Paul, Weiss

2025 in Review

European Restructuring

2025 has been a year of transformation and challenge across the European restructuring landscape. In this review, we'll explore three pivotal themes shaping the market.

01

Restructuring Plans

The evolving legal and commercial dynamics, landmark cases, and the shifting balance between creativity and orthodoxy.

02

Liability Management Exercises (LMEs)

The rise of hybrid strategies, creative solutions, and the interplay between European and U.S. market practices.

03

Distressed Disposals

Why these mechanisms are back in focus, and how they're reshaping outcomes for stakeholders.

Restructuring Plans

Talk of the Restructuring Plan's demise is exaggerated. Post-Petrofac, 7 plans have been sanctioned, and the Restructuring Plan remains a viable tool when used carefully: a credible valuation, meaningful creditor engagement, and proportionate treatment of creditors are essential.

Nick Charlwood
Partner, Restructuring

Where Are We Now?

2025 was a significant year for Restructuring Plans. The statistics tell part of the story.

14 Restructuring Plans filed in 2025 (1 pending sanction hearing)

11 Restructuring Plans sanctioned at first instance

2 Restructuring Plans appealed to CoA (one pending a "leapfrog" appeal to the Supreme Court (**Waldorf**))

1 Restructuring Plan overturned by CoA *(***Petrofac***)*

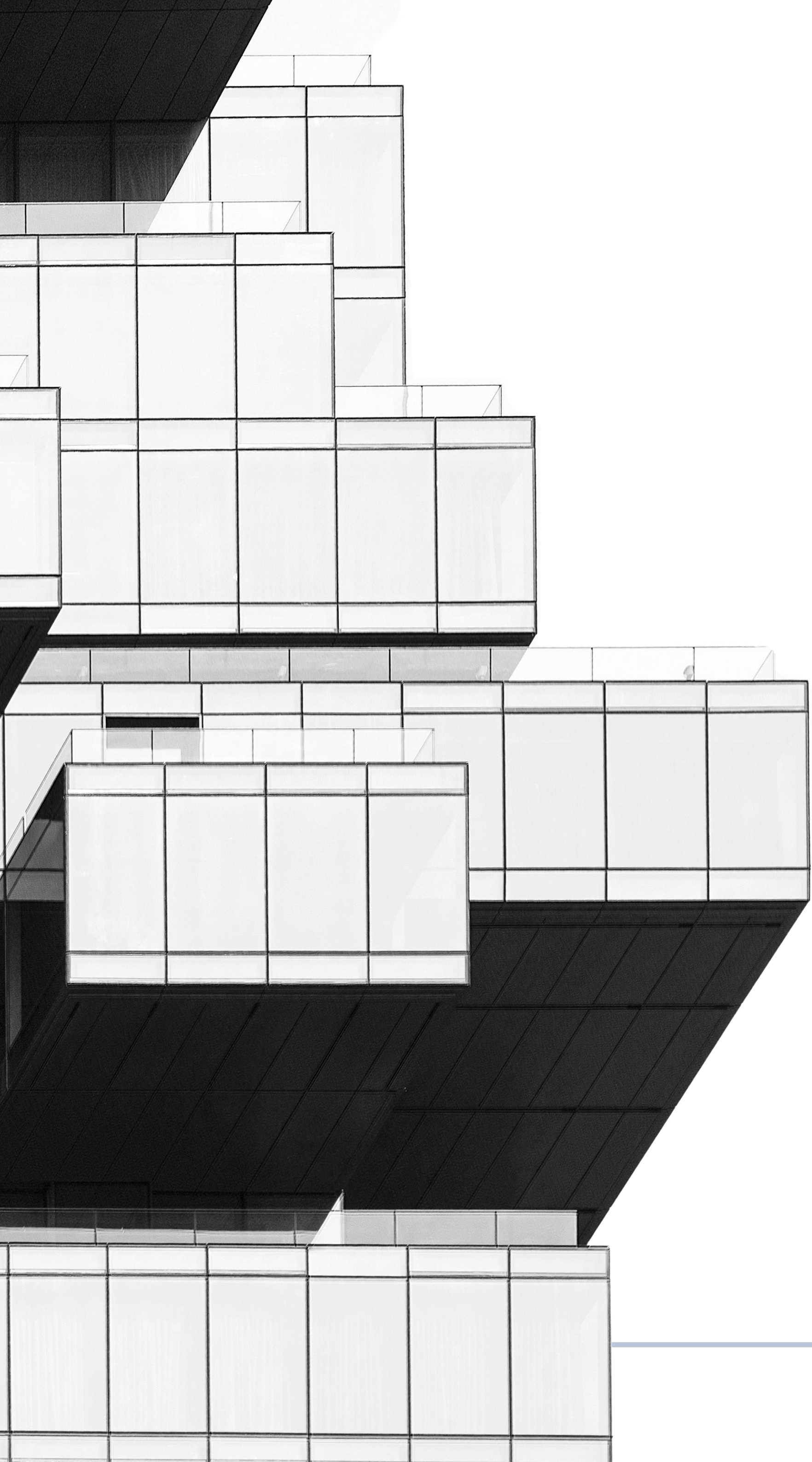
7 Restructuring Plans sanctioned post-**Petrofac**

Early in the year, **Thames Water** was the Court of Appeal's first sight of a Restructuring Plan since **Adler** and sharpened the Court's focus on fairness, the treatment of out-of-the-money creditors, and valuation discipline.

Building on **Thames Water**, the Court of Appeal provided further guidance in its **Petrofac** judgment, which overturned the sanction of the company's plan. The judgment re-set expectations on creditor engagement, fairness in the context of out-of-the-money creditors and the commercial terms of new financing. Following failed attempts to implement its restructuring out of court, the Petrofac parent company entered administration in October and its Jersey subsidiary has applied to the Jersey courts under section 426 of the Insolvency Act 1986 for a letter of request to the English High Court with a view to the appointment of English administrators.

Shortly after **Petrofac**, the Waldorf Restructuring Plan was denied sanction on fairness grounds (the High Court cited limited unsecured lender engagement and dismissive treatment of out-of-the-money classes despite the "no worse off" test being satisfied). Waldorf has successfully appealed directly to the Supreme Court with the hearing expected February 2026, if no settlement or alternative deal is reached in advance. In late November, Waldorf filed for a new scheme of arrangement with the High Court, which may be an alternative implementation route for its restructuring. This casts some doubt on whether the Supreme Court appeal of its Restructuring Plan will go ahead.

Talk of the Restructuring Plan's demise is exaggerated. Post-**Petrofac**, 7 plans have been sanctioned, and the Restructuring Plan remains a viable tool when used carefully: a credible valuation, meaningful creditor engagement, and proportionate treatment of creditors are essential. For the time being at least, orthodoxy rather than creativity is the safer path for implementing transactions in-court in England, and well-advised parties will explore alternative implementation routes wherever possible.



