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# 2025 International European Insolvency Symposium

## **Automotive Restructuring in the U.S. and Europe**

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# Automotive Restructuring in the U.S. and Europe

2025 International European Insolvency  
Symposium  
October 27, 2025

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## Overview

- Current financial environment of the industry
- Financial advisor perspectives on industry pressures and trends
- Supplier risk monitoring
- Certain key issues in an automotive supplier insolvency case
- Cross-border legal issues and impacts

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## Current Financial Environment of the Industry

- Slow growth / weaker demand
- Disruption and additional costs (EVs, tariffs, regulation, inflation)
- Intensifying competition and China production
- Costs of capital
- Recent auto supplier insolvency cases
  - Including Marelli and First Brands



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## Tariff Impacts

### Commentary

- US collected so far approximately \$200bn in tariff revenue, which could double on annualized basis, yet GM reported improved earnings
- Ever Changing Tariffs Policies Make Long-term Planning More Difficult for the industry, while also increasing production costs for the OEMs
  - GM and Ford estimate ~\$4bn and ~\$1bn of annual tariff related costs, respectively,
    - Both OEMs recently revised down estimated tariff impact. Ford by half while GM expects to be able to mitigate up to 35% of those costs
    - US recently approved tax credits for US and auto and engine production of up to 3.75% of the suggested retail price for US assembled vehicles through 2030
  - Toyota and Honda have significant production in the US and are less reliant on imports than European OEMs, although will still face billions in additional costs
  - Mercedes, Porsche, and VW are most affected in Europe due to significant reliance on imports
  - OEMs are encouraging suppliers to move production into the US, at times splitting tariff cost savings to speed up the process
- US Auto Tariffs Drive Reshoring of production to the US, with many OEMs are moving certain vehicle production to the US from abroad
  - GM announced \$4bn investment into US plans in June 2025
  - Stellantis plans to invest \$13bn in the US over the next four years
  - Ford, Honda, and number of other OEMs are also investing in the US



Source: Bloomberg, RPM Partners.

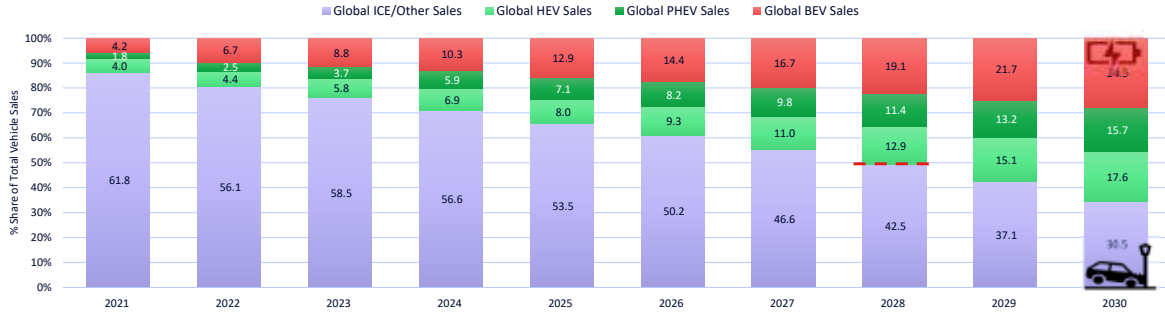
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## Pivotal Decade in Global Transition to EVs

### Commentary

- **Despite slower than expected adaptation of EV vehicles in recent quarters, transition is well underway**
  - On a global basis, ICE vehicles will account for less than 50% of sales by 2028, and continue to decline rapidly thereafter
- **China's bet on the EVs is starting to pay off, while many traditional OEMs are lagging further behind**
  - China overtook Japan as the biggest vehicle exporter in ~2023, and currently export nearly twice as many vehicles
  - Japan's overreliance on hybrids looks increasingly costly, with significant loss of market share in many emerging markets
- **OEMs that fail to transition within the next 5 years will face market pressures that will be hard to overcome**
  - Last OEMs to exit will be stuck with stranded assets, wind down costs, uncompetitive cost structures, and diminishing cash flows

### Global Vehicle Sales Mix by Propulsion

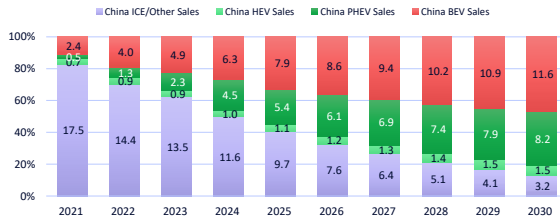


Source: Bloomberg, Marklines, and RPM Partners.

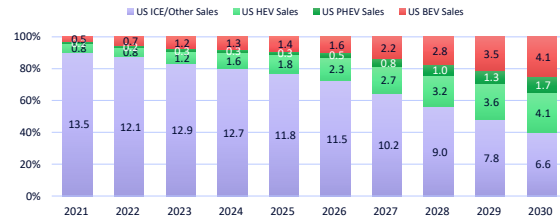
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## Regional Divergence Will Transition Varies Significantly by Region

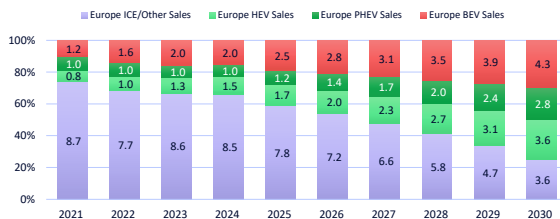
### China Vehicle Sales by Propulsion



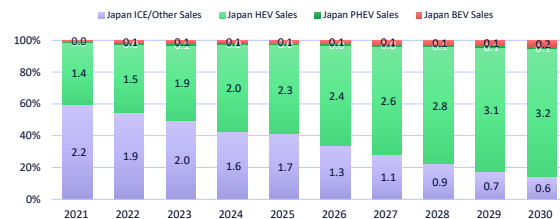
### US Vehicle Sales by Propulsion



### Europe Vehicle Sales by Propulsion



### Japan Vehicle Sales by Propulsion



Source: Bloomberg, Marklines, RPM Partners Calculations. ROW not shown.

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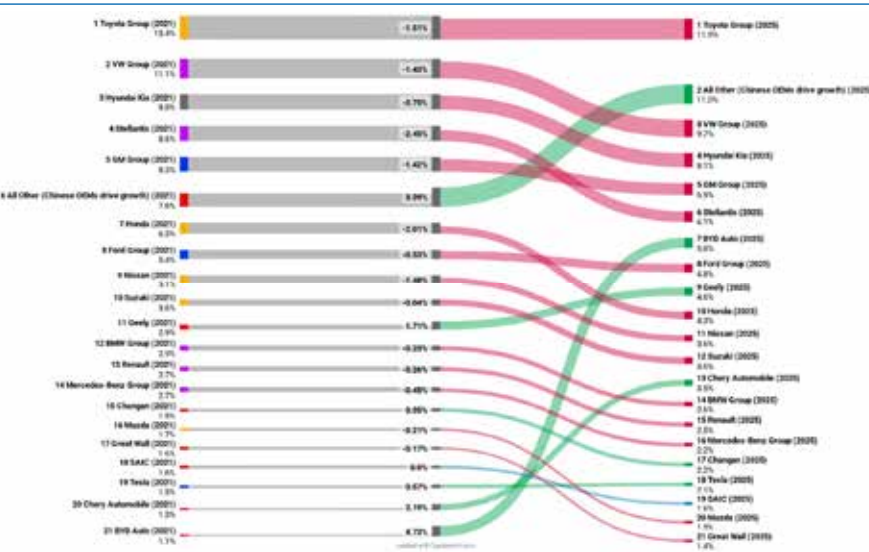
EV/PHEV by Sales Region by OEM Region

