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# Real Estate Finance and Covid – 19

## The UK Corporate Insolvency and Governance Act 2020: how will the new moratorium and restructuring plan impact real estate finance transactions in England?

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**KEY INFORMATION**

The Corporate Insolvency and Governance Act 2020 (the **Act**) entered into force on 26 June 2020. The Act was brought into law very quickly to implement changes to support struggling businesses as they dealt with the economic fallout from the Covid-19 pandemic, but it includes permanent amendments to the insolvency framework that will change the way creditors and others interact with businesses in financial difficulty. A detailed summary and Q&A analysis of the Act is available here.

Following on from our previous note, 'Real estate and Covid-19: the questions we are being asked in England', here we consider the key questions and issues that lenders and borrowers in the commercial real estate lending market in England are likely to have as a result of the new moratorium and restructuring plan introduced by the Act. This note is a generic discussion of those issues but each issue discussed will be the subject of extensive negotiation when it comes to documentation. As a result, the terms and conditions of any finance document should always be considered in the context of the particular document in which they are found and the specific facts and circumstances of the relevant deal. As such, this note provides only a general analysis of issues likely to arise and it does not provide legal advice.

## How worried should I be about the new moratorium and restructuring plan?

The Act undoubtedly represents the biggest reform of insolvency law in the last 18 years since the Enterprise Act 2002. The restructuring plan provisions have introduced a new cross-class 'cram down' of out of the money and dissenting creditors and the potential for a 'cram up' by junior creditors. Each of these represents additional rights for creditors in a distressed scenario and is therefore likely to have a big impact on restructurings and intercreditor discussions going forwards. With respect to real estate financings however, we expect the application of the restructuring plan to be limited in practice to financings of operating businesses with significant real estate assets, rather than structured senior or senior and mezzanine financings of special purpose vehicles holding real estate assets.

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That said, the new cross-class cram down provision under the Act is a useful new tool for senior lenders looking to compromise claims of more junior creditors and presents more optionality in a distressed scenario than going straight to an asset level enforcement. This may seem like bad news for junior creditors, but a restructuring plan that sees them compromised would at least allow them to keep some skin in the game, whereas their claims could be rendered completely worthless by a senior led enforcement. In terms of risk to senior lenders, the potential for junior creditors to cram up in reality is likely to be extremely limited and carefully monitored by the courts.

The new moratorium under the Act and its related payment holiday for particular debts is likely to be of little concern for lenders for two reasons. First, due to the carve outs from the restriction on payments for (among other things) payments made to service debts and other liabilities arising under loan agreements and secondly, the fact that lenders may still accelerate their loan as a last resort notwithstanding a moratorium. The application of the new moratorium to typical SPV borrowers in structured real estate financings may also turn out to be quite narrow for the reasons set out in this note.

A detailed summary and analysis of the new restructuring plan and moratorium provisions of the Act is available here.

Read on for a discussion of the key questions and issues that may arise for senior lenders, mezzanine lenders and borrowers.

# Senior lenders

## Key points

- The new moratorium has limited effect for secured lenders: they continue to get paid and can bring the moratorium to an end by accelerating their loan in order to enforce their security
- A restructuring plan is unlikely to be viable in most real estate financing SPV structures, which typically have tightly controlled cashflows
- The ability to cram down using a restructuring plan is a helpful new addition for senior lenders, either against junior creditors or equity
- There is a theoretical possibility of cram up by junior creditors using a restructuring plan, but this is very unlikely to occur in reality due to the 'no worse off' test, court scrutiny and requirement for fairness in implementing each restructuring plan
- In practice, senior lenders on a real estate financing are more likely to enforce their asset level security than use a restructuring plan, with its associated court and time costs

## Q&A

1. Will a typical borrower in a real estate financing be entitled to a moratorium?
2. Can I accelerate my debt if a moratorium has been granted?
3. Does a moratorium mean that my debt won't be serviced?
4. Can my borrower make payments to its other creditors while a moratorium is in force?
5. Can I enforce my fixed security while my borrower is the subject of a moratorium?
6. Will my floating charge crystallise when the borrower enters a moratorium?
7. Can I take new security from my borrower if they are in a moratorium?

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8. I am the only senior creditor lending against a hotel; there is just some minor trade debt and a subordinated shareholder loan. Can a restructuring plan be used to compromise my claim? Are my enforcement rights affected?