Unresolved Issues Following Petrofac

Treatment of Out-of-the-Money Creditors

Since **Virgin Active** in 2021, it had been relatively settled law that out-of-the-money creditors could be given a de minimis return under a Restructuring Plan, provided that they were no worse off than in the relevant alternative. This was put under the spotlight in **Thames** where the Court of Appeal voiced doubts about the direction the market had taken following **Virgin Active**.

In **Petrofac**, the Court of Appeal held decisively that just because a dissenting class of creditors is no worse off than they would be in the relevant alternative, this doesn't of itself mean that the Restructuring Plan is fair and that the Court should exercise its discretion to grant a sanction order. Rather, the Court focused on a need for the plan company to explain and justify the allocation of any of the benefits generated by the restructuring. In **Petrofac**, the Court found that the release of the claims of creditors that were out-of-the-money in the relevant alternative was a material part of what generated the benefits of the overall restructuring, and therefore those creditors should receive more than they were proposed to be allocated based on the assessment of their position in the relevant alternative.

While overturning the Petrofac plan on its facts, the Court of Appeal gave no general guidance on how to determine that the allocation of benefits is fair. The approach the market has taken thus far is for the plan company to adduce further expert evidence in the form of a "Plan Benefits Report", which adds a degree of additional complication and cost to the process but has so far proven effective (albeit in uncontested or lightly contested cases). Given that a "Plan Benefits Report" is no better than an indicative estimation of future values, it remains to be seen whether this approach will be accepted in the long-term.

The Court of Appeal also made clear that proper engagement with stakeholders is an important part of the plan company demonstrating that there has been a genuine attempt to reach a reasonable compromise, and therefore, that the use of the cross-class cramdown power against the dissent of those unreasonably holding out for better treatment is appropriate. There may be circumstances in which limits on the scope of stakeholder engagement are necessary or unavoidable, but these will need to be explained and justified with reference to the specific facts.

New Money

The facts of **Petrofac** were unusual because the commercial deal had been struck on the basis of a notional post-restructuring equity valuation of c. $350m but the valuation report later produced in evidence by the plan company indicated a day one equity valuation of the restructured group of between $1.5bn and $1.85bn. In circumstances where judgment work fees were to be paid in equity if the plan was sanctioned and the backstop fees for the new money were to be paid partly in equity, the very significant increase in the notional day one equity value had a stark effect on the allocation of post-restructuring value between different creditor groups.

Samsung and Saipem, the dissenting creditors in **Petrofac**, successfully argued that the risk of the new money had been overstated because it was to be provided to the post-restructured (de-levered) group. The plan company had not produced evidence (e.g. of market testing or benchmarking) to show that the allocation of value to the new money lenders (and backstop providers) was justified – on the contrary, the new money terms had remained unchanged despite the marked shift in notional equity value mentioned above. Offering all creditors the right to participate in the new money would not have solved the issue because the over-allocation of value to new money providers was a matter of overall fairness.

The principles set out by the Court of Appeal will be applicable in other Restructuring Plans involving a full balance sheet restructuring, but each situation will inevitably turn on its particular facts.

c.$350m

Assumed post-restructuring value in negotiations

$1.5b-$1.85b

Assumed post-restructuring value in expert report

"The very significant increase in the notional day one equity value had a stark effect on the allocation of post-restructuring value between different creditor groups."

Procedural Developments

New Practice Statement

On 18 September 2025, the Chancellor of the High Court issued a new practice statement in respect of schemes and Restructuring Plans which will apply to all schemes and Restructuring Plans proposed from 1 January 2026. This refreshed practice statement represents a significant step in the evolution of the court's practice, in particular in relation to Restructuring Plans. This update has been much anticipated, reflecting the increasingly contested nature of in-court restructurings in recent years.

The practice statement emphasises the importance of the early identification of issues, active case management, and the need for parties to come to the court well prepared. The most notable changes to current practice are before parties get to court: a claim form must now be issued before a hearing date can be booked. Previously, parties could anonymously reserve dates in advance while commercial discussions were ongoing. Now, if companies wish to remain anonymous on claim forms and hearing dates, applicants must apply for confidentiality protection (which will be granted at the court's discretion). Remaining confidential can be critical for a group's restructuring. Negotiations can be hampered and management distracted if a restructuring becomes 'news' too early. Stakeholders are also mindful of the effects poor press can have on publicly traded debt and equity.

Irrespective of the confidential status of the claim form, events of default and/or termination rights in material contracts may be triggered by the issuance of a claim form and the formal launch of a scheme or plan. In practice, that is typically addressed by the negotiation of agreement, pursuant to which creditors will agree to waive or forbear from taking action on the basis of those defaults. If a claim form commencing a scheme or plan were to be issued at an earlier stage in order to reserve court dates, and those waivers/forbearances sought on a standalone basis, absent agreement on the terms of a restructuring, creditors may be less inclined to agree, and the fact of asking by itself may be prejudicial to negotiations.

The new practice statement now requires an applicant to file a "listing note" with its claim form. This is an additional step to the current procedure.

The listing note must include: (1) an indicative timetable for the entire process; (2) key factors that could affect the timetable, such as anticipated challenges or appeals; and (3) an explanation for any additional urgency. Companies will be keen to keep the details of their listing notes private (especially if details of potentially contested issues are included). It is unclear whether or not listing notes will be accessible by third parties. If there is any indication that notes may become accessible by the public, we may see companies applying for confidentiality protection as standard practice.

By encouraging applicants and other stakeholders to address matters such as class composition, jurisdiction, and the consideration of alternative plans at an early stage, the practice statement should, in theory, reduce the risk of the court being "jammed" with urgent, last-minute applications that require decisions under extreme time pressure. However, there may be implications at the negotiating table. Earlier submissions of claims forms and even earlier applications for confidentiality will likely require companies to ask key stakeholders for forbearances and waivers at a stage in negotiations when the commercial deal is yet to be agreed.

"We may see companies applying for confidentiality protection as standard practice... However, there may be implications at the negotiating table."

Aggregate: The Latest on Recognition in Germany

Recognition of Restructuring Plans in Germany

On 22 August 2025 a judgment in the Frankfurt regional court in relation to Aggregate group's 2024 English Restructuring Plan created uncertainty as to whether Restructuring Plans can be recognised in Germany.

Despite a majority of its assets being in Germany and its debt being German law governed, Aggregate pursued an English law Restructuring Plan. This plan was ultimately sanctioned on 7 March 2024 (although not without significant opposition from junior creditors). The plan featured a maturity extension for senior debt holders, haircuts for junior debt holders and also facilitated a new money injection. The plan company, a Luxembourg incorporated entity, completed a 'COMI-shift' in order to access the English process.

