

Restructuring Plans: An emerging alternative to Chapter 11 for US companies?

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The restructuring plan (**RP**) is the most powerful restructuring tool available in the UK. It was introduced in 2020 against the backdrop of the economic difficulties caused by the COVID-19 pandemic. Since its introduction, over 50 RPs have been successfully sanctioned for companies ranging in size and in many different industries.

The RP was created under the Companies Act 2006 (rather than insolvency legislation) and enables a company to reach a compromise or arrangement with its creditors. Where this cannot be done consensually, the Court can "cram down" dissenting creditors, provided the relevant statutory conditions are satisfied.

There is a relatively low jurisdictional threshold to access the RP, requiring merely a "sufficient connection" to the jurisdiction in which the RP is proposed. This can be achieved in a number of ways, meaning that the RP is open to use by foreign companies.

In the last 12 months, there has been an increase in the use of RPs by US-based companies as an alternative to Chapter 11 bankruptcy. The US courts have shown a willingness, in appropriate circumstances, to recognise the RP in Chapter 15 proceedings.

The key reasons for US debtors choosing the RP have included: preservation of a US public stock listing, favourable class voting thresholds, the general speed of the RP, the availability of non-consensual third-party releases, the relative value (and cost savings) when compared with Chapter 11 and the ability to depart from the absolute priority rule, where this can be justified.

An RP will not always be a viable alternative to Chapter 11. However, it is increasingly within the range of options to be considered when a restructuring is required.

How does an RP work?

An RP is a formal, Court-supervised procedure designed to assist companies in financial distress by enabling them to propose a compromise or arrangement with their creditors and/or shareholders. The process requires two Court hearings and begins with the company preparing a practice statement letter setting out the key features and effect of the proposed plan, which is then distributed to all creditors. Creditors are organised into voting classes depending on the nature of their rights against the company and the proposed treatment of those rights in the RP.

An initial Court hearing is then held, at which the Court will consider only jurisdiction and class composition. If the Court is satisfied that the relevant conditions have been met, the company circulates a more detailed document, known as an explanatory statement, to all creditors proposed to be included within the plan. Meetings of the creditors and shareholders are then convened, and those classes vote on the plan.

If at least one class of creditors votes in favour (requiring at least 75 percent by value of those voting in that class), the matter returns to the Court for a sanction hearing. The Court has ultimate discretion whether to sanction the plan and "cram down" any dissenting creditor classes, provided it considers the plan to be just and equitable and to achieve a better outcome for creditors than the relevant alternative (typically a formal insolvency such as a UK administration or US Chapter 11 proceedings).

Recent cases involving US debtors

Three RP's proposed by separate US-listed debtors have successfully obtained sanction in the English courts during the last 12 months, namely:

1. Argo Blockchain Plc [2025] EWHC 2951 (Ch) [1]

2. Fossil (U.K.) Global Services Ltd [2025] EWHC 2741 (Ch)[2]

3. NFE Global Holdings Ltd and another [2026] EWHC 1620 (Ch)[3]

Why was the RP selected in these cases?

1. Argo Blockchain

Argo Blockchain is a crypto miner and, whilst headquartered in the UK, is listed on the Nasdaq. As a result of its extensive US operations and New York-governed debt, it was eligible for Chapter 11.

However, the RP was chosen instead. A key reason was the **preservation of the company's Nasdaq listing**. It was a central (and untested) question whether the RP would trigger

mandatory delisting under the Nasdaq rules. The debtor's view was that it should not, in contrast to a Chapter 11 filing. Following extensive submissions to the listing panel, it was concluded that the company's RP was neither a "bankruptcy" nor a "business combination" requiring delisting. The fact that the RP is a rescue tool available under the UK's companies (as opposed to insolvency) legislation was helpful to this analysis. This provides a significant precedent for UK companies reliant on US capital markets.

The English Court was also required to address objections from US-based noteholders who argued that, because their claims were senior in priority to the shareholders in the capital structure, shareholders should receive no recovery unless creditors were first paid in full (i.e., invoking the absolute priority rule imposed in US Chapter 11 cases where a dissenting class must be satisfied in full before a more junior class can receive any distribution, or retain an interest). However, the judge rejected that position in unequivocal terms and confirmed that **English restructuring law contains no absolute priority rule. Rather, the Court is required to assess whether the value created by the RP compared with the relevant alternative (which will usually be an insolvency) has been fairly allocated, having regard to each stakeholder's contribution.** In short, it is possible for a debtor in an RP to depart from the absolute priority rule where this can be justified.

2. Fossil Group

The Fossil case differs from Argo Blockchain in that it is the first case (as far as we are aware) in which a publicly traded US company formed an English entity specifically to allow its US group to benefit from the RP regime.

