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What Really Drives Restructuring Outcomes in Germany?

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European restructuring frameworks have expanded materially in recent years, but German-linked restructurings remain structurally constrained by domestic law. Once a restructuring reaches the level of a German entity, directors' duties, capital maintenance rules and insolvency-related safeguards materially limit the scope for aggressive value redistribution, largely independent of documentation or execution venue.

The decisive variable is therefore the restructuring perimeter. Transactions implemented at German OpCo or issuer level are subject to a tightly bounded outcome space, while materially non-pro-rata results are achievable only where restructurings are executed above Germany or before German filing obligations are engaged.

This distinction is illustrated by recent cases. Standard Profil demonstrates how outcomes are confined once the German framework applies. Klöckner Pentaplast shows that non-pro-rata outcomes are possible only where German constraints are structurally avoided. DEMIRE highlights that, where German-law bonds governed by statute define the process, pro-rata treatment is legally mandated.

For credit investors, the implication is mechanical rather than conceptual: identify early whether German borrowers, issuers or security providers sit within the restructuring perimeter. Where they do, outcomes are bounded by law; where they do not, structure and timing remain decisive.

Perfect timing – Restructuring harmonization meets a new distressed cycle

European restructuring frameworks expanded with the implementation of the EU Preventive Restructuring Directive (Directive (EU) 2019/1023), which Member States were required to transpose by July 2021 (with certain extensions into 2022). This expansion of pre-insolvency tools occurred just ahead of the renewed rise in defaults and restructuring activity from 2022 onwards, as higher interest rates, tighter financing conditions and post-pandemic balance-sheet pressure began to translate into increased distress across European credit markets.

FIGURE 1: CREDITOR ON CREDITOR VIOLENCE WEBINAR
Rewatch here in German:

Alongside established insolvency processes, new pre-insolvency tools were introduced to enable earlier intervention and greater flexibility in liability management.

StaRUG in Germany, the UK Restructuring Plan and the Dutch WHOA significantly widened the formal restructuring toolbox. Yet despite this convergence at the framework level, Europe remains structurally fragmented restructuring outcomes continue to be shaped less by the availability of tools and more by the *Leitplanken* of local law, including director duties, capital maintenance regimes and insolvency concepts.

Why Germany Plays a Different Game

Germany treats restructuring as a means to avoid insolvency, requiring management to continuously demonstrate a positive going-concern prognosis, that the company is not insolvent and does not need to file. German law therefore does not allow long, aggressive, late-stage restructurings outside insolvency: once solvency can no longer be credibly defended, strong directors' duties trigger a prompt filing obligation. Insolvency proceedings in Germany are typically value-preserving but administrator-led, with control shifting away from management. By contrast, in the US, entering Chapter 11 is comparatively accessible, management usually remains in control as debtor-in-possession, and personal liability exposure is limited. Insolvency therefore serves as the organizing framework for restructuring, allowing capital structures to be reshaped within the process.

Unlike the US, Europe operates with a fragmented set of restructuring regimes, which in principle allows for forum shopping across jurisdictions. New tools such as the UK Restructuring Plan or the Dutch WHOA have widened procedural choice compared with the single, federal Chapter 11 framework. However, outcomes remain materially shaped by local law, particularly in Germany. German law features enforcement and liability concepts not found in the US, including civil-law share pledges (*Pfandrecht an Geschäftsanteilen*), strict capital maintenance rules (*Kapitalerhaltung*) that limit upstream guarantees, security and value extraction, and civil and criminal liability (*zivil- und strafrechtliche Haftung*) for delayed insolvency filings. Together, these constraints leave little room for late-stage or aggressive restructuring tactics once insolvency becomes likely, in sharp contrast to the US system where Chapter 11 can be accessed with limited personal risk for management.

What the Documentation Seems to Allow – and Why That Can Be Misleading

Investors relying on publicly available information – including quarterly and annual filings and offering memoranda – often assume they have a comprehensive view of restructuring optionality. In practice, this information set is not watertight. While public documents describe headline terms, some of the economically decisive mechanics sit in intercreditor agreements, which are typically not fully disclosed. In Europe, these agreements are frequently more restrictive than their US equivalents, particularly with respect to ranking changes and enforcement rights. At the same time, capacity analysis is structurally opaque: baskets are drawn over time, disclosures are incomplete, and external estimation of remaining capacity is exceptionally difficult. As a result, the flexibility implied by public documentation often diverges materially from economic reality.

IDW S6 and the Worse-Off Test: The Economic Corridor of German Restructurings

At the heart of German restructurings lies a tightly defined economic corridor shaped by two complementary anchors: the worse-off test at the bottom and IDW S6 at the top. IDW S6 is not a statute, but a restructuring opinion issued under the guidelines of the Institut der Wirtschaftsprüfer. Its background lies in the German law concept of lender liability, which essentially exposes lenders providing credit to a distressed company to a personal liability risk if the respective funding extended the period until an insolvency filing to the detriment of creditors. A "safe harbor" for creditors lies in the option to demonstrate that they could rely on a reasonable restructuring prospect, which can be evidenced by an IDW S6 opinion. Despite its private-law origin, IDW S6 has acquired de facto legal significance, as German courts regularly rely on it when assessing lender liability. It can also serve as a means to show that managing directors acted reasonably and fulfilled their duties when deciding not to file for insolvency. Its purpose is to document, in a defensible and independent manner, that the business remains a going concern after the restructuring and that the proposed capital structure is economically sustainable. In practice, an IDW S6-compliant plan requires a positive going-concern prognosis, sufficient liquidity over the planning horizon, positive equity by the end of the restructuring period and a refinanceable level of leverage and debt service. This analysis therefore defines the maximum amount of debt that can be reinstated and the outer limit of permissible non-pro-rata treatment.

