Issue Numbers: 2025100602
2025102701
2025102901
2025110501

BEFORE THE EMEA CREDIT DERIVATIVES DETERMINATIONS COMMITTEE EXTERNAL REVIEW PANEL

IN THE MATTER OF ARDAGH PACKAGING FINANCE PLC AND OF AN EXTERNAL REVIEW UNDER THE 2018 ISDA CREDIT DERIVATIVES DETERMINATIONS COMMITTEE RULES (AS AMENDED)

WRITTEN SUBMISSIONS ON BEHALF OF THE CONVENED DC MEMBERS WHO SUPPORT THE YES POSITION

A. Introduction

1. These are the written submissions of certain DC Members represented by Jones Day (the "**Yes Camp**"). References to exhibits are to either Bundle A (agreed exhibit list) or Bundle B (supplemental exhibits) in the format [Bundle/Tab/Page].

2. The Yes Camp submits that a 'Credit Event' under Section 4.7(a) of the 2014 ISDA Credit Derivatives Definitions ("**2014 Definitions**") ("**Restructuring Credit Event**") occurred with respect to the Reference Entity, Ardagh Packaging Finance Plc ("**APF**"), by no later than 29 September 2025 when the Consent Solicitations (defined below) were launched with the locked-up consent of over 90% by value of the holders of the SSNs and SUNs (being the necessary contractual thresholds to bind all holders). Alternatively, if that primary position is not accepted, a Restructuring Credit Event occurred by no later than:

   (1) 27 October 2025, when the consents provided by in excess of 90% by value of the holders of the SSNs and SUNs became irrevocable upon the 'Effective Time' designated by APF; or

   (2) in the further alternative, by 4 November 2025, by which date the Consent Solicitations had closed without being terminated by APF.

3. On 12 November 2025, Ardagh Group S.A. and its subsidiaries (the "**Group**") announced that the relevant recapitalisation transaction had completed.

4. The determination as to *when* the Restructuring Credit Event took place is far from academic in this instance. It defines the Event Determination Date which in turn is integral to the calculation of the Outstanding Principal Balance and necessarily the circumstances in which that amount falls to be calculated, in particular, as to whether a reduction and equitization of the Deliverable Obligations has occurred by that stage so as to impact upon that calculation.

B. Publicly Available Background

5. The background set out below is drawn from the publicly available documents.

B.1 Contractual power to amend the Indentures

6. Whilst the indentures governing the terms of the SSNs, SUNs and the "PIK Notes" are not themselves publicly available, it is clear from the Group's public announcements[1] and the terms of the TSA (as defined below)[2] that those indentures contained provisions which permitted the modification of the instruments' terms with the consent of 90% of their respective holders by value.

B.2 The TSA

7. Pursuant to the terms of a Transaction Support Agreement ("**TSA**") made on 28 July 2025 ("**28 July Announcement**"), the parties (including APF and consenting holders of the SSNs, SUNs and PIK Notes) agreed that if the applicable conditions to effectiveness and certain stipulated milestones were met or waived, then certain obligations of APF and other companies within the Group would be restructured.

8. The parties agreed to the terms of the recapitalisation transaction the key terms of which were documented in the Term Sheet at Exhibit A to the TSA, which contemplated (among other things): (i) the injection of $1.5 billion of new money in the form of new first lien notes; (ii) the maturity date of the replacement second lien notes being 1 December 2030, being an extension of the 2026 maturity of the SSNs (the "**SSN Maturity Deferral**"); (iii) the conversion of the SUNs into equity representing 92.5% of the restructured Group (the "**SUN Equitisation**"); and (iv) conversion of the PIK Notes issued by ARD Finance S.A.

[1] See 28 July Announcement [A/2/17] and the Statement of Agreed Facts ("**SAF**") at [1.4].
[2] See the definitions of SSN 90% Condition [A/11/158], SUN 90% Condition and PIK 90% Condition [A/11/159].

(the "**PIK Issuer**"), which are not obligations of APF, into equity representing 7.5% of the restructured Group.

9. The TSA was published on 28 July 2025, along with an accompanying presentation entitled 'Announcement of the Agreed Recapitalization Transaction' (the "**TSA Presentation**").

10. It was announced that, at that time, holders of 75% by value of the SSNs, over 90% by value of the SUNs and over 60% by value of the PIK Notes had signed up to the TSA.[3] Accordingly, the TSA was effective in accordance with its terms at the time of the 28 July Announcement.[4] The following features of the TSA can be noted.

11. *First,* the Group agreed "*to take all actions necessary or desirable to consummate the Recapitalization Transaction as promptly as possible through (i) a Scheme, if a 75% Condition is satisfied (if it is determined that the Recapitalization Transaction is to be implemented via a Scheme), or (ii) a Consent Solicitation, if the Consensual Conditions are satisfied*".[5] The 'Consensual Conditions' were, in broad summary, defined to mean participation by not less than 90% by value of the relevant holders of the SSNs, SUNs and PIK Notes in the relevant consent solicitation concerning them (the "**Consent Solicitations**"). The TSA's 'Consensual Conditions' reflected the 90% contractual thresholds required to amend the instruments consensually in accordance with their terms.

