



# The New UK Restructuring Plan - The “Super Scheme”

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The Corporate Insolvency and Governance Act, which received Royal Assent on 25 June 2020, contains a range of significant reforms, not least of which is the introduction of a new Restructuring Plan process dubbed the super scheme. The first such Restructuring Plan, used in the financial restructuring of Virgin Atlantic Airways (VAA), was sanctioned by the High Court on 2 September 2020 representing a new landmark in the UK restructuring landscape.

The Restructuring Plan is a tool which has the potential to change the way many UK restructurings are implemented by moving UK restructuring processes and procedures closer to a “Chapter 11 Lite” model.

## What is it?

Drawing some inspiration from a Scheme of Arrangement under Part 26 of the Companies Act 2006 (Scheme), the new Restructuring Plan is a powerful and flexible new court supervised restructuring process that will likely find favour for companies with a connection to the jurisdiction or English law governed credit agreements or contracts to bind stakeholders to a rescue plan. Unlike a Scheme, the new Act permits a Restructuring Plan to be imposed on a dissenting class of creditors, a so called “cross-class cram-down” which we evaluate in detail below.

## Who proposes the Plan?

The debtor/the company – this is likely to be the case in most instances.

Creditors and shareholders are able to make an application to court to commence the procedure although we suspect that the use by creditors may be quite limited given the significant resourcing requirements that typically need debtor/shareholder input to put together a realistic and credible Restructuring Plan modelled on existing business performance.

## What are the qualifying conditions to the Restructuring Plan?

A company which “has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern” may make an application to use the Restructuring Plan process. So in this respect it differs critically from a Scheme by introducing upfront a requirement that the business has or is likely to experience financial volatility and stress. To recap, the Scheme is a Companies Act tool and is used for a number of different types of transaction regardless of the financial position of the company (e.g. for takeovers).

## Schemes can be used by non-English registered companies – does the same apply for the Restructuring Plan?

The Restructuring Plan will be available to non-English companies as it retains the “sufficient connection” test in terms of jurisdiction which provides a relatively low bar of connectivity. A change of centre of main interests (“COMI”) is not absolutely required in order to implement a Restructuring Plan (although there may be circumstances where this is helpful to the overall restructuring). Schemes of arrangement have been successfully applied to companies across the world, including in Germany, Spain, Bulgaria, France, Italy, the Netherlands, Ukraine, the US, Vietnam and Kuwait so long as it can be shown that the overseas company has sufficient connection with England for an English court to have jurisdiction over it.

Similar to a Scheme, a Restructuring Plan that compromises English law debt will be widely recognised in other jurisdictions following the Brexit transition period. This recognition is likely to be based either on private international law or other cross border frameworks.

These changes increasingly bring the UK’s toolkit for dealing with restructuring and insolvencies much closer to the US Chapter 11 framework (as can be seen from the comparison table below).

# Comparison

EU, UK, NL and US

	Directive	UK Scheme	UK Restructuring Plan	Proposed Netherlands Scheme	U.S. Chapter 11
Out-of-court process	No	No	No	No	No
Debtor in possession	Yes	Yes	Yes	Yes	Yes
Stay on enforcement action	Yes	No	Yes (standalone moratorium)	Yes	Yes
Ban on ipso facto	Yes	No	Yes	Yes	Yes
Separate classes	Yes	Yes	Yes	Yes	Yes
Cram down	Yes	Yes	Yes	Yes	Yes
Cross-class cram down	Yes	No	Yes	Yes	Yes
Support required	Not higher than 75% in amount or number of affected parties	75% by value and 50% by number	75% by value	2/3 in value	2/3 in value and majority in number of allowed claims in each class
Basis for founding jurisdiction	n/a	Sufficient connection	Sufficient connection	Public (CoMI); Private (sufficient connection)	Asset in the U.S.
Super-priority DIP finance	Yes	No	No	No	Yes

## What can a Restructuring Plan contain?

As long as there is some form of compromise or arrangement and the purpose of it is to deal with the company's financial difficulties then this is virtually a blank canvas. We expect, similar to the use of Schemes, to see a variety of flexible business outcomes to support a business seeking to agree a restructuring with its creditors (for example amend-and-extend style schemes to modify credit agreements versus debt-for-equity style restructurings), and for there to be significant flexibility in the application of this new Restructuring Plan.