# Borrowers

## Key points

- The new moratorium gives breathing space to financially distressed debtors without the stigma of entering an insolvency procedure and allows directors to stay in control of the company
- Borrowers entering the new moratorium still need to be able to service certain payment obligations (including payments to lenders under loan agreements) but the moratorium does prevent creditors from enforcing security while the moratorium is in place
- A restructuring plan gives borrowers the option to restructure their existing debts to make them more manageable, if 'in the money' creditors are supportive

## Q&A

1. Will the moratorium trigger a forfeiture of my lease?
2. I am a borrower with a tenant who is subject to a moratorium. What will happen to the income?
3. I am a Luxembourg incorporated SPV borrower who owns a London office building with FRI leases. Can I propose a restructuring plan?
4. I am a borrower-landlord. Could a restructuring plan be used to compromise my rent claim without my consent?

# Mezzanine lenders

## Key points

- The new moratorium has limited effect for secured lenders: they continue to get paid and can bring the moratorium to an end by accelerating their loan in order to enforce their security
- The ability of more senior creditors to cram down using a restructuring plan is a concern to more junior creditors but they have the protection of the 'no worse off' test in the relevant alternative
- A restructuring plan may be more beneficial than asset enforcement for junior creditors in situations where their debt would otherwise be wiped out on enforcement; better to retain a compromised debt or equity stake and hope that the asset value, and therefore junior lender returns, improve

## Q&A

1. Can a restructuring plan be used to get round my contractual standstill/buy-out right/Mezz only share enforcement?
2. Can a senior lender and the borrower use the plan to 'cram me down'?
3. Am I allowed to agree to a plan which 'crams up' the senior lender?
4. The shareholder has injected subordinated debt; what voting rights does it have on a restructuring plan?

# What changes do I need to make to the finance documents?

To date, the LMA have not proposed any changes to the LMA Real Estate Finance Facility Agreement as a result of the Act and we therefore expect no or minimal changes to be adopted by the market to English law facility agreements in the real estate finance market at the current time. The LMA has published some minor changes to its real estate finance security documents to accommodate the Act, which lenders and borrowers should expect to see incorporated going forwards, but these are minor and clarificatory in nature and, importantly, should not affect the commercial position.

# Keep updated, stay in touch….

Please do not hesitate to get in touch with any of the A&O contacts listed below if you have any questions on any of the matters discussed in this note.

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# Questions & Answers

## Senior lenders

### 1. Will a typical borrower in a real estate financing be entitled to a moratorium?

Yes, a typical borrower in a real estate financing will be an eligible company entitled to a moratorium if it meets the entry requirements set out in the Act. Borrowers incorporated overseas are eligible as well, provided there is sufficient connection with the United Kingdom (using the same test applied by the courts in the context of schemes of arrangement and insolvency proceedings), which ought to be met on the basis that the debt to be subject to the moratorium is governed by English law. The court will only grant a moratorium where it is satisfied that the moratorium would achieve a better result for the company's creditors as a whole than the winding up of the company without first being subject to a moratorium. Where a borrower is incorporated overseas, consideration should be given as to whether the moratorium would be effective in the relevant overseas jurisdiction (i.e. the jurisdiction of incorporation and other relevant jurisdictions where the business operates) on a case-by-case basis where lenders are likely to have share security and possibly also security over intercompany loans.

In practice however, we think the new moratorium will have only limited application to borrowers in the types of structured vehicles typically used in a real estate financing; those borrowers wanting to receive the protection of a moratorium would be better off going straight to an administration moratorium under Schedule B1 to the Insolvency Act 1986, which has a significantly longer initial period (the standalone moratorium under the Act being 28 days versus 12 months under the administration moratorium), offers the same protection against creditor action and protects the directors from claims of wrongful trading. Unlike the new moratorium, lenders are not able to indirectly bring about an end to an administration moratorium by accelerating their loan (see more below). The benefits of a standalone moratorium in preventing the crystallisation of floating charges, giving the borrower a payment holiday for certain debts (see more below) and perhaps also reputational in avoiding entry into an insolvency procedure, are not likely to be of significant benefit to a real estate SPV borrower that is struggling to repay its debts.

