AUTHOR STATEMENT

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DECLARATION OF HONOUR

I declare that the paper, titled “Similarities and differences of schemes, restructuring plans and pre-packs” is my own work, that it has been prepared independently and that all references to, or quotations from, the work of others are fully and correctly cited.

Signed

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INSOL Global Insolvency Practice Course - Short Paper

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Compare and contrast the use of an English scheme of arrangement or restructuring plan with the use of a US Chapter 11 “pre-pack” to restructure a single class of bond debt while leaving other creditors and equity holders unaffected.

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Contents

1. Introduction

This paper seeks to compare and contrast an English scheme of arrangement or restructuring plan with the use of a US Chapter 11 “pre-pack”, to restructure a single class of bond debt while leaving other creditors and equity holders unaffected.

In the current environment, financial distress is rarely limited by geographic boundaries. Without a universal bankruptcy system, tailored strategic solutions need to be crafted and explored to achieve the best stakeholder outcome, whether within or outside the available formal procedures. The starting point of the strategic analysis in any given situation must be based on an appreciation of the key characteristics of the available procedures.

As a result, this paper includes a brief overview of the legal framework for the UK, as it relates to schemes of arrangement and restructuring plans, and for the US, as it relates to the Chapter 11 Bankruptcy Code, with a particular focus on pre-packs, whereafter it compares key characteristics of the available procedures, with specific reference to restructuring a single class of bond debt. For the sake of clarity, this paper seeks to focus only on those characteristics that may be considered salient with reference to a single class of bond debt, rather than considering the full universe of nuances among schemes of arrangement, restructuring plans, and the Chapter 11 Bankruptcy Code.

Unsurprisingly, the determination by any company as to which procedure to follow is unlikely to be clear-cut. Rather, several considerations need to be weighed, and companies will have to adopt a strategic view as to which procedure is the best fit for their specific circumstances.

2. Overview of legal proceedings

2.1. Overview

“In the US and UK, Chapter 11 cases under the US Bankruptcy Code, schemes of arrangement under the English Companies Act 2006, and company voluntary arrangements under the English Insolvency Act 1986 have, for many years, offered tried and tested ways for companies to restructure their debts”, according to ICLG.com’s *Restructuring Across the Pond and Back*. In addition, in 2020, the UK’s Corporate Insolvency and Governance Act 2020

("**CIGA**") came into force, ushering in the most significant changes to UK insolvency law that have been introduced in over a decade[1].

2.2. US Chapter 11 Bankruptcy Code

Chapter 11 has proved to be a powerful tool for restructuring the debts of distressed companies. ICLG.com noted that "The wide automatic stay provides breathing space while a debtor formulates a proposed plan of reorganization, and the ability to cram-down dissenting classes of creditors in connection with the approval of a plan of reorganization ensures that restructurings can proceed without the full consensus among affected creditor classes"[1].

However, two major hurdles for companies seeking to restructure their financial and business affairs through a Chapter 11 bankruptcy are that the process is too expensive and takes too long. "Fortunately, Chapter 11 of the Bankruptcy Code includes several provisions that permit a company to obtain creditor approval for a plan or other critical elements of a bankruptcy reorganisation before the case is actually filed with the bankruptcy court", according to Hirschler Law's *Saving Time and Money: Pre-Packaged Chapter 11 Cases*. Companies that take advantage of these provisions are thus able to file what is commonly referred to as "pre-packaged" Chapter 11 cases or "pre-packs." Pre-packs are becoming increasingly popular to keep both professional fee expenses and the time spent in bankruptcy to a minimum[2].

2.3. UK schemes of arrangement and restructuring plans

According to the *Insolvency Review*, "schemes of arrangement and restructuring plans are two pre-insolvency restructuring tools that can be used to compromise or reschedule debt with agreement from a statutory majority of creditors, subject to specific requirements being satisfied as set out in the Companies Act 2006, as amended by CIGA"[3].

