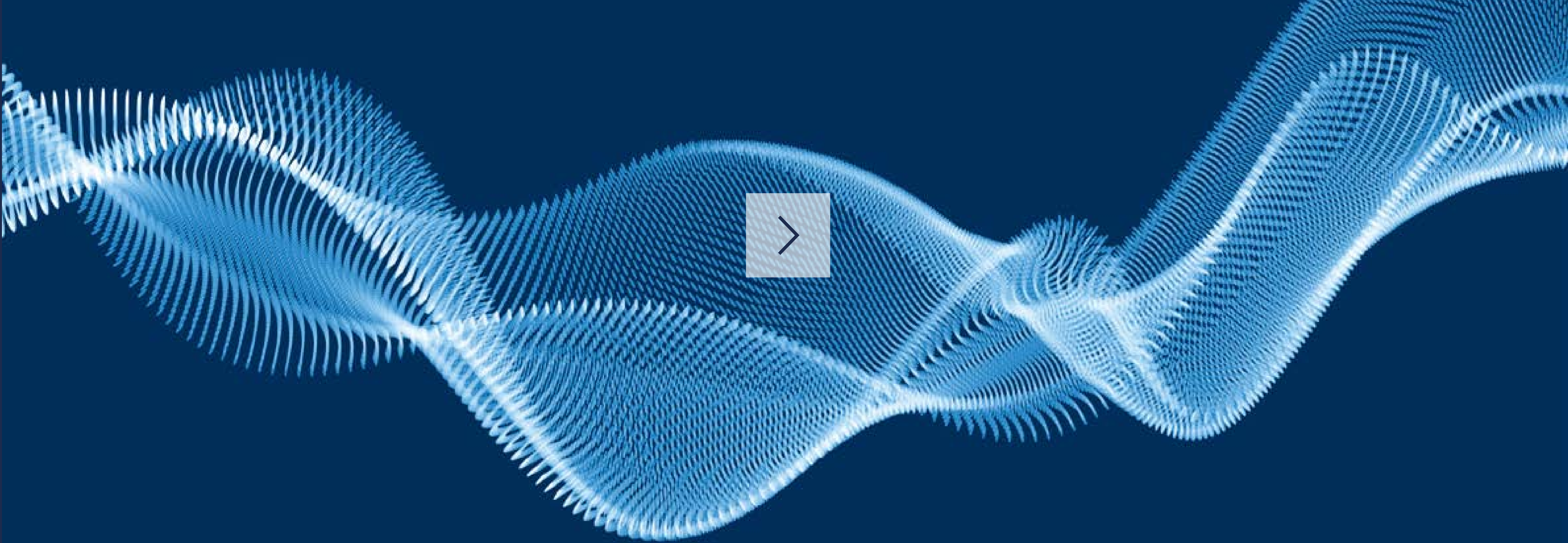
RESTRUCTURING – THE GLOBAL LANDSCAPE

Looking ahead to 2020

and reflecting on trends in 2019



Freshfields Bruckhaus Deringer

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Restructuring – the global landscape

We have identified the **key trends** that we expect to dominate the restructuring landscape globally in 2020.

Sector trends

Automotive
Technology, regulation and global trade continue to challenge OEMs, first and second tier suppliers, dealerships and auto finance providers.

Construction and housebuilding
Continued uncertainty is impacting investment decisions, adding to pressure on the sector and in turn impacting on its supply chain and the steel sector.

Retail
Long-term structural challenges and shorter-term economic trends continue to put pressure on retailers. What will the ultimate and/or cumulative impact of ongoing CVAs and rent reductions be for landlords?

Mining and commodities
In many countries where mining is operative, fluctuating prices, volatile mines and political unrest create a challenging environment.

Oil and gas companies
Many emerged from the last cycle of restructuring in a weakened state. There is still a lot of leverage.

Healthcare and care homes
Demographic changes and developments in care needs continue to challenge public and private appetite and ability to pay for care.

Global themes

Fragile business confidence
This weakness in confidence impacts the manufacturing sector, which is also adversely affected by Brexit, trade wars and auto finance mis-selling.

Low consumer confidence
This has an immediate (and continued) impact on certain sectors, such as casual dining, travel, airlines and consumer finance.