12. *Second*, at launch, it was not yet agreed whether the different elements of the recapitalisation transaction would be implemented via a Scheme (defined to mean a scheme of arrangement under Part 26 of the Companies Act 2006)[6] or via a Consent Solicitation: see also Section 7.1(v) which left this point open ("*if a 75% Condition is*

[3] 28 July Announcement [A/2/17].
[4] See Section 2.1(c) of the TSA [A/11/80], with the thresholds to the effectiveness of the TSA met at the date of its publication.
[5] Section 7.1(u) of the TSA [A/11/97].
[6] [B/1/1-14]

satisfied and it is determined that the Recapitalization Transaction is to be implemented in whole or in part via Scheme…").

13. *Third*, the parties agreed to implement the recapitalisation transaction in accordance with specified milestones unless extended, modified or waived in writing. These included a milestone that by no later than 10 business days following the effective date of the TSA, holders of 90% by value of the SSNs, SUNs and PIK Notes acceded to the TSA (the "**Section 4.1(b) Milestone**").

14. *Fourth*, the Group also agreed to take steps to solicit consents as part of Consent Solicitation to what were described as 'Proposed 50% Amendments' in relation to each of the SSNs, SUNs and PIK Notes.[7] As can be seen from the Term Sheet (at [p. 167]), the parties agreed to a variety of different implementation permutations depending on whether or not the 90% consent thresholds were met.

15. *Fifth*, consenting holders acceding to the TSA were obliged (among other matters) both to "*affirmatively participate in any Consent Solicitation*" (Section 5.1(h)) and to vote their instruments in support of any Scheme (Section 5.1(n)).

16. *Sixth*, the TSA contained provisions governing its termination in Section 16. As regards the consenting holders, the TSA could be terminated by a majority by value of the SSNs and the SUNs in certain stipulated circumstances.[8] These circumstances included where the Section 4.1(b) Milestone was not achieved, but with that termination right lapsing after 20 business days.[9] In other words, there was a window in which, if the Consensual Conditions were not met, the majority consenting SSN and SUN holders could terminate the TSA.

[7] [A/11/158]. The Proposed 50% Amendments are set out at [A/11/168].
[8] See the TSA's definitions of 'Required SSN Group Members' and 'Required SUN Group Members' at [A/11/75]
[9] Section 16.1(e) of the TSA [A/11/124].

17. *Seventh*, the 'Closing Date' of the Recapitalisation Transaction was expressed to be subject to the satisfaction or waiver of a number of conditions precedent as set out in Section 17. The TSA Presentation accompanying the TSA described these conditions precedent as "*customary*".[10] The conditions precedent included, for example, the execution of the Definitive Documents.[11] The key economic terms were, however, set out in the Term Sheet in Exhibit A, and the parties to the TSA agreed to undertake and support the transaction to give effect to them.[12] The Definitive Documents were, in turn, to be consistent with and give effect to the said agreed terms.[13]

B.3 29 September 2025 - Launch of the Consent Solicitations

18. On 29 September 2025, APF as co-issuer of the SSNs and the SUNs, and the PIK Issuer as issuer of the PIK Notes, launched their respective Consent Solicitations accompanied by a public announcement (the "**29 September Announcement**").

19. By this date, in light of the accessions to the TSA at that point, the parties had agreed a route to implementation. Thus, the 29 September Announcement stated: "*We have agreed the terms of the Transaction, including the Consent Solicitations, with the Initial Consenting Holders, who have agreed to consent to the Proposed Amendments and Additional Consents.*"

20. As had been explained on 13 August 2025, the relevant support level was approximately 99% of the SSNs and the SUNs. Accordingly, the 90% consent had been met in relation to the SSNs and the SUNs but not in relation to the PIK Notes, where 81.8% of holders had acceded to the TSA.

[10] TSA Presentation, slide 15 [A/1/15].
[11] Section 17.1(i) of the TSA [A/11/136].
[12] See, e.g., the TSA's first Recital [A/11/63].
[13] Section 3.1 of the TSA [A/11/82].

21. The 29 September Announcement stated that it was providing a summary of a separate 'Consent Solicitation Statement', which was to be made available in parallel to all holders by the Information Agent and set out the details of the recapitalisation transaction previously announced, as well as the terms on which the Consent Solicitations were being advanced.

22. The Consent Solicitation Statement set out the terms on which holders were agreeing to provide their consent. Thus, in relation to the withdrawal of consents, each consenting holder was technically entitled to revoke its consents (albeit thereby breaching commitments made under the TSA) by submitting a withdrawal notice, but only "*prior to (but not on or after) the Effective Time*." Rather, "*On and following the Effective Time, consents to the Proposed Amendments and Additional Consents can no longer be revoked except as described in the Consent Solicitation Statement or as required by law*." APF also was stated to have the power in its discretion to extend, re-open or amend the Consent Solicitations or terminate them.