The *Insolvency Review* goes on to note that a scheme effects a court-sanctioned compromise or arrangement between a company and its creditors (or any class of them) outside of a formal insolvency process. A scheme may be used to vary a class of creditors' rights and can bind all creditors if the requisite majority or majorities of each class (at least 50 percent in number and at least 75 percent by value) vote in favour of the scheme. If approved by the requisite majorities, the court has the discretion to sanction the scheme. The scheme becomes effective

[1] Frogel, Judah, Guyder, Daniel, Marshall, Jennifer, Karolia, Shaheen, "Restructuring Across the Pond and Back: A Comparison of Chapter 11 and the New UK Act", at <<https://iclg.com/practice-areas/lending-and-secured-finance-laws-and-regulations/15-restructuring-across-the-pond-and-back-a-comparison-of-chapter-11-and-the-new-uk-act>>, accessed on 5 February 2022
[2] Burgers, Kirsten, "Saving Time and Money: Pre-Packaged Chapter 11 Cases", Hirschler Publications 2021
[3] McMaster Karen, Levin Sarah, Janssen Lynette, Fonti Matthew, "The Insolvency Review: United Kingdom - England & Wales", at << https://thelawreviews.co.uk/title/the-insolvency-review/united-kingdom-england--wales >>, accessed on 5 February 2022

upon the court's sanction and subsequent filing of the sanction order with the Registrar of Companies[3].

The restructuring plan, "introduced under CIGA and similar in many ways to a scheme", according to the *Insolvency Review*, is a court-sanctioned compromise or arrangement among a company and its creditors or members (or a class or classes or them). The restructuring plan differs from a scheme in two key respects: (1) the company proposing the restructuring plan must show some level of financial distress; and (2) the restructuring plan can be used to bind a non-consenting class of stakeholders (i.e. cross-class cram-down)[3].

A restructuring plan will be approved by a class if at least 75 percent in value of those participating in the vote approve it. Following the vote, the court has discretion to sanction the restructuring plan at the sanction hearing if all classes approve the restructuring plan. If one or more classes did not approve the restructuring plan, the court still has discretion to sanction the restructuring plan where:

1.1. none of the members of the dissenting class would be any worse off than they would be in the 'relevant alternative', which is the scenario the court considers most likely to occur in relation to the company if the restructuring plan were not sanctioned; and

1.2. at least one class who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative approved the restructuring plan[3].

According to ICLG.com's *Restructuring Across the Pond and Back*, "prior to the implementation of the CIGA, the absence of a cross-class cram-down mechanism was regarded as a limitation of the UK restructuring toolkit". That said, the new restructuring plan, introduced by CIGA by adding a new part to the Companies Act 2006, closely resembles Chapter 11 in many key areas, perhaps most notably the introduction of a cross-class cram-down mechanism[4].

2.4. At first glance

Whereas a formal insolvency process such as administration, as governed by the Insolvency Act 1986, may be most aptly comparable to Chapter 11 of the US Bankruptcy Code (particularly as it relates to traditional Chapter 11 cases), schemes of arrangement and restructuring plans share much in common with Chapter 11 pre-packs.

[4] Frogel, Judah, Guyder, Daniel, Marshall, Jennifer, Karolia, Shaheen, "Restructuring Across the Pond and Back: A Comparison of Chapter 11 and the New UK Act", at <<https://iclg.com/practice-areas/lending-and-secured-finance-laws-and-regulations/15-restructuring-across-the-pond-and-back-a-comparison-of-chapter-11-and-the-new-uk-act>>, accessed on 5 February 2022

Perhaps the "greatest strength among schemes of arrangement, restructuring plans, and Chapter 11 pre-packs is that they are largely consensual", according to Sarah Paterson's *Reflections on English Law Schemes of Arrangement*; cases where the majority of financial creditors "coalesce around a debt restructuring plan and where it has been possible to reach an accommodation with the equity, so that only a relatively small number of hold-out creditors remain"[5].

By means of this consensual restructuring, all of schemes, restructuring plans, and Chapter 11 pre-packs seek to minimize the time under court supervision, thereby providing several benefits, most notably minimising the direct administrative costs, as well as the indirect costs to the business operations[6]. That said, each process also requires a significant amount of out-of-court effort, typically requiring a great deal of negotiation and coordination before filing.

The precise nature of schemes, restructuring plans, and Chapter 11 pre-packs typically means that they can be employed to address a particular purpose, and are typically best suited for "balance-sheet restructurings, whereby burdensome funded debt levels have primarily caused the company's financial distress as opposed to a comprehensive restructuring of its business operations", according to Dennis Dunne, Dennis O'Donnell, and Nelly Almeida's *Pre-packaged Chapter 11 in the United States: An Overview*[7].