Americas EV/PHEV Sales	2021	2022	2023	2024	2025
Asian OEMs, excl China	15.6%	12.9%	15.5%	20.9%	20.4%
Chinese OEMs	4.6%	3.9%	4.5%	8.2%	9.2%
European OEMs	15.2%	16.8%	21.2%	17.2%	21.4%
North American OEMs	64.4%	64.4%	55.0%	49.9%	46.0%
Other OEMs	0.2%	2.0%	3.7%	3.8%	3.0%
Asia/ROW					
Asian OEMs, excl China	5.0%	4.5%	4.3%	2.5%	3.3%
Chinese OEMs	55.8%	65.7%	72.0%	78.7%	81.5%
European OEMs	8.1%	6.8%	6.2%	3.9%	2.7%
North American OEMs	27.9%	20.8%	16.5%	14.3%	12.2%
Other OEMs	3.2%	2.3%	1.0%	0.6%	0.4%
EMEA					
Asian OEMs, excl China	16.3%	16.0%	13.8%	13.9%	13.7%
Chinese OEMs	8.3%	11.0%	13.5%	15.8%	16.5%
European OEMs	64.1%	60.3%	56.8%	54.7%	58.0%
North American OEMs	11.2%	12.6%	15.0%	14.4%	10.7%
Other OEMs	0.1%	0.1%	0.9%	1.1%	1.0%
Global					
Asian OEMs, excl China	10.1%	8.1%	7.7%	6.5%	6.8%
Chinese OEMs	33.7%	46.1%	51.7%	60.3%	62.9%
European OEMs	28.2%	20.8%	18.8%	14.1%	14.4%
North American OEMs	26.1%	23.2%	20.6%	18.1%	15.2%
Other OEMs	1.8%	1.7%	1.3%	1.0%	0.7%



Source: Bloomberg, Marklines, RPM Partners Calculations.

Market Share Changes for Top Automotive OEMs (2021-2025)



Source: Bloomberg, Marklines, RPM Partners Calculations.

# Automotive Industry Insights

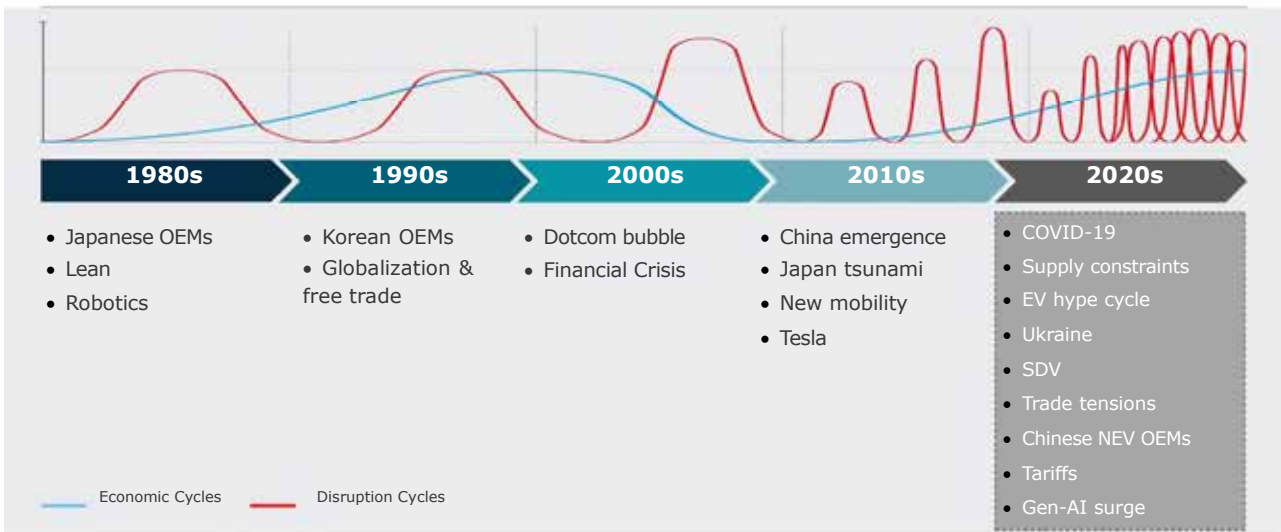
2025 AlixPartners AIB Panel, Berlin

Dr.-Ing Xing Zhou

October 27, 2025

## Disruption cycles are accelerating, with shorter duration and greater impact

Major automotive industry disruptors

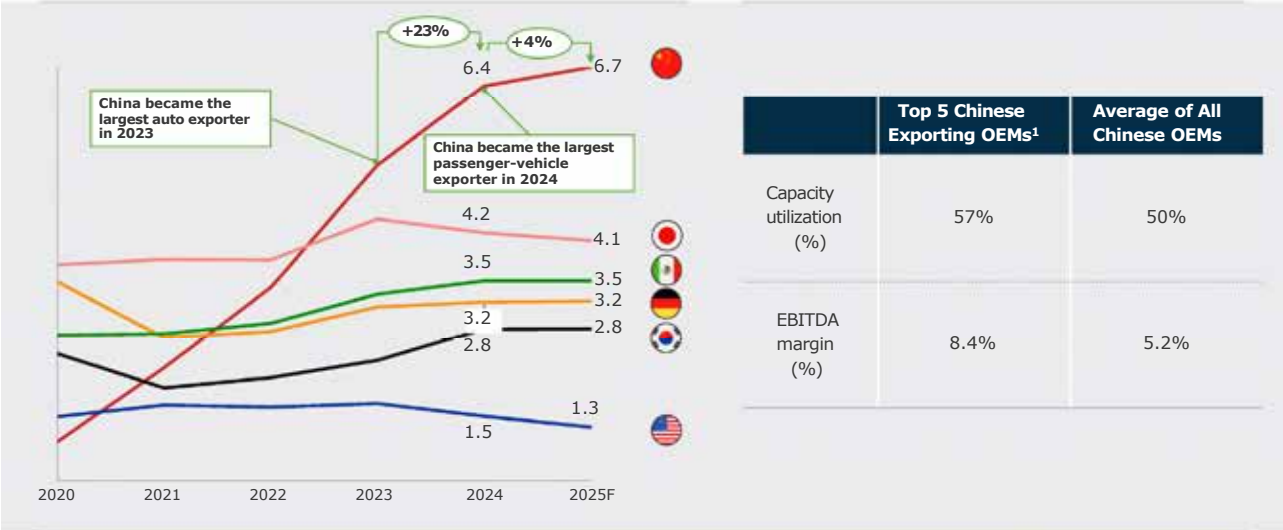


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China is becoming the dominant exporter but that’s flattening, and it’s the stronger OEMs, not the desperate, doing the exporting

World’s Top Vehicle-Export Countries (M units)