23. The Consent Solicitation Statement also set out the route to implementation which had been decided in light of the accession thresholds to the TSA. Under the sub-heading 'Implementation', the 29 September Announcement stated:

> *"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 (the "****Requisite Consents****"), and as further described in the Consent Solicitation Statement.* ***If the Requisite Consents are obtained****, the Existing Co-Issuers and the Existing PIK Issuer* ***will*** *accept all Existing Notes for which Electronic Consent Instructions have been delivered by Accepted Holders* ***and implement the Transaction as described in the Consent Solicitation Statement on the Settlement Date****."*

24. Accordingly, by this juncture, it had plainly been decided that implementation was to take place by way of Consent Solicitations and not by way of an English scheme of arrangement.

25. The implementation of the Transaction set out in the Consent Solicitation Statement was said to be conditional on receipt of the "**Requisite Consents**", which was defined to mean *either* the 50% PIK Notes Condition *or* the 90% PIK Notes Condition. Thus, in circumstances where holders of more than 90% of the SSNs and SUNs were bound to respond affirmatively to the Consent Solicitations, and holders of more than 50% by value of the PIK Notes were bound to provide their consent already, this statement was tantamount to the Group announcing that the Transaction *would* be implemented. No reference to any other specific condition to the Transaction's implementation was made beyond the Requisite Consents condition.

B.4 27 October 2025 – Designation of the Effective Time

26. On 27 October 2025, the Expiration Date of the Consent Solicitations, the Group announced that the Effective Time had occurred (the "**27 October 2025 Announcement**"). The announcement stated that:

> "*Pursuant to the occurrence of the Effective Time, consents in respect of the Proposed Amendments and Additional Consents in relation to the Consent Solicitations can no longer be revoked, except as described in the Consent Solicitation Statement or as required by law.* ***Any Withdrawal Notice provided on or after the time of this announcement will be rejected***."

27. Accordingly, on 27 October 2025, the consents provided to the Consent Solicitations became irrevocable in accordance with the terms of the Consent Solicitation Statement.

B.5 28 October 2025: partial re-opening of consents

28. On 28 October 2025, the full results of the Consent Solicitation were announced. In particular:

(1) The Group announced that: "***Ardagh obtained the consents needed to implement the Transaction in respect of the Existing SSNs and the Existing SUNs on a consensual basis*** *subject to the conditions described in the consent solicitation statement dated as of September 29, 2025 and as supplemented on October 12, 2025 (the "Consent Solicitation Statement")*." As stated above, the only specific condition mentioned in the previous public announcements was the Requisite Consents condition, which by now had been irrevocably achieved.

(2) It was also announced that, "***The SSN Supplemental Indentures and SUN Supplemental Indentures will be entered into and will become effective*** *and operative in accordance with their terms subject to the conditions described in the Consent Solicitation Statement, with the provisions relating to the SSN Mandatory Transfer and the SUN Mandatory Transfer only becoming effective and operative on the Settlement Date*". The 'SSN Mandatory Transfer' and the 'SUN Mandatory Transfer' were, as set out in the 29 September Announcement, aspects of the SUN Equitisation and the SSN Maturity Deferral,[14] and would become effective on the 'Settlement Date'.

(3) Further, it was said that the consent solicitations in respect of the SSNs and SUNs (but not in respect of the PIK Notes, as to which see below) were being re-opened with a new expiry date of 3 November 2025. It is unclear why those consent solicitations were re-opened by the Group but the consents which had previously been given had become irrevocable the previous day upon the occurrence of the Effective Date.

[14] [A/5/32-34].

(4) The PIK Notes consent solicitation was not re-opened, with the announcement stating: "*Since the PIK Notes 90% Threshold was not met, the PIK Notes 90% Proposed Amendments will not be implemented and the Existing PIK Notes will be unblocked from trading by the Clearing Systems. The Existing PIK Issuer proposes to effect the Transaction as it relates to the Existing PIK Notes through an Existing PIK Notes Alternative Implementation as further described in the Consent Solicitation Statement*." Whilst the 'Existing PIK Notes Alternative Implementation' is not described further in the public announcements, it is clear that the implementation of the rest of the PIK Notes transaction was not inter-conditional with the implementation of the restructuring in respect of the SSNs and SUNs. The substantive condition precedent to the implementation of that part of the Transaction was the achievement of the 50% PIK Notes consent threshold, which had already been obtained: see paragraph 25 above.

B.6 4 November Announcement

29. On 4 November 2025, the partially re-opened consent solicitation closed in respect of the SSNs and the SUNs, and an announcement was published which stated:

> "*Ardagh has obtained the consents needed to implement the recapitalization transaction (the "Transaction") in respect of the Existing SSNs and the Existing SUNs on a consensual basis as further described in the Consent Solicitation Statement. Ardagh expects the completion of the Transaction to occur promptly after the satisfaction or (as applicable) waiver of all Transaction Implementation Conditions* ***and will announce the expected Settlement Date in due course***."