With the above in mind, restructuring a single class of bond debt, as is the case for this paper, is likely to be better suited to the procedures of a scheme, restructuring plan, or Chapter 11 pre-pack, as opposed to administration or a traditional Chapter 11 case. In light of this, the remainder of this paper compares and contrasts each of these three procedures, where key differences may inform a company seeking to restructure the single class of bond debt, while leaving other creditors and equity holders unaffected.

3. Procedures

Across all three processes of schemes, restructuring plans, and pre-packaged Chapter 11 cases, there will ordinarily be a "pre-procedural phase in which the debt restructuring is

[5] Paterson, Sarah, "Reflections on English Law Schemes of Arrangement in Distress and Proposals for Reform", available at <<SSRN: https://ssrn.com/abstract=2926848>>, accessed on 3 March 2017

[6] The reduced time spent under the supervision of a bankruptcy court and greater certainty as to an outcome mitigate many of the negative effects of a free-fall Chapter 11 filing on the debtor's business operations. For example, the debtor will be able to provide assurances to its suppliers and customers that a seamless exit from Chapter 11 and a deleveraged, more sustainable capital structure are within reach. In addition, trade creditors will know from the inception of the case that their claims will be left 'unimpaired' and, thus, will have no reason to disrupt deliveries or production. For the same reason, competitors will have less opportunity to use the debtor's Chapter 11 filing to lure the debtor's customers away

[7] Dunne, Dennis, O'Donnell, Dennis, Almeida, Nelly, "Pre-packaged Chapter 11 in the United States: An Overview", at << https://www.lexology.com/library/detail.aspx?g=e8bd2a2e-af91-429f-abbb-38a8b0c8bb8a >>, accessed on 30 January 2022

negotiated", according to Sarah Paterson's *Reflections on English Law Schemes of Arrangement*[8]. In the case of restructuring a single class of bond debt, while leaving other creditors and equity holders unaffected, the pre-procedural phase will be critical to ensuring the "buy-in" of bondholders to a restructure. While a cross-class cram-down may be possible under a restructuring plan, it is more likely that the process will need to be consensual. Accordingly, only once the company has negotiated the specific terms of the restructuring and solicited the votes of the bondholders to accept the arrangement or plan, can the company proceed with the procedure it has determined to be more suitable for its specific circumstances.

3.1. Pre-packaged Chapter 11 procedures

"Given the long history of pre-packaged Chapter 11 cases in the United States, there are well-established procedures for the successful formulation and implementation of pre-packaged Chapter 11 plans", according to Dennis Dunne's *Pre-packaged Chapter 11 in the United States: An Overview*. The authors go on to state that "such extensive guidance is required because, unlike in traditional Chapter 11 cases, the Bankruptcy Court has a more limited role in a pre-packaged Chapter 11 case and, therefore, will not necessarily be on the scene to steer the pre-packaged plan proponents towards confirmation and closure"[9].

In a traditional Chapter 11 case, the Bankruptcy Code mandates that the bankruptcy court consider and approve the extent of required disclosure, appropriate solicitation procedures, classification of claims and interests, and other key matters before any plan vote is undertaken. However, in a pre-packaged Chapter 11 case, the court rules on the disclosure provided and the solicitation steps taken only after the solicitation has been completed and the case commenced[9].

3.2. Schemes of arrangement procedures

A UK scheme of arrangement is typically initiated by the company. Sarah Paterson sets out the steps as follows: "The first procedural step is to send out a letter with the scheme timetable and the classification of classes for voting on the scheme. The scheme then proceeds through several clearly defined stages. First, a 'permission to convene' hearing is held at which creditors may appear to argue that the composition of the classes is unfair, or to raise issues

[8] Paterson, Sarah, "Reflections on English Law Schemes of Arrangement in Distress and Proposals for Reform", available at <<SSRN: https://ssrn.com/abstract=2926848>>, accessed on 3 March 2017
[9] Dunne, Dennis, O'Donnell, Dennis, Almeida, Nelly, "Pre-packaged Chapter 11 in the United States: An Overview", at << https://www.lexology.com/library/detail.aspx?g=e8bd2a2e-af91-429f-abbb-38a8b0c8bb8a >>, accessed on 30 January 2022

with the manner in which the class meetings are proposed to be held, but 'emphatically not … to consider the merits and fairness of the scheme'"[10].

