Background (page 3);
 - B. Purpose of the administrations (page 3);
 - C. Reporting in the administrations (page 4);
 - D. Progress of the administrations (page 5);
 - E. Discharge application (page 5);

- F. Local liquidation proceedings (page 6);
- G. Relief Sought (page 8); and
- H. Conclusion (page 10).

A. BACKGROUND

- 12. In order to assist the Court in understanding the progress made by the Joint Administrators in achieving the statutory purpose of the administration, I briefly set out below certain background information that is relevant in the context of the present application.
- 13. The Nortel group was a global supplier of networking solutions (i.e. telecommunications, computer networks and software) serving customers in Canada, the US, the Caribbean, Latin America, Asia and EMEA.
- 14. On 14 January 2009, the Canadian Debtors, sought protection under the Canadian Companies' Creditors Arrangement Act. On the same day the US Debtors filed voluntary petitions in the US Bankruptcy Court for the District of Delaware pursuant to Chapter 11 of the US Bankruptcy Code. Also on the same day the Company together with 18 other companies in the Nortel EMEA group (the "**EMEA Debtors**") was placed into administration by Order of Mr Justice Blackburne and the Joint Administrators were appointed. The administration of the Company is a main insolvency proceeding as defined in Article 3(1) of the EC Insolvency Regulation.

B. PURPOSE OF THE ADMINISTRATIONS

- 15. The Joint Administrators set out their approach for achieving the statutory purpose of administration in their statement of proposals dated 25 February 2009 (the "**Romania Proposals**") that were approved by a meeting of the Company's creditors. A copy of the Romania Proposals is at [1/1/1] of SJH10. As the Joint Administrators explained in the Romania Proposals, the proposals for each the Company were:
 - 15.1 to continue to manage the Company's businesses, affairs and property during the period of the administration whilst the possibilities for the Global Restructuring were considered, progressed and given effect to by the Company as appropriate;
 - 15.2 during the process of the Global Restructuring, for the Company to continue trading and paying its suppliers and employees in respect of goods or services supplied to the Company after 14 January 2009 for so long as the Company required such goods or services;
 - 15.3 to monitor the cash and asset position of the Company and the general progress and prospects of the Global Restructuring in order to be satisfied that it may still be possible to rescue the Company as a going concern and/or achieve a sale of all or part of the Company's businesses as part of the Global Restructuring and

that it was appropriate that the Company continue to trade rather than cease to trade and/or be placed into liquidation; and

- 15.4 if the Joint Administrators decided that a Global Restructuring was not in the best interests of creditors or that the cost of continuing to trade was no longer in the best interests of creditors, the Joint Administrators would seek to achieve a better result for creditors of the Company as a whole than would be likely if the Company were wound up, by seeking to realise the best price for the business and/or assets of the Company as was obtainable in the circumstances, and then would take steps to enable the assets of the Company to be distributed to its creditors.

C. REPORTING OF THE ADMINISTRATIONS

16. Following their appointment, the Joint Administrators have regularly informed creditors of the progress of the administration. The Joint Administrators have prepared progress reports for the Company on a six monthly basis since the beginning of the administration. Since my fifth witness statement in these proceedings, dated 29 November 2017 ("**Harris 5**"), made in support of the Joint Administrators' last application to extend the administration of the Company (**[1/19/383]** of SJH9), the Joint Administrators have prepared progress reports for the Company for the following periods:
- 16.1 14 July 2017 to 13 January 2018 (**[1/2/29]** to **[1/2/48]** of SJH10); and
- 16.2 14 January 2018 to 13 July 2018 (**[1/3/49]** to **[1/3/66]** of SJH10).
17. The Joint Administrators also provided a detailed update on the progress and status of the administration in my eighth witness statement dated 8 August 2018 ("**Harris 8**", at **[1/4/67]** of SJH10).
18. Harris 5 was written in support of the application to extend our term of office and the administration of the Company by a period of 12 months. Mr Justice Snowden granted the extension and a copy of the Order is at **[1/5/15]** of SJH9. A copy of the judgment of Mr Justice Snowden dated 14 December 2017 is provided at **[3/2/45]** of SJH9.
19. At the outset of the administration, a committee of the Company's creditors was established. Following the making of final distributions to the members of that committee, such that their claims were satisfied in full, the committee ceased to be quorate. Notice to the former members of the committee to inform them of the making and hearing of this application are due to be sent imminently after the filing of this application. Notice of the making and hearing of the application is also to be given to all former creditors of the Company immediately following the filing of the application by way of the Nortel EMEA Administration proceedings website (<http://www.emeanortel.com/proceedings.html>). An

update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the application.

