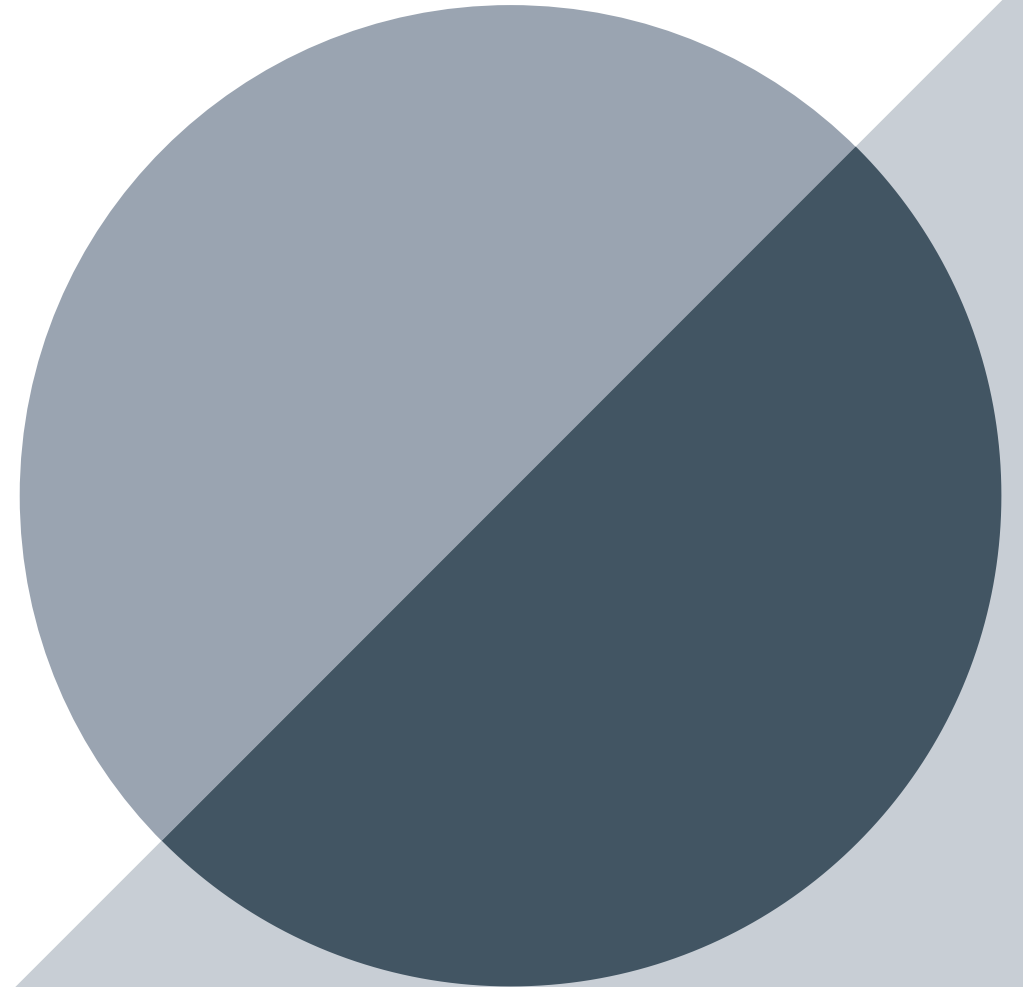


ALLEN & OVERY

Restructuring
Proceedings - UK,
NL, GER

Dr. Christopher Kranz
November 2020



A new set of European restructuring tools

UK Restructuring Plan (Part 26A CA 2006)

- In force since 26 June 2020
- Scheme of Arrangement with new features
- First case = Virgin Atlantic Airlines (September 2020)
- 75% in value majority per class
- Cross-class cram down
 - No worse off test
 - One in the money class in favour
 - No absolute priority rule
- No moratorium (but can be used with separate moratorium with exceptions)
- Ban on ipso-facto clauses (with exceptions)

Dutch Scheme / WHOA

- Will come into force in Jan 2021
- 2/3 in value majority per class
- Cross-class cram down
 - Best interest of creditors test
 - One in the money class in favour
 - (Relaxed) absolute priority rule
- Moratorium
- Ban on ipso-facto clauses
- Special termination rights
- Choice between public / private proceedings

StaRUG Scheme (Germany)

