



Restructuring Plans

The Restructuring Plan procedure is a powerful and flexible tool, introduced as part of the Corporate Insolvency and Governance Act 2020 (“CIGA 2020”) and governed by the Companies Act 2006. Its purpose is to help companies facing financial difficulty to reach a compromise with creditors and shareholders so they can continue to trade.

What is a Restructuring Plan?

A Restructuring Plan (RP), as outlined above, is a formal compromise between a company and its creditors and members. The procedure shares some of the key features of the existing Scheme of Arrangement procedure.

So why choose a RP? The principal benefit of a RP is the ability, in certain circumstances, to agree a plan which binds all creditors, even where there are dissenting classes of creditors. This is otherwise known as the ability to cross-class cram down.

A RP requires voting by creditors and shareholders in classes, and each class will be deemed to have approved the plan if 75% of that class vote in favour. The RP must be sanctioned by the Court, over the course of two hearings.

The RP has some key features that set it apart from the Company Voluntary Arrangement (CVA) procedure used in the UK, such as:

- The ability to bind secured creditors in addition to unsecured creditors
- The ability to cram down dissenting creditor classes
- The ability to compromise members’ rights.

Cross-class cram down

Where successful, a RP will limit the ability of “ransom” creditors. These are creditors who aim to block a viable proposal which has the support of those who still have an economic interest in the business. Dissenting classes are able to be ‘crammed down’ only if they would be no worse off than in the **relevant alternative**.

The relevant alternative is whatever the Court considers would be most likely to occur in relation to the company if the RP is not sanctioned. This could include a CVA, administration, or liquidation. The Court can sanction a plan even where there are dissenting classes of creditors or members. To do so, it must be satisfied that creditors or members are treated fair, and the dissenting class of creditors or members is no worse off in the relevant alternative.

Another attraction of a RP is that it can be combined with the statutory moratorium process. This provides breathing space from creditors seeking to begin legal proceedings against a company in financial difficulty, until the RP has been approved.

Who can use the RP procedure?

A company which “... has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern” may make an application to use the RP process. There’s a requirement that the business has experienced or is likely to experience financial stress.

Overseas companies may use the RP procedure in the event that they have a sufficient connection to the UK.

Who is using the RP procedure?

The RP procedure was introduced in June 2020. Since its introduction, we've seen it used by, amongst many others, Virgin Atlantic Airways, DeepOcean, and Virgin Active. The process can be used for both SMEs and large corporates, as demonstrated in our case study below. The first use of the RP legislation was to secure the future of an SME business in distress.

Case study: Houst Limited, 2022

In July 2022, the High Court delivered judgment sanctioning the RP proposed on behalf of holiday lettings and private house rental company Houst Limited and its subsidiaries.

Operating in eight countries and employing 300 people via independent contractors, Houst specialise in providing property management services for short-term and holiday lettings. Because of the effects of the coronavirus pandemic on the tourist market, the company experienced a significant reduction in demand. As a result, it asked us to provide advice on its options. After consideration, Houst concluded that the proposed RP was in the best interests of all creditors and members.

HM Revenue & Customs (HMRC), as the secondary preferential creditor, voted against the plan, considering that it was the only creditor disadvantaged by it. On the basis that HMRC was no worse off in the relevant alternative, Houst requested that the Court use the cross-class cram down process and sanction the RP.

In judgment, the Court considered that, whilst they could ask Houst to start again, and negotiate with HMRC, this would be highly undesirable. The costs and delay would impose a disproportionate burden on the Company as an SME business. The Court also considered that the plan would, in fact, be in HMRC's best interests, to be recovering more tax. Its best interests therefore laid in sanctioning the plan.

The decision represented the first use of the RP legislation introduced by CIGA 2020 to secure the future of an SME business in distress. It was also significant as it's the first occasion that the RP procedure has included the cross-class cram down of HMRC, the UK tax authority.

The decision confirms the RP process is a viable tool for SMEs in addition to large corporates. It highlights the importance of early engagement with creditors – particularly HMRC – to try and negotiate a compromise before seeking to use the cross-class cram down.



The RP procedure

1. The RP proposal will be sent to creditors or members and filed at Court
2. First Court hearing (convening hearing): the Court will examine the classes of creditors and members as defined by the company. Creditors or members may challenge class formation, if they think the company's classes don't accurately reflect the rights and interests of different classes. The plan company may also seek to exclude certain classes of creditors or members on the basis that they have no genuine economic interest in the company
3. If satisfied, the Court will confirm that a vote on the proposal may be conducted on a specified date ahead of a second hearing, if required. Necessary information would be requested. This would be anything that creditors or members need to decide whether to support the proposal, including certain mandatory matters that must be covered in all cases
4. Plan meetings: vote of creditors and members. If no challenges are brought or counter-proposals permitted by the Court, then creditors or members will vote on the proposal
5. Second Court hearing (sanction hearing): subject to the requisite voting thresholds being met, and the rules for imposing a cross-class cram down being complied with (should it be necessary), the Court will the schedule a second hearing. At this hearing, it'll consider if the necessary requirements have been met. The Court will then make a decision whether or not to approve the RP and make it binding on affected creditors or members.

How we can help you and your business

Since the introduction of the RP procedure, we've advised a range of businesses looking at entering into a RP. We've also advised creditors of companies which are affected by a proposed RP and require advice around their position and the compromise they're being asked to accept.

In the event that a RP is an appropriate way forward for your company, or you're a creditor affected by a proposed RP, our team can provide:

- Advice on the legal procedure and the implications of the process
- Advice on creditor class composition and viability of the RP, together with the proposed Plan Administrator (an insolvency practitioner who provides evidence as to valuation and the relevant alternative in support of the plan)
- Draft documentation in respect of the RP. This includes the required Practice Statement Letter, Explanatory Statement, the Restructuring Plan document, claim form, witness statements, and draft orders for the Plan Meetings of creditors or members and for the sanctioning the plan
- Advice and assistance on other legal aspects throughout the process.

Irwin Mitchell's experience and pricing structure makes the RP a viable option for companies of most sizes and turnover. Please don't hesitate to get in touch with us if you'd like to discuss any aspects of the RP process, or how it may work for you and your business.



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"Irwin Mitchell are true insolvency specialists. They are practical, commercial and very hard-working."

Chambers & Partners, 2022