Distressed M&A
Given continuous levels of high debt liquidity, companies are seeking growth potential where competitors are facing challenges or need to divest.

Digital/technological disruption
The need for companies to keep up with the pace of digitalisation is representing a real challenge, even for big players.

Increased regulation
Following the collapse of Thomas Cook, revised regulation may be introduced covering airline insolvency.

New pensions legislation
A state of flux in the regulatory environment continues to impact 'old' industries – for example mining and commodities.

Rise of restructuring hubs
More countries, such as Singapore and the Netherlands, are developing into restructuring hubs.

Interest rates/monetary policy
These were expected to tighten this year. Will Basel IV banking regulations force banks to push out interest rates? What will the impact be if they do in 2020?

Brexit factor
What does Brexit mean for supply chains, just-in-time manufacturing and tariffs?

Dispersion
Certain sectors have seen an increased risk in hung syndications despite high levels of liquidity in the market.

01 Spain

Discussed topics:

01
Pre-insolvency and restructuring tools

02
Market trends

03
Brexit

Pre-insolvency and restructuring tools

We reviewed the pre-insolvency and restructuring tools recently introduced in Spain that allow dissenting creditors to be bound by the terms of refinancing agreements which are sanctioned by the Spanish courts (*acuerdos de refinanciación homologados*). Several large Spanish companies have taken advantage of these tools, and we noted that they are now well established, having been tested in the Spanish courts.

Market trends

We identified the Spanish retail and construction sectors as those facing the most acute difficulties. The ongoing crisis in the retail sector was attributed to weak sales volumes, higher costs and emerging business models. For the construction sector, a reduction in margins and the reluctance of banks to support large projects have created a challenging environment.

We moved on to discuss activity in the non-performing loan (NPL) market in Spain. It was noted that, although Spanish banks had sold €70bn of NPL portfolios in 2018, a further reduction in the exposure of Spanish banks to distressed assets is still required. In light of this, we predicted that the Spanish NPL market would remain very active in 2019.

Brexit

We explained that, even on a no-deal Brexit, we expect an English scheme of arrangement to still be recognised in Spain. We also explored how an English insolvency officeholder might have to apply to the Spanish courts for recognition on principles of domestic law (exequatur proceedings).

> **It was noted that, although Spanish banks had sold €70bn of NPL portfolios in 2018, a further reduction in the exposure of Spanish banks to distressed assets is still required.**
>
> Iñaki Gabilondo

Update

What has happened since January 2019 and how does this impact 2020 trends?

- Ongoing crisis in the Spanish retail landscape due to weak sales volumes, higher costs and emerging business models. EPC contractors (construction and engineering companies) also face continuing difficulties due to margins reduction.
- Reluctancy of banks to support companies that require big working capital lines, particularly bank guarantees/letters of credit, due to bad experiences in the restructurings of companies such as Abengoa or Isolux. This situation is putting a lot of pressure on these businesses.
- Increased role of bondholders in restructuring transactions.
- Covenant-lite loans and restrictions on lenders' ability to exit are increasingly common. This reduction of protection for lenders could be key in the case of a distressed situation or in a restructuring process.
- The Spanish government is producing a Restated Text of the Insolvency Act and, at the same time, a bill amending the Spanish Insolvency Act to include provisions of the directive on insolvency, restructuring and second chance. Although the majority of the directive's aims are already met in Spanish legislation, which is very advanced in terms of pre-insolvency and restructuring tools, such legislation must be adapted to include provisions to introduce the cross-class cramdown criteria and to bring down the current majority required to bind dissenting secured creditors in some cases, among other things.


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Restructuring – the global landscape

02
Germany

Discussed topics:

Key trends of 2018/2019

We discussed the increase in activity since the second half of 2018 with restructuring dominant in the automotive, retail and leveraged buyout (LBO) sectors. Legislative updates from the EU had also changed the landscape, including a new law regarding the tax exemption of restructuring gains and the final EU restructuring directive.

Automotive, retail and LBO restructurings

Automotive: There are an increased number of distressed situations with a potentially pervasive crisis in the automotive sector on the horizon brought about by the effects of environmental regulation, AI and e-mobility. Key issues affecting automotive suppliers include operating on very low margins leading to small changes in volume or commercial terms triggering distress. We also considered the integral role of original equipment manufacturers in restructuring negotiations, as well as the operational impact of antitrust and competition issues.

