ROPES & GRAY

2025

London Capital Solutions and Business Restructuring **Year in Review**

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Private Credit's Role in **European Restructuring**

Private credit has become a defining force in European capital structures, accelerating out-of-court outcomes, introducing more bespoke documentation and shifting negotiation leverage in restructurings. The rise of direct lenders and private credit clubs, relative to traditional commercial banks, is altering timelines to engagement, documentation dynamics, enforcement strategies and, ultimately, the toolkit used to deliver restructurings. Further aspects of a private-credit-heavy market include greater divergence in loan documentation, increased litigation appetite and tailored governance requirements.

How Private Credit Reshaped Workouts in 2025

Direct lending now spans mid-market to large-cap businesses, with unitranche and club deals often displacing syndicated term loans. Speed remains a hallmark in origination and execution of new money transactions as well as in workouts. Smaller, more concentrated lender groups deliver speed on amend-and-extend solutions, covenant resets and rescue financing, often with less public scrutiny than a bank-led or broadly syndicated process. Familiarity between sponsors and private credit counterparties can accelerate processes, as repeat counterparties typically share a focus on preserving enterprise value through going-concern solutions. Such relationships are also bringing earlier engagement on liquidity bridges and quicker exploration of hybrid capital solutions or sponsor support. Freed from the constraints of the LMA-driven market, private credit deals often involve non-LMA terms negotiated at speed, with resultant gaps or ambiguities subsequently surfacing under stressed conditions. Therefore, rigorous downside planning at origination is increasingly crucial.

Relationship-Led Workouts and Value Preservation Strategies

In many stressed situations, private credit lenders adopt a relationship-based approach with borrowers and sponsors, showing a willingness to grant waivers or short-term resets to create breathing room where a credible path to stability exists. Where cost-efficiency and maintaining a lower profile are critical, lenders often prefer consensual solutions over formal processes.

However, private credit's flexibility means we are seeing increasing willingness to pursue remedies to preserve value where appropriate, including taking control or exercising enforcement rights, with a follow-on restructuring to reset the capital structure and realign governance.

Governance Discipline and Directors' Duties

Overlapping equity and debt relationships heighten conflicts risks and scrutiny of directors' duties. Independent governance, careful management of conflicts and a robust record of board proceedings are essential to withstand scrutiny in any contested outcome. Private credit lenders should calibrate engagement to avoid being considered de facto or "shadow" directors, exercising rights through contractual levers rather than day-to-day decision-making, while boards should take comprehensive, independent advice to ensure they properly discharge their duties to the company and its stakeholders and to assist in documenting a well-reasoned decision-making process.