A disgruntled lender brought an action before the regional court of Frankfurt. In short, the lender argued that, because the Restructuring Plan was not recognisable in Germany, the extension of maturity of its debt was ineffective, and the lender sought repayment of certain amounts by guarantor and borrower entities in the group.

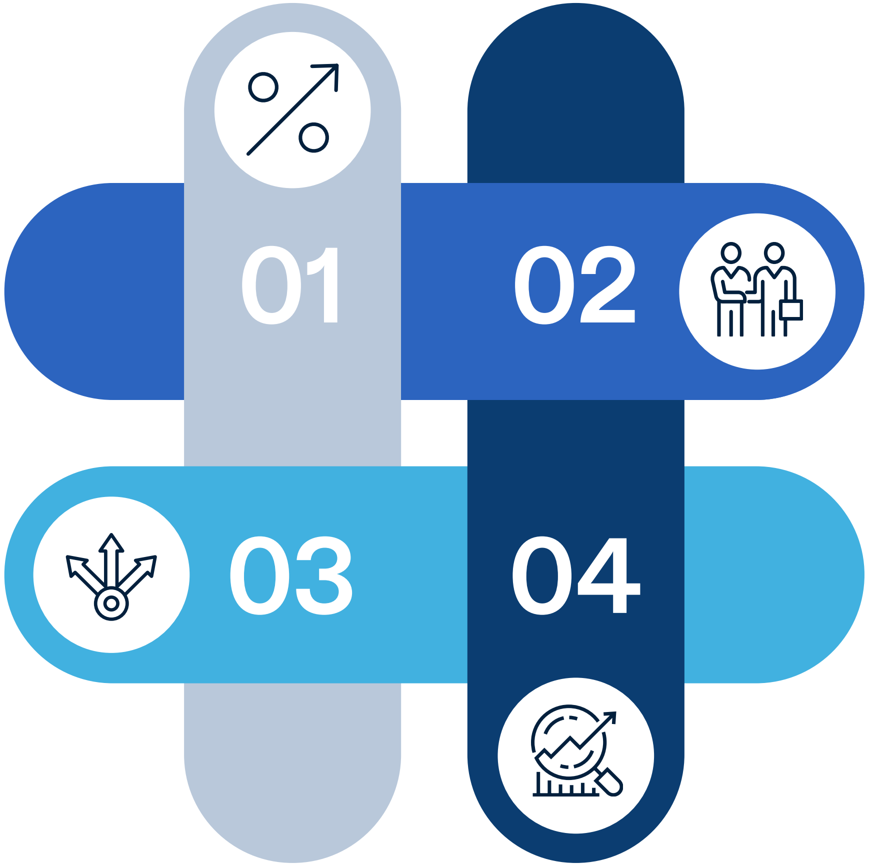
In a first instance interim judgment, the Frankfurt court agreed an English Restructuring Plan was not recognisable in Germany. This was because: (1) an English Restructuring Plan does not constitute "collective insolvency proceedings" per German legislation; (2) the court was not satisfied that the courts of E&W would give reciprocal treatment to orders of a German court; and (3) the relevant Brussels Convention was not available to English judgments post-Brexit.

Notably, the judgment was given in the context of a particular procedure where the plan company was only permitted to adduce limited evidence. The judgment is not final and binding and is already being appealed. Until the outcome of the appeal, however, there is a degree of ambiguity as to the possibility of the recognition and enforcement of English Restructuring Plans (and potentially also English schemes of arrangement) in Germany. Given the specific facts of the Aggregate plan, in which a Luxembourg plan company with German law governed debt holding ownership interests in a real estate development in Berlin, purported to shift its COMI to England, this ambiguity is likely limited to in practice.

The English courts have been willing to sanction schemes of arrangements and Restructuring Plans in relation to a German company in a number of cases post-Brexit (**Adler, Loewenplay, Tele Columbus**). It appears likely that the English courts will follow these precedents where an appropriate recognition opinion is delivered to the court.

In **Standard Profil**, the English courts sanctioned a scheme of arrangement after and in light of the Frankfurt Aggregate judgment. This confirmed that, from an English law perspective, it is still sufficiently likely that a scheme of arrangement will be recognised and given effect in Germany. However, the approach by English courts to Restructuring Plans with a significant German nexus remains uncertain.

Where Next?



Restructuring Plans Will Continue

We will continue to see Restructuring Plans in 2026, but given the current uncertainty (in particular on the fundamental question of the treatment of out-of-the-money creditors), we will likely see fewer complex restructurings implemented via Restructuring Plans until we hear from the Supreme Court.

Out-of-Court Options May Be Preferred

Until then, we are likely to see distressed companies and their stakeholders turning to out-of-court options such as Liability Management Exercises (LMEs) and Distressed Disposals under English law Intercreditor Agreements or in-court processes in other jurisdictions.

The New Practice Direction Will Help

However, for any Restructuring Plans that are proposed (and there will no doubt be at least some), we anticipate that the new Practice Direction will help to enhance case management and encourage parties to address and ideally resolve potential issues at an early stage to reduce the risk of appeals.

Restructuring Plan Needs Predictability

The Court of Appeal's approach in **Petrofac** reflects a wider sense of "re-balancing" the Restructuring Plan process and encouraging stakeholder engagement and negotiations with a view to reaching consensus so far as possible rather than using the cross-class cramdown as a first resort. This is not in itself a bad thing, but to be an attractive implementation tool for restructurings in a global, competitive market, the Restructuring Plan needs greater predictability than is currently the case.

"For the time being at least, orthodoxy rather than creativity is the safer path for implementing transactions in-court in England, and well-advised parties will explore alternative implementation routes wherever possible."

Liability Management Exercises

The market is seeing an increasingly hybrid approach, blending U.S. and European documentary frameworks and implementation strategies. This reflects active experimentation to achieve similar end-results while navigating jurisdiction-specific hurdles and constraints.

Liz Osborne
Partner, Head of European Restructuring

Where Are We Now?

There has been a clear increase in LME activity in Europe, and the structure and execution of these transactions is increasingly aligned with the U.S. market.

European market participants are actively combining U.S. and European documentary frameworks and implementation strategies. This hybrid approach reflects ongoing experimentation to achieve equivalent outcomes while navigating local legal and practical constraints.

Some European jurisdictions have more prescriptive directors' duties regimes, though even these are being tested and re-evaluated as the market develops:

- France, previously viewed as resistant to LMEs, has recently seen cases in which directors got comfortable with moving assets outside the restricted group.
- By contrast, neither Italy nor Germany has yet produced a coercive LME precedent; however, that does not preclude such transactions where directors are satisfied that insolvency can be avoided and the fact pattern is supportive.

For a period, the perceived "violence" often associated with LMEs was a sticking point in Europe. However, we have now seen instances of all major LME categories in Europe. As recent examples, drop-down transactions were executed in Altice France and Oriflame (and very recently and dramatically, Altice International), and a double-dip structure was used in Apollo's loan to Ardagh. We have also seen less common transaction structures, such as vote gerrymandering, in the Intralot transaction in 2021.

