# Cramdown Reimagined: What Chapter 11 Can Learn from the U.K.'s Part 26A Restructuring Plans

By Xianjun Liang

In 2020, the U.K. enacted the Corporate Insolvency and Governance Act 2020 (CIGA), adding a "restructuring plan" in Part 26A of the Companies Act 2006.[1] The procedure gives courts the power to impose a plan across dissenting creditor classes and differs in important respects from chapter 11's cramdown framework.[2]

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Under Part 26A, a plan can bind dissenting creditor classes, and even shareholders, if two statutory requirements are met: (1) at least one class with a genuine economic interest approves the plan by a 75 percent majority in value; and (2) the dissenting class would not be worse off than in that relevant alternative.[3] Unlike the U.S.'s best-interests test, which compares recoveries to a hypothetical chapter 7 liquidation, Part 26A measures recoveries against the outcome the court considers most likely if the plan fails. In most cases, that alternative will be administration or liquidation, although continued trading may also be possible. Even if both conditions are satisfied, the court can still refuse to sanction (*i.e.*, confirm) the plan if the restructuring surplus (the additional value a reorganization generates over and above what creditors would receive in liquidation) is distributed unfairly.

Chapter 11 relies on § 1129(b) of the Bankruptcy Code for nonconsensual confirmation.[4] A plan can be confirmed over a dissenting class only if it does not discriminate unfairly and is "fair and equitable" to each impaired class.[5] Courts interpret this "fair and equitable" standard to require compliance with the absolute priority rule (APR): Junior stakeholders may not retain or receive property until senior dissenting classes have been paid in full.

This article argues that the U.K.'s cross-class cramdown experience highlights two recurring challenges in chapter 11: the APR's inflexibility in closely held business reorganizations, and the lack of a clear framework for evaluating the distribution of restructuring surplus. It further argues that targeted, well-defined reforms could address those concerns without sacrificing the predictability on which U.S. credit markets depend.

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## The U.S. Chapter 11 Cramdown Regime

Under § 1129(b), even if most impaired classes vote to accept the plan, the objection of a single impaired class can block confirmation unless the debtor either modifies the plan or seeks approval through the cramdown provisions of § 1129(b).[6] The Second Circuit's rejection of the gifting doctrine in *DBSD* underscores how strictly U.S. courts interpret the absolute priority rule in cramdown scenarios.[7] By holding that Congress had created no exception for gifts to junior stakeholders, the court signaled a strong unwillingness to dilute the rule's hierarchy, even when the value transfer is entirely voluntary from a senior creditor.

*DBSD* reaffirmed that at least in the Second Circuit, attempts to circumvent the absolute priority rule will face substantial judicial scrutiny. The decision does not, however, settle the question nationally. The First Circuit reached the opposite conclusion in *In re SPM Manufacturing Corp.*, holding that a senior creditor may voluntarily share its recovery with a junior class without violating the absolute priority rule, even over the objection of an intermediate class.[8] This circuit split — gifting permitted in the First Circuit, categorically rejected in the Second and Third[9] — means that a debtor's ability to use creative value allocation to achieve a consensual restructuring turns significantly on geography, an arbitrariness that itself argues for a more principled statutory framework.

The APR is not absolute. Under the "new value" doctrine, existing equityholders may be allowed to retain an interest in the reorganized debtor if they contribute new capital. The Supreme Court addressed this doctrine in *Bank of America National Trust & Savings Association v. 203 North LaSalle Street Partnership*, where existing partners sought to retain equity by contributing $6.1 million in new capital over dissenting unsecured creditors' objections.[10]

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2 U.K., Corporate Insolvency and Governance Act 2020, c. 12 (UK 2020).

3 U.K., Companies Act 2006, Part 26A, § 901G (as inserted by the Corporate Insolvency and Governance Act 2020, c. 12 (UK 2020)).

4 11 U.S.C. § 1129(b) (2024).

5 *See* Elizabeth Warren, "A Theory of Absolute Priority," 1991 *Ann. Surv. Am. L.* 9, 10–15 (explaining historical development of absolute priority rule and its role in ensuring fairness in cramdown). *See also* Douglas G. Baird & Donald S. Bernstein, "Absolute Priority, Valuation Uncertainty, and the Reorganization Bargain," 115 *Yale L.J.* 1930, 1932–35 (2006) (arguing that while APR promotes creditor protection, valuation uncertainty can hinder efficient reorganization).

6 *See* Stephen J. Lubben, "The Chapter 11 Financial Advisors," 28 *Emory Bankr. Dev. J.* 11, 28–31 (2011) (explaining that best-interests test requires a hypothetical liquidation analysis and that disputes often center on valuation assumptions). *See also* Charles Jordan Tabb, *The Law of Bankruptcy* § 11.14 (5th ed. 2020) (detailing statutory basis and practical application of best-interests-of-creditors test under § 1129(a)(7)).