Retail: The German retail sector, particularly fashion and the mid-level market, is struggling with overexpansion in traditional brick and mortar stores, underinvestment in online sales and discounter offerings as key contributing factors. Key issues affecting the retail industry include fluctuations in the FX market, slow and expensive sourcing and significant liquidity swings brought about by seasonality. We noted the absence of a specifically designed restructuring tool for these situations (such as a company voluntary arrangement (CVA) in the UK) dealing with expensive leases and the unanimous consents required for a German out-of-court procedure.

LBOs: Complex bank debt/bond financing structures and sponsor-friendly finance terms delay restructuring discussions. We noted companies using UK restructuring tools (instead of local processes), such as schemes of arrangement for bank debt and CVAs for bonds – both of which may require a change in governing law.

Legislative updates

Cancellation of debt taxation in German restructuring: Provided certain requirements are met, profits resulting from a cancellation of debt will be tax exempt. No longer treating the elimination of liabilities as taxable income will be beneficial to restructurings.

Preservation of loss carried forward upon transfer of ownership: Now a distressed transfer of ownership will not trigger the removal of any loss carried forward. This is provided that at the time of transfer the company is insolvent or will be in the imminent future, and the acquirer gives certain guarantees.

ESUG evaluation: Changes brought about by the ESUG, a law intended to facilitate successful restructuring by encouraging companies to apply for insolvency at an early stage, were considered following a wide call for information. The report decided that the ESUG had brought about an overall positive change; however, adjustments to the existing law are needed in respect of the conditions to enter debtor-in-possession (DIP) proceedings and the right to choose insolvency officeholders.

EU restructuring directive: The new directive brings changes in respect of new financing arrangements, DIP proceedings, the grant of stays and the general restructuring plan. Implementation of the directive will leave ample scope for the national legislator and is likely to take up to two years (the official implementation period) in Germany.

Update

There have been a considerable number of restructuring situations in the automotive supply sector – in contrast to the previous years. These have been triggered for various reasons, in particular by the decreasing worldwide demand. The distress in the sector has not yet developed into a pervasive automotive crisis but we are witnessing, and expect to continue to see, a constant and possibly increasing flow of restructurings in the sector (potentially fuelled by a more widespread slowdown in European economies in 2020 and beyond).

Retail and particularly fashion retail remains a difficult market given the online offering. While there have been successful small- and mid-cap out-of-court restructurings, we have seen an increasing number of insolvencies with few successful restructurings, for example under a German insolvency plan. The outlook for the German high street remains negative, so we expect a number of potentially large restructurings in the coming months.

Compared to last year, there seem to be slightly fewer German distressed LBOs. Some situations have been closed (eg Senvion has been sold) or are still pending (Galapagos) and a few rumoured situations have not developed into (full-blown) restructurings. Secondary debt prices have decreased slightly but are still relatively high and investors still seem to be waiting for prices to come down further.

A draft new law incorporating the directive into German law is expected as early as the first half of 2020, which will prompt a lively debate in Germany.

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Restructuring – the global landscape

03 The Netherlands

Discussed topics:

01

The Dutch scheme

02

Enforcement in the Netherlands

03

Distressed M&A and distressed investing Dutch-style

The Dutch scheme

We examined progress in relation to the Dutch government's proposals for a new 'Dutch scheme', a pre-insolvency tool similar to an English scheme of arrangement with features reminiscent of Chapter 11 in the USA. It was noted that, following two consultations published in 2014 and 2017, the final bill was to be published in the course of 2019, with a view to the scheme entering into force in 2020.

We explored the key features of the proposed Dutch scheme as well as similarities and differences to the EU restructuring directive. The implications of the cross-class cramdown and the 'relative/absolute priority rule', to be introduced on implementation of the EU restructuring directive on the Dutch scheme, were also identified, with a particular focus on whether or not the proposed absolute priority rule envisaged by the Dutch scheme will be acceptable in the light of the EU legislative developments and its existing application in the USA.

Enforcement in the Netherlands

We explored general Dutch law enforcement principles, ranging from the creation of asset-specific security rights to methods of enforcement by security holders, with a focus on the emergence of more efficient enforcement options available to security holders alongside the public auction or court-approved private sale procedures.