Over the past 18 months, there has been a notable uptick in non-pro-rata up-tier transactions in Europe, including **Selecta** and **Victoria**.

A few features of these transactions are worth highlighting:

Changing Ranking

European LMEs have, to date, been implemented in bond structures, where changing ranking is more straightforward under New York law. By contrast, ranking changes are typically a super-majority, and often all-lender, consent matter under European loan documentation, making up-tiers materially harder to execute.

Outcome Specific

LMEs have also been deployed to achieve different objectives: **Hunkemöller** focused on liquidity; **Selecta** combined a debt-for-equity with a reallocation of post-restructuring value; and **Victoria** targeted a maturity extension.

Innovative Implementation

Finally, the mechanics have varied: **Hunkemöller** used a series of amendments under the indenture; ***Selecta*** used a post-distressed disposal exchange; and **Victoria** was implemented, in substance, through an additional intercreditor arrangement.

More broadly, the market is seeing an increasingly hybrid approach, blending U.S. and European documentary frameworks and implementation strategies. This reflects active experimentation to achieve similar end-results while navigating jurisdiction-specific hurdles and constraints.

Where Are We Going?

Creative Solutions

Market practice has evolved. Early concerns that English law-governed ICAs would block liability-management exercises has given way to a more solution-oriented approach. The feasibility of any LME remains highly fact-specific—driven by the precise drafting of the debt documents, the makeup of creditor holdings, and the commercial context—so there is no one-size-fits-all pathway. That said, sponsors and creditor groups are regularly finding creative, document-driven strategies to execute LMEs in Europe, often within existing frameworks and without prohibitive litigation risks.

As an example, the absence of a "no payment for consent" provision (i.e., a clause prohibiting issuers from paying consenting holders for amendments unless the same consideration is offered to all holders) can make it easier to assemble the requisite majorities. This, in turn, reduces the avenues available to minority holders to resist or challenge the transaction.

Two recent transactions - **Selecta** and **Victoria** - highlight how distinct fact patterns and contractual terms can enable bespoke LME outcomes. They also underscore the importance of granular documentary analysis and creditor group dynamics in shaping execution routes and commercial outcomes. These examples are not templates, but rather case studies of how different toolkits can be deployed in practice. On pages 15 to 19 we have set out further detail on these transactions and how they were structured.

Litigation Risk

The U.S. has seen a series of high-profile challenges to LMEs, and that contentious backdrop is informing European participants' risk assessments.

Whether more aggressive LMEs become a standard feature of European restructurings will depend in large part on the outcome of current challenges, including **Selecta** (See page 15), **Hunkemöller** and the recent antitrust challenge brought by **Optimum Communications** (fka Altice USA) against its creditors that are party to a "co-op" agreement. Those decisions are likely to shape market expectations and set the tone for future deals.

As the market develops, a key question is whether European transactions will trend towards fully non-pro-rata structures, or whether parties will adjust structures to mitigate litigation risk earlier and moderate terms accordingly. In practice, we expect behaviour to be value-dependent: where residual value is thin, stakeholders are more likely to pursue aggressive structures to capture scarce recoveries, whereas where there is more value to go around, sponsors and creditors are more likely to temper aggression to reduce litigation risk.

Selecta LME

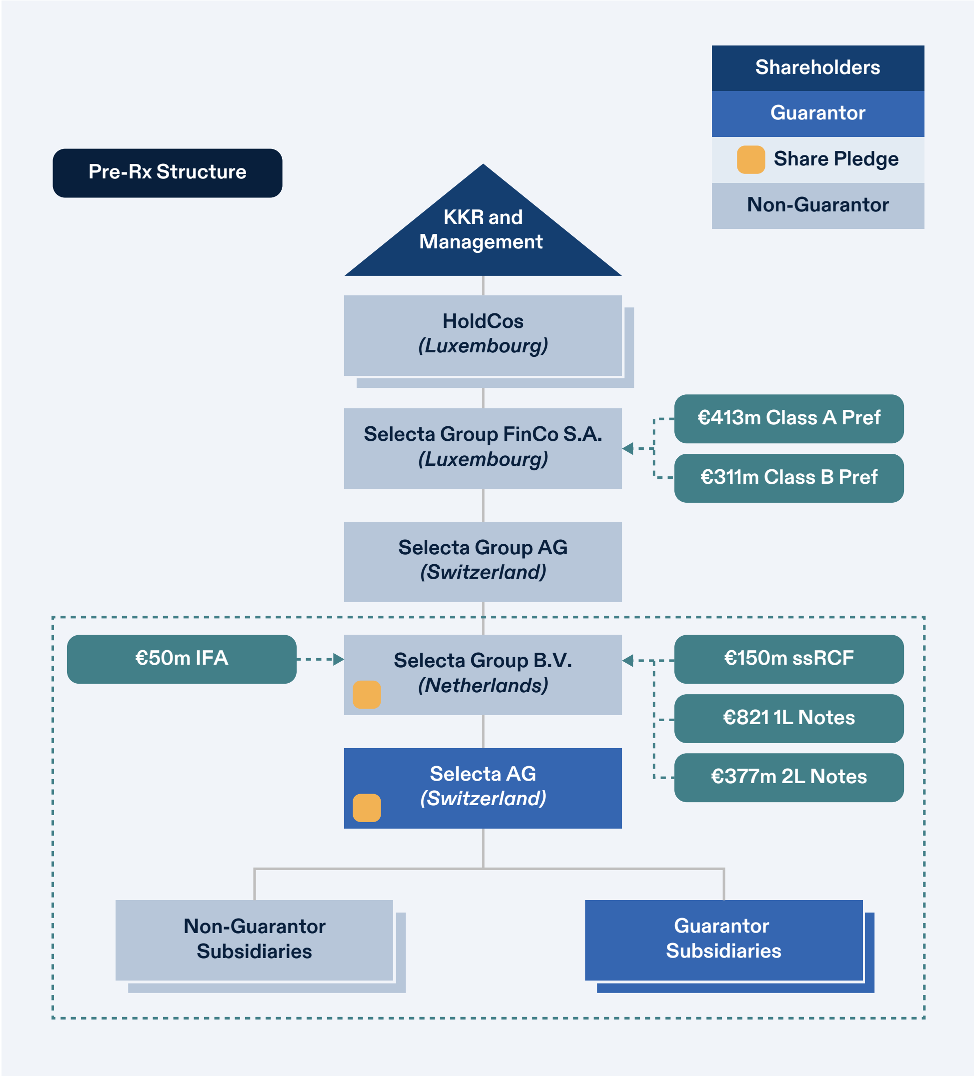
Background

- Selecta is a vending machine and food-tech business that operates across Europe.
- Owned by KKR since 2015, the Company had implemented a restructuring in 2020.
- However, it faced challenging macro-economic conditions over the course of 2024, which led to creditors organising to discuss a further recapitalisation.
- In May / June 2025, the Group implemented a transaction that saw creditors take control of the business through use of the “distressed disposal” mechanisms in the intercreditor agreement (the “ICA”).