### 2. Can I accelerate my debt if a moratorium has been granted?

Yes, lenders can still exercise their contractual rights to accelerate (should they arise) after commencement of the moratorium. Although generally speaking, entry into the moratorium triggers a ban on the operation of termination or variation clauses (*ipso facto* clauses) for suppliers of goods and services on the grounds that the company has entered into the moratorium (the **'*ipso facto*' rule**) this does not apply to financial contracts, including loan agreements. This means that lenders under loan agreements can still charge default interest or drawstop the facility for example and otherwise exercise their contractual rights (drawstops in this context are more likely to arise on investment deals that haven't completed and the final initial valuation has not been issued and on development deals which contemplate drawdowns throughout their life). Similarly, the 'ipso facto' rule would not apply to any waiver or standstill granted by a lender which is expressed to terminate on the occurrence of an event of default (including any event of default that may be caused by entry into the moratorium). Lenders also have the ability to indirectly bring about an end to the moratorium by accelerating the loan if the borrower does not repay in full, as the monitor is obliged to terminate the moratorium in these circumstances. Borrowers will therefore be relying on their lenders to be supportive once a moratorium is granted in order to preserve the moratorium.

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Although a lender retains all its contractual rights, it would be prudent to consider reputational issues very carefully before accelerating in this scenario.

## 3. Does a moratorium mean that my debt won't be serviced?

No, debts or other liabilities arising under a loan agreement, guarantee, commitment or securities contracts (among others) are excluded from the payment holiday for pre-moratorium debts granted to an eligible company that obtains a moratorium under the Act. If these amounts are not paid, the monitor is required to bring the moratorium to an end (see more above). These protections should be of comfort to lenders with borrowers entering into the moratorium regime. Lenders should take care when considering whether to grant waiver requests from borrowers who may enter into a moratorium, that they do not unwittingly waive their right to receive these payments to preserve the benefit of the lender payment protections described above.

## 4. Can my borrower make payments to its other creditors while a moratorium is in force?

Yes, some of them. Other creditors of the borrower may not be paid if their debt or other liability has fallen due before the commencement of the moratorium or becomes due during the moratorium under an obligation incurred by the company before the commencement of the moratorium unless they are amounts payable in respect of:

- the monitor's remuneration or expenses;
- goods or services supplied during the moratorium (and which would otherwise be pre-moratorium debts because the supply contract was entered into pre-moratorium);
- rent in respect of a period during the moratorium (under leases entered into pre-moratorium)
- wages or salary arising under a contract of employment, regardless of when those wages or salary fall due;
- redundancy payments, regardless of when those payments fall due; or
- debts or other liabilities arising under a contract or other instrument involving financial services, including (among others) financial contracts (loans, finance leases, guarantees or commitments, commodities contracts, securities contracts), securitisation transactions, derivatives and spot contracts, capital market investments, market contracts etc., which must be paid whether or not they fall due pre or post the moratorium.

This means that creditors such as swap counterparties under any hedging arrangements entered into before the moratorium was granted should continue to receive payments. Trade creditors may not be paid for goods or services supplied before the moratorium but the Act provides for goods and services supplied during the moratorium to be paid, even where the supply contract was entered into before the moratorium. Amounts payable to subordinated creditors under shareholder loans for example would also continue to be paid whether or not they fall due pre or post the moratorium in the same way as the lender's debt under the loan agreement. Amounts in respect of management company fees are payable on the same basis as trade creditors. Lenders to borrowers with existing development finance should note that bills for goods and services supplied and any wages and salaries (including redundancy payments) of employees must continue to be paid during the moratorium period.

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## 5. Can I enforce my fixed security while my borrower is the subject of a moratorium?

No, generally speaking, the moratorium would prevent the enforcement of security over the company's property, including fixed charges. There are limited exceptions, such as where the security constitutes a collateral security charge or financial collateral or security has been granted during the moratorium with the monitor's consent, or if the court gives permission.

## 6. Will my floating charge crystallise when the borrower enters a moratorium?

No, the moratorium prevents the crystallisation of any floating charge or any imposition of a restriction on disposal of a floating charge asset.

## 7. Can I take new security from my borrower if they are in a moratorium?

Yes, but only if the monitor consents. The Act provides that the monitor should only consent to grant new security if the monitor thinks that the grant of security will support the rescue of the company as a going concern.

## 8. I am the only senior creditor lending against a hotel; there is just some minor trade debt and a subordinated shareholder loan. Can a restructuring plan be used to compromise my claim? Are my enforcement rights affected?

Yes, in theory, a trade creditor and/or subordinated shareholder could propose a restructuring plan to implement a cram up of a senior creditor if they can show that they are 'in the money' i.e. they would receive a payment or have a genuine economic interest in the company in the relevant alternative. Once a restructuring plan is approved by the court, all creditors will be bound by its terms and their rights restructured in accordance with the plan, which would include any right of the senior creditor to take enforcement action based on an event of default that has been remedied or waived in accordance with the restructuring plan.