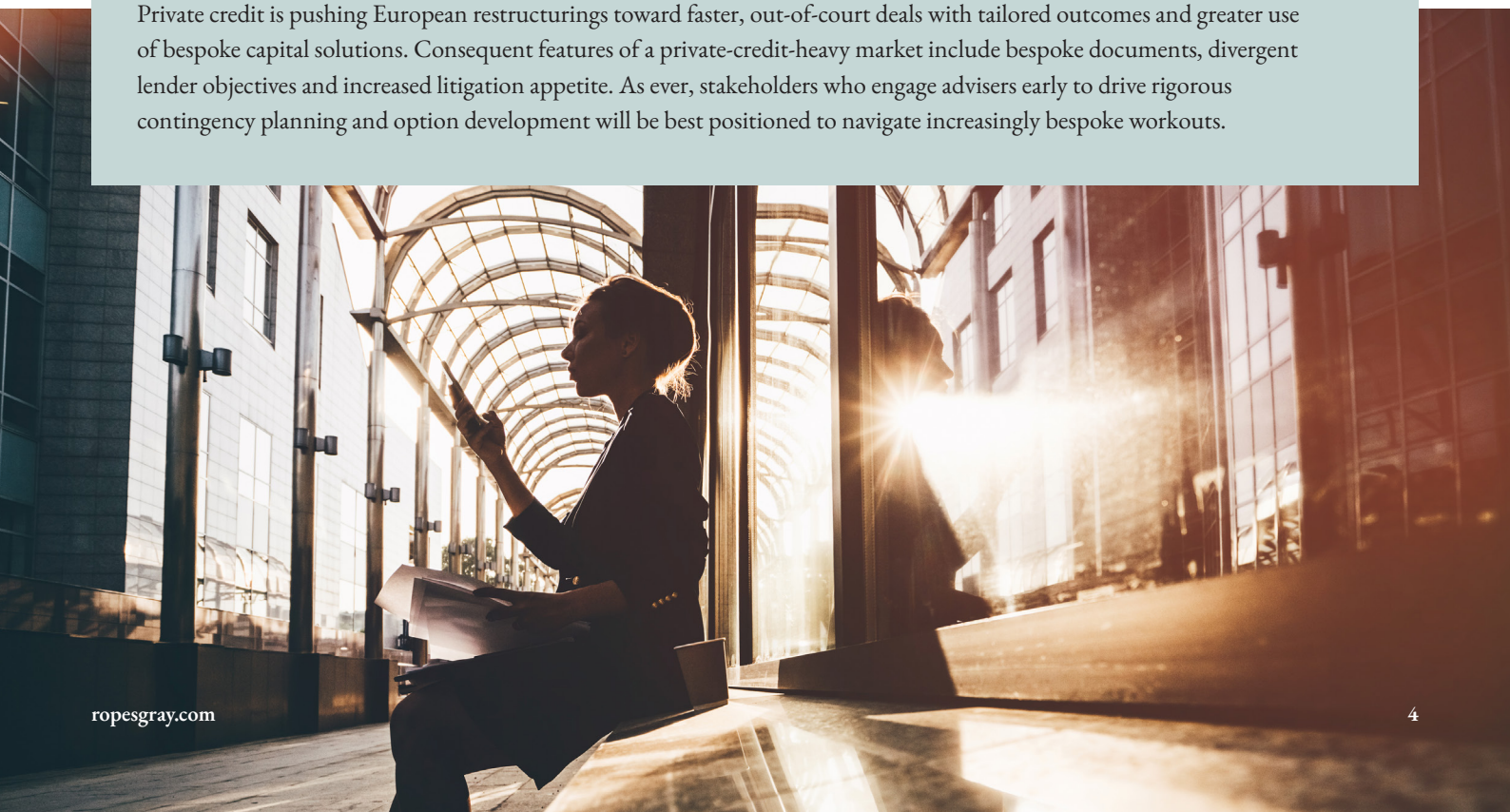
The Evolving Restructuring Toolkit

Several trends intensified in 2025 that will persist into 2026 as private credit remains central to European restructurings:

- **Private credit has driven a marked uptick in US-style liability management exercises in the European market that has only accelerated through 2025.** The increased prevalence of liability management exercises has led to strengthening counter-measures, including co-operation agreements, tighter transfer provisions and targeted contractual blockers (see the Co-operation Agreements article in this issue).
- **Direct lenders' flexibility** has facilitated more solutions out of court where time and consensus permit. In particular, direct lenders are typically better placed than banks to consider PIK toggles, maturity extensions, incremental super-senior liquidity and equity-like instruments to bridge valuation and liquidity gaps with sponsors.
- As discussed above, **bespoke documentation increases litigation risk**, as courts in England and across Europe may be asked to interpret unique terms with limited market consensus or precedent.
- Enforcement credibility is again a central negotiating lever. In England (along with Luxembourg and the Netherlands), share pledge enforcement via appropriation or receivership remains a credible threat where there is a route to business stability and there are prospective buyers. Private credit lenders are often more comfortable "holding the keys" than banks; credible enforcement planning improves negotiating leverage and can shorten time to a deal.
- Schemes of arrangement and restructuring plans (with increasing precedents for cross-class cram-down) remain the core court-supervised options for groups seeking to utilise English restructuring tools to mitigate the hold-out value of dissenting stakeholders or address sacred rights where unanimity is unachievable. Across the EU, frameworks such as StaRUG and WHOA offer similar capabilities, enabling flexible solutions, including priming liquidity and debt-to-equity swaps, while binding minority lenders. See our article in this issue, "Developments in restructuring plans", for our insights on the developments in restructuring plans in 2025.

BOTTOM LINE

Private credit is pushing European restructurings toward faster, out-of-court deals with tailored outcomes and greater use of bespoke capital solutions. Consequent features of a private-credit-heavy market include bespoke documents, divergent lender objectives and increased litigation appetite. As ever, stakeholders who engage advisers early to drive rigorous contingency planning and option development will be best positioned to navigate increasingly bespoke workouts.



Developments in **Restructuring Plans**

1. Key Takeaways From Case Law in 2025

Companies and their advisers are adapting to heightened evidential burdens as courts move towards an increasingly fact-specific and nuanced evaluation of fairness—with transactions such as *Fossil* underscoring that trajectory.

Three key takeaways from case law in 2025:

i. differential treatment between classes or creditors in the same class must be thoroughly justified;

ii. the "no worse off" test is strictly rights-based, with broader commercial considerations only considered at the court's discretion; and

iii. engagement with dissenting creditors (including those "out of the money" in the relevant alternative) is key.

A. Fairness and the treatment of dissenting creditors

Plan companies must articulate clearly how value is fairly allocated to the different parties affected by the restructuring plan.

- ***Waldorf:*** The court ruled it could not judge whether restructuring benefits were allocated fairly amongst creditors without sufficient evidence of meaningful negotiation with unsecured creditors.

  Key takeaway: Evidence of negotiation with all stakeholders is paramount.

- ***Petrofac:*** The court ruled that returns accrued by new money providers materially exceeded prevailing market rates and therefore required justification as to fairness.

  Key takeaway: Courts will scrutinise the allocation of benefits and burdens instead of looking only at the pre-plan implementation waterfall.

- ***Thames Water:*** The court ruled that an interim, bridging restructuring plan could generate intangible benefits (such as giving stakeholders breathing room). Such benefits must also be allocated fairly across classes—including, in this case, to out-of-the-money junior creditors.

  Key takeaway: Fairness is assessed broadly for each relevant party—including non-economic terms and levels of information flow.

B. "No worse off" test

Courts in 2025 emphasised that the "no worse off" test is a rights-based test: courts will compare the financial value of the creditor's existing rights in the relevant alternative with the financial value of the new rights under the restructuring plan. Broader commercial interests sit outside this test unless they are tied to rights compromised by the restructuring plan (and the wider commercial context may be considered at the court's discretion in the context of overall fairness).

C. The relevant alternative

Courts are reluctant to treat "another restructuring plan" as the comparator unless the alternative is sufficiently deliverable.

- In *Waldorf*, unsecured creditors advanced commercially plausible restructuring plan variations—but the court considered these to have insufficient definition, creditor alignment and timing.
- In *Thames Water*, the court ruled that the relevant alternative proposed by the holders of Thames Water's B Notes was insufficiently defined, lacked committed stakeholder support and was not shown to be deliverable within the company's liquidity runway.

D. Fossil: innovative cross-border restructuring plan technology

- Fossil's restructuring is a notable illustration of the international "two-step", showing how a stapled exchange can be paired with a restructuring plan to address capital structure issues that are difficult to solve in a US process.
- The company launched an exchange offer which achieved around 72% consent of the relevant creditors, at which point Fossil pivoted to a restructuring plan, which required only approval of 75% of the voting creditors (determined by value), avoiding US numerosity hurdles and neatly navigating Trust Indenture Act constraints that can block out-of-court changes for non-participating holders. The company subsequently obtained Chapter 15 recognition within days of the restructuring plan sanction to ensure the enforceability of the restructuring plan in the United States.
- Fossil used a governing law flip to English law (with majority consent) and incorporated a new English plan company guarantor and executed a contribution agreement between the existing issuer group and the new English plan company to ensure sufficient connection to England and Wales—an approach expressly recognised by the court as "good forum shopping".

E. Project Fürst - cross-border recognition concerns

- While English restructuring procedures remain highly effective tools for multi-national businesses, a preliminary ruling of the Frankfurt Regional Court in Project Fürst/Aggregate Holdings has questioned recognition of English restructuring plans used to restructure German law debt post-Brexit, suggesting that English restructuring plans may not qualify as "collective insolvency proceedings" under German law, which could expose plan companies to repayment claims in Germany despite obtaining sanction in the English courts. The decision is interim and issued without full expert evidence, but the full conclusions to be drawn from this case will become apparent in the coming months.

2. New Part 26A Practice Statement

- The revised Practice Statement for schemes and restructuring plans, effective for convening hearings listed on or after 1 January 2026, codifies much of what the appellate courts have been signalling as preferred practice.
- Plan companies must now issue a claim form before listing, file a listing note that sets out the anticipated timetable and potential pressure points, and provide earlier, clearer explanatory material to affected parties.
- For restructuring plans that contemplate a cross-class cram-down, the evidential burden at the convening stage now expressly includes details of stakeholder engagement, information asymmetries, objections and alternatives, with courts encouraging parties to identify and resolve contested issues early.

