

| | DUTCH WHOA | US CHAPTER 11 | UK SCHEME OF ARRANGEMENT | UK PART 26A PLAN | GERMAN STARUG | RESTRUCTURING DIRECTIVE EU 2019/1023 |
|-------------------------------------|---|---|--|--|---|---|
| Initiative | Debtor, creditor, works council, employees' representative, shareholder | Debtor or 3 joint creditors of unsecured, non-contingent and undisputed claims | Debtor, creditor, member, liquidator if company is in liquidation or administrator if company is in administration | Debtor, creditor, member, although in practice probably debtor only | Debtor | Debtor, optionally also creditors and employees' representatives subject to the agreement of the debtor (agreement requirement may be limited to SMEs) |
| Jurisdiction | COMI / domicile and non-COMI / domicile, sufficient nexus w/NL required | Broad range | Broad range (little less than Ch 11), close connection w/UK required | Broad range (little less than Ch 11), close connection w/UK required | DE COMI | Flexible |
| Entry requirements | Debtor who considers it reasonably plausible that it will be unable to pay its future debts as they fall due ('light insolvency test') | None | None | Debtor is experiencing, or is likely to experience, financial difficulties that affect the viability of its business as a going concern, and the plan is aimed at eliminating, reducing or preventing, or mitigating the effect, of those financial difficulties | Impending illiquidity | Likelihood of insolvency |
| Type of proceedings | Outside insolvency | Inside insolvency | Both inside and outside insolvency | Both inside and outside insolvency | Outside insolvency | Outside insolvency |
| Public or undisclosed proceedings | Both | Public | Public | Public | Both | Both |
| Debtor management | DIP | DIP | DIP | DIP | DIP | DIP |
| Professionals that may be appointed | (1) Observer, who supervises the drafting and negotiation of restructuring plan on behalf of the joint creditors. (2) Plan expert, who may design and negotiate a plan on behalf of the debtor. | Trustee, who takes over control from the company's management. Appointment only for "cause", for instance fraud | None, although (1) if the company is in administration, the administrator is in control, and (2) if the company is in liquidation, it will be the liquidator initiating the scheme | A monitor will be appointed to supervise a moratorium, as applicable | 1) Restructuring expert (in specific situations e.g. general stay or upon debtor/creditor (>25% of one class) application). (2) Restructuring moderator upon debtor application. (3) Creditor committee, to warrant creditors' interests. | Practitioner in the field of restructuring to be appointed in case of cross-class cram-down; if necessary in a general stay, or if debtor or creditor majority requests appointment |

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| DIP financing and security for such financing | Is protected, subject to prior court authorisation | Is protected, subject to prior court authorisation | No legal framework, optional by classifying as administrative expense or through an intercreditor agreement | No legal framework | Is protected, subject to plan approval | Is protected, can be made subject to court control or authorisation by member states |
| Super seniority | No legal framework | Subject to court consent | No legal framework | No legal framework | No legal framework | Optional |
| Automatic stay (moratorium) | Not automatic, but at request for all pre-moratorium claims | Yes, but for pre-moratorium claims only. | Not automatic, but may be obtained for certain types of pre-moratorium claims through stand-alone moratorium procedure | Not automatic, but may be obtained for certain types of pre-moratorium claims through stand-alone moratorium procedure | Not automatic, but at request for individual, several or all creditors | Not automatic, but at request for individual or all creditors |
| Court orders prior to voting | Any procedural or substantial matter can be cleared by court order | Motions in order to continue the operation of the debtor's business may be filed, such as relief from the automatic stay or the use of cash collateral | Only creditor issues and jurisdiction issues. These are dealt with at the convening hearing. Decision does not bind court in sanction hearing. | Only creditor issues and jurisdiction issues. These are dealt with at the convening hearing. Decision does not bind court in sanction hearing. | Yes, for every issue relevant for plan confirmation | Optional |
| Ipso facto clauses | Deactivated | May not be enforced | Are upheld | Some clauses are deactivated, depending on type of parties to the contract and the type of contract | Deactivated | Deactivated during a stay of individual enforcement actions |
| Classification | Claims or equity rights that differ in such a way that they cannot be deemed similar may not be allocated in the same class | Substantially similar claims or interests need to be allocated in the same class | Creditors whose rights (not interests!) are not so dissimilar as to make it impossible for them to consult together with a view to their common interest may be allocated in the same class | Creditors are divided into classes depending on their existing contractual rights and the rights obtained as a result of the plan | Creditors are placed in classes based on their legal position; mandatory classes being secured creditors, unsecured creditors, subordinated creditors, equityholders and if applicable creditors of group companies | Creditors are placed in classes reflecting sufficiently common interests based on verifiable criteria; mandatory classes are secured and unsecured creditors |
| Equity treatment | Equity may be included | Equity may be included | Equity may be included | Equity may be included | Equity may be included | Optional |
| Effect on secured claims | Yes | Yes but secured creditor may not suffer any loss due to the application of Chapter 11 | Yes | Yes | Yes | Yes |

