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The Corporate Insolvency and Governance Act – questions and answers with Ropes & Gray

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The Corporate Insolvency and Governance Act (the '**CIGA**'), which came into force on 26 June 2020, introduces the most significant changes to English insolvency law in a generation. In this article, we explore those changes in a 'question and answer' format.

At a glance – what has changed?

The CIGA has introduced permanent changes to English legislation that will ensure that England & Wales remains at the forefront of the global restructuring market. These measures are:

i. a 'free-standing' moratorium;

ii. a new restructuring plan, which includes a 'cross-class cram down' mechanism; and

iii. restrictions on the ability of suppliers to rely on termination clauses triggered by counterparty insolvency.

In addition, the CIGA has introduced the following temporary measures, which seek to give businesses the flexibility and breathing space they need to continue trading and survive the COVID-19 pandemic:

i. a temporary suspension of winding-up proceedings which have been commenced on the basis of statutory demands made between 1 March 2020 and 30 September 2020;

ii. a temporary suspension of winding-up petitions presented between 27 April 2020 and 30 September 2020 triggered by cash flow insolvency, where the pandemic has caused the relevant financial difficulties;

iii. a temporary suspension of wrongful trading provisions from 1 March 2020 to 30 September 2020;

iv. deferrals to certain company filings; and

v. temporary relaxations to the existing company law framework, which allow certain general meetings to be convened by electronic means and on an extended time frame.

The English courts will soon be required to explore and further define the scope and implications of the CIGA – we will be monitoring further developments closely.

- In **Part A**, we look at the new restructuring plan (the '**Plan**').
- In **Part B**, we consider the moratorium.
- In **Part C**, we reflect on the impact on suppliers to insolvent businesses.
- In **Part D**, we consider the temporary measures.

Part A – the Plan

1. What is the new restructuring plan?

The Plan is an important addition to the English restructuring framework, complementing existing rescue procedures, namely, schemes of arrangement (‘**schemes**’) and company voluntary arrangements (‘**CVAs**’). The objective of a Plan is to reduce, prevent, mitigate or eliminate actual or anticipated financial difficulties, which means that it will be used in broad range of restructurings, from ‘amend and extend’ deals through to ‘debt for equity’ transactions.

2. What are the key differences between the Plan and a scheme of arrangement?

The Plan is similar to the scheme in many respects, which has led to certain commentators referring to the new procedure as the ‘super-scheme’. Like a scheme, it is not an Insolvency Act 1986 procedure, but instead is included in the Companies Act 2000. However, there are a number of key differences when compared with a scheme:

i. The Plan introduces ‘cross-class cram-down’, inspired by U.S. Chapter 11 proceedings. This means that, subject to meeting two conditions, stakeholders in a dissenting class or classes are bound by the Plan, even if not voting in favour. To ‘cram down’ the dissenting class or classes, at least one class that would receive a payment under the Plan, or would have a genuine economic interest in the context of the ‘relevant alternative’ (*see question 8 for further discussion*) must have voted to approve the Plan. Secondly, no member of the dissenting class or classes should be any worse off under the Plan than they would otherwise be under the relevant alternative.

ii. Whereas a scheme requires approval by 75% in value and 50% in number of creditors or members in each class, the Plan does not have the majority in number requirement. This means that, compared with the scheme, it is less likely that a high volume of creditors with low-value debt can block a Plan. However, the 75% threshold is higher that the 66.66% threshold under Chapter 11, or under the new ‘Dutch scheme’ (*see question 23 for further discussion of Chapter 11 and the Dutch scheme*).

If the conditions described above are met, the Plan can be used to cram down shareholders. This is an important development – as creditors can now work with the company to ‘flush’ or dilute existing equity.

Under Chapter 11 proceedings, the ‘absolute priority’ rule ensures that the claims of a dissenting class must be satisfied in full before a more junior class can make a recovery. However, this feature has not been included in the CIGA. This means that it should be possible to ‘cram up’ whereby junior classes of stakeholders could work with the company to cram down a senior class. However, in practice this may be difficult as the court will need to be satisfied that the senior class is no worse off than in the relevant alternative, and that the junior class has a genuine economic interest with respect to that relevant alternative (*see question 8 for further discussion*).

3. Who can propose a Plan?

As is the case for schemes, the relevant company, as well as any shareholder, creditor, liquidator or administrator, may apply to the court to convene meetings to approve the Plan. We expect that the majority of Plans will be proposed by the company.

