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Expanded European Option

By Kyle J. Ortiz, Owen Roberts, and Cordelia de Mitry

For decades, distressed companies searching for a reliable harbor set their course for two overwhelmingly popular destinations: Chapter 11 in the United States and the English scheme of arrangement. These twin pillars offered unparalleled flexibility, international recognition and – thanks to the rule in *Gibbs* (i.e. an English law liability cannot be compromised by a non-English restructuring process unless the creditor submits to the relevant non-English jurisdiction) – near-impenetrable protection for English-law liabilities. Yet the voyage was never cheap. Chapter 11, in particular, remains procedurally intensive and eye-wateringly expensive, while continued reliance on England is no longer frictionless in a post-Brexit world.

Enter the European Union's Directive 2019/1023 – an unassuming piece of legislation that has, in practice, scattered powerful new restructuring tools across the Continent. The result? A rapidly shifting map in which debtors, creditors

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Beware of the \$0 Cure Trap

By Andrew Edson and Audrey Hornisher

In the complex landscape of bankruptcy proceedings, creditors must remain vigilant to protect their interests. The recent cases of Wesco Aircraft Holdings, Inc. and Wellpath Holdings serve as a critical reminder of the risks associated with inattentiveness and underscores the need for creditors to actively monitor all aspects of the bankruptcy process.

Wesco

The Wesco Aircraft Holdings, Inc. bankruptcy case was filed in June 2023 in the Southern District of Texas Bankruptcy Court. Wesco is a distributor and provider of comprehensive supply chain management service. The bankruptcy case was precipitated to address litigation stemming from an uptier transaction that occurred in 2022. Wesco's initial joint chapter 11 plan was filed in November 2023—5

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and sponsors can plot alternative routes that are faster, more targeted and, crucially, less costly than a full Chapter 11 filing. The Dutch WHOA, German StaRUG, Spanish restructuring plan and Italy's revitalized *Concordato Preventivo* have already proved themselves seaworthy. Combined with the English scheme and the still relatively new English restructuring plan, Europe now boasts a full fleet of processes that can be used independently or in tandem to deal with almost any capital-structure storm.

In the schedule to this article, we set out the key features of the major European restructuring processes (and US Chapter 11).

From Lone Procedures to Parallel Plays

If 2020–2022 was the era of experimentation, 2023–2025 has been the era of confident execution. In *Vroon* (May 2023) an English scheme worked in lockstep with a Dutch WHOA, giving lenders the comfort of English judicial oversight while delivering the Dutch court's ability to compromise hold-out creditors. Less than a year later, *McDermott* mirrored the strategy, this time

pairing an English restructuring plan with a Dutch WHOA and bolting on a Chapter 15 filing for US recognition. Asia, too, has joined the party: *Hong Kong Airlines* (December 2022) and *Sino-Ocean* (February 2025) married English restructuring plans with Hong Kong schemes, illustrating just how far the gravitational pull of English processes still stretches.

With the arrival of so many viable alternatives, restructuring advisors must be familiar with the options available to stakeholders they are advising. A key element of prudent contingency planning will be determining which jurisdiction or combination of jurisdictions to chart a course to maximize value and optionality.

Why Stakeholders Are Rethinking Their Toolkit

1. Cost and speed. A European process can be confirmed in a fraction of the time, and at a fraction of the price, of a Chapter 11.

2. Documentation dynamics. If the debt stack is governed largely by non-English law, European tools may avoid the *Gibbs* trap without needing an English process.

3. Cross-class cram-down. European processes now allow dissenting classes to be bound if

statutory tests are met. The result is Chapter 11-style leverage without Chapter 11-level spend.

4. Director duties and stakeholder optics. Domestic courts often provide a more politically palatable forum for local workforces, suppliers and tax authorities than an offshore or US proceeding.

5. Flexibility. The ability to initiate concurrent and ancillary proceedings across numerous jurisdictions provides practitioners with cross border practices the flexibility to craft bespoke value maximizing solutions.

Liability Management Exercises: The Untested Frontier

Across the Atlantic, aggressive LMEs – cash-less upliers, dropdowns, non-pro rata exchanges – have become a fact of life. Europe is catching up, but slowly. Unanimous-consent clauses in standard English-law documentation, competition-law scrutiny of creditor cooperation agreements and a judiciary wary of coercive tactics (see *Assénagon*, *Redwood*) curb the most extreme maneuvers. That said, the boundaries are being pushed: stakeholders evaluating a European playbook should now

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consider an LME a credible Part A option. Additionally, pairing an LME with a “pre-pack” scheme in certain European jurisdictions (potentially paired with a Chapter 15 in the United States) might allow for releases and eliminate some of the risk that arises with LMEs if further restructuring is needed.

Charting the Optimal Course

With both a transatlantic and transpacific footprint that combines legacy firms Herbert Smith Freehills and Kramer Levin, HSF Kramer can navigate every major restructuring channel – from New York to London, Amsterdam to Frankfurt, Madrid to Milan and across APAC. The message for boards, lenders and sponsors is clear: the toolbox is bigger than ever, and a one-size-fits-all approach is yesterday’s strategy.