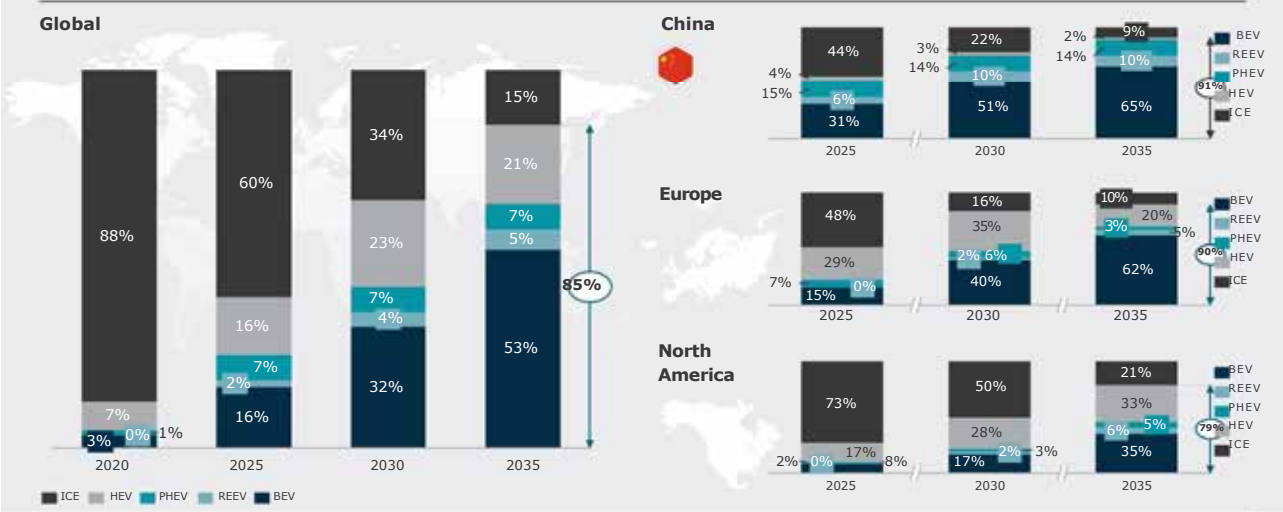
Top 5 Chinese OEMs vs. Average (2024)



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ICE will (still) be marginalized in Europe over the next 10 years.

Evolution Of Light Vehicle<sup>1</sup> Powertrain Distribution (% of Sales Volumes)

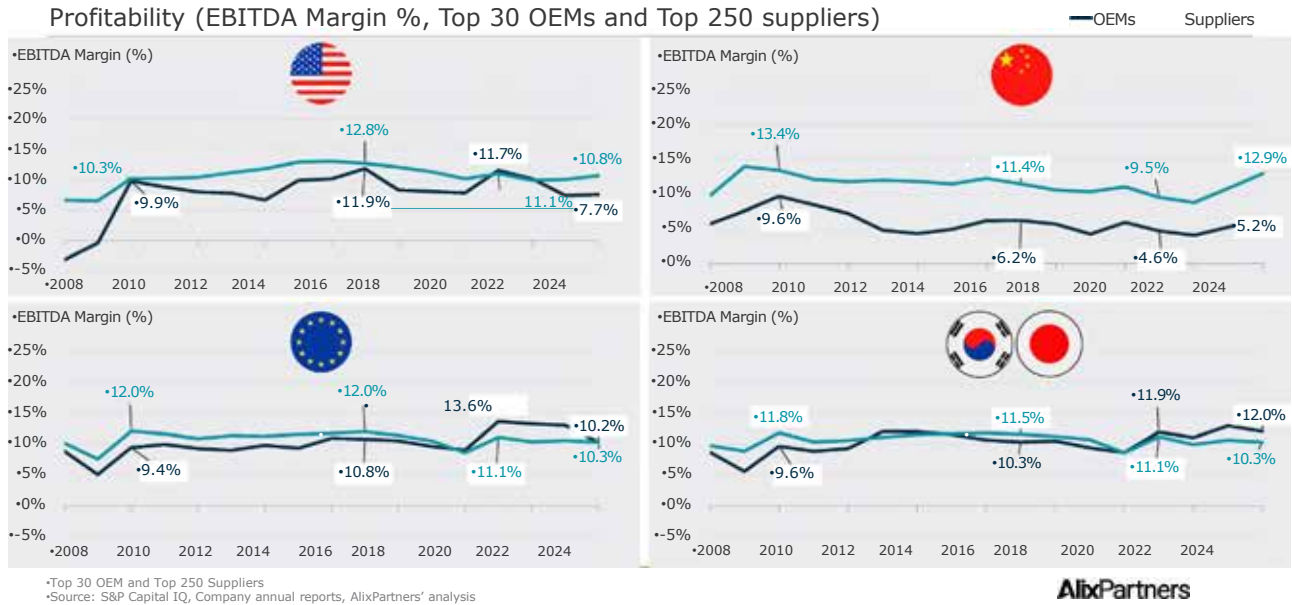


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•EBITDA margins: Chinese suppliers continue to outperform  
•Chinese OEMs as the OEMs grapple with utilization and price

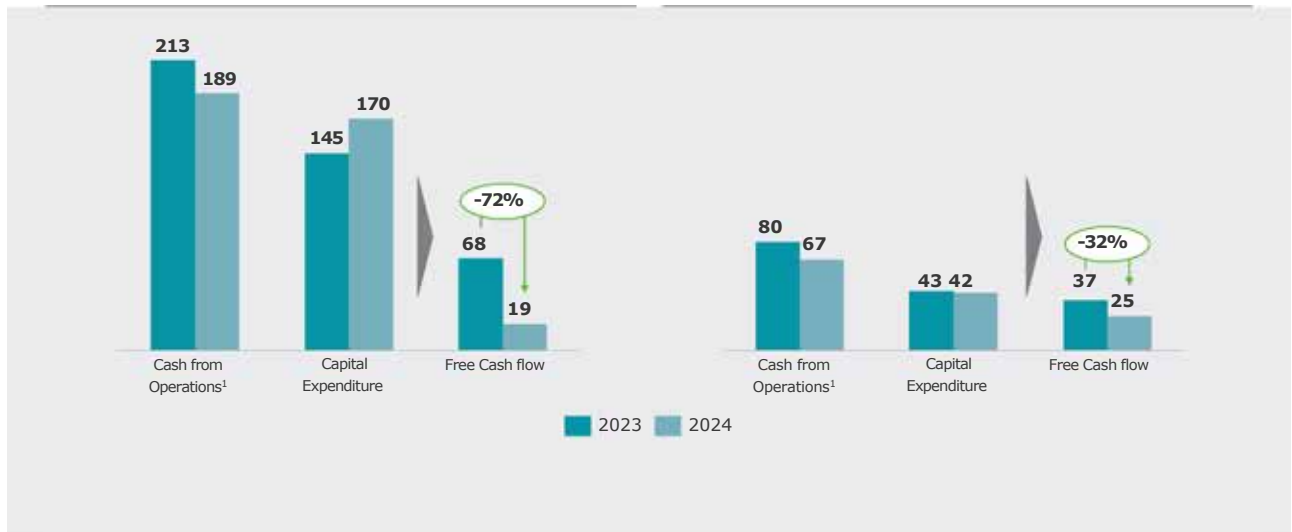
Profitability (EBITDA Margin %, Top 30 OEMs and Top 250 suppliers)



Top global automakers and suppliers experienced drops in cash from operations and free cash-flow