7 *In re DBSD N. Am. Inc.*, 634 F.3d 79 (2d Cir. 2011).

8 *In re SPM Mfg. Corp.*, 984 F.2d 1305 (1st Cir. 1993).

9 *See also In re Armstrong World Indus. Inc.*, 432 F.3d 507, 514 (3d Cir. 2005) (rejecting gifting and strictly enforcing § 1129(b)(2)(B)(ii)).

10 *Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999).

The Supreme Court declined to decide whether the new value exception survives under the modern Bankruptcy Code. Instead, it held that the plan before it could not be confirmed because existing equity holders had the exclusive right to contribute new capital and retain ownership of the reorganized debtor.

Without a competitive process, the Court explained, there was no reliable way to assess whether old equity was paying a fair price for the interest it sought to keep. As a result, contested new value plans often require extensive valuation disputes and, in some cases, a market-testing process, making confirmation more costly and difficult to achieve.

This constraint has no equivalent under Part 26A. U.K. courts are not required to conduct a market test of equity contributions, and the absence of an absolute-priority rule means old equity can retain interests without satisfying *North LaSalle*'s requirements. *Re Houst* illustrates the difference. There, shareholders contributed £500,000 in new capital and saw their holdings diluted to roughly 5 percent of their prior stake. Although the court described the justification for the allocation as "weak," it nevertheless sanctioned the plan without requiring a competitive bidding process.[11]

Because no competitive bidding process was required, the restructuring was able to close quickly and preserve the company's going-concern value. In a chapter 11 case, by contrast, the valuation and market-testing concerns raised by *North LaSalle* could have complicated that result. For closely held businesses, or in situations where an open auction might itself reduce value by disrupting ownership stability and operational continuity, the U.K. approach may offer greater flexibility than the current U.S. framework.

## The U.K. Restructuring Plan

The circuit split on gifting and the demanding requirements of North LaSalle illustrate the limits of the APR's rigid priority structure. Those limits make the U.K.'s more flexible approach particularly instructive. Introduced by the Corporate Insolvency and Governance Act 2020 (CIGA), the Part 26A restructuring plan is a court-supervised procedure available to companies that have encountered, or are likely to encounter, financial difficulties.[12] Unlike a scheme of arrangement, it is specifically designed to facilitate the rescue and restructuring of distressed businesses.

Under Part 26A, a restructuring plan ordinarily requires approval by at least 75 percent in value of each voting class. If one or more classes vote against the plan, however, the court may still sanction it through a cross-class cramdown if Conditions A and B are satisfied. Condition A requires that dissenting stakeholders be no worse off than they would be under the relevant alternative, while Condition B requires the support of at least one class with a genuine economic interest in the company. To facilitate implementation of the restructuring, Part 26A also permits the court to override certain shareholder rights, including pre-emption rights and shareholder approval requirements for the issuance of new shares.

In *Re DeepOcean*, for instance, the court concluded that the relevant alternative was a formal insolvency process because continued group funding was no longer available. The case illustrates that the relevant alternative depends heavily on the company's particular circumstances.[13] In *Hurricane Energy*, the court rejected the plan because the evidence did not establish that the opposing shareholders had no better alternative prospects.[14] As a result, Condition A was not satisfied.

Although Part 26A contains no express "fair and equitable" test, U.K. courts exercise discretion to assess fairness in allocating the restructuring surplus. In *Re Houst*, the court approved a plan despite a "weak" allocation, noting that the new value was contributed by shareholders and HMRC stood to recover more than in the relevant alternative.[15] In *Nasmyth Group*, however, the court refused to sanction a plan where HMRC's share in the restructuring surplus would be disproportionately small compared with that of a junior secured creditor that would be paid in full over time.[16] These decisions demonstrate that judicial discretion is not a blank check for debtors. Rather, it functions as a meaningful constraint on the allocation of value among stakeholders.

Condition A provides an additional safeguard. In *Re Great Annual Savings Co. Ltd.*, the court found the evidence that HMRC would be no worse off than in administration insufficient to satisfy Condition A. The decision illustrates that the "no worse off" test imposes a meaningful evidentiary burden on plan proponents.[17] Taken together, these cases show that Part 26A's flexibility is accompanied by substantive judicial oversight rather than unchecked discretion.

