First Spanish company to use a UK Scheme of Arrangement

La Seda de Barcelona

Restructuring advisers to a big Spanish manufacturing business La Seda de Barcelona have migrated the process to the UK where they are cramming down the bank lender group using a Scheme of Arrangement. Spanish law has no process for cram down and instead requires unanimity.

This is the first ever Scheme used on a Spanish company, in this case to implement a debt-for-equity swap. It illustrates the flexibility restructuring advisers are using to surmount the challenges of modern complex capital structures when they meet rigid European laws designed for a different time.

> "We had agreement from just short of 80 per cent of the creditors," says Alan Tilley of BT&T, "so to achieve the restructuring we decided to use a UK Scheme to cram down minority members."

The turnaround of La Seda, a leading European manufacturer of cartons used in the soft drinks industry, is on track for completion by July with all plants still open. The only plant that has entered an insolvency process, the UK-based Wilton plant, has been sold by the administrators from Deloitte to a South Korean chemicals company.

A PricewaterhouseCoopers (PwC) report commissioned by the La Seda Board at the request of its 54 banks estimated administration would lead to recoveries of 35 cents in the euro, which many observers believed to be optimistic.

PwC's main caveat was that cash flow through the restructuring period would be vital. Tilley says: "We are still here in March 2010 and en route to completion, which we have managed by my colleague David Bryan's tight treasury control."

Tilley says that in March they secured the agreement of 75 per cent by value and over 50 per cent by number of the lender group, who signed a lock up agreement, to give them the security to move towards a Scheme. Just 3 per cent voted 'no', while others were demanding different conditions for the deal. "So we are cramming down 25 per cent by value," says Tilley.

This isn't a COMI issue, Tilley stresses. Interestingly, the UK Scheme of Arrangement falls under the Companies Act rather than the Insolvency Act 1986, so it isn't covered by the European Insolvency Regulation. The justification to the UK court for migrating the case is that the Spanish company has significant subsidiary operations and a branch in the UK, says Tilley.

Will the Spanish courts accept a UK cram-down?

Tilley admits that the case raises a significant question: Will a UK court order cramming down the minority in the Scheme be binding on Spanish lenders?

"This has never been tested in a Spanish court," he says, "but our Spanish advisers and lawyers say that, should there be an objection, we could use Section 5.3 of the April 2009 Lay Concorso on any objecting Spanish lenders.

"But we don't expect to have to use that process," he adds.

The deal

Under the debt-for-equity swap, the bank syndicate is the only creditor group to be impaired. Equity is being severely diluted, says Tilley, but this was agreed by an extraordinary general meeting. Other creditors are being kept whole, but have to sign up to a deferred payment process.

The bank syndicate gets 41.4 per of the equity. New equity investors get another 41.4 per cent; 150 million euro of new capital from BA Vidro, a Portuguese glass manufacturer based in Oporto, and Caixa Geral, a large Spanish bank.

This new equity will only come through after the confirmation of the restructuring, and La Seda will retain its quote. The balance of the equity will remain with the existing shareholders.

La Seda is a Spanish quoted company whose stock was suspended early last year when 600 million euro senior notes breached their covenants.

> The six months of negotiations to get to this stage have been complicated, says Tilley: "We've had to negotiate bridge funding with the Catalan Government. La Seda is in the middle of building a chemical plant in Portugal. It's a 400 million euro project, but we are getting full support from the banks," he says.

La Seda Firms & Faces

The banks

Deutsche Bank and HSBC are leading a syndicate of 54 banks. **Ian Field** of Allen & Overy in London is advising the syndicate through the agent, **Mark Dixon** of Deutsche.

The company

Cuatrecasas is advising the company, led by **Javier Fontcuberta Llanes** in Barcelona.

The restructuring team is led by **Carlos Gila**, who runs his own firm Gila & Co in Madrid. Gila is assisted by **Alan Tilley** and **David Bryan** of Bryan, Tappy & Tilley (BT&T).

Richard Tett of Freshfields Bruckhaus Deringer in London is advising BT&T on UK issues, the relationship with bank syndicate, the Scheme of Arrangement and La Seda's settlement agreement with Deloitte as administrators of Artenius.

The Artenius administrators

The administrators to the Artenius subsidiary in the UK are from Deloitte: **Dan Butters** in Leeds, **Neville Kahn** in London and **Andy Croft** in Newcastle. They are advised by lawyers Dickinson Dees.

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Karstadt creditors agree to first-ever CMBS bond extension

The prospect of saving billions of euros of value in complex property financings in Europe was given a big boost at the end of February when creditors to a portfolio of stores let by insolvent German retail chain Karstadt agreed to the first-ever extension of a CMBS bond.

The case also marks another two 'firsts':

- **CMBS bondholders form creditors committee for the first time**
- **CMBS bondholders hire financial advisers for restructurings**

"This CMBS bond extension is good news for bondholders and sponsors as we come up to a big spike in maturity dates over the next couple of years," says Karl Clowry, a partner with Paul Hastings in London.