Conclusion: Europe Steps Out of the Shadows

Chapter 11 will always have its role, and the English scheme and restructuring plan will remain indispensable whenever English-law liabilities are in play. But the center of gravity is shifting. European processes are no longer

backup options; they are front-line solutions that routinely deliver global restructurings on competitive terms. The era of parallel, multi-jurisdictional strategies is here – and savvy stakeholders are already steering toward it.

About the Authors



Kyle Ortiz is a partner in the New York office of Herbert Smith Freehills Kramer. With nearly 15 years of corporate restructuring experience, Mr. Ortiz has represented debtors in some of the most complex cases of the last decade, including Endo Pharmaceuticals, LATAM Airlines, Greensill Capital, Trident Holding Company, Synergy Pharmaceutical, Pacific Drilling and Westinghouse.



Owen Roberts is a senior associate in the London office

with over eight years of experience at HSF Kramer across a range of non-contentious and contentious bankruptcy and restructuring matters.



Cordelia de Mitry is a trainee in the London office.

The accompanying Schedule was populated with the assistance of **Simone Egidi**, a partner in the Milan office of Herbert Smith Freehills Kramer, **Kai Liebrich**, a partner in the Frankfurt office, **Javier Carvajal**, a partner in the Madrid office, **Alessandra Iandoli**, a senior associate in the Milan Office, **Marta Rey**, a senior associate in the Madrid office, and **Kevin Martinez**, an associate in the Madrid office. ☐

Schedule – Key Features of Major European Restructuring Processes (and US Chapter 11)

Process	Debtor in Possession	Financial Conditions for Entry	Court Involvement	Moratorium / Stay of Proceedings	Creditor and Shareholder Participation	Voting Thresholds	Cross-Class Cram Down	Absolute Priority Rule
English scheme	Yes	None	Convening hearing and sanction hearing required	Not automatic. Available via administration	All affected creditors and shareholders vote in classes	75% in value of each class and a majority in number	Not available	Not required
English restructuring plan	Yes	Financial difficulties threatening ability to carry on business	Convening hearing and sanction hearing required	Not automatic. Available via administration	All affected creditors and shareholders vote in classes	75% in value of each class	Available if statutory tests met	Not required
Dutch WHOA	Yes	Reasonable expectation of future inability to pay debts as they fall due	Ratification hearing; optional hearings for protective measures	Available via court order; enforcement and bankruptcy proceedings stayed	All affected creditors and shareholders vote	2/3 in value of participating creditors or issued capital for shareholders	Available if one 'in-the-money' class approves	Court may reject if not met
German StaRUG	Yes	Risk of becoming unable to meet financial obligations in near future - but not yet insolvent	Optional and limited depending on specific measures being pursued	Not automatic; available via court order; temporary stay of enforcement and realization actions	All affected creditors and shareholders vote in classes	75% majority by value within each class	Available if dissenting class is not worse off and receives appropriate value	Court may reject if not met
Spanish restructuring plan	Yes	Objectively foreseeable inability to meet obligations falling due in the next 2 years or currently insolvent	Opposition hearing (if challenged by any dissenting creditor); court sanction without hearing	Available via court order; enforcement proceedings stayed; can be extended to non-debtors	All affected creditors (including shareholders, if any) vote in classes Shareholders vote if it includes measures they have to approve	3/4 of affected debt in secured classes. 2/3 in unsecured classes Either majority of classes (including at least one classes of privileged creditors), or approved by at least one class which, would reasonably be in the money	Available if either previous majorities are met Dissenting secured creditors may avoid it if there are more votes against than in favor in their class	Court may reject if not met, although some exceptions may apply

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Process	Debtor in Possession	Financial Conditions for Entry	Court Involvement	Moratorium / Stay of Proceedings	Creditor and Shareholder Participation	Voting Thresholds	Cross-Class Cram Down	Absolute Priority Rule
Italian <i>Concordato Preventivo</i>	Yes, under court supervision	State of crisis (likely future insolvency); or insolvency of commercial entrepreneur (subject to judicial liquidation and exceptions)	Judicial review and court authorization necessary to open; and judicial confirmation required Possible further court involvement for specific measures	Available upon debtor's request	Creditors only, shareholders vote might indirectly where they have claims	Simple majority of creditors of claims admitted to the vote. If a creditor holds over 50% of claims, majority in number also required. If different classes, majority in each class required. For a <i>concordato preventivo</i> for continuity, all classes must approve with either (a) majority of voting claims, or (b) 2/3 of claims of voting creditors', provided creditors with at least 50% of claims voted	Allowed if statutory conditions are met	Priority respected but not absolute depending on confirmed procedure
US Chapter 11	Very low threshold: any person with domicile, business, or property in the US	None	Confirmation hearing required; discretionary hearings for stay extensions, venue challenges, and plan objections	Automatic worldwide stay; can be extended to non-debtors	Impaired secured and unsecured creditors vote in classes; shareholders do not vote unless affected by plan	2/3 in dollar amount and majority in number of voting creditors in each impaired class	Available; binds dissenting classes if statutory tests met	Required unless waived or modified by court