Free Cash Flow - Top 15 OEMs \$BN

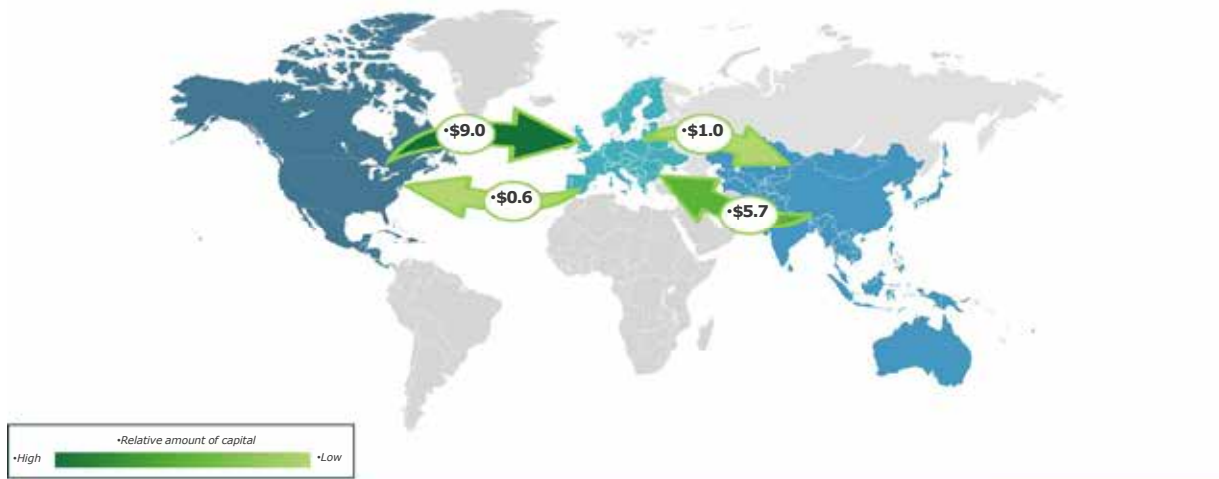
Free Cash Flow - Top 30 Suppliers \$BN





**"Europe is for sale": \$13B in net acquisitions by foreign players since 2022, with many suppliers still on the market or transactable**

Cross-continental deal flows between major regions for 2022-2024<sup>1</sup> (\$B)



\*1. Accumulated values for 03/01/2022-02/01/2025 for regions recording material deal volume, excluding Latin America, Africa, and Middle East Source: S&P Capital IQ, AlixPartners' analysis

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**Supplier Risk Monitor 2025**  
Preview Update

ABI Conference Berlin, October 27<sup>th</sup>, 2025



Agenda

- 01 Introducing the Supplier Risk Monitor: Data, data, data
- 02 Current financial status: Suppliers with limited buffer
- 03 Preview Supplier Risk Monitor 2025: Firefighting on multiple fronts

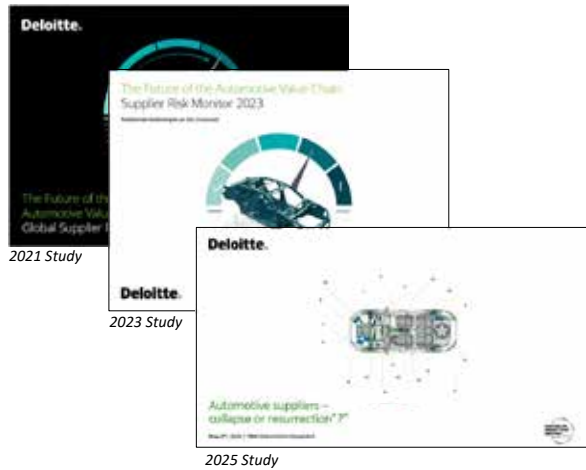
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Introducing the Supplier Risk Monitor: Data, data, data

## Introducing the Supplier Risk Monitor: Data, data, data | Overview

We are in the final phase of preparing the third edition of the Supplier Risk Monitor, following the widely cited second edition (e.g. Manager Magazin, Automobilwoche, FAZ and Finance).



### What?

The Deloitte Supplier Risk Monitor is an analysis framework for automotive suppliers to identify the **greatest risks** for each specific vehicle component cluster and offers potential solutions to mitigate them.

Thus, it stands for the **proactive identification of risk** Cluster and serves as a basis for the development of transformation strategies

### How?

The Deloitte Supplier Risk Monitor evaluates **6 risk factors** subdivided into

- **External risks** (not controllable for an individual automotive supplier)
- **Internal risks** (controllable for an individual automotive supplier)

Starting point are the **19 Automotive Component Cluster** of the Deloitte study series Future of the Automotive Value Chain.




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## Introducing the Supplier Risk Monitor: Data, data, data | Risk factors

The Deloitte Supplier Risk Monitor differentiates external and internal risks, by measuring six risk factor categories which exhaustively reflect relevant risks for 19 supplier component cluster.

### External risks (uncontrollable risks)

Risk factor	
	<b>Market structure and pressure</b> Potential risks to a company arising from market expectations and the competitive situation within a specific automotive component cluster.
	<b>Regulatory and societal environment</b> The topics of safety, sustainability and the predictability of the future legal framework in particular influence a company's risk profile.
	<b>Future market relevance</b> The risk profile can be estimated by the current M&A market, the attractiveness for entrepreneurs as well as the influence of automotive megatrends.
Uncontrollable factors that are likely to have an effect on either the present or future performance of a company but remain to a large degree outside the influence of management.	

### Internal risks (controllable risks)

Risk factor	
	<b>Cash-generation power</b> Profitability and stable operating cash flows form the basis of a solid financial framework for a company. Flexible cost structures also have a risk mitigating effect.
	<b>Cluster adaptiveness and innovative power</b> How strong is the innovative power of a company or to what extent is a company able to participate in the market growth that is expected as a result of the automotive megatrends.
	<b>Creditworthiness</b> How much financial room for maneuver does a company have to finance new projects or strategies by raising equity or debt and paying off dividends or existing debt?
Controllable factors that can be either a multiplier or a mitigator for external risks. Whereas all companies within a cluster are affected to the same extent by external factors, they vary with regard to their internal risks.	

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Note: Traditional technologies (Wheels & Tires, Steering, Frame, Brakes, Suspension, Axles, Body, Interior, Seats and Climate control), Technologies related to ICE (ICE, Transmission, Exhaust system, Fuel system), New drivetrain (High Voltage Battery / Fuel cell, Electric drivetrain), Connected drive and electronics (Advanced Driver Assistance Systems & Sensors, Electronics, Infotainment & Communication)