4. Does the relevant company need to be insolvent?

No. The relevant company should have experienced, or be likely to experience, financial difficulties that affect, or will or may affect, its ability to continue operations as a going concern.

5. Can non-English companies access the Plan?

Yes. As with schemes, non-English companies will be able to use the Plan, if they can demonstrate that they have a 'sufficient connection' to the English jurisdiction. It is expected that the court will take a similar approach to schemes when considering if this test has been met (*for further discussion, please see question 23*). However, it should be noted that the plan won't be automatically recognised by EU member states (*for further discussion, please see question 10*).

6. What is the Plan process?

The Plan process is very to similar to a scheme, broadly comprising (i) an application to court and initial notice to stakeholders, (ii) a convening hearing and notice to stakeholders together with an explanatory statement setting out details of the Plan, (iii) stakeholder meetings to vote on the Plan, and (iv) a sanction hearing. The court will scrutinise the fairness and reasonableness of the process, as well as ensuring procedural regularity.

The CIGA does not provide for a timeline. However, as with a scheme, it is expected that the process will require at least six weeks from the date upon which application is made to the court for the convening hearing. As with a scheme, this date will be preceded by a preparatory phase, during which the company and stakeholders would negotiate the Plan, documentation would be finalised, and supporting stakeholders would enter into a lock-up or restructuring support agreement.

7. Who is entitled to vote on a Plan?

Any creditor or shareholder whose rights are affected by the proposed Plan is permitted to vote at the meeting of the relevant stakeholder class (*see question 9 below*). It remains to be seen how the courts will consider the question of whether a stakeholder's rights are affected, including whether non-financial creditors such as suppliers and landlords could be considered as 'affected'.

Crucially, creditors or shareholder can be excluded from the voting process if the court is satisfied that they do not have a 'genuine economic interest'. This means that out-of-the-money stakeholders, such as shareholders in a deeply distressed business, are not required to approve a Plan.

8. What is the relevant alternative, and what is a genuine economic interest?

The court will need to consider what is the appropriate 'relevant alternative', meaning the scenario which the court considers most likely to occur in the absence of a court-sanctioned Plan. As with schemes, we expect that liquidation will often be identified as the relevant alternative. However, the court may be presented with differing alternatives by opposing stakeholders, and it will then need to determine which scenario is the most appropriate. In considering which is the relevant alternative, the court will need to consider relevant valuation evidence. Having established the relevant alternative and appropriate valuation, the court will then need to ascertain which stakeholders have a genuine economic interest.

Whilst common for U.S. courts to make valuation determinations in Chapter 11 cases, this is relatively unchartered territory for the English courts, which have rarely been required to consider valuation evidence in detail.

9. How will stakeholder classes be formed under a Plan?

As per a scheme, stakeholders will vote on the Plan in classes. When scrutinising the proposed composition of classes, it is expected that the court will follow the scheme principle that stakeholders should vote together in the same class where their rights *'are not so dissimilar as to make it impossible for them to consult together with a view to their common interest'*.

10. Will the Plan be automatically recognised across the EU?

Importantly, the Plan won't be automatically recognised by EU jurisdictions under the European Insolvency Regulation, meaning that having obtained court sanction for a Plan, companies will then need to seek recognition of the judgment in each relevant European jurisdiction (for example, a non-English company will need to seek recognition in its jurisdiction of incorporation). This will add additional procedural complexity. When considering whether to sanction a scheme, the English court assesses evidence as to the likelihood of the scheme being recognised in relevant jurisdictions (e.g., New York, where the scheme compromises New York law-governed debt). We anticipate that the court will request similar evidence when considering whether to sanction a Plan.

11. Is a Plan given special status for tax purposes?

Yes, most importantly the Plan is treated as a statutory insolvency arrangement for UK corporation tax purposes, meaning that income recognized by a debtor on release of financial indebtedness as part of a Plan should qualify for exemption from corporation tax. Certain changes have been made to other parts of the tax legislation, mostly aimed at treating a Plan in a similar way to a scheme.

Part B – the moratorium

12. What is the scope of the moratorium?

The aim of the moratorium is to provide a distressed but viable company with breathing space from creditor action, in order to facilitate a rescue as a going concern and/or restructuring.