Fossil Group Inc. (FGI) is a Texas-based, publicly traded, Nasdaq-listed US company. FGI had sought to avoid the need for an RP (or indeed any formal restructuring tool) by seeking a consensual restructuring of its unsecured loan notes due 2026 (the **Notes**).

After failing to obtain the necessary 90 percent threshold for a consensual restructuring of the Notes (ultimately reaching 82 percent), the Fossil Group established a UK-incorporated company, which acceded as a guarantor to the Notes, and the governing law of the Notes was amended from New York law to English law with majority noteholder support.

One feature of the Fossil Group case was the large number of retail investors holding Notes, which made satisfying Chapter 11's numerosity threshold (over 50 percent of the total number of voting creditors in a class) highly uncertain. In contrast, the **RP has no numerosity requirement for class acceptance**, simply requiring the approval of at least 75 percent by value of the claims represented in the relevant class.

As an illustrative example, imagine a situation with 34 creditors in a class, with a total debt of $10,000. The two largest creditors were owed $4,000 each, and the other 32 creditors were each owed $62.50. Under an RP, only votes in favour from the two largest creditors (with a combined debt value of 80 percent of the total debt) are necessary to reach the required voting approval threshold of 75 percent. In the United States, however, a consenting vote would also require that 18 holders in total approve the Chapter 11 (thus giving the smaller $62.50 creditors significant voting weight). In the case of Fossil Group, 60 percent of the Notes were held by two institutional investors (HG Vora and Nantahala) and the remaining Notes were held by retail investors (with some Notes denominated in amounts as low as $25; thus, there was a large number of, comparatively small by value, retail investors). There was, therefore, an expectation that most of the non-institutional holders would not participate in any restructuring, and further concerns that they could thwart a Chapter 11 on numerosity grounds if enough of the holders voted against.

Furthermore, as mentioned above, FGI plainly incorporated an English entity to fall within the jurisdiction of the Insolvency Act 1986, and the High Court judge expressly recognised that the **strategy of creating a new English entity can be "good forum shopping," which is permitted.** To support this, FGI also enlisted Judge James M. Peck, a retired US Bankruptcy Court Judge, to provide the English Court with an expert opinion. He opined that if an English Court accepted jurisdiction over the Fossil RP, a US Court would recognise and enforce the RP in the United States through Chapter 15.

The RP was sanctioned on 10 November 2025, and two days later, FGI obtained (on an uncontested basis) Chapter 15 recognition in the United States Bankruptcy Court for the Southern District of Texas, granting domestic effect to the terms of the RP in the United States.

It is noteworthy that the Fossil RP included non-consensual third-party releases. The English court was satisfied that the limited release was intended to prevent noteholders from undermining the RP *“by suing directors and advisers involved in proposing or implementing it”*. Such non-consensual third-party releases are now a common feature of RPs in England, marking a departure from the law in the United States, where they are generally prohibited in Chapter 11 cases following the US Supreme Court decision in Purdue Pharma.

Notwithstanding the general prohibition on non-consensual third-party releases in Chapter 11 cases, the United States Trustee did not object to the recognition of such releases in FGI's Chapter 15 case. The issue of whether the US Courts' enforcement of non-consensual third-party releases in Chapter 15 foreign recognition orders runs afoul of Purdue Pharma is currently on appeal in the United States Court of Appeals for the Third Circuit in Crédito Real.

3. New Fortress

New Fortress Energy Inc. (NFE) is a Nasdaq-listed global energy infrastructure company. Following continued operational challenges and financial difficulties, NFE entered into a restructuring support agreement in March 2026, supported by approximately 97 percent of creditors by value, which sought to restructure over $9 billion of debt. This was effectuated by way of an RP, whereby six of the seven classes voted unanimously in favour and the seventh class voted 99.84 percent by value in favour.

In order to access the RP, NFE incorporated two UK subsidiaries (again demonstrating the ability to engage in "good forum shopping"). The RP was sanctioned on 18 June 2026 by the English High Court. On 26 June 2026, NFE obtained Chapter 15 recognition of its RP in the United States Bankruptcy Court for the Southern District of New York. In enforcing the third-party releases contained in the RP, the Bankruptcy Court noted in its oral ruling that it would be a "tougher issue" if the release extended to "third-party mass tort claims."

The case is another example of how an RP permits a company to remain compliant with Nasdaq's continued listing requirements during a restructuring process, which has continued to create a path for Nasdaq-listed entities to restructure without the risks to listed status caused by alternative US bankruptcy processes.