30. There was no suggestion that any substantive Transaction condition precedent remained outstanding, in circumstances where the Requisite Consents had already been achieved.

B.7 12 November 2025 – Settlement Date

31. On 12 November 2025 two announcements were made:

(1) An announcement in respect of an 'amicable agreement' in accordance with the Luxembourg Law of 7 August 2023, which was described as having been entered into between the Group and "*its financial creditors and other stakeholders*". This amicable agreement is described as having been "***filed** today…with the Luxembourg courts*". It is unclear whether the amicable agreement had been subject to judicial homologation at that point: see the SAF at [9.2] as regards the requirement of judicial homologation

(2) A second public announcement of the successful completion of the Transaction with 99% by value of the SSNs and SUNs and approximately 80% by value of the PIK Notes. The Consent Solicitations were described as having "*enabled this Transaction*". It was stated that, "***Pursuant to supplemental indentures executed in connection with the Consent Solicitations, 100% of the outstanding SSNs were mandatorily transferred to the Existing Co-Issuers**. In return, each eligible holder received, for no additional consideration, Second Lien Notes co-issued by APF and AGSA in a principal amount allocated in proportion to the SSNs held by that eligible holder*", with a similar statement in relation to the SUN Mandatory Transfer.

(3) As to the PIK Notes, it was announced that 80% by value of the holders of PIK Notes had entered into a private exchange agreement pursuant to which they were transferred for 7.5% of the new equity. PIK Note holders wishing to do so would be permitted to exchange their notes for their *pro rata* portion of this equity within 20 business days. It added in relation to the PIK Issuer that it had *"**commenced** a judicial reorganization proceeding in Luxembourg under the Luxembourg Restructuring Law of 7 August 2023 (the "Luxembourg JRP")*".

32. Whilst it is not clear from the public announcements what the amicable agreement and the Luxembourg judicial reorganization proceedings were specifically directed at achieving,

they appear: (i) to have been concerned with position of the PIK Issuer rather than the Reference Entity, APF; and (ii) the completion of the Luxembourg processes *cannot* have been a condition precedent to the implementation of the Transaction (including the SUN Equitisation and the SSN Maturity Deferral) given that the judicial reorganisation proceeding was only "*commenced*" on the Settlement Date, and the amicable agreement was only "*filed*" on the same day.

C. Construction: The Law

33. The relevant Credit Default Swap in this case is governed by English law and to be construed according to English principles of construction. A helpful summary of the operation of CDSs is to be found in Cassa di Risparmio della Repubblica di San Marino SpA v Barclays Bank Ltd [2011] EWHC 484 (Comm) at [22]-[31] *per* Hamblen J.[15]

34. The general principles of contractual construction are well settled: see Wood v Capita Insurance Services Ltd [2017] AC 1173 at [10]-[14].[16]

35. In Re LB Holdings Intermediate 2 Ltd (in administration) [2022] Bus. L.R. 10 at [28],[17] which concerned standard form contracts required by the FSA, Lewison LJ said (in relevant part):

> "*First, the instruments that we are asked to interpret have clearly been drafted by skilled professionals and are at the high end of sophistication. Textual analysis is therefore likely to be the principal method of analysis: Wood , para 13. Second, the loan agreements giving rise to Claim A and C were in a standard form required by the Financial Services Authority (the "FSA"). […] The notes giving rise to Claims B and D were, at least in principle, tradable financial instruments. In either case, background has a very limited part to play; and, once again, the primary tool of interpretation is textual analysis: In re Lehman Bros International (Europe) (No 6) [2017] Bus LR 1475; BNY Mellon Corporate Trustee Services Ltd v LBG Capital No 1 plc [2016] Bus LR 725*."

[15] [B/2/4-5].
[16] [B/3/7-8].
[17] [B/4/10].

36. In an earlier Lehman Brothers case, Re Lehman Brothers (No.8) [2017] 2 All E.R. (Comm) 275 at [48],[18] this time concerning the ISDA Master Agreement, Hildyard J summarised the applicable principles of construction (in relevant part) as follows:

> *"(1) It is "axiomatic" that the ISDA Master Agreements should, "as far as possible be interpreted in a way that achieves the objectives of clarity, certainty and predictability, so that the very large number of parties using it know where they stand": Lomas v JFB Firth Rixson [2011] 2 BCLC 120 , para 53, per Briggs J.*
>
> *(2) Although the relevant background, so far as common to transactions of such a varied nature and reasonably expected to be common knowledge amongst those using the ISDA Master Agreements, is to be taken into account, a standard form is not context-specific and evidence of the particular factual background or matrix has a much more limited, if any, part to play: see AIB Group (UK) Ltd v Martin [2002] 1 WLR 94 .*
>
> *(3) More than ever, the focus is ultimately on the words used, which should be taken to have been selected after considerable thought and with the benefit of the input and continuing review of users of the standard forms and of knowledge of the market: see In re Lehman Bros International (Europe) (No 3) [2014] 2 BCLC 451 , paras 53, 88.*
>
> *(4) The drafting of the ISDA Master Agreements is aimed at ensuring, among other things, that they are sufficiently flexible to operate among a range of users in an infinitely variable combination of different circumstances: Anthracite Rated Investments (Jersey) Limited v Lehman Bros Finance SA [2011] 2 Lloyd's Rep 538 , para 115, per Briggs J: particular care is necessary not to adopt a restrictive or narrow construction which might make the form inflexible and inappropriate for parties who might commonly be expected to use it.*"

