

This quick guide sets out an overview of a Restructuring Plan (RP).

An RP enables companies to enter into an arrangement with creditors and shareholders. It is similar to a scheme of arrangement but will, if approved by the court, enable companies to bind all creditors (including potentially both secured and other dissenting creditors) by “cramming down” their debts.

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What Is a Restructuring Plan (RP)?

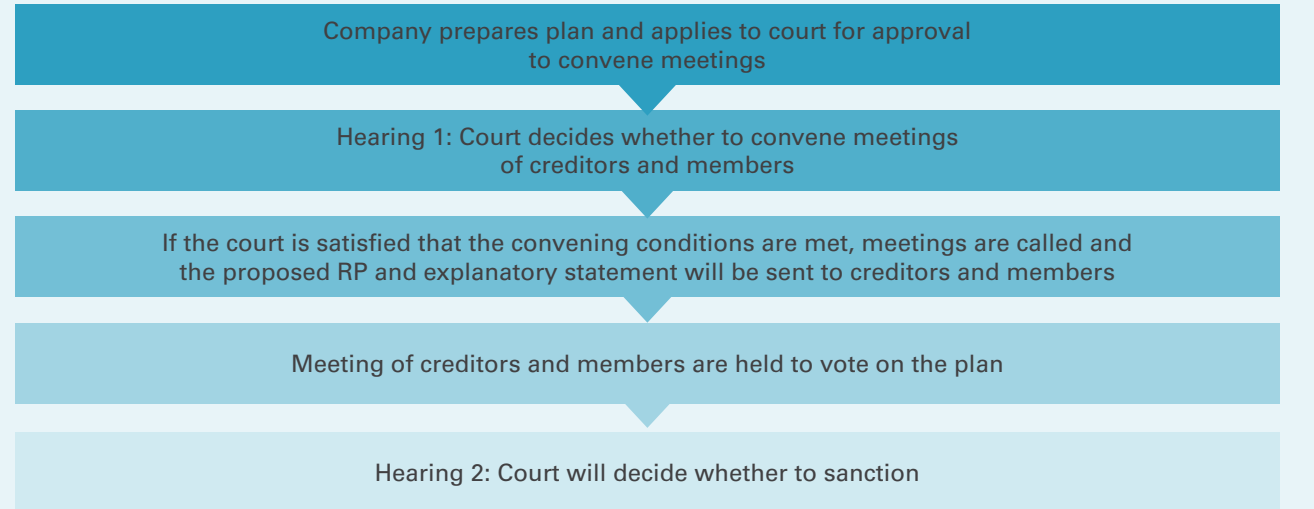
A RP enables a company to propose a compromise or arrangement to its creditors that can bind secured creditors, unsecured creditors, dissenting creditors and compromise members’ rights. The plan largely mirrors a scheme of arrangement (with additional advantages and some differences).

Procedure

A RP is court sanctioned, and requires two court hearings. The process commences by a company proposing a plan to one or more classes of creditor and by the company (or its administrators or liquidators) a creditor or a member applying to court for approval to convene meetings of creditors and members.

There will be an initial court hearing at which the court will consider jurisdiction and class composition only. Following which, meetings of creditors and shareholders are convened, and those classes will then vote on the plan. All parties required to attend the meeting(s) must be provided with a statement that sets out the key aspects of the proposed RP. A class will likely be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult with a view to their common interest, as per the current rules on schemes of arrangement. Determining how classes are to be split is often a delicate balancing exercise.

If stakeholders vote in favour, the matter returns to court and the court will decide whether to sanction the plan. At least 75% in value of each relevant class of creditors must vote in favour of the RP for it to proceed to sanction, subject to cross-class cram down, referred to below. The court has ultimate discretion whether to sanction, and will consider, among other things, whether the plan is fair, whether the plan will be substantively effectively, whether creditors are “no worse off” under the plan. If sanctioned, the plan is implemented and will bind each class of creditor.



What Are the Advantages of a RP?