## Does valuation play any part?

The Restructuring Plan enables the compromise of the debt and equity claims of creditors and/or shareholders which the court is satisfied have no "genuine" economic interest in the company.<sup>1</sup> The consent of these persons with no genuine economic interest is not required and they have no right to participate in the Restructuring Plan approval process.

This is a nuanced change from Schemes where, whilst it is established that persons who are not affected by the Scheme need not be invited to vote, there is no formal consideration of a genuine economic interest at the first hearing. Valuation issues could therefore manifest themselves early (at the first hearing) in the Restructuring Plan process as arguments arise as to whether a creditor is "out of the money" and therefore ineligible to vote on the Restructuring Plan.

The assessment of genuine economic interest, along with cross-class cram-down when that is in play, will put valuation at the heart of a court's judicial scrutiny of any Restructuring Plan and also provide opportunities for competing valuations between classes of creditors who will likely have different interests in the outcome of such a valuation dispute. Whilst the court has wide discretion as to the assessment of genuine economic interest (there is no case law, at present on what "genuine" means), valuation evidence is likely to continue to play a significant role in guiding the court to analyse the position of "out of the money" creditors. This will be particularly acute where there are multiple classes proposed as part of the restructuring and the court is asked to approve a Restructuring Plan where significant classes have accepted the plan treatment but not others. We expect this to be a key area of challenge and/or litigation.

<sup>1</sup> Section 901C(4) of the Companies Act 2006

## Introducing the "cross-class cram-down" for the first time in the UK context

The new procedure with the cross class cramdown mechanics, where they are successful, will limit the ability of "hold-out" or ransom creditors to block a viable restructuring proposal which has the overwhelming support of those creditors who retain an economic interest in the business. It also opens up the possibility of altering equity interests as part of a Restructuring Plan without the consent of the relevant shareholders.

Dissenting classes are able to be crammed down only if they would be no worse off than in the "relevant alternative". The "relevant alternative" is whatever the court considers would be most likely to occur in relation to the company if the Restructuring Plan were not sanctioned. Again, this gives the court wide discretion as to the benchmark against which to assess the "no worse off" test. However, we anticipate that the starting point will be the appropriate comparator test that the courts use for assessing class composition in Schemes. This will bring valuation back into the spotlight again.

## So shareholder rights can be amended by the Restructuring Plan?

Other than permitting a compromise or arrangement with members in order to deal with financial difficulties, the Act does not deal expressly with the rights of shareholders. However, the intention underpinning the Act is that shareholder equity can be transferred, diluted or extinguished as part of a court approved Restructuring Plan which makes sense in the context of distress where shareholder value is likely, in real terms, to be materially impaired, if not nil, based on the then subsisting valuation of the business. The Act includes amendments to the Companies Act, including a disapplication of shareholder pre-emption rights, which appear to be intended to facilitate a dilution of shareholder rights pursuant to a Restructuring Plan. The ability to bind in shareholders can be a significant additional

hurdle to achieve successful restructurings and these implicit powers are likely to be welcomed as part of the additional powers that companies now have under the Act to promote corporate rescue and recovery through the delivery of a viable Restructuring Plan.

## Is there court involvement?

The Restructuring Plan involves court oversight and approval. Similar to the more established Scheme process, there will be court involvement via two hearings. As the Restructuring Plan is to be introduced as a corporate restructuring process not a formal insolvency process, the commencement of the process by a debtor to start a Restructuring Plan will not substitute the powers of the debtor/directors by the court and the process is largely similar to other debtor-in-possession processes like Chapter 11 of the US Bankruptcy Code.

