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# GLOBALTURNAROUND

The international magazine for company rescue and insolvency specialists

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## Germany prepares for auto restructurings



Having enjoyed a 'golden economy' powered by the relatively low euro and high exports to China and the rest of the world, Germany's vaunted car industry is now facing a historic challenge which has already seen a rise in insolvencies and restructurings.

A number of companies in the German auto industry have already entered insolvency over the past twelve months, including SAM Automotive, