EXTERNAL REVIEW PANEL OF THE

DETERMINATIONS COMMITTEE OF THE

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

DC ISSUES: 2025100602, 2025102791, 2025102901 and 2025110501

DECISION

1. The following Reviewable Question has been submitted for external review:

   "*Has a Restructuring Credit Event occurred with respect to Ardagh Packaging Finance plc*?"

   The Reviewable Question is asked four times, by reference to the factual position on the following dates:

   a. 7 October 2025 (**Question 1**).

   b. 27 October 2025 (**Question 2**).

   c. 29 October 2025 (**Question 3**).

   d. 5 November 2025 (**Question 4**).

2. The Reviewable Question responds to the 2014 ISDA Credit Derivatives Definitions (the **Definitions**), so far as material as follows:

   "Section 4.1. Credit Event

   "Credit Event" means, with respect to a Credit Derivative Transaction, one or more of Bankruptcy, Failure to Pay, Obligation Acceleration, Obligation Default, Repudiation/Moratorium, Restructuring, or Governmental Intervention…"

   "Section 4.7. Restructuring.

   "(a) "Restructuring" means that, with respect to one or more Obligations and in relation to an aggregate amount of not less than the Default Requirement, any one or more of the following events occurs in a form that binds all holders of such Obligation, is agreed between the Reference Entity or a Governmental Authority

and a sufficient number of holders of such Obligation to bind all holders of the Obligation or is announced (or otherwise decreed) by the Reference Entity or a Governmental Authority in a form that binds all holders of such Obligation (including, in each case, in respect of Bonds only, by way of an exchange), and such event is not expressly provided for under the terms of such Obligation in effect as of the later of the Credit Event Backstop Date and the date as of which such Obligation is issued or incurred:

(i) a reduction in the rate or amount of interest payable or the amount of scheduled interest accruals (including by way of redenomination);

(ii) a reduction in the amount of principal or premium payable at redemption (including by way of redenomination);

(iii) a postponement or other deferral of a date or dates for either (A) the payment or accrual of interest, or (B) the payment of principal or premium;

(iv) a change in the ranking in priority of payment of any Obligation, causing the Subordination of such Obligation to any other Obligation; or

(v) any change in the currency of any payment of interest, principal or premium to any currency other than the lawful currency of Canada, Japan, Switzerland, the United Kingdom and the United States of America and the euro and any successor currency to any of the aforementioned currencies (which in the case of the euro, shall mean the currency which succeeds to and replaces the euro in whole)."

3. We held an administrative meeting on 24 November 2025. On 2 December 2025, four sets of Written Materials were submitted on behalf of the Yes Presented Position and two sets of Written Materials on behalf of the No Presented Position. We have read each of the briefs and taken them into account in this decision. We conducted a hearing for Oral Argument on 9 December 2025 at the offices of A&O Shearman. Mr Adam Al-Attar KC and Mr Matthew Weiniger KC made oral submissions for the Yes Presented Position and No Presented Position respectively.

4. There is a Statement of Agreed Facts, to which reference may be made if necessary. We do not therefore set out those facts in this decision. In accordance with Section 4.6(d) of the Credit Derivatives Determinations Committees Rules, we are obliged to answer the Reviewable Questions by choosing a Presented Position as the "*better answer*".

5. In our unanimous opinion, the better answer to Question 1 is "*yes*", namely that a Restructuring Credit Event has occurred with respect to Ardagh Packaging

Finance plc (**APF**) by reference to the factual position on 7 October 2025. As a consequence, the better answer to Questions 2, 3 and 4 is also "*yes*", on the basis that a Restructuring Credit Event occurred with respect to APF by 7 October 2025. In other words, the earliest of the four dates identified in paragraph 1 above by which a Restructuring Credit Event occurred with respect to APF is 7 October 2025.

6. We summarise the reasons for our decision under the following heads:

    a. Section 4.7 of the Definitions.

    b. Application to the known facts by reference to the Publicly Available Information.

Section 4.7 of the Definitions

7. The principal issues between the Yes Presented Position and the No Presented Position turned on contrasting interpretations of Section 4.7 of the Definitions. Accordingly, we need to express our views on that dispute, before going on to consider the known facts, by reference to the Publicly Available Information.