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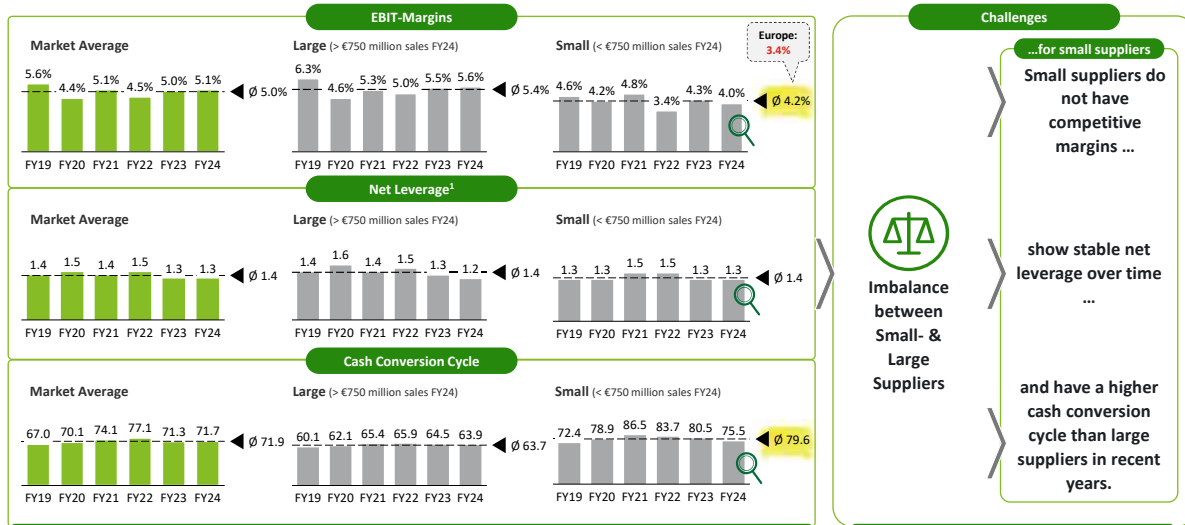


## Current financial status: Suppliers with limited buffer

Preliminary results

### Current financial status: Suppliers with limited buffer | Large vs. small supplier

Large suppliers achieve sufficient results, and they are able to maintain their position, while small suppliers cannot achieve sufficiently adequate results.



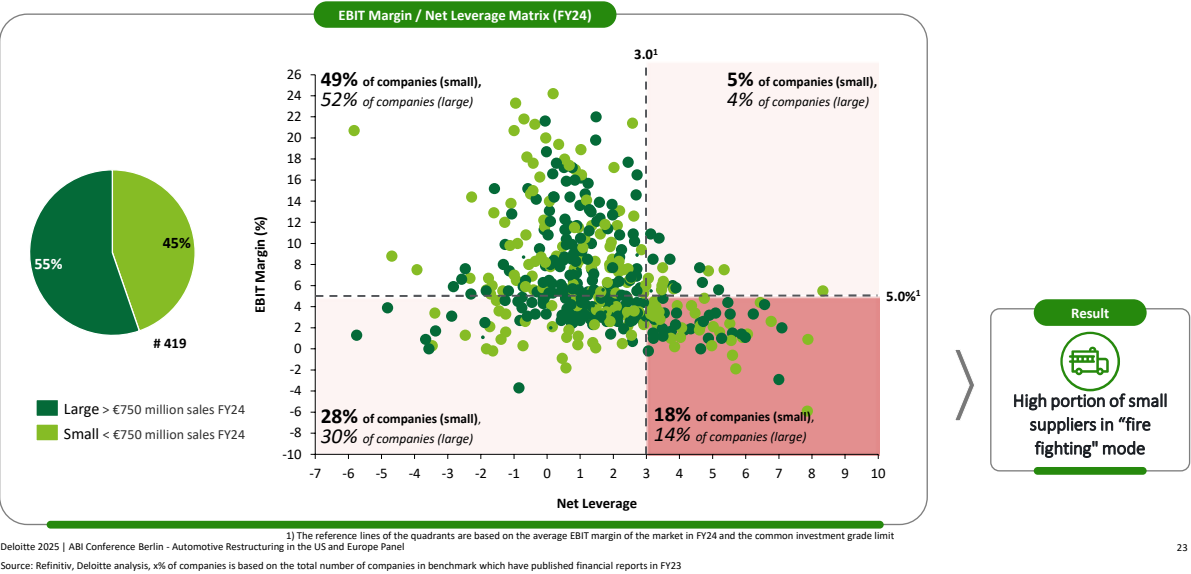
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Source: Refinitiv, Deloitte analysis, values display the median

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Preliminary results

Current financial status: Suppliers with limited buffer | Summary

Nearly a fifth of all small suppliers under review are in a critical zone concerning EBIT margin and net leverage.



Preview Supplier Risk Monitor 2025: Firefighting on multiple fronts

## Preliminary results

### Preview Supplier Risk Monitor 2025: Firefighting on multiple fronts | Current market challenges

Accelerating shifts toward China, persistent uncertainty, and rising financial strain are intensifying challenges on the automotive industry

**Production volume is stagnating:**

- Significant underutilization
- Higher dependency on operational efficiency
- Tougher fixed cost absorption

**Production volume forecast continuously reduced in the recent years:**

- Complex financial and operational planning
- High inventories
- Low investor confidence

**Aggressive market expansion by Chinese OEMs:**

- Reduced volume at legacy customer base for traditional suppliers
- Substantial change in requirements of potential new customers

**(Emerging) Chinese and American players have a significant lead in e-mobility:**

- Significant technology and implementation gap in e-mobility
- Substantial change in customer base for traditional suppliers
- Potential market share shift from traditional towards new suppliers especially for EV components

**Economic environment in Europe hinders competitiveness:**

- Unfavorable cost structure
- Expensive restructuring
- High bureaucracy hurdles

**A significant number of suppliers have no financial buffer:**

- High liquidity and insolvency risk
- Less strategic flexibility
- More distressed M&A activities

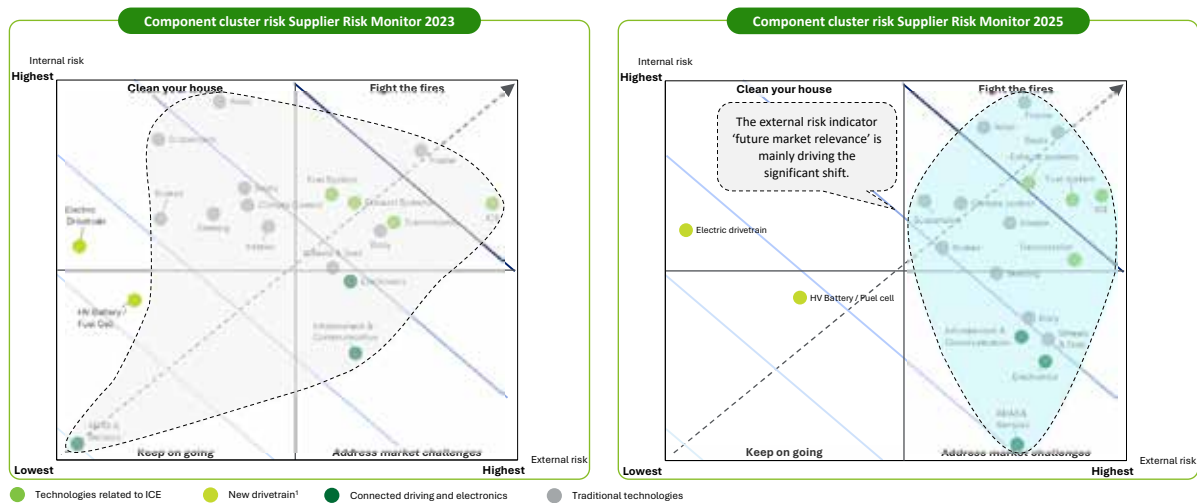
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## Preliminary results

### Preview Supplier Risk Monitor 2025: Firefighting on multiple fronts | Risk factor development

Since the last edition of the Supplier Risk Monitor, the situation for suppliers has further deteriorated, with a clear and substantial increase in overall risk exposure across all component clusters.