- Draft bill in Nov 2020, earmarked for Jan 2021
- 75% in value majority per class
- Cross-class cram down
 - Best interest of creditors test
 - Majority of classes in favour
 - (Relaxed) absolute priority rule
- Moratorium
- Ban on ipso-facto clauses
- Special termination rights
- Choice between public / private proceedings

	UK Restructuring Plan	Dutch Scheme (WHOA)	StaRUG Scheme (Germany)	Directive EU 2019/1023
Non-collective nature	Yes	Yes	Yes	Yes
Triggering element	(Impending) financial difficulties	Reasonable expectation of illiquidity	Impending illiquidity	Likelihood of insolvency
Out-of-court process	<ul style="list-style-type: none"> • No • Two court decisions 	<ul style="list-style-type: none"> • No • One court decision 	<ul style="list-style-type: none"> • No • One court decision 	<ul style="list-style-type: none"> • No
Initiation of proceeding	Court application by debtor, creditor or shareholder (though in practice debtor)	Notice to court by debtor, creditor, shareholder or works council,	Notice to court by debtor	N/A
Debtor in possession	<ul style="list-style-type: none"> • Yes • Compulsory monitor with regards to optional moratorium 	<ul style="list-style-type: none"> • Yes • Optional observer • Compulsory restructuring expert with regards to third party initiation 	<ul style="list-style-type: none"> • Yes • Optional restructuring nominee • Compulsory restructuring nominee, with regards to moratorium, cross- class cram down etc. 	Yes
Moratorium	<ul style="list-style-type: none"> • Optional • Collective stay, but various exceptions (e.g. finance debt) • 20 – 40 BD (extendable) 	<ul style="list-style-type: none"> • Optional • Collective or individual stay • 4mths (extendable to 8 mths) • COMI-shift protection 	<ul style="list-style-type: none"> • Optional • Collective or individual stay • 3-4mths (extendable to 8 mths) • COMI-shift protection 	<ul style="list-style-type: none"> • Optional • Collective or individual stay
Ban on ipso-facto	Yes, but various exceptions (e.g. finance debt)	Yes	Yes	Yes
Special termination rights	No	Yes, if no prior amendment possible	Yes, if no prior amendment possible	N/A
Inclusion of group entities in plan	<ul style="list-style-type: none"> • No, but combination of separate plans possible • Can release guarantors and other co-debtors 	Yes, with regards to cross-collateral and subject to court having jurisdiction	Yes, with regards to cross-collateral and subject to separate creditor-class	N/A

	UK Restructuring Plan	Dutch Scheme (WFOA)	StaRUG Scheme (Germany)	Directive EU 2019/1023
Inclusion of group entities in moratorium	No	No	Yes	Optional
Separate classes	Yes, by separation of rights not interests	<ul style="list-style-type: none"> Yes, by separation of rights in liquidation or pursuant to plan Compulsory class for SME creditors, if such creditors receive less than 20% in cash 	Yes, with compulsory classes of secured creditors, unsecured creditors, subordinated creditors, shareholders and, where applicable, creditors of group companies	Yes
Inclusion of shareholders	Optional in separate class or classes	Optional in separate class or classes	Optional in separate class or classes	Optional
Debt for equity swap	Yes	Yes	Yes	Optional
Cram down within classes	Yes, with 75% in value per class, no headcount	Yes, with 2/3 in value per class, no headcount	Yes, with 75% in value per class, no headcount	Not higher than 75% in value or headcount
Cross-class cram down	Yes, subject to (a) no creditor being worse off under plan than in relevant alternative; and (b) at least one in the money class in favour	Yes, subject to best interest of creditor test, (relaxed) absolute priority rule and at least one in the money class in favour	Yes, subject to best interest of creditor test, (relaxed) absolute priority rule and majority in the of classes in favour	Yes, subject to best interest of creditor test, absolute or relative priority rule and at least one in the money class in favour
Cram-up	Yes subject to same tests for cram down	Subject to absolute priority rule	Subject to absolute priority rule	N/A
Super-priority DIP finance	No (unless in parallel with administration)	No	No	Optional
Interim court orders	Yes, at convening hearing	Yes	Yes	Optional
Legal remedies	Yes	No	Yes	N/A
Basis for founding jurisdiction	Sufficient connection (possibly Brussel Ia Regulation)	Public (COMI), Private (sufficient connection)	Public (COMI), Private (Brussel Ia Regulation?)	N/A

Questions?

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