This is unlikely to be a material concern for the senior lender in this scenario though for a number of reasons:

- the first is that if a trade creditor and/or subordinated shareholder is 'in the money', then the senior creditor's debt, as senior secured, will be fully cash covered in the event of any administration, liquidation or other realisation of the company's assets;
- the second is that for a cram up to be sanctioned, the court must be satisfied that the senior creditor would not be worse off under any restructuring plan proposed by any junior creditors than in the relevant alternative and the court will need to consider and conclude that the plan is fair. As the senior creditor is fully cash covered and senior secured, at worst, a restructuring plan on these facts could be expected to propose a term-out of the senior loan, waiver of any events of default and repayment at par; although if the senior lender could expect immediate cash repayment in the relevant alternative (i.e. on a security enforcement), it is unlikely that the court would find that terming out the senior debt met the requirement that the senior creditor would be no worse off. That said, a sympathetic lender in this situation will probably be considering supporting the company in this way anyway; and
- finally, the costs of implementing a restructuring plan mean that it will almost certainly not be viable or warranted on these facts as, if the company is in trouble, the court costs may wipe out any value left for more junior creditors altogether.

Under the Act, property service providers and other trade creditors in this scenario would not be able to terminate their contracts with the borrower for insolvency pursuant to the 'ipso facto' rule as a result of any restructuring plan proposal. This is intended to help borrowers and lenders alike in terms of keeping the borrower's business as a whole viable while a restructuring plan is implemented. Lenders should note that the 'ipso facto' rule would also prevent them from terminating an asset management agreement pursuant to the terms of any existing duty of care agreements for example on grounds of borrower insolvency.

# Borrowers

## 1. Will the moratorium trigger a forfeiture of my lease?

No, the granting of a moratorium prevents forfeiture of the lease by a landlord except with the permission of the court. For more on the effect of the Act and Covid 19 on financial institutions in the commercial real estate market generally, click here.

## 2. I am a borrower with a tenant who is subject to a moratorium. What will happen to the income?

As landlord, you will be entitled to receive rent to the extent that rent is 'moratorium rent' from its tenant but 'pre-moratorium rent' will be subject to a payment holiday. This could cause significant disruption to your (and therefore the lender's) income if the property is single occupancy, or may be of less concern if the property is multi-let.

Rental income is dealt with differently under the Act depending on whether it arises in respect of the period before the moratorium or the period during the moratorium, as follows:

- **Pre-moratorium rent:** Rent that is payable in respect of the period before the moratorium, including rent arrears, will be the subject of a 'payment holiday' under the Act and the landlord may not exercise any right of forfeiture in respect of those amounts except with the court's permission; this means that the borrower-landlord will not be in receipt of these amounts which would ordinarily be used to service its debt. The tenant will require the permission of the court to pay any pre-moratorium rent if the amount of such rent exceeds the greater of £5,000 or 1% of the company's debts when the moratorium began. Although the expectation is that any unpaid rent will eventually be paid following the end of the moratorium, when the company emerges as a going concern, it is worth bearing in mind that if this becomes impossible and the borrower enters into liquidation or administration instead, the borrower will have been using available cash to service its moratorium debts and those debts not subject to a payment holiday, thereby reducing the assets available to ultimately pay the landlord any outstanding amounts.

- **Moratorium rent:** Rent in respect of the period during the moratorium under leases entered into pre-moratorium is still payable under the exceptions to the moratorium payment holiday set out above, so any tenants that are subject to a moratorium should continue to pay these amounts to the borrower. Although the borrower is not able to exercise its right of forfeiture for non-payment of these amounts without the court's permission, if these rental payments are not made, the monitor is required to bring the moratorium to an end.

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Lenders and borrowers considering cash-flows during a moratorium should be aware that it is not yet clear from the Act whether ‘rent’ referred to above includes amounts in respect of other periodical payments such as service charge and insurance or would only catch the principal rent.

## 3. I am a Luxembourg incorporated SPV borrower who owns a London office building with FRI leases. Can I propose a restructuring plan?