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## Certain Key Issues in an Automotive Supplier Insolvency Case

- The Stakeholders and Their Priorities
  - Supplier
  - Key customers
  - Secured lenders
  - Vendors
  - Shareholders
  - M&A buyer/investor

## Certain Key Issues in an Automotive Supplier Insolvency Case

- Cause of the financial issues and how fixed and how long it takes to restructure
- Cash burn and time to stabilize
- Customer behavior - resourcing vs. stay
- Lender behavior - liquidate vs forbear
- Employees/labor

## Certain Tools in Automotive Insolvency Cases

- Contract modifications
- Stability enhancement through multiparty agreements
  - Customer accommodation or contribution/continuation agreements
  - Forbearance agreement
  - Access agreement (U.S.)
  - Subordinated participation (U.S.) or loan agreement

## Cross-Border Legal Issues and Impacts

- Multinational borrower issues include/impact:
  - Ability to stabilize production and value
  - Supplier protections and powers
  - Financing protections
  - Ability to control supplier
  - Restructuring/sale powers, including shedding liabilities

## US Chapter 11 Regime, Generally

- No rigid “alarm bell” or formula process under which a company must file insolvency.
- Chapter 11 process broadly supports reorganization versus a forced liquidation (Chapter 7).
- Provides broad automatic stay from collection efforts, termination of contracts, seizure of assets.
- Financing can be granted superpriority (including rollups)
- The debtor supplier remains in control of its business (rather than a trustee) absent unless unusual cause such as fraud, gross mismanagement or incompetence.
- The debtor supplier has the power to assume and assign, OR reject (breach and walk away from), executory contracts and leases in its business judgment.
- Bankruptcy courts often enable debtors to pay “critical vendors” before a plan distribution.
- Debtors can shed debts and obligations through rejection of contracts, and by obtaining approval of a chapter 11 plan approved by certain creditors.
- \*Sale of substantially all the assets pursuant to section 363 of the Bankruptcy Code, free and clear of all liens, claims and encumbrances can be approved on a business judgment standard.

## EU Framework Overview

- EU insolvency system is based on two key documents: the Recast Insolvency Regulation (2015/848) (the 2015 Recast) and the Restructuring Directive (2019/1023) (the 2019 Directive).
- Applies across EU Member States (except Denmark) to align insolvency and restructuring law.
- The Recast Regulation establishes several key points, including the COMI (center of main interests), automatic recognition, and coordination of cross-border cases.

## EU Restructuring Directive (2019/1023)

- Requires EU Member States to implement preventive restructuring regimes before insolvency.
- The Directive aims to promote a rescue culture in the EU. It focuses on two areas: (1) ensuring that viable enterprises and entrepreneurs in financial difficulties have access to effective preventive restructuring options; and (2) providing for honest insolvent or over-indebted entrepreneurs to have a full discharge of their debts after a reasonable period.

## EU Member State Implementations and Coverage

- EU Member States (except Denmark) have enacted laws implementing the 2019 Directive.
- Others reformed existing insolvency codes in countries such as France, Spain, and Italy.
- The UK is excluded post-Brexit, meaning no automatic EU recognition.

## Building the EU Insolvency Architecture: From Coordination to Substantive Law

- Jurisdiction and recognition (pre-2015): EU insolvency law mainly addressed cross-border coordination, ensuring that a proceeding opened in one Member State would be recognized automatically in another. This framework culminated in the 2015 Recast, which governs where a case is filed (debtor's COMI), how main and secondary proceedings interact, and how insolvency practitioners cooperate across borders—but leaves the substantive rules of insolvency entirely to national law.
- Preventive restructuring (2019): The Restructuring and Second Chance Directive (EU) 2019/1023 (the 2019 Directive) required all Member States to create early-stage restructuring frameworks allowing viable firms to renegotiate debt and stay enforcement actions. This was Europe's answer to Chapter 11's debtor-in-possession laws, left liquidation law and directors' duties largely untouched.
- Fragmentation of substantive insolvency law: By 2020, Member States still had radically different insolvency law. The 2020 Capital Markets Union Action Plan called for the EU to move from procedural coordination to substantive harmonization, recognising that investors would not fully trust cross-border recoveries until core insolvency outcomes were more predictable.

## Building the EU Insolvency Architecture: From Coordination to Substantive Law

- 2015 Recast: This Regulation provides the jurisdictional and procedural backbone for all EU insolvency cases. It determines where a debtor's main proceeding must be opened—based on the debtor's COMI—and requires automatic recognition of those proceedings across the Union. It also governs cooperation among courts and insolvency practitioners in cross-border cases.
- 2019 Directive: This built on the 2015 Regulation by addressing the pre-insolvency stage. It requires Member States to create early-warning systems and preventive restructuring frameworks that allow debtors to negotiate with creditors under a temporary stay. The 2019 Directive thus harmonizes reorganization tools before formal insolvency but deliberately excludes liquidation and most post-insolvency mechanics.

## The 2022 Directive: A Further Move Toward Harmonized Substantive EU Insolvency Law

- Introduces substantive harmonization of insolvency law, complementing both earlier acts.
- Cites the 2015 Regulation as the procedural foundation for its new liquidation-phase tools, noting that the pre-pack liquidation phase “shall be carried out by means of insolvency proceedings as set out in Annex A to Regulation (EU) 2015/848”. Substantively, the 2022 Directive adds minimum EU rules on avoidance actions, asset tracing, pre-packs, directors’ filing duties, and creditors’ committees.
- Initial Commission Proposal (Dec. 2022). The European Commission released COM(2022) 702 final, the first proposal for an EU-wide Directive harmonizing key aspects of insolvency law—covering avoidance actions, asset tracing, pre-packs, director duties, and creditors’ committees.
- Council and Parliament Negotiations (2023–2025). Over two years of negotiations, Member States raised concerns about privacy, proportionality, and interference with national insolvency traditions. The scope was narrowed to focus on politically feasible areas of consensus.

## The 2022 Directive: A Further Move Toward Harmonized Substantive EU Insolvency Law

- Revisions Adopted in the 2025 “General Approach.”
  - The Council’s June 2025 text (ST-9257-2025-INIT) refined and reprioritized the proposal by:
    - Limiting access to bank-account and beneficial-ownership registers to authorized practitioners.
    - Adjusting avoidance-action look-back periods and evidentiary rules to accommodate national systems.
    - Codifying pre-pack sales tied to proceedings in Annex A to Regulation (EU) 2015/848.
    - Adding a minimum director duty to file within a defined period once insolvency is unavoidable.
    - Making creditors’ committees optional where cost or size does not justify them. The 2025 markup represents a political compromise, transforming the Directive from an ambitious effort at full substantive harmonization into a pragmatic, minimum-standards framework likely to achieve Council and Parliament adoption by late 2025.



## Requirements to File Proceedings

- 2015 Recast: Does not create a uniform EU rule on when a debtor must file. Each Member State retains its own triggers and duties for directors or debtors to commence insolvency.
- 2019 Directive: Does not impose a duty to file for insolvency upon reaching a balance-sheet or cash-flow insolvency.
- 2022 Directive: Introduces a minimum duty for directors to request the opening of insolvency proceedings within a defined period of 3 months after they became or should have become aware of insolvency.
- Compare with U.S. Bankruptcy Code: Imposes no mandatory filing requirement upon insolvency; debtors may file voluntarily at their discretion under 11 U.S.C. § 301, and while directors owe fiduciary duties as insolvency approaches, there is no statutory deadline or independent liability for failing to commence a bankruptcy case.