Transaction Structure

To activate the ICA distressed disposal provisions, the shares of Selecta Group B.V. were acquired by a creditor-owned bidco (“Bidco”) by way of a Dutch share pledge enforcement.

The Dutch court approved the enforcement by way of private sale for consideration of €1 and subject to the release of the existing indebtedness.



Selecta LME

Transaction Structure (Continued)

The majority of the equity in the post-restructuring Group was allocated to providers of new money (ranking 2L).

The new money was open to all existing 2L holders and backstopped by the AHG (with the fee being 20% of post-rx equity).

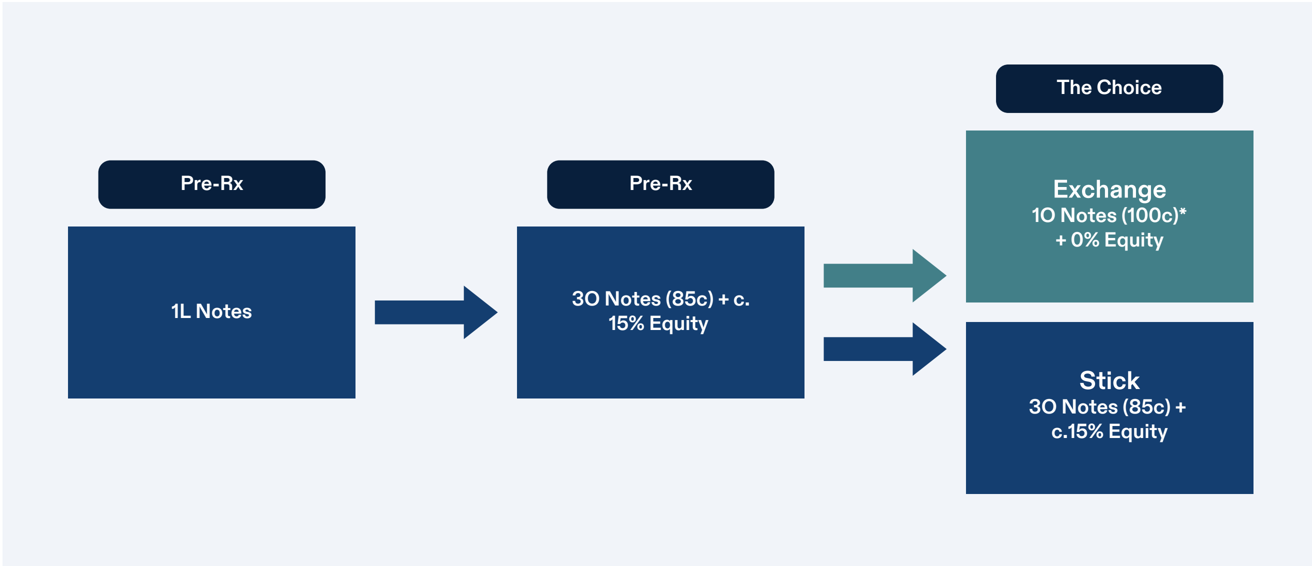
Existing 1L holders had the following options:

- Initially, in order to comply with the pari passu treatment requirement under the ICA, all 1L holders were exchanged into 85c of 3O and ~15% of non-voting equity.
- Post-enforcement, they were offered the opportunity to exchange their 3O debt and equity into 100c of 1O debt. However, the “sacred rights” under the 1O debt could be amended in the first 12 months with only 50% consent, with the AHG holding >50% of the 1O tranche. This 12-month period may itself be amended and extended by a majority.

Therefore, non-AHG 1L holders could either:

- Remain at the bottom of the waterfall having taken a 15c write-down; or
- Swap at par into the new 1O tranche, subject to the lower consent threshold for amendments.

The trading price of the instruments reflected the difference between AHG 1O and non-AHG 1O paper.



Indicative pricing, per Bloomberg, early Aug 2025

Instrument	Bid Price	Ask Price
Super Senior	100	101.5
1O (AHG)	74.5	76.0
1O (non-AHG)	10.0	30.0
2L New Money	70.0	77.0
3O	10.0	30.0

Selecta LME

Commentary

01
ICA Flexibility

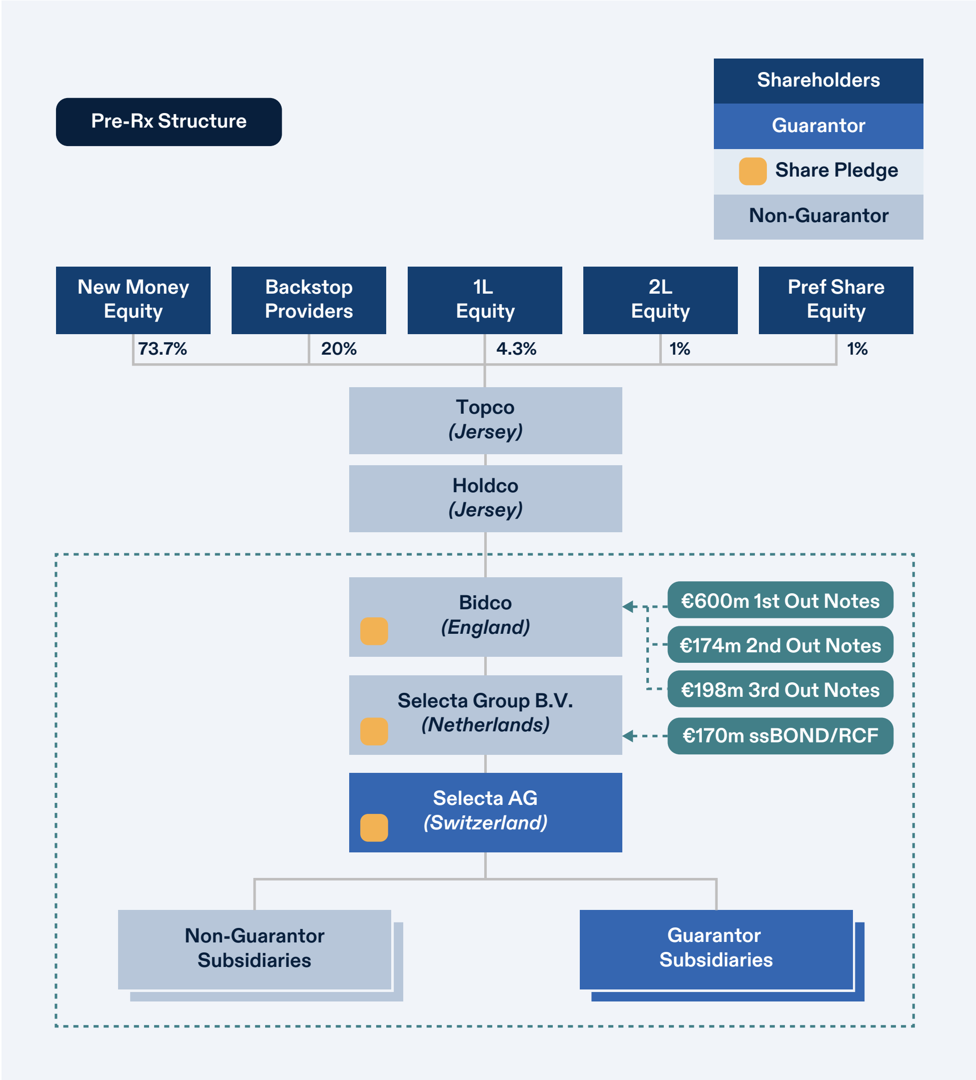
The transaction shows the flexibility available under an English law ICA, even when dealing with NY law governed instruments. Notably, a debt for equity transaction with such a complex capital release and re-instatement mechanism would likely not be attempted out-of-court in a U.S. situation, illustrating the breadth available through the English law ICA mechanics.