D. PROGRESS OF THE ADMINISTRATIONS

20. The administration has proceeded successfully and various sales of the Nortel group's business lines were concluded in 2010 in pursuit of the Joint Administrators' proposal to achieve a better result for creditors of the Company as a whole than would be likely if the Company was wound up. A dispute in relation to the Sale Proceeds between the EMEA Debtors, the US Debtors and the Canadian Debtors, among other creditor constituencies was the subject of proceedings before the US and Canadian Courts. On 12 October 2016, the various parties to the Allocation Dispute entered into a Global Settlement settling the Allocation Dispute and a number of other matters between them and certain significant creditors.
21. The Global Settlement became effective on 8 May 2017 and the Sale Proceeds were released from the lockbox escrow accounts with the Company receiving the allocation agreed as part of the Global Settlement in May 2017.
22. Since receipt of the Sale Proceeds by the Company and the granting of the Expense Order, the Joint Administrators and their team progressed the administration including by complying with the Court's directions regarding Expense Claims, investigating and adjudicating creditor claims, making significant distributions to the Company's creditors and planning for the ultimate winding down of the Company.

E. DISCHARGE APPLICATION

23. On 8 August 2018, the Joint Administrators applied for their appointment to be terminated in respect of the Company (the "**Discharge Application**"). The Discharge Application was made in light of the successful completion of the distribution process to creditors governed by Part 14 of the Rules. On 24 August 2018, Mr Justice Snowden made an Order terminating the Joint Administrators' appointment conditional on the appointment by the Romanian court of a liquidator to wind up the Company in accordance with Romanian law (the "**Discharge Order**"). A copy of the Discharge Order is at [1/5/121] of SJH10 and a copy of Mr Justice Snowden's judgment is at [1/6/125] of SJH10.
24. The Discharge Order specified that if the appointment of a liquidator by the Romanian court was not made within 45 days of the date of the Discharge Order (such date falling on 23 October 2018) then the matter was to be re-listed for hearing within 14 days.
25. The reason for this deadline set in the Discharge Order was to give the Court an element of certainty as to the Joint Administrators' actions and claims against them such that the Court could grant the Joint Administrators' discharge from liability pursuant to paragraph 98 of Schedule B1 to the Act. Save for the preparation of the liquidation motion (described at

Section F (*Local liquidation proceedings*), the receipt of the capital contribution referred to in paragraph 27.3 below and the making of certain final payments to suppliers and advisers, the Joint Administrators have taken only very limited steps in relation to the Company. As such the Joint Administrators continue to have no knowledge of any claims made against them which have not been dealt with during the course of the administration and none of the Joint Administrators are aware of any facts which would give rise to such a claim.

F. LOCAL LIQUIDATION PROCEEDINGS

26. The Joint Administrators had hoped to file the motion in the Romanian court in the weeks following the Discharge Order. However meetings of the board and shareholders of the Company, at which it was resolved to file the motion to the Bucharest Tribunal and the necessary legal documentation in support of the motion was signed, were only held on 2 October 2018 and the Joint Administrators' local legal advisers, Schoenherr Şi Asociaţii ("**Schoenherr**"), were not in a position to file the motion until 15 November 2018 for the reasons set out below:

26.1 The motion required the support of NNIF as the Company's sole shareholder. Concerns were raised that the Bucharest Tribunal might disregard this shareholder support if, in the period between the filing of the motion and the hearing, NNIF moved from English administration to Dutch law liquidation. As such it was determined that the motion should only be filed after the appointment of liquidators at NNIF, which took place on 28 September 2018.

26.2 Once the motion was filed, the Company would lose its ability to make further payments, as the making of any such payments ran the risk of being ruled to be voidable in a subsequent liquidation. The Joint Administrators were therefore unable to file the necessary motion earlier due to delays in the making of certain final payments to suppliers and advisers caused by delays in obtaining final invoices (which has in turn impacted on the timing of the final payment to the local tax authority).