## What will be covered at the first hearing?

**Class composition:** Voting on the Restructuring Plan will be by reference to classes and the court will examine the proposed class composition at this first hearing. In the first hearing for the VAA Plan the court accepted that the body of law and practice around class composition in the context of Schemes was directly applicable to Restructuring Plans.

**Jurisdictional issues:** Where there are any jurisdictional issues, for example where the Restructuring Plan is proposed by an overseas company, the court will consider those issues at the first hearing. The court will also consider at the first hearing whether the statutory eligibility criteria (a company having financial difficulties, and proposing a compromise or arrangement to deal with them) are met.

**Information provided to creditors:** Provided it is satisfied with class composition, the court will then confirm that a vote on the proposals should take place on a specified date. Creditors and those being asked to vote and participate in the Restructuring Plan will receive what will look very much like an explanatory statement used in the context of Schemes which will contain the details of the Restructuring Plan to enable them to assess its merits. Creditors must also receive adequate advance notice that the Plan is being proposed to enable them to appear at the first hearing if they wish to do so. The court will consider whether adequate notice has been provided at the first hearing.

## What thresholds or other rules apply to the voting?

### Voting Threshold

The relevant threshold for approval is 75% in value (gross value of debt) of creditors in each class who vote. It is noteworthy that the anticipated requirement that more than half of the value of unconnected creditors vote in favour does not appear in the Act. Similarly, the numerosity test in Schemes (i.e. a majority in number voting in favour requirement which applies to Schemes) does not apply to the Restructuring Plan.

### Cross-class cram-down in more detail

This is a new and powerful feature. Notwithstanding that a class does not vote in favour, creditors in that class may be bound by the plan if the cross-class cram-down rules are met. Those rules are:

- i. at least one class of creditors "who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative" voted in favour of the Restructuring Plan<sup>2</sup>;
- ii. the dissenting creditors would not be "any worse off" under that plan than they would have been in the event of "whatever the court considers would be most likely to occur in relation to the company" should the plan be rejected (which may not necessarily be the immediate liquidation of the debtor company, although this would probably be the correct comparator in many cases, given the eligibility criteria); and
- iii. the court is prepared to sanction the Restructuring Plan.

Court involvement is likely to be significant as regards rule (i) and rule (ii) with rule (iii) likely to be more of a catch all of fairness considerations generally drawing on the English court's extensive experience of the same in the context of UK Schemes, until Restructuring Plan specific jurisprudence is further developed.

### Absolute priority rule missing

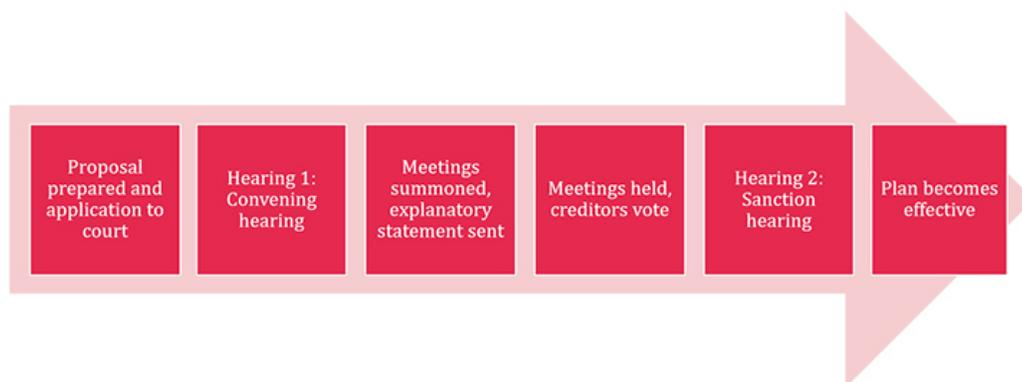
The Act does not contain any semblance of the absolute priority rule which was touted when the reforms were first announced in August 2018. It seems likely that in substance this becomes part of the test in step (iii) in so far as testing for consistency with the absolute priority principle is concerned and whether amounts owed to a dissenting class of creditors will be satisfied in full under the proposed plan before a more junior class could receive any distribution or keep any economic interest under the Restructuring Plan.