8. Under the terms of Section 4.7(a), a Restructuring Credit Event with respect to an Obligation of a Reference Entity is an "*event*" which falls within one or more of the categories described at (i) to (v), including a reduction in the amount of principal or premium payable at redemption and a postponement or other deferral of a date or dates for either the payment or accrual of interest or the payment of principal or premium. Such an event arises in three specified circumstances, namely where it:

    a. "*occurs in a form that binds all holders of Such Obligation"* (**Limb 1**);

    b. "*is agreed between the Reference Entity or a Governmental Authority and a sufficient number of holders of Such Obligation to bind all holders of the Obligation*" (**Limb 2**); or

    c. "*is announced (or otherwise decreed) by the Reference Entity or a Governmental Authority in a form that binds all holders of such Obligation…"* (**Limb 3**).

9. The Transaction Support Agreement dated 28 July 2025 (**TSA**) described a transaction (the **Proposed Recapitalisation Transaction**), the features of which included the exchange of all of the APF Senior Secured Notes (**SSN**s) for new second lien takeback paper, the exchange of all of the APF Senior Unsecured Notes (**SUN**s) for equity interests in Yeoman Capital SA or another entity to be determined (**EquityCo**) and the exchange of all PIK Notes issued by ARD Finance SA (the **PIK Notes**) for equity interests in EquityCo. It was common ground that the Proposed Recapitalisation Transaction involved (or at least would involve if implemented) "*events*" with respect to one or more Obligations of APF as Reference Entity, falling within Section 4.7(a)(i) to (v). It was also agreed that the entry into the TSA and each of the steps that followed resulted directly or indirectly from a deterioration in the creditworthiness or financial condition of APF, as required by Section 4.7(b)(iv) of the Definitions.

10. As for the three circumstances specified in Section 4.7(a), it was common ground that neither Limb 1 nor Limb 3 was engaged on the operative dates for the Reviewable Questions. The Yes Presented Position contended that Limb 2 was engaged and the No Presented Position contended that it was not. This is in circumstances in which APF's group (**Ardagh**) announced the implementation of a recapitalisation transaction on 12 November 2025. In broad terms, the issue is whether Limb 2 may apply before the relevant event has been put into effect (for example by way of the execution of amended indentures) and if so in what circumstances, particularly where (and expressing the point neutrally for the moment) initial plans may have been fluid and/or subject to outstanding conditions at all times until implementation.

11. The determination of this issue requires a close analysis of the components of Limb 2. This may be broken down into three elements, as follows:

    a. First, there must be an agreement. It was common ground that this means a legally binding agreement rather than some non-binding understanding or preliminary statement of intent.

    b. Second, the agreement must be between (as relevant here) the Reference Entity and one or more holders of the Obligation.

    c. Third, the number of holders who have reached agreement must be sufficient "*to bind*" all holders.

12. We agree with the Yes Presented Position that Limb 2 is principally directed towards collective action clauses, namely provisions in indentures where (as in

the present case) a relevant majority of holders is given the contractual power to consent to specified amendments to the terms of the indenture. The effect of the exercise of such a power is that the minority is subject to the decision of the majority, once the relevant threshold is reached, and so may properly be said to be "*bound*" by that decision. However, this only begs the question as to when a qualifying Limb 2 agreement has been made.

13. The Yes Presented Position advanced two arguments on interpretation. First, it was contended that a qualifying Limb 2 agreement is made as soon as there is an agreement between the Reference Entity and a sufficient number of holders who assent to the relevant event and who between them have the power to bind all holders of the Obligation in question. In other words, whilst it remains necessary to identify the agreement to a restructuring event, and to satisfy the relevant threshold condition, it does not matter whether the effect of the agreement is to bind all the holders at that stage, provided only that it is capable of doing so at some stage.

14. We do not agree with the Yes Presented Position on this first argument. In brief:

    a. We do not consider that the words of Limb 2 alone provide a clear answer as to what is meant.

    b. There is assistance from the immediate context of Limbs 1 and 3. Under both of these Limbs, a Restructuring Credit Event will occur only when all noteholders are in fact bound to the event: under Limb 1 because the event must occur in a form that binds all holders, and under Limb 3 following an announcement or decree in a form that binds all holders. True it is that Limb 2 expresses itself in a slightly different way ("*...between... and a sufficient number... to bind*" rather than "*in a form that binds"*) but we see this as a consequence of the syntax, and the need to describe the sufficiency of holders as a critical component, rather than as the expression of what would be a radically different approach between the three Limbs. Consistency strongly favours an interpretation by which, under each of the Limbs, all noteholders are in fact bound to the event.

    c. More generally, we would disfavour an approach to Limb 2 which leads to a scenario in which a Restructuring Credit Event might occur without the noteholders being bound to it, triggered only by the existence of an agreement with power to do so. We were presented with conflicting submissions from a market perspective, as to the general appropriateness of an early trigger as a signal of financial distress (from the Yes Presented

Position) or as to the merit of waiting until the event is certain or perhaps near certain (from the No Presented Position). In the absence of data or expert evidence, we could not reach an informed view about the merits of these respective positions, but we do feel that a test that is satisfied merely by the existence of an agreement with power would, in the absence of any actual binding effect, be too far removed from the event in question.

15. The second argument of the Yes Presented Position was that a relevant agreement with a sufficient number of noteholders may nevertheless still bind all noteholders even if that agreement has not yet been implemented and even if it is subject to conditions to implementation (as distinct from conditions precedent to the existence of the agreement at all). When specifically asked about this during the oral hearing, Counsel for the Yes Presented Position confirmed that the case was that all such conditions are irrelevant because, as a matter of English law, a party is still bound by an agreement, even if there remain conditions to implementation.

16. The No Presented Position had two responses to this. First, and by way of written *amicus* brief, the case was advanced that an agreement will only bind all noteholders once *all* unsatisfied conditions precedent have been satisfied. Until then, as contended for, any agreement "*is incapable of being an agreement which binds all holders"*. Second, and this was the argument advanced by Counsel for the No Presented Position, conditions "*which are merely administrative or procedural, or are otherwise a mere formality…may be disregarded*". So, on this second case, noteholders may be bound, and a Restructuring Credit Event may occur, in advance of actual implementation and even though certain such conditions to implementation remain outstanding.

17. On this second argument, we agree with the Yes Presented Position, for the following reasons:

    a. This is a question of contractual interpretation. In addition to the general principles of interpretation under English law, which were cited by the parties and which are familiar, we acknowledge the special circumstances of the ISDA contractual framework, as described by Hildyard J in *Re Lehman Brothers International (Europe) No. 8* [2017] 2 All ER (Comm) 275 at [48], including the importance, to the extent possible, of clarity, certainty and predictability, and indeed the avoidance of fact specific disputes.

    b. Especially with that guidance in mind, we cannot accept the submission from the No Presented Position that there is a critical borderline between,

on the one hand, conditions which must be satisfied (or waived), before noteholders will be bound and, on the other hand, a category of conditions which, by reason of some characteristic, need not be satisfied before noteholders will be bound. There is no indication of such a distinction in the Definitions and it is the product of argument rather than consensus. Beyond that, it would tend towards obscurity, uncertainty and unpredictability. It is not even clear that a DC would know (and the DC in the present case did not know) what, if any, conditions actually remained outstanding at any point in time. In many cases, such information is unlikely to be publicly available. And even if this were known, by what benchmark would it be determined whether those conditions were administrative, procedural or a formality?

c. The course of oral submissions at the hearing underlined the difficulties inherent in this argument. Indeed, Counsel for the No Presented Position expressed the test in additional ways, namely whether the condition was "*material*" (as opposed to "*immaterial*") or whether its satisfaction was "*likely to happen*"; and by reference to an earlier DC decision, he also suggested that a determining factor was whether satisfaction of the condition was within the gift of the issuer. The suggested use of such (different and varying) terminology lacked clear or precise definition and begged more questions than it answered. A test which can be expressed in six formulations is not attractive. And even if it could be condensed into a single measure, its operation would still require an awareness on the part of the DC of the underlying facts and an evaluation against an indeterminate benchmark. We do not agree with this interpretation.

d. Nor are we persuaded by the simpler case advanced in the written *amicus* brief that requires all conditions to be satisfied. As to this:

    (i) Limb 2 is engaged when there is an agreement to effect one of the events in Section 4.7(a)(i)-(iv). On the reading of the words, it is clear that this may occur before the event is itself implemented.

