

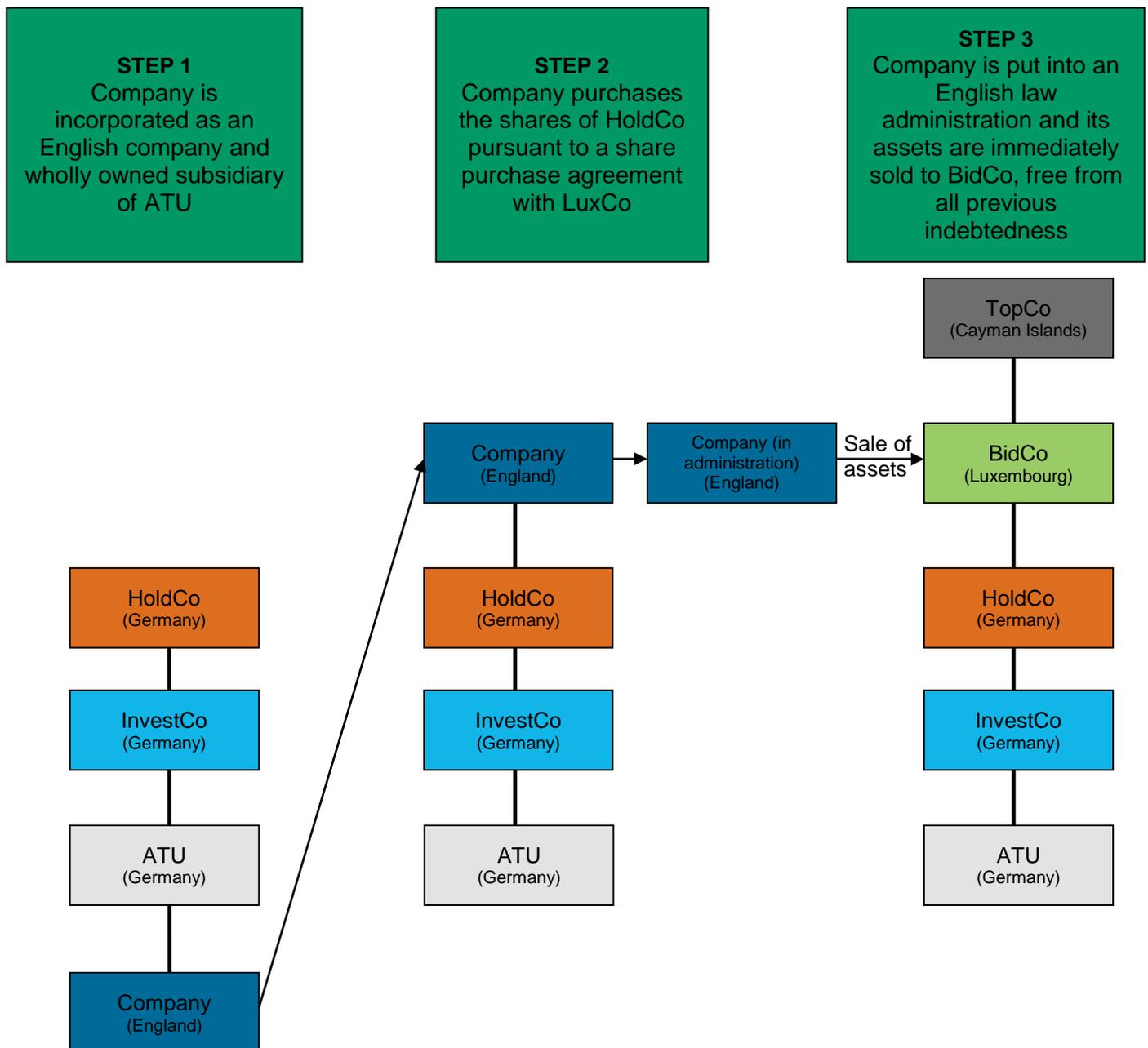
A.T.U. Auto-Teile-Unger

The facts

The restructuring of A.T.U. Auto-Teile-Unger (ATU), the German auto car parts reseller, was completed in January 2014 following the pre-packed sale of ATU through a UK administration to a new owner, set up by senior noteholders of ATU. Prior to the restructuring the group had a €45m Revolving Credit Facility, €400m of NY governed Senior Notes and €130m of Junior Notes all of which were governed by an intercreditor agreement ("ICA"). The senior notes were converted into preferred equity and the junior notes were released using the release mechanics under the ICA which provided that the Senior Notes and Junior Notes and their corresponding guarantees and security could be released (the "Release") in the event of an enforcement.

The implementation of the deal was elaborate and is explained here with the help of Figure 1 below. Step 1 involved incorporating an English incorporated company ("Company") which started its existence as a subsidiary of ATU. The reason an English company was chosen was to take advantage of the UK's pre-pack administration regime. The Company purchased intercompany debt for nominal consideration then signed the ICA to become an "Obligor" for the purposes of the ICA. The ICA provided that the Release would only operate if the group was sold by an "Obligor". The definition of "Obligor" included a company which was a subsidiary of ATU, hence the Company's incorporation as such. The Company was then moved above ATU in the group structure (Step 2), placed into a UK administration process and its assets (shares in HoldCo) were sold to a new Bidco (Step 3). As the sale was taking place in an enforcement process, the terms of the ICA allowed the security agent to effect the Release. Bidco is owned by TopCo, a Cayman entity, which is partly owned by the former senior creditors of ATU.

Figure 1. Please note: this represents the restructuring in a highly stylised form



Why was the case significant?

UK pre-packs have been used before in restructurings where the company being placed into an insolvency was a non UK company. Most famously in 2010 a number of the Luxembourg holding companies of Greek telecoms operator Wind Hellas were placed into a UK administration process to effect a sale of Wind Hellas via a UK pre-pack. In the Wind Hellas case the COMI of the holding companies were shifted to the UK. In the ATU case there was no need to undertake a COMI shift as a new English holding company was placed above ATU to effect the sale via the



pre-pack. This then removed the need to shift the COMI which can often be an elaborate and time consuming process which also has a significant tax effect. We also speculate that the purpose of putting this complex structure in place was to avoid having to enforce the German share pledges over ATU or other holding companies which would offer awkward technical challenges. German law requires that debt is outstanding to enforce a pledge. Therefore once the debts had been accelerated, ATU would have to have been put into an insolvency process within 21 days, which may have been insufficient to effect the enforcement. It remains to be seen whether this rather convoluted transaction will be copied by other parties who wish to avoid the COMI shift process.