She goes on to state that, "the scheme document is circulated, together with an explanatory statement. The scheme meetings are then held, at which the requisite majorities must be achieved in each class. Assuming that the majorities are achieved, a further court hearing is held, at which the court must be satisfied that the 'arrangement is such as an intelligent and honest man acting in respect of his own interest might reasonably approve', before sanctioning it. The court will ordinarily be of the view that 'if the creditors are acting on sufficient information and with time to consider what they are about, and have acted honestly, they are, … much better judges of what is to their commercial advantage than the Court can be'". Once the scheme has been sanctioned and the court order filed at the Registrar of Companies, it is difficult to challenge the scheme, other than in the case of a fraud which affected the result[10].

3.3. Restructuring plan procedures

In the UK, a company, its creditors, or members can also propose a restructuring plan without an application to the court. However, the UK court does have oversight of the restructuring plan process, and indeed there are two court hearings as part of the approval process. ICLG.com's *Restructuring Across the Pond and Back* sets out the steps as follows: "In the first court hearing, the court must approve the class formation and the convening of restructuring plan meetings, similar to the scheme of arrangement. If sufficient creditors or members approve the plan at the relevant meetings, the court will consider, in the second court hearing, whether it is a proper exercise of its discretion to sanction the plan. In doing so, the court will consider whether the classes of creditors or members were properly constituted, whether it has jurisdiction to sanction the plan, and whether the plan is fair. If sanctioned, the plan will be binding on all creditors and members regardless of whether they approved the plan individually or as a class"[11].

Generally, the scope of a restructuring plan is very broad, but unlike a scheme of arrangement, which a completely solvent company can propose, there are primary conditions related to financial distress that must be met in the case of a restructuring plan. First, the company must have encountered or be likely to encounter financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern. Second, the plan must reflect a compromise or arrangement proposed between the company and its creditors or members (or any class of either) where the purpose of such compromise or arrangement is to eliminate,

[10] Paterson, Sarah, "Reflections on English Law Schemes of Arrangement in Distress and Proposals for Reform", available at <<SSRN: https://ssrn.com/abstract=2926848>>, accessed on 3 March 2017

reduce, prevent or mitigate the effect of any of the financial difficulties the company is facing. So long as those criteria are met, it will be possible to use the new restructuring plan to reorganize the debtor's liabilities[11].

4. Timing and cost of procedures

Timing for a scheme, restructuring plan, and pre-packaged Chapter 11 process is broadly comparable; the most time-consuming element being negotiations between the parties rather than the court timetables. "A pre-packaged Chapter 11 can be concluded in as little as two to three months (or, in rare cases with simple capital structures, even faster)", according to ICLG.com. The timetable for a scheme of arrangement and a restructuring plan is similar in the UK, which generally takes "between six to eight weeks from launch", according to the *Insolvency Review*[11].

On the basis that differences in timing are unlikely to vary significantly, for the purposes of restructuring the single class of bond debt, timing is unlikely to be a determining factor as to which procedure to follow.

The costs of Chapter 11 processes are generally significant in large, complex reorganization cases, but are often justifiable given the protections and benefits afforded by Chapter 11. In contrast, the costs for a scheme of arrangement or restructuring plan are likely to be similar and generally slightly less than in the US. However, if cross-class cram-down is proposed in the restructuring plan (as referenced below) and the court is required to consider competing evidence on valuation, this would most likely significantly increase costs[11].

5. Control of insolvency proceedings

In the case of restructuring a single class of bond debt while leaving other creditors and equity holders unaffected, it will be necessary for the debtor to retain control through the process.

Accordingly, in the case of a Chapter 11 pre-pack, because the votes necessary to confirm the plan have already been obtained, it is also less likely that management will be displaced or otherwise lose control.

[11] Frogel, Judah, Guyder, Daniel, Marshall, Jennifer, Karolia, Shaheen, "Restructuring Across the Pond and Back: A Comparison of Chapter 11 and the New UK Act", at <<https://iclg.com/practice-areas/lending-and-secured-finance-laws-and-regulations/15-restructuring-across-the-pond-and-back-a-comparison-of-chapter-11-and-the-new-uk-act>>, accessed on 5 February 2022

Similarly, in the case of a scheme or restructuring plan, the existing management and directors will remain in control throughout the restructuring process. In practice, however, according to Alexander Wood, Paul Bromfield, Robert Lemons and Kate Stephenson's *Scheme Hot Topics Bulletin*, "a chief restructuring officer and/or interim CFO may well join the board, usually at the creditors' insistence"[12].