D. Construction of Section 4.7

37. Section 4.7 of the 2014 Definitions defines a Restructuring as follows:

> ""*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 […]*".

38. Section 4.7(b) sets out various carve-outs to the definition of a Restructuring Credit Event, including *"**the occurrence of, agreement to or announcement of any of the events***

[18] [B/5/18].

described in Sections 4.7(a)(i) to (v) *in circumstances where such event does not directly or indirectly result from a deterioration in the creditworthiness or financial condition of the Reference Entity...*". [19]

39. The Yes Camp makes the following submissions as to the proper construction of Section 4.7(a).

D.1 Three alternative scenarios

40. The starting point is that Section 4.7(a) sets out three alternative scenarios in relation to the events listed in Section 4.7(a)(i) to (v), each of which constitutes a Restructuring Credit Event:

    (1) *First*, where the event "*occurs in a form that binds all holders of such Obligation*" ("**Limb 1**");

    (2) *Second*, where the event "*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

    (3) *Third*, where the event "*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)*".

41. That the three scenarios envisaged are alternatives to one another is reinforced by the language of Section 4.7(b), which refers back to "*the occurrence of, agreement to or announcement of any of the events described in Sections 4.7(a)(i) to (v)*".

[19] Pursuant to Section 4.7(b)(iv) and see also the same formulation used in Section 4.7(b)(iii).

D.2 "is agreed"

42. The Yes Camp makes the following submissions in relation to the words "*any one or more of the following events…is agreed*".

43. *First,* the phrase "*is agreed*" in Limb 2 is to be contrasted with the phrase "*occurs in a form that binds all holders*" in Limb 1:

    (1) The latter formulation denotes one of the stipulated events actually occurring in a form that binds all holders, e.g., the time at which a reduction in principal or a postponement of maturity is actually implemented. Plainly, the words "*in a form that binds all holders*" are descriptive of the word "*occurs*". In other words, what is envisaged by Limb 1 is the actual occurrence of the relevant restructuring event in a form that binds all holders.

    (2) In contrast, the words "*is agreed*" in Limb 2 are not linked to the later phrase "*to bind all holders of the Obligation*" as a matter of syntax. Rather, (as set out further below) the later phrase informs the concept of the sufficiency of the number of holders to the relevant agreement. To make two initial points in this regard:

        (a) If the draftsperson had intended to make the later phrase an infinitive dependent on the words "*is agreed*", then the words in the middle of Limb 2 would have read "*is agreed **by** the Reference Entity…and…*". Limb 2's use of the word "***between** the Reference Entity…and*" indicates that the second half of Limb 2 is merely identifying the characteristics of the parties to the relevant agreement, rather than stating the effect of the agreement reached; and

        (b) This reading is bolstered by Section 4.7(b)'s reference to "*the occurrence **of**, agreement **to** or announcement of any **of** the events*". If Limb 2 was intended to cover an agreement which itself has the effect of binding all holders to the

relevant restructuring event, the draftsperson would have used the preposition "*of*" in Section 4.7(b) ("*agreement **of**...any of the events*"), instead of referring to an agreement "*to*" a restructuring event, which more naturally envisages an assent to a restructuring event which is to occur in the future.

(3) All that Limb 2 requires as a matter of plain language is that one or more of the relevant events "*is agreed*" or, as Section 4.7(b) puts it, that there is an "*agreement to...any of the events*". There is, however, no further indication in the language that such an agreement must – in and of itself – have the effect of binding all holders to the alteration of the relevant obligations. That is what Limb 1, but not what Limb 2, provides.

44. *Second*, as to the nature of a qualifying "*agreement*" to the relevant restructuring event:

(1) The words "*is agreed*" are apt to capture a legally enforceable agreement between the debtor and a group of holders by which they have assented to the implementation of any of the stipulated restructuring events. An agreement to agree the terms of a restructuring in the future would not, for example, be caught.

(2) It also captures a scenario involving individual agreements between the Reference Entity and single holders (provided that together they are sufficient in number to reach the requisite threshold, as described further below).

(3) The words are also broad enough to capture the scenario where consents are provided pursuant to a consent solicitation process initiated by the Reference Holder, with the holders assenting to the implementation of a relevant restructuring event.