## The Existing Chapter 11 Toolkit

Chapter 11 affords distressed companies two principal pathways for transferring a business as a going concern: (1) a court-approved sale of assets under § 363 of the U.S. Bankruptcy Code; and (2) a reorganization plan. Both paths come with strengths and weaknesses, but none expressly contemplates the liability-cleansed share transfer that characterizes the Canadian RVO.

For example, a fully marketed sale under § 363 can close within roughly 30-90 days and enjoys the twin advantages conferred by § 363(f) and (m): the ability to convey assets "free and clear" of claims, interests and encumbrances, and the appellate-mootness protection accorded to a good-faith purchaser. However, state and federal licenses could be lost unless regulators consent, and tax attributes could be stranded once the corporate shell is severed from the operating assets.

By contrast, a confirmed plan can surgically allocate assets and liabilities while preserving licenses and net operating loss carryforwards, yet the creditor solicitation and plan-confirmation process for a traditional (non-prepackaged or prearranged) chapter 11 plan seldom finishes in less than six months, with the commensurate erosion of

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11 *Re Houst Ltd.* [2022] EWHC 1941 (Ch) (Eng.).

12 Companies Act 2006, c. 46, pt. 26A (U.K.).

13 *Re DeepOcean 1 UK Ltd.* [2021] EWHC 138 (Ch) (Eng.).

14 *Re Hurricane Energy plc* [2021] EWHC 1759 (Ch) (Eng.).

15 *Re Houst Ltd* [2022] EWHC 1941 (Ch) (Eng.).

16 *Re Nasmyth Group Ltd* [2023] EWHC 988 (Ch) (Eng.).

17 *Re Great Annual Savings Co. Ltd.* [2023] EWHC 1141 (Ch) (Eng.).

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going-concern value. Accordingly, none of these mechanisms precisely replicates the Canadian RVO.

## Policy Implications and Reform Possibilities

The U.K. experience offers a broader lesson for chapter 11. The cases discussed above demonstrate that flexibility and creditor protection need not be mutually exclusive. Although *Houst*, *Hurricane Energy*, *Nasmyth* and *Great Annual Savings* produced different outcomes, each reflected a common principle: Dissenting stakeholders must receive meaningful protection, whether through the "no worse off" safeguard in Condition A or through judicial scrutiny of the allocation of restructuring value. That principle, rather than the specific mechanics of Part 26A, is what U.S. reform efforts could adapt.

Chapter 11's priority rules can also shape bargaining dynamics. When a proposed restructuring contemplates departures from strict priority, senior stakeholders whose consent is needed to approve those deviations may gain significant leverage in negotiations, whether their objections stem from genuine valuation concerns or strategic considerations. Part 26A takes a different approach.

Because the focus is on whether dissenting stakeholders are no worse off than in the relevant alternative, a creditor cannot block a plan simply by insisting on full payment if that standard is satisfied and the court concludes that the plan is fair. A question for U.S. reform is whether a similarly limited departure from strict priority could reduce holdout leverage in appropriate cases without undermining the predictability that makes the APR valuable to credit markets.

Similar creditor protections might be achieved through a narrowly tailored mechanism permitting limited departures from the APR in circumstances where dissenting stakeholders are demonstrably no worse off than under the most likely alternative to the proposed restructuring. Borrowing from Part 26A's Condition A, such an approach could preserve the creditor-protection rationale underlying the APR while reducing its capacity to impede value-maximizing reorganizations.

To minimize additional valuation disputes, courts could rely on the liquidation analyses already required under existing chapter 11 practice rather than introduce entirely new evidentiary frameworks. Properly cabined, this type of targeted flexibility could address some of the APR's most challenging applications without sacrificing the predictability that remains central to U.S. restructuring law. Because the proposal would operate only in a narrow category of cases and would remain anchored to existing liquidation-value analysis, its impact on *ex ante* credit-pricing should be considerably more limited than a broad relaxation of the APR.

## Conclusion

The U.K.'s experience with Part 26A offers more than a comparative point of interest; it highlights a tension that has long existed within chapter 11. The absolute-priority rule provides the predictability on which U.S. credit markets rely, but that predictability can come at a cost by giving dissenting creditors significant leverage in negotiations, which may at times complicate otherwise value-maximizing restructurings.

The gifting circuit split, the demanding requirements of *North LaSalle*, and the persistence of holdout behavior in large chapter 11 cases suggest that the balance between certainty and flexibility remains difficult to strike. Part 26A does not eliminate that tension, but it demonstrates that greater flexibility can coexist with meaningful protections for dissenting stakeholders.

Part 26A does not solve this tension so much as reframe it. By replacing full payment with a "no worse off" floor as the threshold for cramdown, the U.K. regime shifts the central question from "what does this creditor deserve in absolute terms" to "what would this creditor realistically receive if the plan failed." abi