02
Non-pari Treatment

Although it was generally understood that new money could receive differential treatment, the use of a post-enforcement exchange is an innovation.

03
Challenges

The private sale enforcement court approval is currently subject to challenge in the Netherlands. Further, recently, non-participating creditors have filed a detailed complaint asserting ten counts under U.S. federal antitrust law, New York contract and related tort law, and raising issues of English law. The non-participating creditors allege that the participating holders entered into an unlawful "co-op" agreement to restrain trade in the market for the first-lien debt, in which the participating and non-participating holders are the only competitors. The central question posed is whether such an arrangement is anti-competitive or otherwise an unlawful restraint of trade. A further, broader, challenge to a "co-op" agreement on U.S. federal and NY state antitrust grounds was recently brought by **Optimum Communications** (fka Altice USA) as debtor against the vast majority of its creditors.



Victoria Uptier

Background

- Victoria plc is an AIM-listed global designer, manufacturer and distributor of flooring products.
- The Group was facing pressure over its near-term debt maturities, with its €488.9m outstanding (originally €500m) 3.625% senior secured notes due August 2026 (the "2026 Notes").
- The Group also has €250m 3.75% senior secured notes due March 2028 (the "2028 Notes", and with the 2026 Notes, the "Existing Notes").

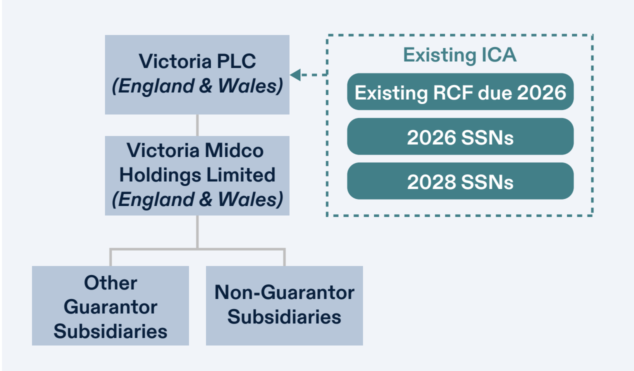
Transaction

- Under the amendments provision of the Existing Notes' indenture, changing the ranking of the Existing Notes was not a 90% sacred right matter.
- In addition, a feature of the Existing Notes was that the 2026 Notes and the 2028 Notes voted together.
- Given the relative size of the tranches (i.e. the 2026 Notes constituted in excess of 50% of the Existing Notes), it was possible to implement an uptier of the 2026 Notes with only their support.
- Under the uptier transaction:
    - 98% of consenting holders of the 2026 Notes exchanged into new 9.875% first priority senior secured notes due August 2029 ("1PNs").
    - c.€74m of the 2028 Notes were also exchanged into 1PNs (under private transactions, outside of the public exchange offer).
- The new SSCF (which replaced the existing RCF due 2026) remains super senior, followed by the elevated 1PNs. The stub of 2026 Notes and the 2028 Notes will rank behind the 1PNs, pari passu.
- To implement the transaction, the Group launched, with the support of over 90% of the 2026 Notes and over 77% of the combined Existing Notes: (i) two concurrent public consent solicitations; and (ii) a public exchange offer (for 2026 Notes holders to exchange into the 1PNs).
- The first consent solicitation sought consent to:

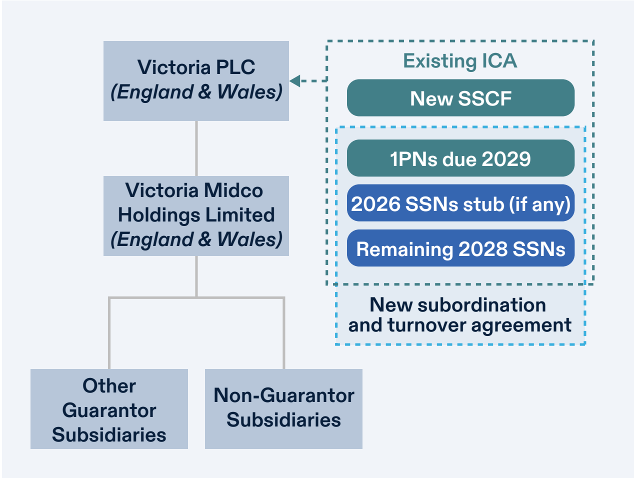
A. Remove substantially all incurrence-based covenants under the Existing Notes (to encourage 2026 noteholders to exchange into the 1PNs); and

B. Establish the priority of the 1PNs ahead of the Existing Notes, via a new subordination and turnover agreement.

Group's capital structure before the uptier transaction



Group's capital structure after the uptier transaction



Victoria Uptier

Transaction (Continued)

The second consent solicitation (the "Super Majority Consent Solicitation") sought consent from 90% of the 2026 Notes make economic changes to the 2026s:

- Extending the maturity of the 2026 Notes to August 2031; and
- Reducing the coupon of the 2026 Notes to 1% p.a. (from 3.625%).

Result

The transaction completed on 27 August 2025 and extended the Group's near-term senior debt maturities, providing additional maturity runway to allow time for the Company to implement its turnaround measures and in expectation of an overall improvement in the macro-outlook for building materials suppliers.