6. Moratorium and *Ipso Facto* Termination Prohibition

"The worldwide automatic stay is often perceived as a key advantage under Chapter 11", according to Alexander Wood's *Scheme Hot Topics Bulletin*; in contrast, simply initiating a scheme procedure or restructuring plan does not result in any automatic stay. That said, although there's no formal moratorium under the scheme procedure, the English courts do have discretion to stay litigation or any judgment in special circumstances pending the outcome of a scheme or restructuring plan. In practice, though, financial creditors often agree to formal or informal standstill arrangements while a scheme is being implemented[12].

"The standalone moratorium and *ipso facto* provisions (also known as the termination clause override), recently introduced under CIGA, are comparable to the automatic stay and the exercise of *ipso facto* clauses (provisions that terminate or modify the contract on the basis of the company's insolvency) under Chapter 11", according to ICLG.com's *Restructuring Across the Pond and Back*[13].

For the purposes of this paper, the moratorium (automatic or implied) and *ipso facto* provisions are unlikely to be a determining factor as to which procedure to use, considering that the process is likely to be consensual (considering that the other creditors and equity holders are unaffected) and trade creditors will remain unimpaired (particularly relevant for *ipso facto* provisions).

7. Stakeholder Voting and Thresholds

In Chapter 11, creditors whose claims are impaired under a plan of reorganization are generally entitled to vote on whether to accept or reject the plan. A creditor is impaired if such creditor's legal and equitable rights as they existed pre-bankruptcy are altered in any way by

[12] Wood, Alexander, Bromfield, Paul, Lemons, Robert, Stephenson, Kate, "Scheme Hot Topics Bulletin: Part III Schemes vs Chapter 11", June 2015

[13] Frogel, Judah, Guyder, Daniel, Marshall, Jennifer, Karolia, Shaheen, "Restructuring Across the Pond and Back: A Comparison of Chapter 11 and the New UK Act", at <<https://iclg.com/practice-areas/lending-and-secured-finance-laws-and-regulations/15-restructuring-across-the-pond-and-back-a-comparison-of-chapter-11-and-the-new-uk-act>>, accessed on 5 February 2022

the plan. The plan is confirmed if at least two-thirds in value and more than one-half in number of each class of claims vote in favour of the plan[13].

Under the UK scheme of arrangement and restructuring plan, every creditor or member of the company whose rights are affected by the compromise or arrangement must be permitted to participate in the meeting and vote on the plan, but there is no need to include creditors or members whose rights are not affected[13].

In the case of a scheme of arrangement, a vote by 75 percent of value and a majority of the members of each scheme class is required to approve the scheme, whereas, in the case of restructuring plans, at least 75 percent in value of creditors or members present and voting (in person or by proxy) of each class must agree to the compromise or arrangement. Note that while similar to the threshold in a scheme of arrangement, under a restructuring plan, there is no numerosity requirement that there must be at least 50 percent by number of creditors voting in favour of the arrangement[13].

For purposes of this paper, the company will need to consider the composition of the bondholders to determine which voting thresholds, with specific reference to Chapter 11 (two-thirds in value and more than one-half in number) or restructuring plans (75 percent in value), may stand the best chance of a successful outcome.

8. Cram-down

A Chapter 11 cram-down allows for a reorganization plan to be confirmed notwithstanding rejection of the plan by a dissenting class of claims, provided that at least one impaired class of claims votes in favour of the plan, the plan is "fair and equitable," the plan does not discriminate unfairly, and all other requirements for confirmation are met[13].

Under the UK's scheme of arrangement or restructuring plan, the compromise or arrangement must be proposed between the company and its creditor or members (or any class of either). Whereas a scheme of arrangement may vary a class of creditors' rights once approved by a sufficient majority of that particular class of creditors[14], a cram-down within a scheme is limited to the statutory majorities in each separate class, cramming down the minorities within their own class.

[14] McMaster Karen, Levin Sarah, Janssen Lynette, Fonti Matthew, "The Insolvency Review: United Kingdom - England & Wales", at << https://thelawreviews.co.uk/title/the-insolvency-review/united-kingdom-england--wales >>, accessed on 5 February 2022

However, in the case of a restructuring plan, "even in the absence of approval by all classes of creditors, the court may still sanction the plan", according to ICLG.com's *Restructuring Across the Pond and Back*, provided that:

8.1. the court is satisfied that none of the dissenting classes are any worse off under the plan than they would be in the event of the "relevant alternative"; and

8.2. the plan has been agreed by a number representing 75% in value of a class of creditors, present and voting (in person or by proxy) who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative[13].