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| Group obligations including PGs | May be included in the plan | Are not affected | Requires creditor consent or sanctioning of the scheme in which it is agreed that the guarantee will not be enforced | May be included in the plan | May be included in the plan | N/A for restructuring plan; optional for stay of individual enforcement actions |
| Onerous contracts | May be terminated without other party's consent, subject to court authorisation and payment of damages (which may be included in the plan) | May be rejected or assigned, notwithstanding contractual assignment prohibitions | Stay in place, unless agreed otherwise in the scheme | Stay in place, unless agreed otherwise in the plan | Stay in place, unless agreed otherwise with other party | N/A |
| Cross-class cram-down | Yes | Yes | No | Yes | Yes | Yes |
| APR | Yes, with reasonableness exception | Yes, with exception | No | No statutory APR but nevertheless most likely some form of it based on existing case law | Yes, with reasonableness exception | Optional, member states can apply APR or RPR |
| Eligible to vote | All creditors and shareholders affected by the plan | All creditors and shareholders affected by the plan | All creditors and shareholders affected by the plan | All creditors and shareholders affected by the plan | All creditors and shareholders affected by the plan | All creditors and shareholders affected by the plan |
| Voting | Per class | Per class | Per class | Per class, although a class that has no genuine economic interest in the debtor may be excluded from voting by court order | Per class | Per class |
| Approval requirement per class | 2/3 of debt or subscribed capital on which votes are cast in a class | 2/3 of debt and at least 50% of all claim holders in a class | At least 50% in number, representing at least 3/4 of debt on which votes are cast in a class | 75% of debt or subscribed capital on which votes are cast in a class | 75% of debt or subscribed capital in a class | Max. 75% of claims or interests, plus optionally max. 75% headcount |
| Specialised judges | Yes | Yes | Yes | Yes | Yes | Yes |
| Requirement for court confirmation | Approval by at least one in-the-money class or by class in which value breaks | Approval by at least one in-the-money class | Approval per class | Approval by at least one in-the-money class, or a class that has a genuine economic interest in the relevant alternative to the plan | Approval by majority of the classes | Approval by at least one in-the-money class |

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| Grounds for refusal of court confirmation | Limited, in line with international market practice | Limited, in line with international market practice | Limited, in line with international practice. | Limited, in line with international market practice | Limited, in line with international market practice | Limited, in line with international market practice (mainly best-interest-of-creditors test) |
| Consequences of court confirmation | Plan is binding on all affected creditors | Plan is binding on all affected creditors | Plan is binding on each class that has approved the plan | Plan is binding on all affected creditors; not entirely certain if a class excluded from voting due to its lack of a genuine economic interest in the debtor will be bound | Plan is binding on all affected parties | Plan is binding on all affected parties |
| Appeal against plan confirmation | No | Yes, at District Court or, if established, the Bankruptcy Appellate Panel of a bankruptcy court | Yes, at Court of Appeal | Yes, at Court of Appeal | Yes, at restructuring court | Optional in case of judicial authority |
| Recognition of court confirmed plan | COMI / domicile: automatic within the EU under EIR recast (public version) or Recast Brussels Regulation (undisclosed version); non-COMI / domicile: possibly under Model Law, treaties or private international law | Possibly under Model Law, treaties or private international law. | Possibly under Model Law, treaties or private international law. | Possibly under Model Law, treaties or private international law. | Public version: automatic within the EU under EIR recast. Undisclosed version: possibly within the EU under Recast Brussels Regulation; outside EU possibly under Model Law, treaties or private international law. | N/A, but EIR applicable in case of public proceedings |
| Timeframe | 6 to 8 weeks as of submitting restructuring plan for voting | 6 months to 2 years | Minimum of 2 months after first application to court | 6 to 8+ weeks | 3 to 6 months | Member states are required to shorten the length of proceedings |
| Costs | Relatively low | High | Medium | Medium | Medium | Member states are required to lower the costs of restructurings |