## So what happens at the second hearing?

If the requisite voting thresholds are met and (if relevant) the rules for imposing a cross-class cram-down have been complied with, the court will decide whether or not to confirm the Restructuring Plan and make it binding on affected creditors and shareholders.

The court will, according to the explanatory notes provided when the bill was initially published, sanction the Restructuring Plan if it is just and equitable to do so. This is the same consideration that applies to Schemes at the equivalent second stage sanction hearing and the court in the VAA Restructuring Plan confirmed that the body of law developed from Schemes will assist the court with this.

# Simplified process



## While all this is happening is there any protection from actions by creditors?

One of the notable disadvantages of the UK Scheme process and (absent a linked administration or (prior to the Act) small company eligibility) the UK CVA process is that those processes don't automatically give the debtor a moratorium and breathing space during which to propose the process to its affected stakeholders.

The Restructuring Plan provides some much-needed flexibility and optionality here for companies that can take advantage of this breathing space. The proposal of a Restructuring Plan can be combined with the new moratorium procedure under the Act which will prevent certain actions against the company while the Restructuring Plan is being progressed to approval.

Only time will tell how this will be used in practice, and some limitations to the effective use of this are likely to include the fact that such a moratorium is likely to be confined to the UK as a jurisdiction as opposed to having worldwide effect similar to the Chapter 11 moratorium. Proposing a Restructuring Plan is likely also to trigger an event of default under most LMA style loan agreements, and it will remain to be seen whether the moratorium would be effective to prevent the exercise of remedies by such creditors including as mentioned above where there is significant foreign collateral. An additional and likely significant limitation of the new moratorium procedure, is that all amounts falling due under financial contracts, including loan agreements, must continue to be paid during the moratorium. If the company is unable to pay such amounts the moratorium will end. Support from lenders, and potentially lock-up agreements, are still likely to be needed in many cases even where the moratorium is used. See our further analysis of the new moratorium.

## Looking to the future, where might a Restructuring Plan be used in the alternative to a Scheme of Arrangement or a CVA?

# Comparison with other UK restructuring tools

Restructuring Plan 	CVA 	Scheme 
<ul style="list-style-type: none"> <li>• Can bind secured creditors</li> <li>• Can bind unsecured creditors</li> <li>• Can cram-down dissenting classes</li> <li>• Can compromise members' rights</li> <li>• Potential for integration where previous restructurings may have involved separate Scheme + CVA</li> <li>• Voting threshold: 75% by value</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot bind secured creditors</li> <li>• No classes, all vote together</li> <li>• Cannot compromise members' rights</li> <li>• Voting threshold: 75% by value and a majority by value of unconnected creditors</li> </ul>	<ul style="list-style-type: none"> <li>• Can bind secured creditors</li> <li>• Cannot cram-down dissenting classes all classes must vote in favour</li> <li>• Can compromise members' rights</li> <li>• Voting threshold: 75% by value and a majority in number</li> </ul>

Scenario 1:

Bond Restructuring – multi-tiered debt structure (Senior Secured Notes (SSNs) and Senior Unsecured Notes (SUNs))

Financial Restructuring – featuring a debt compromise, no debt for equity swap. Assumes SSNs are broadly in favour (in all cases over 75% in support) whereas SUNs are a less homogenous grouping, nearer the value break and of differing views.

Assumes all else being equal (i) 90% threshold for changes for consensual compromise of fundamental terms (ii) separate classes for voting purposes, (iii) Scheme is preferable to a Restructuring Plan due to established body of case law in respect of Schemes and therefore (arguably) less uncertainty.