Provided that the conditions for sanctioning a cram-down plan have been met as set out above, it is "open to the court to sanction a plan that is approved by a junior class of lenders but rejected by a senior class", according to ICLG.com[13]. The authors go on to note that "the protection for the senior class is that the courts will test the fairness of the plan to determine whether the senior class will ultimately receive value at least equal to what they would have received in the relevant alternative"[13].

Considering the requirement to leave other creditors and equity holders unaffected, it may be challenging under Chapter 11 (considering the absolute priority rule) or a scheme of arrangement (considering each class needs to approve the scheme), to undertake a cram-down of the class of bondholders only. However, a restructuring plan may still be sanctioned by the court notwithstanding the cram-down of the bondholders, on the basis that the court determines, in its discretion, that they are better off than they would be in the event of the "relative alternative".

9. The Absolute Priority Rule

"The "absolute priority rule" requires that no class of creditors or interest holders may recover in Chapter 11 unless the claims of all creditor and interest holder classes senior to them have been satisfied in full, barring agreement by a senior class to the lesser treatment of its claims", according to ICLG.com's *Restructuring Across the Pond and Back*[13].

Whereas in the UK, schemes, and restructuring plans have much greater flexibility, placing significant responsibility on the court to adjudicate on the fairness of the restructuring proposal as a whole in determining whether or not to exercise its discretionary power to sanction the scheme or restructuring plan[13].

Considering that the intention is to restructure a single class of bond debt while leaving other creditors and equity holders unaffected, the UK's scheme and restructuring plans ability to apply the "relative priority" rule may be advantageous relative to Chapter 11. That said, considering that the Chapter 11 proceedings will only commence once the bondholders have voted in favour of the plan, thereby agreeing to the restructuring while leaving other creditors and equity holders unaffected, the US courts may permit same notwithstanding the "absolute priority rule".

10. Market impact

"Scheme disclosure requirements are extensive but, in practice, are generally somewhat lower than pre-packaged Chapter 11 cases (or at least are not as readily accessible to those other than scheme creditors, unless a scheme is being promulgated by a listed company or in relation to listed securities)", according to Alexander Wood's *Scheme Hot Topics Bulletin*[15].

The market's perception of a company restructuring a single class of bond debt by means of either a scheme, restructuring plan or pre-packaged Chapter 11 would be similar. While schemes and restructuring plans are corporate proceedings set out in the Companies Act 2006, as amended by the CIGA, rather than insolvency proceedings, they avoid the "taint and trauma", according to Wood, which can apply to Chapter 11 proceedings. However, pre-packaged Chapter 11 proceedings, by their nature, minimize the time under court supervision and are broadly welcomed as rescue procedures that provide a debtor with the legal protection necessary to give it the opportunity to reorganize.

11. Conclusion

A scheme of arrangement, restructuring plan, or pre-packaged Chapter 11 presents attractive options for a company looking to "restructure or deleverage its balance sheet without the costs and risks associated with administration or a more traditional Chapter 11 case", according to Matthew Harvey and Paige Topper's *One-Day Restructuring: The New Trend of "Super Speed" Prepacks*[16]. That said, the right circumstances will need to be in place in order to restructure a single class of bond debt while leaving other creditors and equity holders unaffected; most notably the "buy-in" of the bondholders to the process. While a case could

[15] Wood, Alexander, Bromfield, Paul, Lemons, Robert, Stephenson, Kate, "Scheme Hot Topics Bulletin: Part III Schemes vs Chapter 11", June 2015
[16] Harvey, Matthew B., Topper, Paige N., "One-Day Restructuring: The New Trend of "Super Speed" Prepacks," TOUCHPOINT - INSOL's Insolvency Practice Group Newsletter, April 2021

be made to implement a cross-class cram-down using a restructuring plan, it is more likely that the restructuring will need to be consensual.

Following this paper's comparison among schemes of arrangement, restructuring plans, and Chapter 11 pre-packs, while similar, there are some key characteristics that differ, including most notably, the stakeholder voting thresholds, the ability to cram-down dissenting creditors, and the absolute priority rule.

Unsurprisingly, the answer is not a one-size-fits-all approach, and companies will have to adopt a strategic view as to which procedure is the best fit for their specific circumstances.

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