45. An agreement that includes contractual provisions governing its termination does not thereby cease to be an "agreement" properly so called. Most commercial contracts contain termination provisions and may well include termination "for convenience" rights without

impact on the validity of the contract for want of certainty or want of obligation[20]. Moreover, the presence of a contractual termination provision or a power to revoke a particular consent given does not thereby render the agreement between the debtor and the holders "*conditional*" in any sense: it is an effective agreement unless and until the contractual right of termination or to withdraw the consent is exercised.

D.3 "between the Reference Entity….and a sufficient number of holders of such Obligation to bind all holders of the Obligation"

46. A qualifying agreement to the relevant restructuring event must be "*between*" the Reference Entity (i.e. APF in this case), on the one hand, and a "*sufficient number of holders of such Obligation to bind all holders of the Obligation*". The function of the second part of Limb 2 is to identify the characteristics of the parties to the qualifying agreement.

47. Accordingly, the expression "*to bind all holders of the Obligation*" qualifies the number of holders who are required to agree to the relevant event in order for Limb 2 to be engaged. Absent this qualifier, the concept of a "*sufficient number of holders*" would be amorphous and completely at large. Instead, the sufficiency in number is qualified by reference to a stated threshold, namely, that there must be a sufficient number of holders "*to bind all holders of the Obligation*".

48. It will be noted that the "*sufficient number*" wording would be otiose if the earlier phrase "*is agreed*" were taken to mean that the relevant event must be agreed to bind all holders. If that were the correct reading, the consent of a sufficient number of holders would *ex hypothesi* already have been obtained (absent which there could be no implementation by agreement).Thus, if that construction were correct, it would have sufficed for Limb 2

[20] Chitty on Contracts (5th ed.) at 26-052 [B/6/1]

simply to read "…*is agreed to bind all holders of such Obligation*", essentially mirroring the wording and structure of Limb 1 ("*occurs in a form that binds all holders of such Obligation*"), but without introducing the sufficiency of number requirement.

49. Instead, by specifying a sufficiency of number requirement, the wording of Limb 2 strongly points to there needing to be a sufficient number of holders who have assented to the implementation of the relevant event and who between them have the power in substance to bind all holders of the relevant obligations.

50. It makes commercial sense that where a critical mass of holders who agree or assent to the particular restructuring event is reached, and who collectively have the power to bind all holders to that restructuring event, there is sufficient apprehension as to the Reference Entity's creditworthiness and the imminence of a restructuring event to trigger Limb 2 of Section 4.7(a).

51. In this case, pursuant to the terms of the SSN and SUN indentures, holders of 90% by value of the SSNs and SUNs had the power to bind all other holders of those instruments to amendments to their terms.

D.4 Conclusion

52. In order for Limb 2 of Section 4.7(a) to be engaged one of the relevant restructuring events must be agreed between the Reference Entity and a sufficient number of holders, who assent to that restructuring event and who between them have the power in substance to bind all holders of the relevant obligation.

E. Application to the Reference Questions

53. It is understood to be common ground with the No Camp that the following requirements relating to a Section 4.7 Restructuring Credit Event are satisfied (as set out in the SAF at [3.2] ff.):[21]

    (1) *First,* it appears to be agreed that the Transaction set out in the 29 September Announcement in relation to the SSNs and SUNs would, when implemented, constitute one or more events under 4.7(a)(i)-(v). In particular:

        (a) The SUN Equitisation would be a reduction in the principal payable at redemption given that the SUNs would be fully equitized so as to constitute a Section 4.7(a)(ii) event.

        (b) The SSN Maturity Deferral, would be a deferral of the date for payment of principal event under Section 4.7(a)(iii).

    (2) *Second*, in relation to the carve-outs in Section 4.7(b), the relevant events resulted from a deterioration in the creditworthiness or financial condition of APF: see the SAF at [2.3].

54. In light of the above, the principal controversy for determination relates to the point in time at which a Restructuring Credit Event was triggered and, in particular, whether Limb 2 was engaged and, if so, at what point in time.

55. In answer to Question 1, the Yes Camp considers that a Restructuring Credit Event within the meaning of Limb 2 was triggered by no later than the launch of the Consent Solicitations on 29 September 2025.

[21] The SAF at [1.1] confirms that the Default Requirement under s. 4.9 of the 2014 Definitions is met, and that each of the SUNs and SSNs are Multiple Holder Obligations for the purposes of Section 4.10.

