



INSOL
INTERNATIONAL

GLOBAL INSOLVENCY
PRACTICE COURSE

UK restructuring on the ground

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Presenters



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Overview

- Key considerations
- Available techniques and restructuring/insolvency proceedings
- Schemes of arrangement and restructuring plans



Key considerations

- Consensual negotiations – relevant considerations, e.g. INSOL Principles for Multi-Creditor Workouts
- UK restructuring “tool-kit”
- Identify problem to be solved, e.g. dissenting creditors, management, shareholders
- Jurisdictional issues
- Recognition and cross-border considerations



Available techniques and proceedings

- Proactive use of the restructuring “tool-kit”
- Security enforcement strategies
- Different jurisdictions, different rules
- Solvency tests and directors’ duties
- Available processes:
 - Schemes of arrangement (including “Restructuring Plans”)
 - Administration (commonly a “pre-pack”)
 - Company voluntary arrangement (“CVA”)
 - “New” moratorium
 - Liquidation (terminal/“end-of-the-road”)



Schemes and RPs: overview

- Statutory procedures under UK Companies Act
- Flexibility – “surgical” restructuring
- Light-touch court involvement
- Available to foreign companies – “sufficient connection”
- BUT...
 - Typically, high level of critical creditor buy-in from outset
 - Cannot be used purely to divest creditors of rights
 - Litigation risk e.g. valuation issues



Schemes and RPs: common features

- Class constitution: similar rights/commonality of interests
- Approval threshold: at least 75% by value in each class
 - For “ordinary scheme”, at least 50% by number
 - For RP, does not apply for every class if cross-class cramdown requirements are met
- Only approved (“sanctioned”) if fair and reasonable
- No moratorium; lock-up/support agreements common
- Timing – process typically around 8 weeks



RPs: the new kid on the block

- “Gating” conditions
 - Financial difficulties affecting ability to carry on business as going concern
 - Purpose of RP is to eliminate or reduce effect of financial difficulties
- “Cross-class cramdown”: RP approved where not all classes vote in favour if:
 - None of dissenting classes are worse off under RP than they would be in “relevant alternative”
 - RP approved by class that has genuine economic interest in any “relevant alternative”
- Relevant alternative: contentious; “best foot-forward” by debtor
- Application of new prohibition on termination of supply contracts



Key scheme and RP cases

- Let's get physical: *Virgin Active* (valuation practice-points)
- You are like a... *Hurricane Energy* (RP rejected... failed "no worse off" test)
- Panic! At the... *DTEK* (international recognition post-Brexit)
- Hola *Amigo!* (different considerations in a consumer redress scheme)



Role of the UK insolvency practitioner in restructurings

- Licenced insolvency practitioners (IPs)
- Work very closely with the legal advisers
- Schemes / RPs – IPs focus on business viability, financials, strategic options / alternative scenario and contingency planning. Potential for cross examination in Court.
- CVAs – formal insolvency process but debtor remains in control
- Pre-packaged business sales
- Claims against IPs



QUESTIONS?

Feel free to contact us whenever you have a question!