SSN Consent Support Level	SUN Consent Support Level	Numerosity issue?	Cross-Class-Cram-Down needed?	First choice Process?
At least 90%	At least 90%	N/A	N/A	Consensual Restructuring Agreement for SSNs and SUNs
At least 90%	At least 75% but less than 90%	N/A for SSNs No for SUNs	No	Consensual Restructuring Agreement for SSNs with Scheme for SUNs
At least 90%	At least 75% but less than 90%	N/A for SSNs Yes for SUNs	No	Consensual Restructuring Agreement for SSNs with Restructuring Plan for SUNs
At least 75% % but less than 90%	At least 75% but less than 90%	No for SSNs No for SUNs	No	Scheme(s) for SUNs and SSNs
At least 75% % but less than 90%	At least 75% but less than 90%	Yes for SSNs No for SUNs	No	Restructuring Plan for SSNs (encompassing SUNs) or Restructuring Plan for SSNs and interconditional Scheme for SUNs
At least 75% % but less than 90%	At least 75% but less than 90%	Yes for SSNs Yes for SSNs	No	Restructuring Plan encompassing SSNs and SUNs

At least 75% % but less than 90%	Less than 75%	No for SSNs No for SUNs	Yes	Restructuring Plan encompassing SSNs and SUNs
At least 75% % but less than 90%	Less than 75%	Yes for SSNs No for SUNs	Yes	Restructuring Plan encompassing SSNs and SUNs
At least 75% % but less than 90%	Less than 75%	Yes for SSNs Yes for SUNs	Yes	Restructuring Plan encompassing SSNs and SUNs

Scenario 2:

In this section we consider available mechanisms for a scenario like Scenario 1 above but with a Debt-Equity Swap (e.g. transfer to lender owned vehicle).

Schemes have been traditionally used alongside enforcement mechanisms and have become a key restructuring technique to deal with shareholders in debt-equity swaps and out of the money creditors in combination with the release of the claims of those out of the money creditors under LMA style intercreditor agreements. The following steps are typical:

- Step 1 – Insolvency practitioners are appointed to a Holdco or share(s) Holdco owns in its subsidiaries;
- Step 2 - Holdco sells its subsidiaries to a Newco (consideration to Holdco can be structured by novating debt to Newco through a Scheme for example);
- Step 3 - The claims of “out of the money” junior creditors are released or sold by the security trustee pursuant to the distressed disposal provisions of an LMA style intercreditor agreement;
- Step 4 – Old equity holders left behind as shareholders in Holdco.

Intercreditor agreements are highly negotiated documents in leveraged financings particularly around releases and “safe harbour” provisions. As a result, the pathway to enforcement is often more complex than a pure senior-junior wholesale subordination of economic and legal rights where senior controls the entire enforcement without fetter.

The Restructuring Plan enables a restructuring of both “out of the money” debt and equity to be implemented within the existing corporate structure without the need for a sale of the business and/ or subsidiaries through a pre-pack administration or transfer via a share pledge enforcement.

However, the statutory mechanisms empowering changes to equity structures within an existing corporate vehicle only apply in the context of England and Wales registered companies. Therefore, whilst Restructuring Plans can be used for international debtors with sufficient connection with England and Wales in the same way as Schemes, there is this limitation which means that we will likely continue to see Schemes accompanied by enforcements to effect debt equity swaps.

#### Restructuring Plan as an alternative to a CVA

**Secured and unsecured debts** - One of the key advantages of the Restructuring Plan over a CVA is the Restructuring Plan can compromise the claims of both secured and unsecured creditors. Therefore, there may be some efficiencies by conducting the entirety of a restructuring through a Restructuring Plan rather than through a CVA with subsequent financial restructuring for example.