    (ii) We agree with the submission of the Yes Presented Position that a party will still be bound to a contract under English law, even if there are conditions to implementation (or indeed if there are powers of termination). Such conditions may properly be seen as affecting contractual performance rather than the *a priori* existence of a contract (this is in contrast to

the situation where there is a condition precedent to the existence of an agreement at all). There is nothing in the wording of Limb 2 that requires all, or any, conditions to implementation to be satisfied before the noteholders are bound.

(iii) In considering whether, and if so when, a non-consenting noteholder is bound by the agreement of the requisite majority, for the purpose of Limb 2, it is relevant that all noteholders will already be bound by the terms of the existing indenture, under which they accede to the majority decision. Hence the decision of that majority to consent to a restructuring event binds the non-consenting noteholders to the outcome as much as the consenting noteholders.

(iv) An interpretation of Limb 2 which mandates the satisfaction of *all* conditions to implementation clearly risks collapsing Limbs 1 and 2, which is undesirable and unlikely to represent the intention of the draftsman as reflected in the words used. This is where, in substance, the *amicus* brief ended up, the case submitted being that there was no binding effect until the indentures were in fact amended. We do not agree that the difference between Limb 1 and Limb 2 is that Limb 1 may be satisfied by a unilateral act whereas Limb 2 requires an agreement. Whilst it is technically correct that a unilateral act could fall within Limb 1, that Limb is not so restricted, and so this is not a persuasive distinction.

(v) As it appears to us, Limb 2 has independent life if there may be agreements which qualify for the purpose of Limb 2, in advance of implementation. It might be possible to envisage a scenario in which there is an agreement on which all conditions to implementation have been satisfied, but where, perhaps, implementation is to be delayed for a specified period. That may or may not be realistic but, even then, the effluxion of time is a form of condition.

(vi) We understand why the No Presented Position sought to introduce a qualification, by allowing for the non-satisfaction of conditions which might, by some measure, appear of lesser significance than others. We interpolate that this was with a

view to differentiating Limb 1 and Limb 2, as well as providing an answer to the riposte that it is unrealistic and uncommercial to defer a Restructuring Credit Event until every last box had been ticked. However, we do not consider that that solution provides the answer. Instead, the better answer is that the consenting parties are bound once they have agreed to a consensual restructuring event, notwithstanding the existence of outstanding conditions to implementation of that event, and that, once the necessary thresholds have been reached, the effect of the existing indenture is that the non-consenting parties are also bound by the outcome of what has been agreed. That solution also accords with the aims of clarity, certainty, predictability.

(vii) We acknowledge, as was submitted by the No Presented Position, that such an interpretation could lead to a scenario in which there is a Restructuring Credit Event under Limb 2 but where, because the transaction is never actually implemented, there is no "*event*" falling within Section 4.7(a)(i)-(iv). But we see that as an intended consequence of the drafting rather than an error in the interpretation. Nor do we see a commercial objection to the possibility of a Restructuring Credit Event occurring upon the making of a binding agreement between the Reference Entity and a sufficient body of noteholders which can bind – and does bind – all noteholders to a relevant event, in circumstances where this results directly or indirectly from a deterioration in the creditworthiness or financial condition of the Reference Entity.

(viii) Finally, we note Section 4.2, which deals with a Bankruptcy Credit Event. One of the specified events is the presentation of a winding up petition which is not dismissed within 30 days. On its face, this therefore allows for the possibility of a Bankruptcy Credit Event occurring whether or not the petition is successful (indeed even if it is dismissed after 31 days). Perhaps that is an extreme example but it lends support to the view that the Definitions espouse a range of possibilities in accordance with their terms, and that Credit Events are not necessarily limited to finalised and certain outcomes.