A moratorium is available to certain companies where:

i. a company is, or is likely to become, unable to pay its debts; and

ii. it is likely that the moratorium would result in the rescue of the company as a going concern.

It is a free-standing process, meaning that it does not have to be combined with an insolvency procedure or restructuring procedure, and there will be no requirement to have a particular outcome in mind at the time of entry into a moratorium. The moratorium is initiated by the directors filing the relevant documents with the court (although a court order is required with respect to an overseas company, if the company is subject to a winding-up petition, or if an extension to the moratorium is sought). As part of the court documents, the directors must provide confirmation of (i) above, and the monitor, an insolvency practitioner who supervises the moratorium (*see question 13 below for further discussion*) must provide confirmation of (ii) above. Under a temporary measure (until 30 September 2020), the monitor may qualify its statement to the court: it may state that it is likely that a moratorium would result in the rescue of the company as a going concern, or would do so if it were not for any worsening of the financial position due to coronavirus.

Once the moratorium is in place, the directors remain in control of day-to-day operations, but under the supervision of the monitor. Before undertaking certain transactions, the directors must seek the consent of the monitor. Whilst the moratorium is in place, there are restrictions on the enforcement of 'pre-moratorium debts' (indebtedness incurred by the company prior to moratorium) and 'moratorium debts' (indebtedness incurred by the company during the moratorium). Pre-moratorium debts are subject to a payment holiday save for listed exceptions; key exclusions are capital markets arrangements, bank debt and certain other financial obligations (*see question 15 below*), contracts secured by a financial collateral arrangement, rent, goods and services, salary payments, and expenses of the monitor (*see question 13 below*).

No administration may be commenced, no winding-up petition shall be presented and no winding-up order may be made unless initiated by the directors of the company. Unless court permission is obtained, no forfeiture or re-entry rights may be exercised, no steps may be taken to commence or continue a legal process (other than certain employment-related proceedings), no floating charges will crystallise (subject to certain exceptions) and creditors will be unable to enforce security over the company's property (except for certain financial collateral).

13. What is the role of the monitor?

The moratorium will be overseen by a licenced insolvency practitioner who will act as a monitor. The monitor will scrutinize the company for the duration of the moratorium, assessing whether it is likely that the moratorium will result in the rescue of the company as a going concern.

The monitor should make a statement, to be included in the documents filed with the court to initiate the moratorium, stating that in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern. Once the monitor receives notice from the directors that the moratorium has come into force, the monitor will notify the registrar of companies, every creditor of whose claim the monitor is aware and, where necessary, the appropriate Pensions Regulator or Pension Protection Fund.

The monitor's consent will be required with respect to certain transactions, including non-ordinary course disposals, any grant of security, and payment of pre-moratorium debts (in excess of the greater of £5,000 and 1% of the company's unsecured liabilities).

However, the directors will remain in charge of running the business on a day-to-day basis.

14. What is the duration of the moratorium?

The moratorium will provide an initial breathing space of 20 business days to the company. Subject to satisfaction of certain conditions (including payment of all moratorium debts and pre-moratorium debts for which the company does not have a payment holiday), the directors may file for an extension of a further 20 business days. Any extension beyond 40 business days will require the consent of the company's pre-moratorium creditors (amongst other conditions) or the court. The moratorium may last for up to a year.

The moratorium will come to an end if the company enters into administration or liquidation or if a scheme or Plan is sanctioned. In addition, the monitor may terminate the moratorium if of the view that the moratorium is no longer likely to result in the rescue of the company as a going concern, that a rescue has been achieved, that the company is unable to pay its debts that have fallen due, or it is unable to carry out its duties.

15. What are the key exclusions to the moratorium?

Companies that are subject to either an ongoing or recent (within the last 12 months) insolvency proceeding are excluded from using the moratorium, as are companies for which a moratorium is already or, during the last 12 months was, in force. Other companies excluded from the moratorium include, among others, insurance companies, certain financial institutions and any company that is party to a 'capital market arrangement'. A capital market arrangement is an arrangement in excess of £10 million in value, where a company has provided security to a trustee or agent, guaranteed or secured the obligations of another party, or invested in certain options, futures or other derivatives, in each case under a capital markets instrument. There will therefore be many companies, for example, those with a significant amount of outstanding bonds, that will not have access to a moratorium.