E.1 29 September 2025 – Launch of Consent Solicitations

56. As at the date of the 29 September Announcement and the launch of the Consent Solicitations, there was an agreement between APF and (i) over 90% of the holders of the SUNs and (ii) over 90% of the holders of the SSNs to implement the Transaction (including the SUN equitisation and the SSN Maturity Deferral). Those holders held sufficient notes by value to bind all holders of the SUNs and SSNs to the SUN Equitisation and the SSN Maturity Deferral respectively once it was decided to go down the Consent Solicitations implementation route. In particular:

    (1) It was decided to launch the Consent Solicitations with the support of the requisite SSN and SUN holder majorities to implement the Transaction by that route. The holders were already bound to provide their consents to the Consent Solicitations: see paragraph 20 above. As the 29 September Announcement thus noted, "*If the Requisite Consents are obtained, the Existing Co-Issuers and the Existing PIK Issuer* ***will*** *accept all Existing Notes for which Electronic Consent Instructions have been delivered by Accepted Holders* ***and implement*** *the Transaction as described in the Consent Solicitation Statement on the Settlement Date."*

    (2) Of course, it was already known that the Requisite Consents would be obtained at this point. If any of the consenting holders refused to provide their consent to the relevant Consent Solicitations, the Group could at that juncture have enforced the holders' obligations and required them to respond affirmatively to the Consent Solicitations.

    (3) Thus, whatever the position when the TSA itself was launched in July 2025, when multiple avenues to implementation were being contemplated, by the time of the launch of the Consent Solicitations, the locked-up majorities of SSN and SUN

holders in excess of the 90% contractual consent threshold had the power to bind all holders by the Consent Solicitation route.

(4) At the earlier time when a scheme of arrangement in respect of the SSNs and SUNs by APF was still in contemplation (see Section B above), the requisite majorities of SSN and SUN holders would *not* have had the power to bind the remaining holders by the scheme route. That is because, in the case of a scheme of arrangement, it is the combination of the Court's sanction order and the affirmative majority votes in excess of 75% by value that *together* have the power to bind all creditors effect: see Kempe v Ambassador Insurance Co (In Liquidation) [1998] 1 W.L.R. 271.[22]

(5) Further, the implementation of the Transaction as a whole (including the SUN Equitisation and the SSN Maturity Deferral) was not conditional on achieving 90% consent in relation to the PIK Notes amendments. Rather, pursuant to the definition of 'Requisite Consents', it was a sufficient condition to implementation that 50% of the PIK Notes provided their consent, which consent had already been amply locked-up. Accordingly, there being no other substantive conditions precedent outstanding, the SSN and SUN holders locked up pursuant to the TSA had the power to bind all holders of the relevant obligations to the SUN Equitisation and the SSN Maturity Deferral as of 29 September 2025.

(6) Stepping back, the launch of consent solicitations, where the requisite majorities of holders with the power to bind all holders are already contractually bound to support, is likely to be exactly the sort of event which signals an imminent restructuring event to trigger a Restructuring Credit Event. A more restrictive reading of Section 4.7(a),

[22] Delivering the Opinion of the Board, Lord Hoffmann said there: "*Under section 99 it is for the liquidators to propose the scheme, for the creditors by the necessary majority to agree to it and for the court to sanction it. **It is the statute which gives binding force to the scheme when there has been a combination of these three acts**, just as the rules of the constitution give validity to acts duly passed by the Queen in Parliament*" [B/7/6].

to the effect that a Restructuring Credit Event is only triggered once the agreement to alter the underlying obligations is actually implemented, would effectively deprive protection buyers of the additional optionality and protection they bargained for under Limb 2. In this connection, it is to be noted that a CDS in relation to a Restructuring Credit Event is not a form of insurance against loss.[23]

57. The possible counterarguments are considered for completeness below. They appear to be divided into arguments (i) based on an erroneous construction of Section 4.7, (ii) that there was no agreement to the restructuring event, and (iii) that the requisite majorities of SSN and SUN holders did not have the power to bind all holders.

58. As to (i) and the argument that the agreement to implement the Transaction by way of Consent Solicitations does not qualify as a Limb 2 agreement because it does not in and of itself unconditionally implement the restructuring event, that argument is wrong as a matter of construction of Limb 2 for all the reasons set out in Section D above.

59. As to (ii), a possible counterargument is that the requisite holders might have terminated the TSA or declined to provide their consents to the Consent Solicitations prior to the Effective Date on 27 October 2025, such that there was no qualifying agreement to the restructuring events. As to this:

    (1) The presence of termination rights under the TSA or the power to revoke consents pursuant to the terms of the Consent Solicitation Statement did not thereby deprive the relevant agreement between APF and the requisite majority of holders of the quality of being "an agreement" that was clear and legally enforceable. By 29 September 2025, the effect of the TSA on locked-up holders was to oblige them to

[23] See The Law on Financial Derivatives (6th ed.) at [5-196]-[5-197] [B/8/2-3].

respond affirmatively to the Consent Solicitations and support implementation of the Transaction.

(2) In any event (and insofar as relevant), by 29 September 2025, the right of the majority holders of the SSNs and SUNs to terminate without cause had lapsed: c.f. the EMEA DC decision of 14 August 2025[24] which referred to this right of termination which had not lapsed at the time of the decision. By 29 September 2025 there were no publicly known circumstances which might entitle the requisite majorities under the TSA to terminate that agreement. Moreover, having had the opportunity to terminate in August 2025 without cause, the relevant holders did not do so.