**Thresholds: no unconnected creditor test** - The Restructuring Plan, as set out above has a 75% approval threshold which is similar to a CVA however a key difference is that there is no express unconnected creditor approval threshold requirement, as there is in a CVA (a resolution to approve a CVA will be invalid if those voting against it include more than half of the total value of creditors unconnected to the company whose claims have been admitted for voting).

**Voting dilution** - As CVAs require all unsecured creditors to vote together as a single “class” they have been criticised (particularly by landlords in CVAs focused on amending lease payment obligations (rent)) in circumstances where the difference between approval and rejection of the CVA might be the vote of unsecured creditors who, arguably, may not be being asked to compromise or alter their position as fundamentally as, say, landlord creditors. Conversely for companies this can be seen to be a strategic advantage of a CVA.

Under the Restructuring Plan, where, for example compromise of landlord rights might constitute landlords in their own separate class for voting purposes, the cross-class cram-down procedure built into the Restructuring Plan does allow a restructuring to be imposed on a dissenting class of creditors. It is likely however that the same theory behind the vertical comparator test in a CVA will act as a check in the court’s sanction of the Restructuring Plan where the court is considering the “no worse off” test. We can certainly envisage scenarios where debtors looking to utilise the Restructuring Plan may be incentivised to start with a broader classification of creditors than previously permissible using Schemes, to take advantage of the cross-class cram-down procedure although this will itself be subject to the fairness requirements as a whole. The relative fairness of the effect of the Restructuring Plan on any dissenting class of creditor by reference to the other classes, will likely include substantive checks similar to the CVA “horizontal comparator” test, although the debtor/proposer of the plan may be able to demonstrate that such differential treatment is justifiable in the circumstances<sup>6</sup>.

#### Court involvement – a blessing or a curse?

Some may view the lack of court involvement in the CVA process as a significant benefit (not least from the perspective of upfront cost) however the lack of court substantive scrutiny during the CVA process can lead to uncertainty at the back end of that process, with challenges on the basis that (i) there has been some material irregularity at or in relation to the shareholders’ meeting or the creditors’ decision procedure, such as failure to supply the required information or (ii) the CVA unfairly prejudices the interests of a creditor, member or contributory of the company, increasingly common.

### Specific Lessons from the VAA Restructuring Plan

The VAA Restructuring Plan was sanctioned by the High Court of England and Wales on 2 September 2020.

Some initial observations on the VAA Restructuring Plan focusing on two of the key features of the Restructuring Plan, (i) the lack of numerosity test and (ii) cross-class-cram-down are as follows:

#### Numerosity

There were four classes of creditor in the VAA Restructuring Plan who voted as follows according to the skeleton argument in respect of the sanction hearing:

1. 100% in number and value of the RCF Plan Creditors (with a turnout of 100%);
2. 100% in number and value of the Operating Lessor Plan Creditors (with a turnout of 100%);
3. 100% in number and value of the Connected Party Plan Creditors (with a turnout of 100%); and
4. 99.24% in value and 95.32% in number of the Trade Plan Creditors present and voting (with a turnout of 66.05% in number and 89.18% in value).

Each of the RCF Plan Creditors, Operating Lessor Plan Creditors and Connected Party Plan Creditors executed lock up agreements in advance of the Restructuring Plan meeting. Whilst the Trade Plan Creditors did not unanimously vote in favour there was no record of active objection to the Restructuring Plan.

There is no required numerosity test for a Restructuring Plan nevertheless, whilst satisfied in the circumstances of the VAA Restructuring Plan process that the voting process was fair, Justice Snowden indicated it would be helpful in the future if chairman's reports could contain the number (alongside the value of creditors) voting, so the court could satisfy itself that the meeting was representative.