26.3 Finally, prior to the filing of the motion in the Bucharest Tribunal, it was necessary for the Joint Administrators of NNUK to make a capital contribution to the Company to allow for the payment of certain expenses of the Company. This required a formal process in accordance with Romanian law and subsequent registration of the change in the Company's capital with the Romanian Trade Registry. This registration process was completed on 8 November 2018.

27. On 8 October 2018 the Joint Administrators requested that the Court grant an extension to that deadline as it became apparent that the order of the Romanian Tribunal appointing liquidators would not be made before expiry of the 45 day deadline. By Order dated 9

October 2018, Mr Justice Snowden extended the deadline to 1 December 2018. Copies of the Joint Administrators' application by way of letter from HSF is at [1/7/135] and of the Order is at [1/8/139] of SJH10.

28. The Joint Administrators filed a motion in the Bucharest Tribunal requesting the appointment of liquidators to the Company on 15 November 2018. A copy of the motion as filed in the Bucharest Tribunal is at [1/9/141] of SJH10 and a copy of the subpoena received from the Bucharest Tribunal on 20 November 2018 together with translation is at [1/10/603] of SJH10,. A hearing of the motion was subsequently listed for 26 November 2018 at which it was anticipated that the liquidation order would be granted.
29. No issues or questions were raised by the Bucharest Tribunal at the hearing of the motion on 26 November 2018 and the Bucharest Tribunal reserved judgment until 3 December 2018. It was the expectation of the Joint Administrators and of their local legal advisers, Schoenherr, that the liquidation order would be granted.
30. On 27 November 2018, HSF wrote to the Court on behalf of the Joint Administrators requesting that the Court grant a further extension to the deadline set out in the Discharge Order. By Order dated 28 November 2018, Mr Justice Snowden extended the deadline to 31 December 2018. Copies of the letter from HSF and of the Order are at [1/11/605] and [1/12/607] of SJH10.
31. On 4 December 2018, the Joint Administrators were informed by Schoenherr that the Bucharest Tribunal had rejected their motion requesting the liquidation of the Company and the appointment of liquidators to the Company. The Joint Administrators understand from Schoenherr that no specific reason for the rejection has yet been given and that a formal decision setting out the reason(s) for the rejection would be issued by the Bucharest Tribunal in the coming weeks. On the basis of Schoenherr's advice, the Joint Administrators are confident that the procedural requirements in relation to their motion and the requirements of the Romanian Insolvency Act were fulfilled such that there appear to be no grounds on which the Bucharest Tribunal could properly refuse to grant the liquidation order.
32. The Joint Administrators are considering the most appropriate way to proceed to wind up the affairs of the Company. It is not possible for them to reach a firm conclusion as to their immediate next steps without fully understanding the reasoning of the Bucharest Tribunal which should be set out in its formal decision. Subject to understanding the reason(s) for rejection set out in that formal decision, the Joint Administrators understand from Schoenherr there are three courses of action open to them:
 - 32.1 The Joint Administrators could appeal the rejection of their motion to the Bucharest Court of Appeal. Such an appeal must be launched within seven days of receipt of the formal decision of the Bucharest Tribunal. Provided that the

formal decision is received before the Christmas holidays, the Joint Administrators understand that the hearing of any appeal would likely be held in January 2019. The Joint Administrators are advised by Schoenherr that if the Bucharest Court of Appeal is satisfied that the motion ought to have been granted then the Bucharest Court of Appeal would either (i) itself order the commencement of liquidation proceedings in respect of the Company and appoint a liquidator without the need for further hearing, or (ii) order the Bucharest Tribunal to reconsider the matter in a new hearing.

32.2 Even if the Joint Administrators are advised that there are strong grounds for appeal, they may determine that it would be more expeditious to simply re-issue the motion in the Bucharest Tribunal taking any corrective action as may be necessary to ensure that the motion is not rejected a second time.

32.3 Alternatively, in the event that the Bucharest Tribunal's formal decision sets out substantive grounds on which the motion of 15 November 2018 was rejected, the Joint Administrators would need to consider those reasons with their legal advisers before re-considering the options available to them to wind up the Company in accordance with Romanian law. Given the advice the Joint Administrators have received from Schoenherr, they consider it highly unlikely that there are any substantive grounds for the motion to be rejected but without having seen the Bucharest Tribunal's formal decision they cannot entirely discount the possibility.