## Reorganization vs. Liquidation Proceedings

- 2015 Recast: Recognizes both reorganization and liquidation proceedings but leaves their design to national law. 2019 Directive: focuses exclusively on reorganization (preventive restructuring) rather than liquidation, establishing a framework for debtors in financial distress to restructure before formal insolvency, preserving viability and jobs; it requires Member States to implement procedures enabling debtors to propose restructuring plans, obtain stays of enforcement, and confirm plans with cross-class cram-downs, with liquidation remaining outside its scope.
- 2019 Directive: Governs preventive restructuring (reorganization), not liquidation. It requires Member States to make available procedures that allow debtors “in financial difficulty but not yet insolvent” to restructure early, preserve going-concern value, and avoid the opening of liquidation proceedings.

## Reorganization vs. Liquidation Proceedings

- 2022 Directive: Builds on that split by harmonizing selected liquidation-stage tools, introducing an EU-wide framework for “pre-pack” sales to preserve going-concern value during liquidation and a simplified winding-up regime for microenterprises,
- Compare with U.S. Bankruptcy Code: Draws a clear statutory line between reorganization under Chapter 11 (continuation of operations under a plan confirmed by the court) and liquidation under Chapter 7 (orderly sale of assets by a trustee); debtors may choose either path depending on viability, and conversions between chapters are permitted under 11 U.S.C. § 706 and § 1112. “Pre-packaged” Chapter 11 bankruptcy plans, including sales of assets or recapitalizations free and clear of old liabilities, may be achieved as quickly as 1 day after bankruptcy filing or more commonly 30 days after filing.

## Automatic Stay

- 2015 Recast: Does not establish a substantive EU-wide automatic stay; instead, it requires Member States to recognize stays or suspensions that arise under the law of the opening State once main proceedings are opened, extending the effect of the stay across borders, but the scope, duration, and exceptions are determined by national law.
- 2019 Directive: Introduced preventive stay of individual enforcement actions to support early restructuring negotiations. Under Articles 6–8, a debtor facing a likelihood of insolvency may obtain a stay—initially lasting up to four months, extendable to a maximum of twelve months—to suspend enforcement, foreclosure, and other recovery actions while a restructuring plan is negotiated. The stay covers both secured and unsecured claims but allows limited exceptions (e.g., employee and maintenance claims) to protect legitimate interests. Recitals 32–33 explain that this “breathing space” aims to mirror the U.S. automatic stay but remains temporary and court-controlled, balancing creditor protection with debtor rescue. Member States must ensure that creditors cannot terminate essential contracts solely because of the stay, reinforcing business continuity during restructuring.

## Automatic Stay

- 2022 Directive does not introduce a new automatic stay regime, confirming that stays remain within the scope of the 2019 Directive and national law. It focuses on post-insolvency mechanics such as avoidance actions, pre-pack sales, and director duties.
- Compare with U.S. Bankruptcy Code: U.S. bankruptcy law imposes one of the most comprehensive automatic stays in the world. Under 11 U.S.C. § 362(a), the filing of a bankruptcy petition immediately halts all actions against the debtor or its property, including litigation, collection, foreclosures, actions to control assets of the debtor including contract terminations, and enforcement of judgments. The stay applies globally (subject to practical jurisdiction. . .), continues until case closure or dismissal, and may be lifted only by court order for cause (§ 362(d)).

## Company/Administrator Control

- 2015 Recast: Does not harmonize who controls the debtor once proceedings open. It recognizes that insolvency proceedings may be debtor-in-possession or administrator-led, depending on national law.
- 2019 Directive: Adopts a debtor-in-possession (“DIP”) model as the EU’s preferred approach for preventive restructuring. Article 5 provides that debtors should normally remain “totally or at least partially in control of their assets and the day-to-day operation of the business,” with a practitioner in restructuring (“monitor”) appointed only in specified cases (e.g., when a stay affects many creditors or independent supervision is needed).

## Company/Administrator Control

- 2022 Directive: Concerns post-insolvency liquidation, where control normally shifts from company management to an insolvency practitioner or court-appointed liquidator. Title IV (Pre-pack Proceedings) distinguishes between a pre-pack preparation phase—during which the debtor or monitor prepares the sale under judicial oversight—and a liquidation phase conducted within formal insolvency proceedings listed in Annex A to Regulation 2015/848. Article 20 provides that the liquidation phase must be opened in accordance with national insolvency law, meaning the insolvency practitioner assumes control at that point.
- Compare with U.S. Bankruptcy Code: Bankruptcy Code (11 U.S.C. §§ 1107–1108). In U.S. reorganization cases, the debtor remains in possession and operates its business as a fiduciary for the estate. In liquidation under Chapter 7, control immediately shifts to a trustee

## Financing for Distressed Entities

- 2015 Recast. The Regulation does not provide any uniform rules on post-petition or rescue financing.
- 2019 Directive. The Directive introduced the EU's first framework for interim and new financing to support restructuring efforts before insolvency. Article 17 requires Member States to ensure that interim and new financing granted during a preventive restructuring is not declared void or voidable merely because it was made in that context, and that such financing receives priority or protection from avoidance actions if granted in good faith and necessary for a viable restructuring.

## Financing for Distressed Entities

- 2022 Directive. The pending Directive focuses on liquidation-phase harmonization and does not itself create an EU-level rule for new or rescue financing. Recitals (21)–(27) and Articles 19–20 govern pre-pack sales and liquidation proceedings, but the Directive leaves “the ranking of claims” and “distribution of proceeds” to national law, expressly preserving existing national treatment of financing priorities.
- Compare with U.S. Bankruptcy Code: Bankruptcy Code § 364: Provides a comprehensive, court-supervised system for debtor-in-possession (DIP) financing. Under 11 U.S.C. § 364, a debtor may obtain unsecured credit in the ordinary course or seek court approval for credit with administrative-expense, lien, or super-priority status (§ 364(c)–(d)) when other financing is unavailable. Lenders receive protection through court orders granting superior priming liens, liens on new collateral or priority repayment.

## Sales of Assets Free and Clear of Liens and Claims

- 2015 Recast: Provides only a recognition framework for sales of assets conducted under national insolvency laws. Article 7(1) states that “the law of the Member State within the territory of which such proceedings are opened shall determine the conditions for the opening, conduct and closure of the insolvency proceedings.”
- 2019 Directive: Concerns preventive restructuring and does not authorize sales “free and clear” of liens or claims.

## Sales of Assets Free and Clear of Liens and Claims

- 2022 Directive: Recital (28b) provides that to “increase the attractiveness of asset deals,” Member States must ensure that purchasers acquire businesses free and clear of debts and liabilities, with creditors’ claims satisfied from sale proceeds rather than asserted against the purchaser. However, obligations under executory contracts or employment relations (e.g., pensions) that transfer with the business remain binding on the acquirer. Article 19–20 of Title IV (Pre-Pack Mechanism) requires national courts to approve the sale in a liquidation phase conducted through proceedings listed in Annex A to Regulation (EU) 2015/848, thus integrating cross-border recognition of free-and-clear sales
- Compare with U.S. Bankruptcy Code: Bankruptcy Code § 363(f): provides a comprehensive and codified rule for “free and clear” sales under a going concern M&A transaction or liquidation sale. Under 11 U.S.C. § 363(f), a trustee or debtor-in-possession may sell property of the estate free and clear of any interest (including liens and claims) if one of five conditions applies—such as lienholder consent, a sale price exceeding the lien’s value, or the interest being in bona fide dispute. Liens then attach to the proceeds under § 363(e). Section 363 sales are widely used to transfer businesses as going concerns quickly in Chapter 11 cases and are recognized as providing finality and certainty of title absent from the EU framework.