The payment holiday will not apply to pre-moratorium debts arising under contracts for ‘the provision of financial services consisting of lending’, which will exclude most bank facilities. Most facility agreements (including the Loan Market Association facility agreements) provide that a moratorium will be an event of default. Upon an event of default, nothing in the CIGB will prevent lenders’ rights to accelerate the debt or claim any rights of set-off. Where excluded debts are accelerated, the company must be in a position to settle these as they fall due; otherwise, the monitor is obliged to end the moratorium and lenders would be able to enforce their security in accordance with the terms of their finance agreements.

Other financial obligations such as guarantees, derivatives, factoring and finance leasing will also be excluded from a payment holiday. Importantly, the moratorium does not extend to financial collateral arrangements either. The moratorium may not be the most beneficial process for companies that are parties to significant financial collateral arrangements or have significant bank debt. Other restructuring tools could be more appropriate in these circumstances.

Unpaid moratorium debts and ‘priority pre-moratorium debts’ are granted super-priority status in a subsequent liquidation or administration (or protection from compromise in a Plan, CVA or scheme) commencing within 12 weeks of the end of the moratorium. Priority pre-moratorium debts are, for the most part, unpaid pre-moratorium debts that are not subject to a payment holiday, However, the definition of priority pre-moratorium debts specifically excludes any amount under a financial contract that, between (i) the date of the initial monitor’s statement regarding the likelihood of rescue (see paragraph 11 above) and (ii) the end of the moratorium, fell due as a result of acceleration or early termination.

Part C – suppliers to insolvent businesses

16. How does the CIGA impact suppliers?

Many commercial contracts include ‘ipso facto’ clauses, whereby a supplier is permitted to terminate a contract upon the insolvency of the relevant counterparty. Pre-CIGA, English insolvency legislation prohibited suppliers of essential supplies (namely, electricity, gas, water, communications and IT services) from enforcing ipso facto clauses.

New provisions in CIGA broaden the scope of this prohibition to include all contracts for the supply of goods and services, with the objective of ensuring continuity of supplies for distressed businesses, and assisting continuity of operations. Prohibition extends not only to termination of the relevant contract, but also termination of supply. The grounds for termination that are covered by the CIGA prohibition include the new Plan and the moratorium, as well as existing English insolvency procedures; however, termination clauses triggered by schemes are not captured.

Suppliers are not permitted to make continued supply of goods and services conditional upon payment of outstanding amounts for supplies made before the insolvency trigger. Suppliers are also prohibited from increasing pricing or introducing new payment terms as a result of the insolvency trigger.

Should rights to terminate the contract have arisen before the relevant insolvency trigger event, but were not subsequently exercised, termination after the occurrence of the insolvency trigger event is prohibited. However, once the insolvency trigger event has occurred, suppliers will be able to terminate a contract on other contractual grounds, such as non-payment, or breach of contract.

Suppliers benefit from certain safeguards under the CIGA. A supplier can apply to the court for permission to terminate the contract on the grounds of hardship caused to its own business. Small company suppliers are also exempted from the prohibition until 30 September 2020. A contract can also be terminated with agreement of the company (where the company has entered a moratorium, voluntary arrangement or restructuring plan) or the officeholder (in any other relevant procedure). In addition, if a business or assets are transferred into a ‘newco’ structure as part of a restructuring, suppliers do not have to supply the newco. The CIGA includes carve-outs for financial services, meaning that insolvency events of default in finance documents are not impacted.

Part D – the temporary measures

17. What is the impact of the temporary measures on directors' duties?

Under English 'wrongful trading' legislation, directors can incur personal liability if the relevant company enters into liquidation or insolvent administration, and the director knew (or should have reached the conclusion) that there was no reasonable prospect of the company avoiding liquidation or administration proceedings. The threat of a possible wrongful trading application serves as a powerful deterrent to directors where a company continues to trade and there is a threat of insolvency, even where directors intend in good faith to take steps to minimise losses to creditors. Faced with potential insolvency, this can be a difficult course for directors to navigate, and becomes increasingly challenging to assess at a time when there is considerable uncertainty around trading conditions, both in the immediate and longer-term future. Directors have to make difficult decisions about the future viability of their companies and whether it is appropriate for trading to continue.