18. We should also add, for the sake of completeness, that we were shown various previous DC decisions made in respect of other Reference Entities in other circumstances. Quite apart from any technical issues as to the relevance, on a pure question of interpretation, of such previous decisions, the information on each was necessarily skeletal, such that we did not consider it safe to draw any assistance from them.

Application to the known facts by reference to the Publicly Available Information

19. Under the terms of the TSA, the contracting parties agreed, by way of positive and negative commitments, to support, approve and implement the Proposed Recapitalisation Transaction. As confirmed in the accompanying announcement of 28 July 2025, agreement had by that stage been reached with 75% by value of the SSNs, over 90% by value of the SUNs and over 60% by value of the PIK Notes. We note three elements of the TSA:

    a. The Proposed Recapitalisation Transaction was, as envisaged, a single transaction, or single composite transaction, involving a restructuring of each of the SSNs, the SUNs and the PIK Notes. The indicative term sheet confirmed that: "*[t]his term sheet is being provided as part of a comprehensive compromise and settlement, each element of which is consideration for the other elements and an integral aspect of the recapitalisation transaction*".

    b. Subject thereto, the precise mechanism by which the Proposed Recapitalisation Transaction was to be effected was undetermined, and could not be determined until requisite consent thresholds had been reached:

        (i) The stated intention was that the transaction would be "*primarily implemented by way of certain consent solicitations and/or one or more exchange offers"*. In the event that 90% thresholds were reached on each of the SSNs, the SUNs and the PIK Notes, the transaction would be effected through what the indicative term sheet described as the **Consensual Process.** The No Presented Position referred to this as **Plan A**.

        (ii) In the event that only 75% thresholds were met for any of the SSNs, the SUNs or the PIK Notes, the indicative term sheet

envisaged the pursuit of a scheme or schemes of arrangement under Part 26 of the UK Companies Act 2006. The No Presented Position referred to this as **Plan B**.

(iii) If the 75% thresholds were not met, then the indicative term sheet contemplated alternative implementation planning, referred to by the No Presented Position as **Plan C**.

c. The TSA left a number of matters to be resolved as regards implementation, including the agreement of Definitive Documents, the following through of the exchange offer and consent solicitation process (if appropriate) and various other specified conditions precedent to the consummation of the transaction on the Closing Date, as defined.

20. It was common ground that the TSA did not, when executed on 28 July 2025, constitute a Restructuring Credit Event.

21. On 8 August 2025, it was announced that agreement had been reached with over 90% by value of the SSNs, over 90% by value of the SUNs and over 75% by value of the PIK Notes. The figures were updated on 13 August to 99%, 99% and 82% respectively. By its decision dated 14 August 2025, a Supermajority of the DC confirmed that no Restructuring Credit Event had occurred. The Yes Presented Position submitted that there could have been no Restructuring Credit Event at this point because, given that the 90% threshold on the PIK Notes had not been achieved, there was no agreement to pursue the Consensual Solution. Instead, and like the position as at 28 July 2025, a single or single composite transaction was being proposed along three possible lines. The Yes Presented Position accepted that the process envisaged by Plan B, involving a scheme of arrangement, could not be said to bind all noteholders because of the need for Court sanction so as to implement the statutory scheme[1]. Equally, Plan C remained entirely at large.

22. On 29 September 2025, Ardagh announced the launch of the Consent Solicitations, confirming that the terms were agreed by over 90% by value of the SSNs and SUNs and nearly 82% by value of the PIK Notes. Although the Solicitations themselves are not publicly available information, it is agreed that their key terms are summarised in the announcement. The following statement

[1] Reference was made to *Kempe v Ambassador Insurance Co (In Liquidation)* [1998] 1 WLR 271 at p 276.

was made in respect of the SSNs (with a materially similar statement in respect of the SUNs and the PIK Notes):

"*If in respect of any Existing SSN Indenture, Existing SSN Holders representing not less than 90% of the then outstanding principal amount of the Existing SSNs under such Existing SSN Indenture have consented to the SSN Consent Solicitation (the **SSN 90% Condition**) and the SSN 90% Condition has been met in respect of all Existing SSN Indentures on or before the Expiration time (the **SSN 90% Threshold**) then in order to facilitate the SSN Mandatory Transfer, the SSN Proposed Amendments will be implemented on the Settlement Date to amend such Existing SSN Indenture and Existing SSNs in accordance with the terms of the Consent Solicitation Statement and in the form of a supplemental indenture (the **SSN Supplemental Indenture**).*"