G. RELIEF SOUGHT

33. Given the strong possibility that any liquidation order of the Romanian court would only be granted after the Joint Administrators' terms of office as joint administrators of the Company has come to an end of on 13 January 2019, the Joint Administrators believe that it is appropriate that their terms of office be extended for a six month period to allow them to transfer control of the Company to a local liquidator to manage its ultimate winding up.

34. Subject to understanding the full reasoning of the Bucharest Tribunal, the Joint Administrators anticipate a liquidation order being made by the Romanian courts in January or February 2019. The Joint Administrators are mindful that the Court has already considered the terms of their discharge and granted the Discharge Order by which the termination of their appointment as Joint Administrators is conditional on the appointment of a local liquidator. Notwithstanding the procedural issues being experienced, the Joint Administrators and their legal advisers expect that the appointment of liquidators should be made by 28 February 2019. In the event that the appointment of a liquidator is further delayed, the Joint Administrators are bound by the terms of the Discharge Order to return to Court within a period of 14 days.

35. The Joint Administrators believe a six month extension to the administration is appropriate given the possibility that the formulation of an alternative exit strategy be required. While the Joint Administrators anticipate a liquidation order being granted in January or February 2019, they do not propose that the administration automatically cease on 28 February 2018 in case further time is required and would not wish to incur the costs of a further extension application pursuant to paragraph 76(2)(a) of Schedule B1 of the Act at that stage.
36. The Joint Administrators consider that moving the Company into an English law liquidation process or returning the Company to the control of the directors would be hugely disruptive to the winding up of the Company's affairs. Should the Joint Administrators' term of office come to an end, they could cease to have any standing in respect of the Company in the Romanian courts. Any English liquidators subsequently appointed, or the directors where the Company was returned to their control, would need to issue new proceedings in the Romanian courts for the Company to be wound up in accordance with Romanian law.
37. Having managed the business and affairs of the Company for almost ten years, the Joint Administrators do not consider it proper for the Company to be returned to its directors to bear the responsibility of issuing a motion for the Company's liquidation. As set out in Section E (*Brexit*) of Harris 9, it remains uncertain how the EC Insolvency Regulation will apply to the administration of the Company and what, if any, recognition will be given to the Joint Administrators by the Romanian courts following any withdrawal agreement or the two year deadline set out in Article 50(3) of the Treaty, being 29 March 2019. If, after 29 March 2019, it remains uncertain how the EC Insolvency Regulation will apply to the administration and it becomes apparent that some form of recognition or other action is required then the Joint Administrators will seek such remedy from the Romanian courts or otherwise as is necessary to best coordinate the completion of the administration. If necessary, the Joint Administrators may also apply for directions to the Court where it appears that the orderly transfer of control of the Company from the Joint Administrators to the Romanian liquidator cannot be achieved.
38. If the circumstances of the Company change significantly before 13 July 2019, including such that the Joint Administrators consider that the purpose of any administration are frustrated by the impact of Brexit, the Joint Administrators understand that they are obliged to return to Court to seek such an order as to the future conduct of the administration as is appropriate in those circumstances, including an order that their appointment as Joint Administrators of that Company shall cease to have effect.
39. Accordingly, the Joint Administrators respectfully request that this Honourable Court makes the order sought by the application on behalf of the Company.

H. CONCLUSION

40. For the reasons mentioned above, I respectfully request that the Court grants the relief sought by the application.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

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STEPHEN JOHN HARRIS

Date: 6 December 2018

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTERS OF:

NORTEL NETWORKS ROMANIA SRL **No, 538 of 2009 /**
CR-2009-000050

AND IN THE MATTER OF THE INSOLVENCY ACT
1986

TENTH WITNESS STATEMENT OF
STEPHEN JOHN HARRIS

**Applicant
Stephen John Harris
Tenth Statement
Exhibit "SJH10"
6 December 2018**

**IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)**

IN THE MATTERS OF:

NORTEL NETWORKS ROMANIA SRL

No. 546 of 2009 / CR-2009-000050

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

EXHIBIT "SJH10"

This is the Exhibit marked "SJH10" which is referred to in the witness statement of Stephen John Harris dated 6 December 2018.

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Stephen John Harris