60. As to a related argument that APF's right to terminate the TSA and/or the Consent Solicitations pursuant to the terms of the Consent Solicitation Statement resulted in there being no qualifying agreement for the purposes of Limb 2:

(1) Once again, a power of termination does not thereby render the agreement to implement the Transaction any less of an "*agreement*". APF was bound to proceed with the Consent Solicitations under the TSA and had no obvious route to terminate it.[25]

(2) In reality, given the publicly known circumstances of the Group's financial distress, the prospect of termination of the TSA and/or the Consent Solicitations by APF was fanciful. Absent pursuing the Consent Solicitations, it is a reasonable assumption that the Group would have faced formal insolvency proceedings given the imminence of the SSNs' maturity date in particular.[26]

[24] [B/9/1-2].
[25] For example, there was a standard 'fiduciary out' provision at Section 16.3(c) of the TSA which allowed the Group to terminate but only if the threshold was crossed that the board, advised by outside counsel, considered the Transaction to be inconsistent with its fiduciary duties.
[26] See also the TSA Presentation at slides 7-8 [A/1/7-8].

61. As to (iii) and the argument that the ultimate implementation of the Transaction remained subject to certain further conditions precedent such that the requisite majority of SSN and SUN holders did not, at that point, have the power to bind all holders:

(1) The requisite majorities of SSN and SUN holders had the power to amend the indentures and bind all holders to the restructuring events as a matter of commercial substance. That commercial substance was recognised in the Settlement Date announcements cited above at paragraph 31(2) above.

(2) In any event, the only Transaction implementation condition of substance referred to in the public announcements was the Requisite Consents condition, which the relevant holders had the power (and had already agreed) to provide. All other conditions precedent were "*customary*".[27] The sort of standard conditions precedent one is dealing with can be seen in the TSA at Section 17.1, which could be waived in any event.[28]

E.2 27 October 2025

62. If contrary to the above, a Restructuring Credit Event did not take place by 29 September 2025, it took place by no later than 27 October 2025:

(1) The Group designated the Effective Time as 27 October 2025. Accordingly, by this time, the consents provided by the requisite majorities of SUN and SSN holders (in excess of the 90% consent threshold) constituted an agreement by holders to the Transaction, at a time when they had the power to bind all holders to the SUN Equitisation and the SSN Maturity Deferral by the Consent Solicitations route.

[27] TSA Presentation at slide 15 [A/1/15].
[28] Section 17.1 of the TSA [A/11/135].

(2) By this date there was a clear (and indeed irrevocable) assent by a requisite number of holders to the implementation of the Transaction, who had the power to bind all holders of the SSNs and SUNs. The TSA's relevance at this juncture takes a back step given that holders could not revoke their consents, even if they terminated the TSA.

(3) Seen as a matter of substance, by 27 October, there was an irrevocable agreement by the requisite holders to the alteration of their obligations under the SSNs and SUNs. The only outstanding matters to implement the Transaction were matters of mechanics involving the satisfaction or waiver of the remaining conditions precedent, in circumstances where the Requisite Consents had already been irrevocably achieved.

(4) Therefore, even if one were to adopt a construction of Limb 2 to the effect that there has to be an agreement which binds all holders *in substance* to the restructuring event, there was such an agreement by the end of October 2025, leaving aside technical conditions precedent to closing.

63. Insofar as it is said that APF nevertheless had a right to terminate the Consent Solicitations, that was a theoretical rather than a realistic prospect as would have been obvious to any reasonable observer of the situation.

E.3 4 November Announcement

64. If, contrary to the above, a Restructuring Credit Event did not take place by 27 October, such an event took place by no later than 4 November 2025. By that date:

(1) The consents of the requisite holders to the Consent Solicitations were irrevocable (as they had been at the earlier dates at the end of October).

(2) In addition, however, by this date the Group had plainly decided not to terminate any one of the Consent Solicitations. From this point at the very latest, there could be no realistic expectation that it might go on to terminate the Consent Solicitations and scupper the prospects of the Transaction.

(3) The Group was instead in the position to say that it "*expects the completion of the Transaction to occur promptly after the satisfaction or (as applicable) waiver of all Transaction Implementation Conditions and* ***will*** *announce the expected Settlement Date in due course*." Put another way, it was only a matter of time until the announcement of the Settlement Date.

E.4 12 November 2025 – Settlement Date

65. The Transaction as a whole, including the SSN Maturity Deferral and the SUN Equitisation, completed on 12 November 2025. Presumably, on the No Camp's case, that was sufficient to engage both Limb 1 and Limb 2 at the same time given that: (i) as regards the former, restructuring events occurred that bound all holders of the relevant obligations, and/or (ii) the restructuring events were unconditionally implemented by agreement at that point in time.

66. That result, which collapses Limb 1 into Limb 2, underscores that a wrong turn has been taken at an earlier point in the analysis, depriving Limb 2 of any meaningful scope, even where the implementation of the Transaction was in substance the result of the consenting SSN and SUN holders' prior agreement.

2 December 2025

Jones Day

Adam Al-Attar KC
Edoardo Lupi
South Square