The English restructuring plan continues to be a popular and robust tool. As restructuring plans become increasingly well-tested, market understanding of the requirements for a robust restructuring plan with a high likelihood of achieving court sanction continues to improve, allowing market participants to improve execution certainty.

3. Takeaways for Plan Companies and Supporters

- The restructuring plan remains a versatile and powerful tool for plan companies and creditors to implement LME-style transactions (as seen in *Fossil*).
- Courts are increasingly scrutinising valuation, the "relevant alternative" and overall distribution of restructuring plan benefits when assessing fairness.
- Keeping a record of early engagement and negotiation with affected creditors across the capital structure is key, as this can now drive sanction hearing outcomes.
- Companies proposing to privilege new money or to depart from *pari passu* sharing of surplus should assume that expert or market-testing evidence will be required by courts up front.
- Careful consideration and structuring is required when an ad hoc group is looking to provide new money in a distressed context.
- For cross-border restructurings, plan companies should identify a path for recognition (e.g., Chapter 15), diligence recognition risk and consider tools such as change of governing law and a co-obligor structure to bolster jurisdiction.

The 2026 Practice Statement means that any complex or potentially contentious elements of a restructuring plan must be dealt with at an earlier stage in the process, with significant increased evidence provided at the convening hearing stage.

CREDITOR COORDINATION AGAINST LIABILITY MANAGEMENT TRANSACTIONS:

The **Rise of Co-Operation Agreements** in European Restructurings

Private creditors in Europe are responding to the increase in US-style liability management transactions in the European market with a two-track defence: (i) incorporating tighter documentary blockers at origination of new financings or refinancings and (ii) in anticipation of a restructuring where such blockers do not exist, creditors entering into a co-operation agreement. The immediate value of the co-operation agreement is a defensive alignment: sustaining cohesion amongst creditors where documentary mechanics can otherwise be utilised to divide creditors and erode overall recoveries.

The toolkit: front-end blockers and back-end co-operation agreements

Blockers

The rise of European liability management transactions has motivated creditors to push for tighter front-end protection, including Serta-style anti-uptier protections, J.Crew drop-down limits (often paired with Envision-style basket caps), Chewy guarantor-release limits and broader omni-blockers (or catch-all blockers) designed to catch future innovations. Developments in market expectations in respect of such blockers have made the documentation baseline more restrictive in private credit primaries and amend-and-extend transactions.

Co-operation agreements

Co-operation agreements developed in recent years in US restructurings and, through 2024 and 2025, have gained a greater foothold in the European distressed market. Co-operation agreements are a defensive tactic employed where creditors are concerned that sufficient documentary blockers may not exist or transaction documentation may otherwise facilitate a liability management transaction. Co-operation agreements are entered into solely between creditors. They are typically entered into where a company is exhibiting signs of distress, with the aim of defending against a non-pro-rata liability management transaction.

How do co-operation agreements work?

- Co-operation agreements typically require signatories to agree not to support any transaction implemented at the expense of another co-operation group member. To preserve the ability for the co-operation group to negotiate a restructuring with the company, co-operation agreements commonly provide for supermajority intercreditor approvals and transfer restrictions. The key feature of a co-operation agreement is typically to provide for pro rata sharing of the benefits of any subsequently agreed restructuring amongst co-operation group members. Co-operation agreements have been effective in protecting creditors against uptiering and priming transactions that would otherwise require a simple majority of creditors to implement. They have, however, proved to be less effective as a shield against drop-downs, where a company can move certain assets outside the value net of the relevant creditors without obtaining their consent.

What's next for co-operation agreements?

- **Sponsors and borrowers have increasingly sought to steer creditors toward or away from entering into co-operation agreements** with two common levers. Firstly, by offering enhanced economics to "first movers" who consent to liability management transactions in order to build a supportive coalition quickly. Secondly, by blunting creditor coordination through NDAs restricting intercreditor communications and, more recently, through anti-co-op covenants in primary documentation. However, to date, few anti-co-operation agreement covenants have ultimately been agreed in the European market.
- **Antitrust sensitivities remain relatively untested.** Two challenges against creditor co-operation agreements have recently been brought in the Southern District of New York, both characterising the respective co-operation agreements as 'unlawful restraints of trade'.

As of the end of 2025, co-operation agreements remain one of the most dynamic and quickly-evolving aspects of the European distressed market. Given no "one-size-fits-all" form of co-operation agreement has developed, European restructurings will likely continue to see a balancing of sponsor/borrower efforts to temper the potential effect of co-operation agreements against increased use of co-operation agreements by creditors as part of the restructuring playbook.