The restructuring plan is available to any company with a sufficient connection to the United Kingdom (see above) that meets the two conditions set out below, including foreign companies. A sufficient connection can usually be founded on the basis that the debt being compromised is governed by English law. The restructuring plan can also be used by some non-corporate entities used in real estate financings such as limited liability partnerships, for example. The two entry conditions are: (1) the entity must have encountered or be likely to encounter financial difficulties that are affecting, or will or may affect its ability to carry on its business as a going concern; and (2) a compromise or arrangement must be proposed between the entity and its creditors or members (or any class of either) and the purpose of such compromise or arrangement must be to eliminate, reduce, prevent or mitigate the effect of any of the financial difficulties that entity is facing (the **entry conditions**).

In practice we do not expect the restructuring plan will be particularly useful in restructuring the debts of special purpose vehicles holding single real estate assets because (a) the costs to implement a plan will logically preclude their use in such structures where the income and capital structure is so tightly controlled and (b) senior secured lenders who are fully cash covered will be better off opting for an asset level enforcement rather than the terms of a restructuring plan in the majority of cases.

## 4. I am a borrower-landlord. Could a restructuring plan be used to compromise my rent claim without my consent?

A number of high profile retail businesses have recently used company voluntary agreements (CVAs) to restructure their lease obligations while leaving liabilities owed to their other creditors largely unaffected. Our view is that a restructuring plan could be used by other operating businesses with significant real estate assets, for example hotel chains or shopping centres, to achieve the same effect more easily due to the less onerous voting requirements of a restructuring plan compared with a CVA. The approval threshold for a restructuring plan is, as a minimum, 75% of a single class of creditors present and voting and only creditors who would receive a payment, or have a genuine economic interest in the company in the event of the relevant alternative are counted for these purposes. In this scenario, differential treatment of the claims of landlords in relation to other creditors with similar rights with respect to schemes and CVAs, is likely to result in the borrower landlord, together with any other landlords of the borrower, constituting a separate class of unsecured creditors for the purposes of any restructuring plan and therefore being open to a cram down by more senior secured creditors.

In contrast, a CVA doesn’t separate creditors into separate classes and requires the approval of 75% by value of the company’s voting creditors and that not more than 50% by value of the creditors who vote and who are not connected with the company vote against it at a members meeting, which is an additional hurdle for companies hoping to implement a CVA. Unlike a restructuring plan, CVAs are not able to compromise the rights of a secured creditor to enforce their security and therefore often need to be coupled with bilateral agreements with secured creditors to achieve a whole business restructuring. Another advantage of a restructuring plan over a CVA is the ability of the restructuring plan to compromise member’s shareholdings.

Having said that, although the restructuring plan looks attractive from a voting perspective and for senior lenders looking to be able to compromise the claims of other junior secured creditors, we would still expect CVAs to remain the instrument of choice in the majority of cases as the cheaper alternative, requiring less court involvement and representing a well-trodden path for lenders looking for a greater degree of certainty as to the outcome.

# Mezzanine lenders

## 1. Can a restructuring plan be used to get round my contractual standstill/buy-out right/Mezz only share enforcement?

The first point to make here is that a restructuring plan could be implemented on a typical structurally subordinated senior and mezzanine financing (i.e. senior and mezzanine lenders have debt sitting at different levels in the corporate structure) with common security and cross guarantees. Mezzanine contractual rights and security are therefore potentially within scope to be compromised by a restructuring plan; if a restructuring plan is sanctioned by the court, it can compromise creditors' contractual rights as against the borrower and each other in order to implement the principal compromise. There are two ways that a restructuring plan can be imposed on the company's creditors and members without their consent: (1) a cram down; and (2) a compromise of debt and equity claims of creditors and/or shareholders who the court is satisfied have no genuine economic interest in the company.

On a practical level, the company would also be able to use either the new moratorium under the Act (if lenders are supportive of the restructuring plan) or an administration moratorium (if they are not) to prevent any creditor enforcement while the plan is put in place. A restructuring plan is extremely flexible and can be tailored to affect a range of scenarios, provided it constitutes a compromise or arrangement and satisfies the entry conditions.

## 2. Can a senior lender and the borrower use the plan to 'cram me down'?

Yes. If a court approves a restructuring plan, all creditors and members of the company are bound by it, irrespective of whether or not they voted on it and whether they voted for or against it (see above). One notable exception, where a mezzanine lender could not be subject to a cram down of its contractual rights, is if the company has been in a moratorium and the restructuring plan is proposed within the 12 week period following the end of the moratorium. In this scenario, a mezzanine lender whose debt is being compromised by the restructuring plan must vote in favour of the restructuring plan. In practice, this means that a restructuring plan would need to either be implemented after the 12 week period following the end of a moratorium, or during the moratorium itself.