We examined the 'enforcement conundrum' as one of the key issues currently facing the Dutch restructuring landscape. It was noted that a codependent relationship exists between security holders and bankruptcy trustees: the security holders rely upon co-operation with trustees to realise the going concern value of businesses as a priority, on the one hand, while the bankruptcy trustees rely upon co-operation with the security holders to effect transactions in such a way as to protect the interests of employees and other stakeholders alongside their obligations to creditors.

Noteworthy legislative progress aimed at improving the enforcement regime in the Netherlands included the introduction of a bar date, the removal of limits to the size and composition of creditors' committees, and the permitting of multiple supervisory judges in more complex insolvency cases under the Act on the Modernisation of Bankruptcy Proceedings. We also noted that the recent establishment of the English-speaking Netherlands Commercial Court aims to facilitate international business, fast-track processes and improve overall court efficiency in the region.

Distressed M&A and distressed investing Dutch-style

We discussed the dos and don'ts of distressed investing in the Netherlands, with a focus on the nuances of dealing with bankruptcy trustees and works councils in the light of shifting considerations towards the interests of employees in distressed transacting, factoring in the requirement to obtain supervisory judge approval, and methods of enhancing market testing efficiency in the jurisdiction.

Update

We have seen the first court cases go to the Netherlands Commercial Court, including a procedure where a pledgee sought the consent of the court for a share pledge enforcement, by way of an enforcement sale that involved a credit bid and debt-for-equity swap.

In another case, the ordinary Dutch court also consented to a share pledge enforcement, involving a credit bid and a debt-for-equity swap, resulting in part of the debt being rolled and the remainder being converted into equity, culminating in a lender-controlled vehicle becoming the owner of the collateral.

In addition, following the Smallsteps decision of the European Court of Justice – where the court ruled that the Dutch practice of pre-packed bankruptcy sales resulted in the transfer of undertaking protection being applicable to the employees of the transferred business, despite the transfer taking place out of a bankruptcy estate – the Dutch legislator has offered a new legislative proposal for consultation to stakeholders, which should address the consequences of the Smallsteps decision for the nascent Dutch pre-pack bankruptcy practice. This new proposal takes the fact that a sale by the bankruptcy trustee will result in a transfer of undertaking as a starting point. But it does offer the possibility of not taking all employees for economic, technical or organisational reasons (ETO reasons), subject to the employees that are being offered employment by the acquirer being a fair reflection of the make-up of the original workforce of the transferee and objective selection criteria that have been approved are utilised in making the selection.

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04
Italy

Discussed topics:

01
NPL and UTP markets

02
Effectiveness of restructuring proceedings and insolvency law reform

03
Lending to distressed businesses

NPL and UTP markets

At the end of 2018, the estimated gross value of the Italian non-performing loan (NPL) market was €266bn, with 45 per cent of the value of NPLs held by eight institutions. In light of this, we considered how the aggregation of small market players' interests could improve NPL collection. We moved on to consider the growing importance of the Italian 'unlikely-to-pay' (UTP) market, which had an estimated gross value of €79bn as of May 2019.

Effectiveness of restructuring proceedings and insolvency law reform

We examined recent trends in the effectiveness of restructuring proceedings in the UTP market. According to the Bank of Italy, after four years: 62.2 per cent of restructuring agreements are still in place; 22.5 per cent resulted in liquidation or bankruptcy proceedings; and only 10.4 per cent resulted in a positive and conclusive outcome. We noted that the new Italian Insolvency Code was approved on 12 January 2019. Certain provisions of the Italian Insolvency Code, which amend the Italian Civil Code, came into force on 16 March 2019. The remainder of the Italian Insolvency Code will come into force on 15 August 2020. Having reviewed the timeline for the Italian Insolvency Code's implementation, we considered the key changes that the Italian Insolvency Code will make to Italian insolvency proceedings. In particular, we examined the provisions of the Italian Insolvency Code relating to debt restructurings, recovery plans and creditors' voting procedures.

Lending to distressed businesses

We briefly explored recent changes to Italian securitisation law that allow for the use of securitisation SPVs in distressed scenarios, and considered the potential application of this type of lending structure to the UTP market.