Because the issuing entity was a German GmbH, Standard Profil Automotive GmbH, the restructuring had to comply with German insolvency-avoidance rules. The worse-off test set the downside: non-participating creditors received the minimum recovery consistent with an insolvency scenario. The IDW S6 restructuring opinion anchored the upside by defining the maximum sustainable capital structure post-restructuring. Participating creditors were able to capture value within this range, but any additional non-pro-rata treatment beyond the delta between floor and ceiling was structurally capped. Standard Profil therefore illustrates how, once the German framework applies, non-pro-rata outcomes are possible – but only within a clearly defined corridor. This corridor provides the analytical framework for restructurings at German entity level discussed below.

Forum Shopping and the Rule of Gibbs: Choosing the Venue, Not the Economics

In practice, the restructuring economics are defined first – in German-linked cases typically through an IDW S6-based assessment that determines whether a viable restructuring prospect exists and how much debt can be sustained. Forum choice comes second and serves only to implement that outcome.

Governing law sets hard limits on where liabilities can be restructured. Because of the Rule of Gibbs, English-law governed debt generally requires an English restructuring process – most commonly a Scheme of Arrangement or UK Restructuring Plan – to bind dissenting creditors. Since Brexit, however, the recognition of UK restructuring proceedings in Germany is no longer automatic and instead relies on German private international law rather than EU insolvency regulations. As a result, while forum shopping remains possible in principle, cross-border implementation has become more legally complex and heavier than in the pre-2021 environment.

Accordingly, forum choice determines how and where a restructuring can be implemented, while the scope for aggressive economic outcomes remains largely shaped by German domestic constraints and the IDW S6 framework once they are engaged.

Standard Profil: How the German Corridor Works in Practice

Standard Profil Automotive, a German automotive supplier, entered a financial restructuring in 2025 after several years of pressure from weak automotive end-markets, rising costs and a highly leveraged balance sheet. The restructuring was conducted at the level of the German entity, which was both the issuer and the economic center of gravity.

As a restructuring at the level of the German issuing entity, the transaction fell squarely within the IDW S6 / worse-off corridor described above. Non-participating creditors were held to the insolvency floor, while participating creditors captured the value available up to the IDW S6-defined sustainability ceiling. Any additional non-pro-rata treatment beyond this delta was structurally capped.

Klöckner Pentaplast: A Narrow Exception, Not a Blueprint

Klöckner Pentaplast, a global plastic packaging manufacturer with significant German operations, came under balance-sheet pressure in 2023–2024 following the interest-rate shock.

While the business remained operationally viable, elevated leverage and refinancing needs triggered a liability management transaction.

The restructuring was executed outside Germany and above the German entities. The relevant debt sat at HoldCo / financing-entity level, with the Luxembourg KLEOPATRA FINCO S.à r.l. entity as issuer, and was implemented via a US Chapter 11 pre-packaged process, allowing creditors to be bound efficiently under a single framework. German entities were not issuers and were only indirectly involved through capped guarantees with limitation language, meaning German capital maintenance rules and director filing duties were not yet engaged. As a result, the German restructuring corridor – defined by the worse-off test and IDW S6 sustainability limits – did not apply, enabling a more documentation-driven, non-pro-rata outcome.

The key point is not the use of Chapter 11 itself, but the timing and perimeter. Had German filing obligations arisen at a German entity level, the transaction would have been pulled back into the German framework, making a similar outcome difficult to achieve. Klöckner Pentaplast therefore illustrates that Chapter 11 can facilitate non-pro-rata outcomes only where German domestic constraints are avoided, not overridden. In Klöckner Pentaplast, non-participating creditors reportedly crystallized recoveries in the high-teens, while participating new-money providers achieved effective recoveries closer to 50c, illustrating a degree of non-pro-rata treatment that would have been difficult to sustain once German entity-level constraints applied.

DEMIRE: When German Bond Law Hard-wires Pro-Rata treatment

DEMIRE Deutsche Mittelstand Real Estate AG, a German commercial real estate company, executed a liability management transaction in 2023–2024 in response to refinancing pressure in a stressed real estate market. The transaction concerned German-law governed bonds subject to the German Bond Act (Schuldverschreibungsgesetz, SchVG) and was implemented through a consent solicitation under that statutory regime.

Under the SchVG process, DEMIRE implemented a package of uniform bond amendments, including a partial redemption at par, a bond repurchase / tender offer, a maturity extension to 31 December 2027, an adjusted coupon structure (5% cash plus PIK) and the introduction of collateral via a double LuxCo structure. Once approved by the required bondholder majority, these measures applied equally to all remaining holders of the same German-law bond. Because the SchVG does not permit selective consideration, participation-based economics or differentiated recoveries within a single bond issue, the restructuring outcome was necessarily pro rata and driven directly by statute rather than by execution strategy or structuring choices.

What This Means for Credit Investors

In German-linked restructurings, aggressive outcomes are the exception, not the base case. Once a restructuring reaches the level of German based companies, director duties, capital maintenance rules and the IDW S6 / worse-off framework materially constrain what can be achieved, regardless of documentation or forum choice.

The main source of differentiation therefore lies upstream: in identifying whether a transaction can be executed above Germany or before German filing obligations are engaged. Where this is not possible, investors should expect outcomes to converge toward pro-rata or only modestly non-pro-rata solutions, with limited scope for late-stage value reallocation.

As restructuring activity increases, the key investment question will be where the restructuring perimeter sits and when German constraints become binding. Forum choice remains an execution detail; the economics are largely determined once the German framework applies.

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