Simplified Capital Structure (£m)*

	Pre-Transaction		Post Transaction			
	Amount	Δ	Amount	xEBITDA	Maturity	Coupon
Existing SSRCF	44	-44	-			-
New SSCF	-	75	75	1.3x	Jan-30	S/E + 6.0%
New 1PNs	-	534	534	6.6x	Jul-29	9.88%
€489m 2026 Notes	420	-420	-	-	-	-
€250m 2028 Notes	215	-72	143	8.0x	Mar-28	3.75%
Local Lines	121	-	121	0.6x	-	-
Total debt	**801**	**72**	**873**			
Less cash and equivalents	57	9	65			
Net debt	**744**	**63**	**808**	**8.0x**		

*From Company's FY25 Investor Presentation, as at March 25 (i.e. sets out prospective results for transaction and based on Company's figures). Group in August 2025 announced that they had 98% of 2026 Notes consenting (with €612m 1PNs issued) i.e. a 2% stub was remaining.

Distressed Disposals

> *Distressed disposals offer an alternative implementation tool for non-consensual transactions. The low instructing threshold and more limited requirement for court involvement are particularly attractive characteristics in the European market. As the market approaches Restructuring Plans with more caution, out-of-court distressed disposals are becoming more prominent. Distressed disposals can offer an alternative route for disenfranchising stakeholders (or threatening to do so to drive a consensual deal).*

Kai Zeng
Partner, Restructuring

What Is a Distressed Disposal?

A distressed disposal is a mechanic under English law governed intercreditor agreements ("ICAs") that typically provide the security agent with a series of powers over the transaction security, and importantly the creditors' claims and the obligor group's obligations, in respect of the debt liabilities subject to the ICA.

A distressed disposal includes disposals of assets (such as the sale of shares of a certain entities within the group) at the request of an "instructing group" of certain creditors to the security agent. Such instructions can only be given in certain circumstances, for example, following an acceleration of liabilities subject to the ICA or as part of enforcement of security.

This mechanic can typically be used with the applicable contractual majority (most commonly a simple majority or sometimes a two-thirds majority) of the relevant creditor group. An instruction by the relevant majority of creditors (the "instructing group") under the ICA binds all creditors subject to the agreement. This means the security agent can take steps to: (i) release security; (ii) dispose of the shares of a member of the group; (iii) release or transfer the liabilities owing under the financing arrangements; and (iv) accept and distribute any cash or non-cash consideration which is paid to the security agent in consideration for it taking any such actions.

This effectively means a minority group can be "dragged" into a new corporate and capital structure, where the terms of the relevant intercreditor agreement are complied with.

Why Are Distressed Disposals an Attractive Implementation Tool?

One attraction is that an instruction to a security agent can often be made with a simple majority of the most senior creditor group (excluding super senior debt), often much lower than almost all of the in-court restructuring regimes available, both in Europe and the U.S..

Another attractive feature is that litigation risk is back-ended. There is no built-in challenge forum (unlike English law schemes of arrangement or Restructuring Plans), and this reduces the risk of upfront challenge. A dissenting creditor or shareholder may apply for an injunction, but this is rarely seen in practice.

The use of the distressed disposal to implement a transaction also involves less public scrutiny and often can be implemented in a much shorter time period than a court-driven restructuring process.

Distressed disposals offer significant transaction structuring flexibility. They can be used in a consensual deal with the sponsor where either the sponsor retains some form of control or there is as an orderly transfer of ownership. When a consensual transaction cannot be agreed, creditors can use a distressed disposal as part of an enforcement strategy.

We have also seen distressed disposals used in non-pro rata transactions (in conjunction with or as part of a carefully sequenced LME transaction).

Why Are They Back on The Agenda?

Back “in Vogue” as Restructuring Plans Are Approached With More Caution

- Market participants are now looking more closely at distressed disposals as a means by which (1) pressure can be exerted on sponsors and/or dissenting creditors; or (2) holistic restructurings can be implemented.
- Distressed disposals offer an alternative implementation tool for non-consensual transactions. The low instructing threshold and more limited requirement for court involvement are particularly attractive characteristics in the European market. As the market approaches Restructuring Plans with more caution, out-of-court distressed disposals are becoming more prominent.
- Distressed disposals can offer an alternative route for disenfranchising stakeholders (or threatening to do so to drive a consensual deal). Senior creditors can direct the distressed disposal under the terms of the ICA and junior creditors might be effectively stranded outside of the new structure. As distressed disposals are generally conducted out-of-court, there is not the same court inspection of “fairness” and “allocation of value to out-of-the-money creditors” (which we see when courts consider the use of a cram-down in Restructuring Plans).

Historically, Challenges Have Been Between Junior and Senior Creditors

- Junior creditors typically benefit from certain fair value protections under the ICA (e.g., the security agent must be satisfied that the disposal is made for ‘fair value’). However, it is often difficult for junior creditors to progress a claim on such grounds because of their lack of information. In addition, as the fair value protections are a matter of contract (rather than legislation or common law, like a Restructuring Plan), courts will likely approach a ‘fair value’ challenge narrowly and focus on whether the procedural and contractual requirements of the ICA have been met.
- Historically, junior creditors have challenged distressed disposals in response to the actions of senior creditors (and the relevant debtor company). To date, none of these challenges have succeeded in court.
- Distressed disposals often require enforcement action, and this can give rise to implementation risk in some jurisdictions if court processes or public auctions are involved. Non-consenting lenders can seek to frustrate the enforcement process in local jurisdictions. However, again, the information asymmetry can make such challenges difficult for dissenting creditors. Often these creditors only have knowledge of the existence of the transaction after it has been completed.
- Unlike a Restructuring Plan, in principle there is a long tail for a challenge (6-year limitation period under English law).