CIGA introduces a temporary change to wrongful trading legislation, whereby directors' personal liability is suspended with respect to any worsening of the relevant company's financial position between 1 March 2020 to 30 September 2020. The suspension period may be extended further (*see question 22 for further discussion*). The suspension allows directors of companies impacted by the pandemic to take decisions, without the threat of personal liability arising pursuant to wrongful trading application from a future liquidator or administrator.

Under the CIGA, the court *'is to assume that the [director] is not responsible for any worsening of the financial position of the company or its creditors'* that occurs during the suspension period. The amended approach applies irrespective of whether it is shown that the worsening of the company's position was a result of the pandemic.

However, directors may still incur liability for fraudulent trading or for breach of their duty to promote the success of the company, whilst considering the interests of creditors where they 'know or should know that the company is or is likely to become insolvent'.

However, there is a significant carve-out to these temporary measures: the changes do not apply to the directors of certain excluded companies, including any company that is a party to a qualifying capital markets arrangement. This is broadly defined to include companies that have granted security or guaranteed obligations with respect to a capital markets instrument, including any rated or listed bond.

18. What is a statutory demand, and what are the implications of the temporary measures?

A statutory demand is a written demand presented to a company, requiring payment of an unpaid debt. Where a statutory demand remains unpaid, the creditor may then use the outstanding debt to demonstrate to a court that a company is unable to pay its debts and then rely on this as grounds to present a winding-up petition, forcing the company into liquidation.

The CIGA prevents the use of a statutory demand to bring a winding-up petition against a company, for the period of 1 March 2020 to 30 September 2020. The suspension applies regardless of whether or not the debtor is experiencing financial difficulties as a result of the pandemic.

Whilst the provision applies to all creditors, the genesis of the measure was in response to the issue of landlords who sought to sidestep the moratorium on forfeiture introduced by the Coronavirus Act 2020 by presenting a statutory demand for payment of rent. The suspension period may be extended further (see question 22 for further discussion).

19. Are all winding-up petitions suspended?

No. With retroactive effect from 27 April, any creditor presenting a winding-up petition on the grounds that the company is unable to pay its debts must be able to demonstrate to the court that they have reasonable grounds to believe that the company's inability to pay its debts was not caused by the coronavirus pandemic. A winding-up order will only be made against the company if the court is satisfied that the company would be unable to pay its debts even if coronavirus had not had a financial effect (the 'relevant test'). Any winding-up petition presented between 27 April and 30 September will be void if the relevant test is not met, and the suspension period may be extended further (see question 22 for further discussion). Importantly, if a petition had been made under pre-CIGA legislation, and the relevant test was not met, then the court is permitted to make orders necessary to reinstate a company's position, and the petitioning creditor may be liable for the associated costs. If a winding-up order was made during that period and the court would not have made the order in light of the temporary Covid-19 condition, the winding-up order will be void. In practice, it may be difficult for the court to determine whether a company would be insolvent, were it not for the consequences of the pandemic – it will be interesting to see the approach taken by the court in the months ahead (for further discussion on the role of the court, please see question 22).

20. What are the temporary changes to company meeting requirements?

Those companies that are obliged to hold an annual general meeting ('**AGM**'), have struggled to meet this obligation, whilst simultaneously observing social distancing requirements. To ease this problem, the CIGA introduces temporary relaxations that permit companies that would otherwise hold a general meeting (including an AGM) during the period of 26 March to 30 September 2020 to hold such meetings virtually by electronic means (with no requirement for the meeting to be held at a particular place). In addition, votes may be cast by electronic or other means, and the meeting may be held without a quorum of participants having to be together in one place.

The CIGA also makes provision to extend the period within which companies must hold an AGM in order to offer further flexibility, if required. Those entities with a deadline for holding an AGM expiring between 26 March 2020 and 30 September 2020 will be given until 30 September 2020 to hold their AGM.

21. What are the implications for company reporting?

Public companies which are required to file their accounts and financial reports between 25 March 2020 and 30 September 2020 will have until the earlier of 30 September 2020 and the last day of the period of 12 months immediately following the end of their relevant accounting reference period to do so.

The CIGA also provides for secondary legislation to be introduced to extend the time for filing various documents at Companies House, including accounts, confirmation statements and notices of appointment and resignation of directors. In addition, the regulations may extend the deadline for registering a charge with Companies House.