"Balance sheet lenders are able to extend debt, but bonds can't do that, because the maturity date recognised by the ratings agencies is hard and fixed."

Clowry and others expect that the extension approved by a majority of holders of 1.13 billion euro (US$1.5 billion) in Fleet Street Finance Two, a CMBS structure issued to finance department stores occupied by Karstadt, will create a useful precedent for restructurings.

The bondholders voted to extend the 'rated final maturity date' of the notes, in this case by three years from July 2014 to July 2017.

An increasing number of borrowers are defaulting on their European CMBS loans. In such situations, these loans are more frequently becoming "specially serviced" and are undergoing financial restructurings or enforcements. This has led to an increasing role for special servicers in restructuring negotiations.

This trend is expected to increase significantly over the next three years as up to UK£150 billion (US$225 billion) of loans in over 100 CMBS transactions near their maturity dates.

Seniors vs juniors

CMBS restructurings produce some novel problems, particularly because they are made up of different tranches, costed according to different risk ratings. As the property backing the loans plummets in value, a gap opens up between the senior ranking investors, who are virtually guaranteed to remain whole even if the thing collapses into liquidation, and more junior creditors who would prefer to extend the bonds in order to avoid losses associated with a fire-sale. Seniors therefore have little incentive to extend. It takes all the persuasive powers of the advisers involved to get them to agree.

The Karstadt case arose after its parent, Arcandor, was forced into insolvency on 9 June 2009. Another subsidiary Quelle was wound up and Karstadt put into insolvency under the same administrator as Arcandor.

Finally this year advisers managed to persuade the CMBS seniors that in exchange for extending the maturity of the bonds by three years to July 2017 and relaxing loan to value covenants on the financing, all bondholders would receive an additional 52 basis points of margin of interest paid.

In addition, any excess cash from rent or a sale would be used to repay the securitisation ahead of other stakeholders.

As the CMBS spike approaches, restructuring advisers hope this technique will pass into general use.

Fleet Street Finance Two Firms & Faces

The landlord

Highstreet, the landlord of the stores which was advised by Cairn Capital, said the proposals to extend the Fleet Street Finance Two bond received almost unanimous approval. Goldman Sachs/Whitehall, the majority owner of Highstreet, the acquisition vehicle that controls the Arcandor real estate, is being advised **Dr. Frank Kebekus**, who has his own insolvency firm in Düsseldorf.

It is also being advised by Hengeler Mueller in Frankfurt, led by **Dr. Daniel Kress** and **Thomas Müller**.

The consortium of funds that has a minority stake in Highstreet is being advised by Gleiss Lutz, led by **Dr. Jan Bauer** and **Dr. Andreas Spahlinger**; Anchor, a law firm set up by former Wellensiek people, including **Tobias Wahl**; and Sidley Austin in London, led by **Graham Penn**.

The liquidator of Arcandor

The Essen court appointed **Dr. Klaus Hubert Görg**, who runs his own firm in Cologne and Essen, as provisional liquidator of Arcandor on 9 June 2009.

Arcandor

Last year Arcandor appointed **Horst Piepenburg** of Piepenburg & Gerling in Dusseldorf, a well-known German restructuring expert, to advise the management team.

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What went wrong at La Seda

La Seda has several plants around Europe, the one in Italy had to be mothballed. The company had to restate its financial statements in 2008, and then more worryingly several fraudulent transactions emerged.

These involved accelerated invoicing and false invoicing on an enormous scale. Over 550 million of negative ebitda had to be restated.

The board asked a leading Spanish turnaround manager Carlos Gila to come in, first as executive director and then at the end of June 2009 as executive vice chairman of the group in charge of turnaround and restructuring. Gila in turn hired Alan Tilley and David Bryan of BT&T as chief restructuring officers.

Separately, Gila is President of the Turnaround Management Association's (TMA) Spanish unit, which was formally given Chapter status this month.

La Seda's UK subsidiaries

La Seda had two big subsidiaries in the UK; the 'Jewel in the Crown', Appe, which is a 700 million euro business; and Artenius, an old ICI plant on Teeside which was put into insolvency last year before Gila and BT&T were involved.

Artenius had a 250 million euro turnover and employed 150 people when it was the subject of a winding up order. In June 2009 three administrators were appointed from Deloitte; Dan Butters in Leeds, Neville Kahn in London and Andy Croft in Newcastle.

"We arrived too late to stop that administration," says Tilley.

Artenius is being sold to a South Korean company, says Tilley, and most of the jobs have been preserved. BT&T have been providing licensing technology to assist this process, he adds.

Appe has its head office in North Wales, as well as three plants in Belgium, and one each in Germany, Spain and Morocco. It makes pre-formed plastic bottles which are delivered to the likes of Coca Cola and Nestle.