Restructuring – the global landscape

There is widespread sentiment that UTPs are the emerging business in Italy, but market players are still prudently exploring the most efficient ways to exploit the full potential of this new market and to govern the switch from a 'gone concern' approach to a 'going concern' approach.

Francesco Lombardo

Update

- For the first half of 2019, statistics show (i) a decrease in Italian companies' bankruptcies and forced liquidation; and (ii) a significant increase in voluntary arrangements. This trend is expected to continue and may be further fostered by the entry into force of the Italian Insolvency Code in the second half of 2020.
- There is widespread sentiment (supported by data on UTP stocks held by Italian banks) that UTPs are the emerging business in Italy. But market players are still prudently exploring the most efficient ways to exploit the full potential of this new market and to govern the switch from a 'gone concern' approach to a 'going concern' approach (ie a proactive management of the receivables versus the collection/recovery strategy that was traditionally pursued in the NPL sector). Some players have created the first investment platforms to jointly invest in UTPs.
- A draft of amendment provisions to the Italian Insolvency Code has been published. In addition to clarifying and better co-ordinating the content of some provisions of the Italian Insolvency Code, the proposed amendments take into account the new provisions contained in the restructuring directive.


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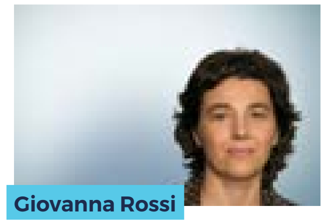
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Restructuring – the global landscape

05 England

Discussed topics:

01
CVAs

02
Schemes of arrangement

03
UK corporate insolvency reform and the EU restructuring directive

04
Brexit

CVAs

Companies seeking to rebalance their store portfolio in 2018 and 2019 significantly increased the use of landlord company voluntary arrangements (CVAs). We looked at what the future holds and concluded that CVAs are here to stay, extending into mainstream restructuring (especially unsecured debt deals).

Schemes of arrangement

Two notable cases, involving Noble and Stronghold, underlined how the courts have refined their approach in dealing with aspects such as jurisdiction (to be assessed at the convening hearing if it is a 'roadblock'). Courts have given a clear warning on timetabling.

UK corporate insolvency reform and the EU restructuring directive

The key elements of the insolvency reform proposals put forward by the government in August 2018 are:

- the introduction of a restructuring moratorium;
- a restructuring plan with cross-class cramdown; and
- a ban on *ipso facto* clauses.

Proposed duties on directors of holding companies, when considering the sale of a large insolvent or near-insolvent subsidiary, had not moved on in 2019 since their initial introduction.

Brexit

The scheme of arrangement is likely to stay a contender despite Brexit, but COMI shifts may become more difficult post-Brexit. The loss of the EU Regulation on Insolvency Proceedings would be keenly felt, although different methods of obtaining recognition may be available.

> **We looked at what the future holds for CVAs and concluded they are here to stay and are extending into mainstream restructuring (especially unsecured debt deals).**
>
> Ken Baird

Update

What has happened since June 2019 and how does this impact 2020 trends?

- **CVAs have continued** – and we have seen the first real challenge for a decade with the Debenhams CVA being the subject of a fast-tracked court hearing. The ruling (in favour of Debenhams) has provided welcome clarity in some respects.
- **Schemes of arrangement have continued** – while proving to be a real contender to US Chapter 11, with Nyrstar choosing to implement its restructuring via an English law scheme of arrangement (coupled with Chapter 15 recognition).
- **UK insolvency reform is on the back-burner** – with the possible exception of airline insolvencies, in light of Thomas Cook, as Brexit is consuming all of parliament's time.
- **New pensions legislation** is likely to have an impact on restructurings where there is a defined benefit pension scheme due to new criminal sanctions.

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Restructuring – the global landscape

06

Central and Eastern Europe

Discussed topics:

01

The EU restructuring directive

02

Distressed infrastructure project loans

03

Market update

The EU restructuring directive

We explored the main features of the preventive restructuring framework set out in the directive, which had become effective in July 2019. It was noted that, due to the significant degree of optionality built into the directive, the extent to which its implementation will harmonise restructuring frameworks across the EU depends on the variance of options selected by member states.