Why an RP could, in certain circumstances, be a useful restructuring tool for US companies

1. **Supportive jurisdiction for "good forum shopping."** The English courts continue to demonstrate that they are “open for business” and prepared to accept jurisdiction for the restructuring of foreign companies. There are a variety of established practices available to bring overseas-based situations within the jurisdiction of the English courts (as demonstrated in the FGI and NFE cases).
2. **Restructuring of US debt.** RPs can be used to restructure the liabilities of a US debtor, provided that the approach under the RP does not violate US public policy. Following sanction by the English Court, recent RPs have subsequently been recognised by US Courts under Chapter 15 of the US Bankruptcy Code.
3. **Flexibility in creditor class.** RPs are a flexible tool in terms of the ability for a company to focus on specific parts of the capital structure. RPs do not require all creditors to be compromised by the plan.
4. **No absolute priority rule.** Under an RP, shareholders or junior ranking creditors may, in certain circumstances, be permitted to receive some form of recovery before senior ranking creditors are

paid in full. This affords the RP greater flexibility than a Chapter 11 plan because it allows for differential treatment of creditors, where such treatment is justified.

5. **Different approval threshold.** Under an RP, a single 75 percent value approval threshold applies (of those in that class who vote), with no numerosity test. This contrasts with Chapter 11, which has a 67 percent value threshold but also requires more than 50 percent by number of each voting class.
6. **Ability to retain listed status.** The RPs have shown that Nasdaq-listed entities can restructure without losing their listed status.
7. **Non-consensual third-party releases.** The Fossil Group case included non-consensual third-party releases, where non-debtor parties (the directors and advisers) were released from liability without the consent of affected creditors. Following the US Supreme Court's decision in *Purdue Pharma*, US Bankruptcy Courts are generally unable to grant such releases within Chapter 11 proceedings. However, US Courts are currently recognising third-party releases contained within foreign plans under Chapter 15. It should be noted that the issue of US Bankruptcy Courts recognizing non-consensual third-party releases in Chapter 15 recognition filings is currently being appealed to the Third Circuit in *Crédito Real*.

Implications for cross-border restructurings

The aforementioned cases clearly demonstrate the benefits that can be achieved by using an RP; however, it remains to be seen whether it will become a more common alternative to Chapter 11 proceedings for US companies or will remain a rarity for specialised cases.

It is important to note that each of the cases so far has been pursued without significant creditor opposition. Both the US and English courts may be more reluctant to grant the necessary relief in the face of substantial creditor opposition. In particular, contested proceedings could lead to challenges regarding the recognition of non-consensual third-party releases under Chapter 15 (depending on the outcome of the appeal in *Crédito Real*).

For instance, in the *Mega Newco* case, an originally Mexico-based debtor sought to implement a restructuring in the UK and then have that proceeding recognized in the United States under Chapter 15.[4] Although the US Court ultimately granted the company's recognition application, the Court felt it necessary to comment that:

[I]f [Courts] were routinely to allow this structure in all cases, no matter what the circumstances, the ordinary predicates for Chapter 15 relief could be stripped of any meaning. Any debtor company could restructure its obligations anywhere it chose without even subjecting itself to a foreign proceeding. All that a debtor would need to do is to form a new subsidiary in a jurisdiction of its choice

and then cause that new subsidiary to assume the parent company's obligations. … The laws of the chosen jurisdiction would govern a restructuring, no matter how those laws might affect the legitimate expectations of creditors and regardless of whether the debtor had chosen a particular jurisdiction for the purpose of favoring insiders or for other improper reasons.[5]

This concern was echoed in the *New Fortress* case, where Judge Glenn stated: *"I want to be sure that no class of creditors has been disadvantaged by going to the UK and then coming back in a Chapter 15."* In that case, any such concern was mitigated by the overwhelming creditor support, with 99 percent voting in favour.

It should also not be forgotten that RPs are not without other limitations. For example, there is no established debtor-in-possession financing regime (meaning that difficulties in accessing financing can be a constraint on companies using an RP), and there is also no automatic stay to prevent creditors from taking action against the debtor before an RP is sanctioned.

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1 https://southsquare.com/wp-content/uploads/2026/01/Re-Argo-Blockchain-plc-sanction-2025-EWHC-3395-Ch.pdf

2 https://www.iclr.co.uk/document/2025038083/2025ewhc3058ch_TNA/html

3 https://plus.lexis.com/uk/cases-uk/re-nfe-global-holdings-ltd-and-others/?crid=3a4d3c59-aac1-425a-a1b6-8fc0efb9c886

4 *In re Mega Newco Ltd.*, 2025 WL 601463 at *3 (Bankr. S.D.N.Y. Feb. 24, 2025).

5 *See id.* at *6-7.

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