22. What further developments are expected?

Further extensions to temporary measures

Certain temporary measures, namely, the suspension of winding-up proceedings which have been commenced on the basis of statutory demands, the suspension of winding-up petitions triggered by cash flow insolvency and the suspension of liability under wrongful trading provisions, will expire on 30 September 2020. However, in the event that the impact of the pandemic on businesses continues beyond the end of that period, the suspension may be extended for up to six months using secondary legislation (and may be further extended using the same method).

DIP financing?

Chapter 11 permits ‘debtor-in-possession’ financing, which is used to fund the business during the course of the Chapter 11 proceedings. Lenders under such ‘DIP’ financing may be secured on a super-prime basis, provided that other secured creditors consent, or if the company can show that financing was unavailable on better terms, and the other secured creditors are ‘adequately protected’. The CIGA has not introduced a DIP regime, meaning that any new funding must fit within the framework of the existing debt documentation. However, approval may be sought pursuant to the Plan itself for new priming debt, and the government has indicated that DIP financing legislation may be forthcoming. The question remains as to whether such legislation will be accelerated through the legislative process, in the same manner as the CIGA.

The role of the English court

The CIGA only sets out the framework for the Plan. Given the state of the economy, both in the UK and globally, we expect to see a number of Plans presented over the coming months, and the English court will be instrumental in testing and developing how the Plan is used. Whilst there is a significant body of case law in relation to schemes, much of which will be pertinent to the Plan, new issues and challenges will arise. In particular, the English court will need to consider valuation evidence in relation to the Plan. We expect that in many situations competing valuations will be presented to the court, and, as often seen in Chapter 11 proceedings, the courts will be involved in resolving valuation disputes. We will be closely monitoring developments in relevant case law.

23. How will the changes impact the cross-border restructuring landscape?

Until recently, many jurisdictions lacked ‘tried and tested’ restructuring tools. This has meant that English procedures such as schemes, or Chapter 11 proceedings in the United States, have become very popular with non-English or non-U.S. companies seeking to restructure.

Non-English companies can access the English courts by demonstrating ‘sufficient connection’ with the jurisdiction. This can be achieved in a number of ways, most commonly by compromising English law debt (or amending the governing law of debt to English law), the accession of an English co-borrower or co-issuer, or moving the ‘centre of main interests’ (COMI) of a company to England. A scheme can be completed in as little as six weeks, does not have the stigma of an insolvency process (a scheme is a company law procedure) and allows management to stay fully in control. A company voluntary arrangement (CVA) can be completed within a few weeks, allows management to stay in control, and (unless challenged) does not require court involvement.

Chapter 11 proceedings under the United States Bankruptcy Code are frequently considered by non-U.S. companies as a means to restructure. The jurisdictional threshold to access the U.S. courts is low; a place of business or property in the U.S. (including funds in a U.S. bank account) are sufficient, meaning that overseas companies can access Chapter 11 with relative ease. However, Chapter 11 can be a lengthy and expensive process, and court approval is required for key business decisions. This means that for many restructuring situations, England has a comparative advantage.

However, a number of European jurisdictions have or are about to introduce new restructuring procedures. Eligible European companies will be more likely to a restructure in a European jurisdiction. In Spain, the popularity of the *homologacion* process as a means of compromising the debt of Spanish companies has increased, as stakeholders, especially international investors, have become increasingly comfortable with the process. In the Netherlands, the ‘Dutch scheme’ will shortly come into force, and like the Plan, takes inspiration from Chapter 11. In particular, it will offer cross-class cramdown, and only requires a two-thirds majority of each voting class. Importantly, it will be available to both Dutch and non-Dutch companies. Whilst inevitably stakeholders will be cautious about being amongst the first to test the Dutch scheme, we expect to see a number of restructurings using this procedure over the coming months.

With competition from such jurisdictions, we may see fewer European companies looking to the English courts as a forum for their restructurings, especially as, post-Brexit, seeking recognition in European jurisdictions is likely to add procedural complexity.

In the context of this increased competition, the CIGA is very welcome. It strengthens the English restructuring regime; certain features of Chapter 11, such as cross-class cramdown, are now available for both English companies and overseas companies that can demonstrate a sufficient connection. Whilst Chapter 11 will remain a popular tool for cross-border restructurings, and certain European companies may choose to use new restructuring tools available in their jurisdictions of incorporation, the appeal of the English jurisdiction as a forum to restructure a business is now greater than ever.