What to Watch for in 2026

Drawing on market dialogues, our active mandates, and current trends, we expect a **peak in restructuring activity in the first half of 2026** as recoveries lengthen and lending, particularly from private credit, becomes more selective. Given market indicators, we further anticipate **automotive, manufacturing** and **construction and building materials** leading near-term stress. As amend-and-extend runs out of road, we expect a barbell: out-of-court liability management exercises where documents permit, and court-supervised plans where stakeholder complexity or valuation friction demands it.

Across the UK and Europe, **liability management exercises will remain central to addressing stressed capital structures**. US-style techniques are now embedded in European practice and are being deployed with greater sophistication, from non-pro-rata exchanges and uptiering to so-called double/triple-dip structures. Sponsors will continue to mine documentary flexibility and intercreditor gaps to preserve optionality, while lenders will continue to respond with tighter transfer provisions and bespoke blockers. The practical takeaway is unchanged: **early, well-advised engagement on documentary permissions, consent thresholds and implementation pathways will be decisive**.

Under English law, **restructuring plan strategy** will continue to evolve. Appellate decisions over the past year have sharpened the fairness inquiry beyond a mechanistic waterfall, requiring evidence-led justification for how plan benefits are defined and allocated across classes, even where valuation evidence projects that junior classes are out of the money absent implementation of the relevant plan. Courts are applying a rights-based "no worse off" test and expect meaningful, even-handed engagement with dissenters, supported by robust valuation evidence and, where relevant, market tested new money pricing. Practice is moving in lockstep: a revised Practice Statement effective for convening hearings listed on or after 1 January 2026 frontloads disclosure, stakeholder engagement and case management, with contested fairness issues and expert evidence required to be addressed early. We therefore expect to see restructuring plans operating as a disciplined backstop to liability management exercises—aligning execution speed with court-supervised certainty—while deal architecture adapts to anticipated appellate guidance on post-restructuring value allocation between senior and junior stakeholders.

Finally, financing structures will continue to shape both risk and remedy. With **the continued expansion of private credit in European distressed capital structures, expect to see faster, relationship-led, out-of-court fixes where time and consensus** exist; but bespoke documents and larger clubs raise litigation risk and make rigorous downside planning essential. Enforcement credibility remains a core lever: English share-pledge enforcement routes (namely appropriation or receivership) remain well-trodden paths, and use of flexibility to pursue value preservation through equitisation of debt claims will continue to feature where equity is out of the money. Schemes and restructuring plans (and EU analogues such as WHOA/StaRUG) remain strong implementation options, providing the additional comfort of court sanction in circumstances where achievement of contractual approval thresholds is uncertain.

Representative **Restructuring** and Capital **Solutions** Experience

ORIFLAME SWEDEN

Represented Oriflame in connection with a comprehensive recapitalisation to deliver a substantially de-levered and sustainable balance sheet with a debt reduction of approximately €520 million and a meaningful maturity runway.

FOSSIL GROUP

Represented HG Vora Capital Management and Nantahala Capital as Fossil Group's noteholders in the negotiation and implementation of an innovative exchange offer for new first-out and second-out senior secured notes due 2029 and associated incremental funding, warrants, and equity consideration, implemented by means of a single class English Part 26A restructuring plan.


exactech

Represented Exactech, Inc. and its affiliated debtors in their pending Chapter 11 cases involving the restructuring of more than $350 million of prepetition debt, as well as additional prepetition liabilities; Exactech's Chapter 11 cases are supported by an $85 million debtor in possession credit facility and a stalking horse bid, which remains subject to higher and better offers, for substantially all of the debtors' assets.

Represented Arrival on navigating their distressed situation, including putting in place unique and innovative secured bridge financing and concurrent convertible bond exchange, a first in the European market, and subsequent strategic sale transaction, ultimately culminating in administration.

altice

Altice France S.A. and Altice France Holding S.A. on their historic balance sheet restructuring involving more than €24 billion of debt.


BainCapital CREDIT

Represented Bain Capital Credit in connection with its investment in the INSPIRE Entertainment Resort in South Korea.

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convene

Advised an ad hoc group of bondholders to Convene Group, in relation to its restructuring by means of a debt to equity transaction, and subsequent recapitalisation

Triton

Represented Triton in relation to the €28.7 million refinancing of Cata Electrodomesticos.

Represented a special situations asset manager in relation to its investment in a global HR and outsourcing business.

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