## 3. Am I allowed to agree to a plan which 'crams up' the senior lender?

Yes, a mezzanine lender (or class of mezzanine lenders, as applicable) could approve a plan that 'crams up' the senior lender provided they are eligible to vote on the restructuring plan. As stated previously, we think the circumstances in which this may happen in practice will be very limited because if the mezzanine lender is 'in the money' the senior lender will be fully cash covered.

Lenders will be aware that the LMA Real Estate Finance Intercreditor Agreement includes an optional voting provision which entitles the security agent (acting on the instructions of the instructing group) to give instructions to creditors whose claims are regulated by the intercreditor agreement to vote

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in certain insolvency and other proceedings. It is not yet clear whether the restructuring plan would be caught by this provision and if it is, whether a creditor instructed to vote in a certain way by the security agent could challenge the restructuring plan successfully on the basis that the votes cast pursuant to that instruction should be discounted or similar because they were not voting as members of the relevant class, but on the basis of instructions given to them by the security agent acting on the instructions of another creditor group. We anticipate that the interplay between the mezzanine lender's contractual rights and their statutory rights, especially to 'cram up' and be 'crammed down' under the Act, will be the subject of extensive discussion on certain real estate financings over the coming months.

## 4. The shareholder has injected subordinated debt; what voting rights does it have on a restructuring plan?

If the shareholder has a genuine economic interest in the company or would receive a payment in the event of the relevant alternative, it can join or form a class of creditor for the purposes of voting on any restructuring plan that is proposed (see above for voting thresholds).

# Key terms

## Moratorium

Companies will be able to apply for a moratorium (temporary suspension of creditor rights) under the Act, which will prevent creditors taking certain action against the company for a specified period. This is to give companies breathing space to explore options for the rescue or restructuring of the company free from creditor action but under the supervision of an independent monitor. With certain key exceptions, the company will not have to pay debts falling due during the moratorium, which will be similar to that which is available in an administration. For as long as the moratorium applies, it will prevent the enforcement of security, the commencement of insolvency proceedings or other legal proceedings against the company and forfeiture of a lease. A moratorium will last for an initial period of 20 business days (beginning with the business day after it comes into force) with the possibility of extension of up to 12 months from its commencement (in the case of an extension made with creditor consent) or longer with the court's permission.

## Restructuring plan

This is a new reorganisation measure similar to a scheme of arrangement, which many companies already use to restructure their debts successfully. It is a court supervised compromise or arrangement between a company and its creditors or members (or any class of them). As with a scheme, creditors are divided into classes based on the similarity of their rights prior to and as a result of the plan. Each affected creditor will have the opportunity to vote on the plan and, provided that one "in the money" class of creditors approves the plan and the plan delivers a better outcome than the next best alternative option (i.e. liquidation or administration) for each dissenting class of creditors, the plan will become binding on creditors in all classes if sanctioned by the court. A class votes in favour if at least 75% by value of the creditors from that class who cast their vote, vote in favour of the plan. Two other conditions must be met: (1) the court must be satisfied that no creditor is worse off under the plan than they would be in the relevant alternative (the '**no worse off' test**); and (2) at least one class, who would receive payment, or have a genuine economic interest in the company in the event of the relevant alternative, must approve the plan.

## 'Cram down'

In the context of a restructuring plan, 'cram down' is where one or more classes of senior creditors and/or members of the company imposes a restructuring plan on one or more dissenting classes of junior creditors that voted against the restructuring plan, provided that (a) the court is satisfied that, if the restructuring plan is sanctioned, the mezzanine lender would not be any worse off than they would be in the event of the relevant alternative and (b) the senior lender and/or the members of the borrower would receive a payment or have a genuine economic interest in the event of the relevant alternative, has approved the plan.

## 'Cram up'

In the context of a restructuring plan, 'cram up' is where one or more classes of junior creditors and/or members of the company imposes a restructuring plan on one or more dissenting classes of senior creditors.

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## 'Relevant alternative'

In the context of a restructuring plan, the 'relevant alternative' is what the court determines would be most likely to occur if the restructuring plan is not implemented. This might for example, be a fire sale of the assets, or insolvent administration or liquidation of the company and will be determined on a case-by-case basis by the court.

For more a more detailed explanation of each of these terms, click here.

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