

# Analysis

## Restructuring Plans – The Flexible Friend for Business Rescuers

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### **Biography**

*Nick Hood is the Senior Business Adviser at the Opus Business Advisory Group (<https://www.opusllp.com>), the largest independent advisory, restructuring and insolvency firm in the UK.*

*Nick was a licensed Insolvency Practitioner, working in the business rescue market for 25 years. He is a committed internationalist, having created the largest global network of independent business rescue firms and having also worked overseas in Canada, Milan and Bahrain.*

*In his earlier career and after qualifying as a Chartered Accountant in 1970, Nick held senior executive positions in major companies in the construction, engineering and media sectors, as well as working for a boutique investment bank.*

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### **Abstract**

*The development of new business rescue techniques and tools is often driven by major crises, as old processes are rendered ineffective by fundamental changes in the financial world. The pandemic was just one such event, generating in the UK a novel and much more flexible way of preserving struggling businesses: the Restructuring Plan. As UK Courts continue to interpret the legislation, this procedure is being applied in increasingly innovative ways to facilitate corporate survival explains the author of this article.*

### **Introduction**

The latest addition to the turnaround and restructuring tool kit – the Restructuring Plan – owes its origins to Covid-19. It was introduced in June 2020 as part of the Government's strategy in the early stages of the pandemic to protect viable businesses, which might otherwise have been brought down by the gross commercial disruption taking place. It is proving to be a powerful and highly flexible tool to help businesses facing financial distress to survive and avoid the damage, cost and stigma inherent in a formal insolvency process.



### Who can use the process?

Eligibility to use the procedure is simple. 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”* can apply to the Court for permission to negotiate a Restructuring Plan with its creditors.



### What Is a Restructuring Plan?

A Restructuring Plan is a Court-sanctioned compromise reached between a Company facing financial difficulties and its creditors and/or its shareholders in order to continue trading and survive as a going concern. It shares some of the key features of the Scheme of Arrangement procedure and the Company Voluntary Arrangement (CVA) process, but they are different overall to both.

There is no standard template for a Restructuring Plan, each one is unique. Their design is constantly evolving as more and more legal precedents are set and the boundaries of the law are tested.

### **What are the benefits a Restructuring Plan?**

The main advantage of a Restructuring Plan is the ability to agree a compromise which is binding on all creditors, despite the objections of dissenters and even where those against the Plan represent a significant element or even a majority of claims against the Company. This is known as a 'cross-class cram down'.

In addition, it has three other important features, which distinguish it from a CVA. It can bind in secured as well as unsecured creditors, shareholder rights can be compromised and there is no distinction between connected and unconnected creditor voting rights.

### **How does the Cross-Class Cram Down (CCCD) work?**

In Restructuring Plans, the creditors are divided into different classes at the Company's discretion, each one of which votes on the Plan separately. Approval requires a 75% majority of the total gross debt value within that class to vote in favour of the Plan. Only one class needs to vote in favour for the Court to consider sanctioning the Plan, even if one or all of the other classes vote against.

Rejections by Dissenting classes can be ignored, but only if they would be no worse off than in the "relevant alternative" scenario. The "relevant alternative" is whatever the Court considers would be most likely to happen if the Restructuring Plan was not to be sanctioned, such as the Liquidation of the Company.



### **How can a Restructuring Plan help?**

Each Company's challenges are unique, as are the solutions that can be proposed through a Plan. Examples might include:

- Stabilizing finances to facilitate the injection of new equity or debt.
- Improving the risk profile of a balance sheet through a debt for equity swap.
- Reducing borrowings in an over-leveraged business.

- Renegotiating and easing covenants on bank and other lending.
- Rescheduling debt repayments and/or renegotiating servicing costs, such as interest.
- Terminating or renegotiating onerous contracts, such as leases of property or other assets.

**What is the process?**



**How are Restructuring Plans working in practice?**

As of Autumn 2024, 35 Restructuring Plans had been filed since the procedure came into operation in 2020. Of those, 29 had been sanctioned by the Court, two had been rejected, two discontinued/ stayed and one is on appeal to the Supreme Court.