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## Assumption / Rejection of Contracts and Leases

- 2015 Recast: Does not harmonize rules on executory contracts or leases.
- 2019 Directive: Does not create a uniform EU rule for assumption or rejection of executory contracts or leases, but it does address contractual termination rights during restructuring. Article 7(5) and recitals (36)–(38) require Member States to prevent creditors and counterparties from terminating, accelerating, or modifying contracts solely on the grounds that the debtor has entered into preventive restructuring proceedings or obtained a stay of enforcement. This protection ensures business continuity while a restructuring plan is negotiated, similar in effect to a limited “anti-ipso-facto” rule. However, the Directive stops short of granting administrators the power to affirm or reject burdensome contracts, leaving those rights to national insolvency law and the 2015 Recast Regulation’s coordination framework.

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## Assumption / Rejection of Contracts and Leases

- 2022 Draft Insolvency Directive (ST-9257-2025-INIT): Introduces rules on executory contracts in the context of pre-pack sales. Under Recital (28) and following provisions, Member States must ensure that contracts necessary for the continuation of the debtor's business can be assigned to the purchaser even without the counterparty's consent, to preserve going-concern value. However, Member States may limit assignment or require consent where the counterparty's legitimate interests would otherwise be unfairly affected—especially in cases involving competitors or sensitive IP. The Directive also allows a counterparty to terminate within three months of assignment and preserves protection for employees and IP licensees. This harmonizes business-continuity principles in liquidation without creating a full U.S.-style assumption/rejection regime.

## Assumption / Rejection of Contracts and Leases

- Compare with U.S. Bankruptcy Code: Bankruptcy Code § 365 provides a comprehensive, nationwide framework. Under 11 U.S.C. § 365(a), a debtor or trustee may assume, reject, or assign executory contracts and unexpired leases with court approval. Assumption requires curing defaults (§ 365(b)), while rejection is treated as a pre-petition breach giving rise to a general unsecured claim (§ 365(g)). Assignments are allowed notwithstanding anti-assignment clauses (§ 365(f)), enabling going-concern sales without counterparty consent. This mechanism is central to Chapter 11 reorganizations and § 363 sales, providing a far stronger codified regime than anything yet harmonized in EU law.

## Asset Tracing

- 2015 Recast: Establishes cross-border cooperation and information-exchange duties but does not create a uniform right to trace or recover assets. The Directive does not create a unified EU system for tracing or recovering assets, since it applies only to preventive restructuring before insolvency.
- 2019 Directive: Does not create investigative or tracing powers for practitioners but promotes financial transparency so creditors can assess the debtor's position during preventive restructuring.

## Asset Tracing

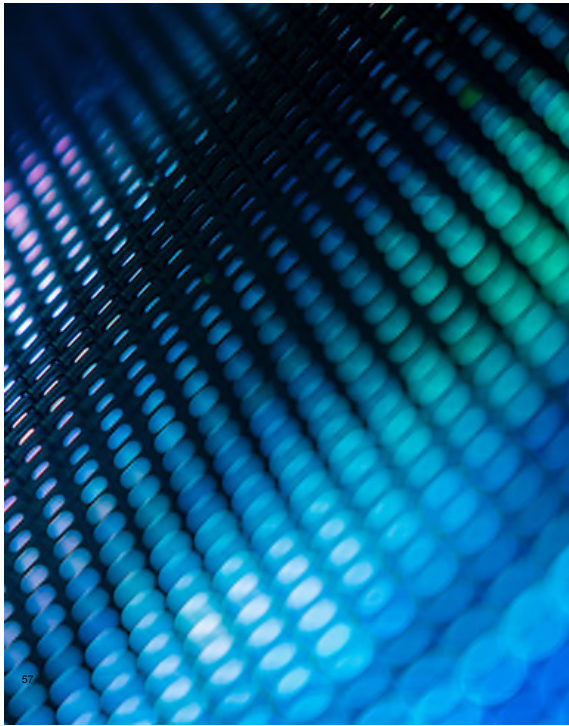
- 2022 Directive (ST-9257-2025-INIT): Directly addresses asset-tracing for the first time in EU substantive law, expanding insolvency practitioners' access to financial and ownership data. Recitals (13)–(20) require Member States to ensure that practitioners or designated authorities can access non-public databases and centralized bank-account registers to identify and trace estate property. It mandates direct or indirect access to BARIS (Bank Account Registers Interconnection System) and to beneficial-ownership registers, even across borders, for the purpose of locating assets belonging to the debtor or subject to avoidance actions
- Compare with U.S. Bankruptcy Code: Asset tracing is achieved through a combination of statutory investigative powers and discovery tools. Under 11 U.S.C. §§ 541, 542, 543, 548, and 550, the estate includes “all legal or equitable interests of the debtor,” and trustees may compel turnover, avoid fraudulent or preferential transfers, and recover property or its value from transferees. Rule 2004 of the Federal Rules of Bankruptcy Procedure authorizes broad examinations allowing the trustee to trace funds, compel records, and question any entity with knowledge of the debtor's assets. Combined with automatic worldwide turnover obligations (§ 542), this gives U.S. trustees much stronger, court-enforced tracing powers than those available under current or proposed EU law.

## Creditors' Committee

- 2015 Recast: Does not establish or harmonize creditors' committees. It focuses on cross-border coordination and recognition, leaving internal governance of proceedings to national law. Articles 41–44 require cross-border cooperation between insolvency practitioners and courts in different Member States and encourage communication between creditors, but the Regulation provides no framework for domestic committee formation or powers (Recitals 48–49, Articles 41–43).
- 2019 Directive: Does not mandate formal creditors' committees, but it embeds collective creditor participation through plan-voting and class-formation mechanisms.

## Creditors' Committee

- 2022 Directive: Creates minimum EU rules on creditors' committees. Under Recitals (47)–(50) and Title VII, Member States must allow committees to be established once insolvency proceedings open, though they may restrict them to large enterprises or omit them where cost outweighs benefit. The committee's role is to improve transparency, collective participation, and creditor oversight of insolvency practitioners. The Directive requires fair representation (including foreign and SME creditors) and permits Member States to define appointment and voting rules, thereby harmonizing the principle of creditor representation across the EU.
- Compare with U.S. Bankruptcy Code: Bankruptcy Code § 1102 et seq. mandates an official committee of unsecured creditors in every Chapter 11 case under 11 U.S.C. § 1102(a), appointed by the U.S. Trustee. The committee acts as a fiduciary for all unsecured creditors, may hire professionals at the estate's expense (§ 1103), and plays a central role in negotiating plans, reviewing DIP financing, and monitoring management. Additional committees (e.g., equity or retiree committees) may be appointed for adequate representation (§ 1102(a)(2)). Compared with the EU framework, the U.S. regime provides a mandatory, empowered, and well-funded model of creditor participation.



## Questions?

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# Faculty

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