To comply with the directive, we highlighted the fact that significant legal reform would be required in Austria, the Czech Republic and Romania. In contrast, in Bulgaria, Croatia, Hungary and Poland only moderate reform would be necessary. While the directive has the potential to make restructuring frameworks available in CEE jurisdictions more attractive on paper, we concluded that the efficacy and reliability of the court system, in any given jurisdiction, remains an equally important factor in deciding where to initiate a restructuring. Such predictability has, to date, all too often been lacking, particularly in certain CEE countries.

Distressed infrastructure project loans

With reference to two case studies, the D4 expressway in the Czech Republic and the Brașov highway in Romania, we considered the main challenges to the smooth completion of infrastructure projects in CEE. Political factors, such as administrative inexperience, changes in government and regulatory change, were identified as the strongest headwinds for investors to be aware of.

Market update

Noteworthy market news included Croatia's recovery from a lengthy financial crisis and the upgrade of its credit rating to investment level; the rise of non-performing loans in Turkey, a close neighbour of CEE; and regulatory developments in the distressed debt market in Ukraine.

“While the directive has the potential to make restructuring frameworks available in CEE jurisdictions more attractive on paper, we concluded that the efficacy and reliability of the court system, in any given jurisdiction, remains an equally important factor in deciding where to initiate a restructuring.

Florian Klimscha

Update

On 19 September 2019 the Ukrainian parliament adopted Law No. 1070 'On Amendments to Certain Laws of Ukraine on Improving the Procedure of Financial Restructuring', which extends the Law of Ukraine 'On Financial Restructuring' for another three years and is designed to simplify and accelerate the procedure of voluntary financial restructuring.

One main feature is the single procedure of financial restructuring with respect to several debtors who are related parties; another is the possibility of the creditor leasing assets to the debtor in order to ensure the continuity of the debtor's business.

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Restructuring – the global landscape

07 USA

Discussed topics:

01

Uptiering

02

Chapter 11 proceedings v UK schemes of arrangement

03

Chapter 15 – increased use

04

Chapter 11 as a cure for Purdue's opioid crisis

Uptiering

Certain rights in a credit agreement are considered 'sacred' and, as a result, cannot be amended by a simple majority vote. We looked at instances in which these amendments have occurred and how sacred right protections were diluted, and examined what happened in the NYDJ and Trident Holdings restructurings.

Chapter 11 proceedings v UK schemes of arrangement

We examined the differences between the procedure and practicalities of US Chapter 11 proceedings and UK schemes of arrangement. We also discussed the restructuring of Syncreon Group and Nyrstar, and fact-specific circumstances that may make a particular procedure the more suitable alternative, such as the role of management, cross-class cramdown and the level of court involvement.

In Syncreon, the group chose a UK scheme of arrangement instead of a US Chapter 11 proceeding, and deliberately (and openly) changed the finance documents to be governed by English law to be able to implement a scheme. A key factor cited was the high costs associated with Chapter 11.

In Nyrstar, an English scheme of arrangement was the chosen procedure. Here, a key consideration was that not all guarantors would have to file separate proceedings, unlike in a Chapter 11.

Chapter 15 – increased use

Chapter 15 proceedings are designed to efficiently deal with cross-border insolvency cases and achieve co-operation between US and non-US courts. We highlighted the recent surge in Chapter 15 applications and recent cases in which we were involved, such as Air Berlin, Alitalia, Nyrstar and Reward Science Technology Industry (China).

Chapter 11 as a cure for Purdue's opioid crisis

Purdue Pharma has filed for Chapter 11 bankruptcy protection in order to manage its litigation liability. A litigation injunction has halted even the opioid-related cases brought by government entities that may not necessarily be stayed by the US Bankruptcy Code's automatic stay provisions. This is part of a proposed multibillion-dollar settlement intended to stop the escalating litigation costs and preserve Purdue's assets for claimants. Purdue's subsequent restructuring plan involves transferring all of its assets into a new entity, established for the benefit of claimants. Significant questions around the restructuring plan remain, including the resolution of non-dischargeable liabilities for defrauding a US government entity, the potential forfeiture and distribution of assets by the US Attorney General and the possibility of the Sackler family (the owners and former directors of Purdue) obtaining a discharge.