**Property liabilities**

The process continues to be used successfully as the tool to compromise problematical liabilities, especially debts and responsibilities to landlords. Early examples were Virgin Active and Prezzo, which had their “landlord” Restructuring Plans sanctioned by the Court.

More recently, the clothes retailer Superdry, the Revolution Bars pub group, the Wildwood and Dim T restaurants and cinema chain Cineworld have all used Restructuring Plans to compromise landlord liabilities, as well as dealing with other classes of creditors.

### **Tax debts**

HMRC enjoys an elevated status in insolvency as a secondary preferential creditor in relation to certain taxes. Notwithstanding a Court's power to exercise CCCD, the views of HMRC are crucial to the success of a proposed plan. This was clearly demonstrated earlier in 2023, when HMRC successfully opposed the Plans proposed by Nasmyth and Great Annual Savings.

Following guidance issued by HMRC later in 2023, Companies are now aware of what they need to do to gain its support for a Plan. This was shown in the Revolution Bars case, where HMRC voted in favour of the payment terms being offered.



### **Cross-border cases**

The English Scheme of Arrangement has long been an attractive option for overseas Companies looking to restructure their debts. This has now been extended to Restructuring Plans, with the English Courts being asked to approve Plans for foreign Companies, often intended to work in parallel to local law restructuring processes.

Before it can approve a Plan proposed by an overseas Company, the Court has to be convinced that the Company has a genuine connection to England and equally importantly, that the Plan will be recognised and effective in the relevant foreign jurisdiction.

An example in 2024 was an amended Restructuring Plan proposed by Project Lietzenburger Strasse HoldCo Sarl (PLS), which was approved by the High Court in London. PLS is a Company incorporated in Luxembourg, which owns property in Germany. The Plan's objective was to restructure debt governed by both German and Luxembourgish law. The Court was satisfied that PLS had genuinely moved its centre of main interests to England, where its central administration was located. It accepted expert evidence that such a change was not a breach of Luxembourgish law and would be recognized in Germany.

### **Opposition by dissenting creditors**

The first instance of a previously Court-sanctioned Plan being overturned by the Court of Appeal occurred in 2024, torpedoing proposals put forward by the German real estate group Adler. Last year also saw the first security for costs order being granted in favour of a dissenting creditor for their costs in challenging a Plan. Litigation by opposing creditors continues to be a feature of Plans being brought forward.

### **Thames Water**

Restructuring Plans have reached new public prominence as a headline part of the travails of the struggling UK utility company, Thames Water. It is battling to survive despite staggering under a wildly excessive debt burden and being threatened with quasi-nationalization through the Special Administration mechanism.

Its chosen path to calmer financial waters is through a Restructuring Plan, which was approved by the High Court in London in mid-February 2025 in the face of vehement opposition from certain creditors and competition from an alternative Plan put forward simultaneously by those dissenting creditors. This manoeuvre has created a wide range of firsts for the procedure, which include:

- the largest ever Plan, seeking to compromise >£16 billion of debt;
- the first Plan considered in parallel with an alternative Plan;
- the first Plan opposed on a Public Interest basis by a Member of Parliament;
- the first Plan challenged as an alleged breach of competition law;
- the first Plan proposed at the same time as an equity fund raising process;
- the first Plan to involve a public protest at the Court hearing;
- the first Plan where an independent Regulator is responsible for setting the Company's principal business plan parameters.

Although the Plan has been approved, the dissenting creditors have been granted the right to take their objections to the Court of Appeal.

### **What next for Restructuring Plans?**

Although there have not been large numbers of Plans, the procedure continues to define the degree to which previous commercial and legal norms can be redefined to facilitate the rescue of a business. It is difficult to understate the importance of having a procedure, which is proving so adept at breaking life-threatening deadlocks in creditor negotiations.

To date, the cost and potential complexity have confined the use of Plans to larger entities, although there remain hopes that in time the establishment of accepted principles may simplify the process and allow smaller businesses to take advantage of it.