23. There was also reference to a PIK Notes 50% Consent Solicitation, leading to certain proposed amendments and additional consents, this described as the **PIK Notes 50% Condition**. Under the heading **Implementation**, the announcement continued:

"*The transaction is subject to satisfaction or (as applicable) waiver of certain implementation conditions including, amongst others, receiving consents to the Proposed Amendments from Noteholders meeting the SSN 90% Condition, the SUN 90% Condition and either the PIK Notes 90% Condition or the PIK Notes 50% Condition…*"

24. In agreement with the Yes Presented Position, we consider that the announcement on 29 September 2025 represented a material development. Specifically:

    a. it is apparent from the terms of the announcement that the Proposed Recapitalisation Transaction was no longer a single transaction in respect of all three categories of notes, which was to be completed as a whole. Instead, it was agreed that the SSN Supplemental Indenture would be implemented if the 90% SSN Threshold was met. And the same applied for the SUNs and the PIK Notes. No doubt the implementation of the components of the transaction remained subject to a number of conditions (including as noted above) but by agreement each component could now, and if necessary would, be pursued separately, if the applicable thresholds were reached.

b. So far as the SSNs and SUNs were concerned, the Consent Solicitations were already agreed by over 90% by value of noteholders. Pursuant to the TSA (to which 99% had acceded by 13 August 2025), the noteholders were contractually obliged to support, approve and implement the Proposed Recapitalisation Transaction insofar as it applied those notes. Further, in these circumstances, also pursuant to the TSA, APF was contractually obliged to pursue and implement the Consensual Solution.

c. The Consent Solicitations provided for, and Ardagh (including APF) agreed to implement, the Consensual Solution as regards the SSNs and SUNs. There was no longer any reference to Plan B or C in respect of these notes because this would have been redundant.

d. So far as the PIK Notes were concerned, the satisfaction of at least the PIK Notes 50% Condition was now a condition to implementation, but even that had already been agreed.

25. In such circumstances, we have concluded that the better answer is that there was a Restructuring Credit Event as of 29 September 2025. This was constituted by a combination of the TSA and the agreed Consent Solicitations. By that stage, there was agreement between APF and the requisite number of SSN and SUN noteholders to pursue the Consensual Solution in respect of those notes by way of Consent Solicitation and supplemental indentures. The restructuring transaction to which the noteholders had agreed included events for the purpose of Section 4.7(a)(i)-(v). The agreement was capable of binding all holders of SSNs and SUNs, because the necessary thresholds had been reached. And, for the reasons explained above, it did bind all such noteholders, whether consenting or not.

26. In the *amicus* brief for the No Presented Position, it was submitted that the TSA did not in and of itself effectuate any of the events in Section 4.7(a)(i)-(v). We agree. It was then said by the No Presented Position that the TSA "*merely contemplated that the parties would take steps toward a potential transaction*." In our view, however, this understates the significance of the obligations under the TSA. Given such obligations, including the obligation of the noteholders affirmatively to participate in any Consent Solicitations by giving the necessary consents, and the obligation of APF to implement the Consensual Solution (including by amending the indentures) following the obtaining of the necessary consents, we see no reason why it would be necessary to wait for the already pre-agreed Consent Solicitation process to follow its course, let alone for the formal amendment of the indentures, before finding an agreement which binds all

noteholders. Nor, for the reasons we have explained, do we consider that the existence of conditions to implementation means that the SSN and SUN noteholders were not bound, for the purpose of the Section, by the agreement.

27. For these reasons, and as indicated at paragraph 5 above, we have concluded that the better answer to Question 1 is "*yes*". As a consequence, the better answer to Questions 2, 3 and 4 is also "*yes*", on the basis that a Restructuring Credit Event occurred with respect to APF by 7 October 2025.

Adrian Beltrami KC
Timothy Howe KC
Stephen Robins KC

London, 15 December 2025