New Developments and Challenges

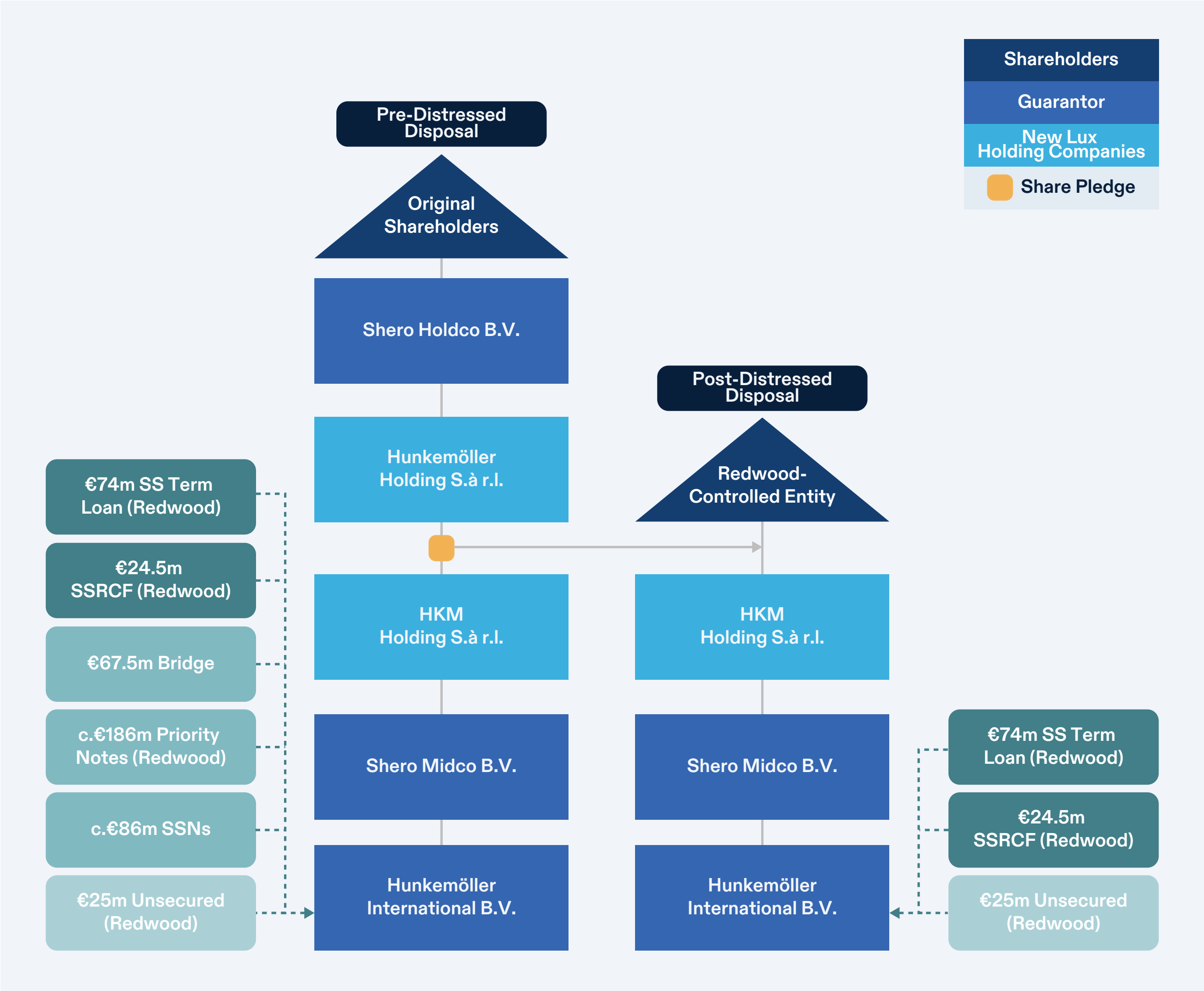
- The ***Selecta*** transaction outlined on pages 15 - 17 is an example of the creative use of a distressed disposal as part of a transaction where the dynamic was not senior vs junior creditors, but majority senior vs minority senior. These battle lines may become a recurrent theme. As noted below, a challenge including claims of majority "abuse" is now before the English court on **Hunkemöller**. Given the English law ICA in the **Selecta** situation, the possibility of a Hunkemöller-style litigation challenge in England cannot be entirely excluded (noting the challenges which have already been brought in the Netherlands and New York).
- A distressed disposal was also used to implement the ***Hunkemöller*** recapitalisation in March 2025. This was a more conventionally structured deal, albeit made more complicated by the uptier transaction in June 2024, which is the subject of ongoing litigation in New York. We have set out further detail on the **Hunkemöller** distressed disposal and the recent challenge to that transaction on the following slides.

"Distressed disposals offer significant transaction structuring flexibility. They can be used in a consensual deal with the sponsor where either the sponsor retains some form of control or there is as an orderly transfer of ownership...

We have also seen distressed disposals used in non-pro rata transactions."

Hunkemöller Distressed Disposal

- It was announced in March 2025 that Redwood had become the new sole owner of Hunkemöller following a distressed disposal of the business to a Redwood-controlled entity.
- Following a new money injection and an uptier transaction completed under the NY law governed indenture in June 2024, Redwood had a dominant position in the capital structure.
- Despite the liquidity provided in June 2024, Hunkemöller's performance deteriorated again in late 2024. Hunkemöller was unable to meet its material interest obligations in early 2025 and a €70 million new money need was identified.
- On 21 March 2025, following an event of default, the security agent was instructed by Redwood (who then held the majority of the super senior and senior secured debt issued) to enforce over the share security in a Luxembourg holding company of the debtor. These holding companies had been added into the structure shortly before the enforcement.
- The security agent effected a distressed disposal of all secured liabilities subject to the ICA. The shares and liabilities were acquired by an entity controlled by Redwood.
- Following the distressed disposal and as a result of the new capital structure, the non-Redwood SSN holders stand to recover nothing.
- As set out on the following slide, minority holders of the SSNs commenced proceedings in England in connection with the distressed disposal in parallel with their existing claims in New York regarding the uptier.



Challenge Landscape

Minority Holders Challenge the Hunkemöller Distressed Disposal

A group of minority SSN holders affected by the **Hunkemöller** transaction commenced proceedings in the English courts in October 2025. Formal proceedings were brought against the security agent and the Hunkemöller borrower entity. The minority SSN holders are pursuing three main claims with respect to the distressed disposal (narrowed considerably from the list of claims set out in their letter before action, which was made public in the course of litigation in New York):

1. There was no valid instruction to the security agent because Redwood's uptiered SSNs were not 'valid' senior secured credit participations;
2. The security agent was on notice or turned a blind eye to the invalidity of Redwood's instructions; and
3. Redwood's exercise of its majority vote under the ICA was in bad faith and breached the 'abuse principle'.

The 'Abuse Principle' in English Law

In general, the English courts are slow to imply additional obligations or limitations in commercial contracts, especially where the parties to the contract are sophisticated corporate entities with the benefit of professional advice. However, there is a (limited) line of case law where the English courts have affirmed the 'abuse principle': where a power is conferred on a majority to bind a minority such power given is not unlimited and must be exercised for its purpose and "the purpose of benefiting the class as a whole, and not merely individual members only".

Generally, case law shows that courts take a fact-specific approach when determining if a majority power has been used in bad faith.

The Role of the Administrative Parties and Indemnification

Given the role of the agent and security agent in the distressed disposal process and as illustrated by the **Hunkemöller** case in England where the security agent is the first named defendant, administrative parties are often in the firing line for challenges under the ICA. It is typical for administrative parties to require an additional indemnity as well as the indemnity included in the existing finance documents. As distressed disposals become more frequently used (and used in more innovative ways), we can expect requests for additional indemnification to come to the fore. Sometimes administrative parties request a fighting fund to be put in place.

Similarly, more U.S. market standard terms may be adopted. For example, instructing group lenders may start to request indemnities from the company or sponsor in the event the transaction is challenged in order to de-risk their participation.

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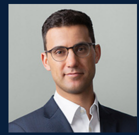

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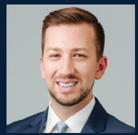

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