Flexible Terms	<p>There are no limits on what can be proposed, offering a blank canvas for companies looking to reorganise their businesses.</p> <p>A RP can, and has in some cases, been used to effect a debt-for-debt or debt-for-equity swap, restructure landlord claims, manage a solvent wind-down, enable the issue of new notes and equity interests, and amend and extend maturity dates, loan facilities, or bonds.</p> <p>Unlike a company voluntary arrangement an RP can be used to restructure both secured and unsecured debt.</p>
Cross-Class Cram Down	<p>The most notable feature of the RP is the ability for the court to cram down dissenting creditors and/or shareholders (subject to the court being satisfied that they would be no worse off than in the relevant alternative and the plan being agreed by a class that would receive payment under the plan). This is still a developing area of case law.</p> <p>Cram down limits the ability of creditors to “hold out” or block a proposal, which has support of those creditors that retain an economic interest in the business.</p>
Cross-Class Cram Up	<p>A RP might also allow junior creditors to “cram up”, forcing a plan on more senior creditors provided that they are no worse off than in the relevant alternative.</p>
Voting	<p>The voting threshold is lower in a RP, compared to a scheme of arrangement (or Chapter 11 plan).</p> <p>The plan simply requires 75% in value of each class of creditor to approve it. There is no requirement for a majority in number to vote in favour.</p>
Disenfranchisement of Creditors	<p>A class of creditors or members can be excluded from voting if the court is satisfied that they have no economic interest in the company, preventing “out of the money” creditors derailing a plan but still binding them to it.</p>

No Absolute Priority Rule	<p>A RP, therefore, gives greater flexibility than say a US Chapter 11 plan because it allows (where treatment is justified) for differential treatment of creditors. This means that shareholders or junior ranking creditors may, in certain circumstances, be paid before senior ranking creditors are paid in full.</p>
Cheaper?	<p>Costs may be significantly less than alternative processes, particularly those that rely more heavily on the court. Reduced court oversight also means costs can be more predictable and planned.</p>
Court Involvement	<p>Although the court oversees the process, once sanctioned, the company implements the plan without having to go back to court to get permission to action its decisions.</p>
Debtor in Possession	<p>Management remains in control of the business.</p>
Opportunity to Restructure	<p>The RP offers an option for a foreign company to reorganise its business in circumstances where that company’s local laws do not permit or enable that.</p> <p>This could be advantageous in situations where the only option locally might be to liquidate the company, which could destroy the integrity and value of the company.</p>
Overcoming the “rule in Gibbs”	<p>The rule in <i>Gibbs</i> provides that obligations governed by English law cannot be discharged by foreign proceedings, unless the party submits to those proceedings. This could lead to parallel proceedings (and more cost) if a company wishes to restructure English law governed debts in its local jurisdiction. Using an RP to restructure would address this.</p>
Mid-market Restructuring Tool	<p>Typically, a scheme of arrangement has been used to restructure multinational corporates. The RP was introduced as a tool that could also be used to assist smaller, mid-market corporates and the English courts are keen to promote that. The court has sanctioned a number of SME RPs, but the cost of the process can be prohibitive.</p>

Eligibility

- An RP is available to most companies who have encountered, or are likely to encounter, financial difficulties that are affecting, or will or may affect, their ability to carry on business as a going concern, although there are a handful of restrictions.
- A company does not have to be registered in the UK to be eligible. Provided that the company has sufficient connection to the UK the English courts have jurisdiction to consider and sanction an RP proposed by a foreign company.

Timing

- The legislation does not prescribe how long the process. On average it could take 4-8 weeks from the start of the formal process, plus the time required to prepare the RP ahead of that. This will vary depending on the complexities of the plan, but it could take up to 3 months (or longer).

Dissenting Creditors

- Votes on the RP will be calculated solely by the relevant debt or shares (i.e. 75% in value of the creditors or members of a class have to vote in favour for the RP to be implemented) but the court can override this in certain circumstances,
- Cross-class cram down: if a class of creditors or members votes against the RP, the court can still sanction it if two conditions are met:
 - *Condition A*: none of the members of the dissenting class would be worse off than under a relevant alternative (i.e whatever procedure the court considers would be most likely to occur in relation to the company (perhaps most likely administration) if the RP were not sanctioned), and
 - *Condition B*: at least 75% by value of a class of creditors or members, which would receive a payment in such alternative procedure, had still voted in favour of the RP.
- If there are dissenting creditors this can add additional costs to the process if they choose to challenge the RP. One area where we expect to see more disputes arise is around valuation.

Key Contacts



John Alderton
Partner, Leeds
M +44 788 505 8896
E john.alderton@squirepb.com



Russ Hill
Partner, Birmingham
M +44 792 160 0409
E russ.hill@squirepb.com



Monika Lorenzo-Perez
Partner, London
M +44 778 572 0439
E monika.lorenzo-perez@squirepb.com



Charlotte Møller
Partner, London
M +44 788 180 4970
E charlotte.moller@squirepb.com



Devinder Singh
Partner, Birmingham
M +44 772 139 9625
E devinder.singh@squirepb.com



Vanessa Stuart
Director, Manchester
M +44 7825 942711
E vanessa.stuart@squirepb.com

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