Update

Continued use of aggressive backstop arrangements in restructuring transactions and Chapter 11 plans to raise new capital, where larger creditors and creditor ad hoc groups are hiving off substantial value through the backstop for themselves, away from other creditor constituencies. This was most recently an issue in the Acosta bankruptcy case, where a group of four creditors with a majority in amount of debt attempted to exclude minority creditors from participating in the lucrative fees and other rights under an equity backstop. Ultimately, the minority creditors were able to compel their participation as the four creditors (while holding a majority in the amount of debt) did not control the numerosity requirements of the Bankruptcy Code. This leaves open the issue of how minority creditors can protect their interests (and even if they are legally allowed to protect such interests) where the majority creditors reach both the threshold dollar amount and numerosity requirements under the Bankruptcy Code.

Uptiering of prepetition loans, imposing case milestone provisions and other bankruptcy case management requirements continue to be prevalent in connection with debtor-in-possession (DIP) financing. Use of roll-ups continues, while parties and the bankruptcy courts grapple with issues such as what ratio of new money to roll-up is necessary; justifying a zero new money roll-up; who participates in the roll-up; and what should be allowed for case management by secured creditors via DIP financing and/or cash collateral orders, including the case milestones.

Companies and creditors continue to contemplate the use of a UK scheme v Chapter 11 and what would work best for the company and its creditors under the particular circumstances (ie financial restructuring v operational restructuring) and what statutory tools may be available in one regime as opposed to another. Regardless, we continue to anticipate increased Chapter 15 filings as parties seek to have non-US restructuring proceedings recognised in the USA.

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Restructuring – the global landscape

08 France

Discussed topics:

01

General framework of French insolvency laws

02

Creditor takeovers

03

Debt cramdown and new money injection

General framework of French insolvency laws

We discussed amendments to French insolvency laws allowing a cramdown of opposing minority creditors and, in limited circumstances, a forced transfer of shareholders' equity. Despite this, French insolvency law remains shareholder friendly, with, for example, very limited means of removing an 'out-of-the-money shareholder' and a 10-year term-out on creditors, which can be imposed by *sauvegarde* and rehabilitation proceedings.

Creditor takeovers

We examined the prerequisites for a successful creditor takeover, where: (i) there is a requirement for new money but the shareholder is unwilling or unable to make the required injection; (ii) the creditors' restructuring proposal addresses all relevant issues for the company; and (iii) the management and court appointed *mandataire ad hoc* or *conciliateur* are supportive of the proposal.

We discussed the numerous pitfalls causing security enforcements to be seldomly used in France. The most common route towards a creditor takeover involved getting the existing shareholder to agree to a transfer of their equity on a consensual basis. Agreeing to a consensual transfer is, however, usually a lengthy process that can be made easier if (i) a security enforcement is a credible threat on the shareholder, especially important if a double Luxco structure is in place; and (ii) in the context of a second round of restructuring, a *fiducie* (trust security) or golden share has been granted as part of the first round of restructuring.

"French insolvency law remains shareholder friendly, with, for example, very limited means of removing an 'out-of-the-money shareholder' and a 10-year term-out on creditors, which can be imposed by *sauvegarde* and rehabilitation proceedings.

Laurent Mabilat

Debt cramdown and new money injection

Provided all stakeholders (the shareholder and all creditors) are in agreement, the debt restructuring can be implemented through a conciliation agreement (*protocol de conciliation*), which in most cases will be court sanctioned (*homolgué*). In a situation where there are opposing minority creditors, an alternative route to consider is the accelerated financial safeguard (SFA), which allows for cramdown of these opposing minority creditors.

In relation to the injection of new money, we considered how best to structure this, including the importance of the group entity in conciliation proceedings and the conciliation protocol being court sanctioned, as this allows the contributors of the new money to benefit from a favourable ranking and protects them against hardening period risks, in case of a subsequent round of restructuring.

Update

We expect 2020 to be a very busy year with a number of new restructuring situations developing. 2019 will have seen two very large situations (Bourbon and Rallye) addressed through formal insolvency proceedings (as opposed to the so-called 'amicable proceedings') and this trend could continue.

The transposition of the restructuring directive should lead to (i) an overhaul of the three committees (suppliers, credit institutions and bondholders) whose consent is currently required to approve a safeguard plan; and (ii) the implementation of a cross-class cramdown mechanism.

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