A further point worth noting that there were over 160 Trade Plan Creditors under the Restructuring Plan. In constructing the Trade Plan Creditor class the company decided not to compromise the claims of trade creditors who were owed less than £50,000 as at a particular date, meaning that such creditors were excluded from the class of Trade Plan Creditors subject to the plan.<sup>2</sup>

One of the queries raised by Justice Snowden was why the company constructed the class of Trade Plan Creditors by reference to the £50,000 threshold. Justice Snowden specifically raised that that it could be grounds for opposition in respect of a Restructuring Plan (or a scheme) that similarly-placed creditors are excluded and do not need to be compromised. However, he added if there was a legitimate commercial reason that creditors have been selected for exclusion in this manner the court would not generally decline to sanction such plan (or scheme). No rationale is given (or required under the Companies Act or otherwise) for using the Restructuring Plan over a Scheme. The final voting on the VAA Restructuring Plan shows that the plan would have been passed, all else being equal, if constructed as a Scheme. One of the reasons, it can be speculated, for using a Restructuring Plan over a Scheme may have been the large number of Trade Plan Creditors and possible unpredictability over whether the numerosity test in a Scheme would be met – that risk could have increased exponentially, if that reasoning were the case, were there 1000 + creditors in the Trade Plan Creditor class as opposed to the 160 in the Restructuring Plan.

<sup>2</sup> Counsel for VAA stated that the increase in Trade Plan Creditor numbers from not drawing the line here (to increase by approximately 1000 more creditors whose combined value was approximately £5million would have subjected the company to logistical, time and cost burdens which would not have been commercially beneficial under the circumstances.

#### Cross-Class-Cram-Down

The result of the Restructuring Plan meant there was no need to access the new cross class cram down mechanism in order to have the Restructuring Plan sanctioned. However, Justice Snowden did remark that that he did not have to decide whether the court's power to impose a cram-down would have arisen under circumstances where the company had consensually agreed a restructuring plan with 100% of creditors in a number of creditor classes but where there was one dissenting class. Crucially he stated that it might be said that a company could not create a cram-down power by constituting classes of creditors who support a restructuring and could be dealt with outside a plan consensually in order to cram down a minority class unless the company could demonstrate a good reason why the Restructuring Plan was being structured in this way. A clear sign that the court could use its discretion in the future to decline to sanction a Restructuring Plan in such circumstances.

#### Conclusions

Given the powerful provisions contained in the Act for dealing with both secured and unsecured creditors, creditor cram-downs and cram-ups, and notwithstanding the introduction of far reaching insolvency and restructuring reforms in other jurisdictions, we suspect that given the experience of the English courts with CVAs and Schemes that the Restructuring Plan will prove popular for companies looking to promote and successfully implement a restructuring proposal.

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<sup>1</sup> There is no guidance as to whether a dissenting class has to be offered anything or specifically whether a Restructuring Plan can truly be called a "compromise" or "arrangement" without offering dissenting creditors something (even where they might get nothing on a liquidation).

<sup>2</sup> The Act does not state that this must be a class of impaired creditors (that is, creditors who will not receive payment in full under the Restructuring Plan) but in practice there is likely to be a very significant threshold set by the court to sanction a plan which might otherwise look like it is being "rail roaded" through by a class which is not taking any impairment under the terms of the Restructuring Plan. We expect that the "relevant alternative" will also be an area of focus, challenge and competing evidence as to what the relevant alternative should be.

<sup>3</sup> An insolvency event of default will typically include a sub-heading which states that an event of default shall occur if, "by reason of actual or anticipated financial difficulties, [the debtor] commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness".

<sup>4</sup> Typically provisions which seek to impose certain objective measures (e.g. sale by a regulated insolvency officer, court supervised enforcement, a fairness opinion incorporating a valuation, a competitive sales process run by an independent investment bank etc) before permitting the release of claims.

<sup>5</sup> The "vertical comparator" compares the projected outcome of the CVA with the projected outcome of a realistically available alternative process (usually liquidation). This sets a low water mark below which a CVA cannot go.

<sup>6</sup> The "horizontal comparator" compares the treatment of creditors under the CVA as between each other. Whilst there is no prohibition on differential treatment, any differential treatment must be justified.

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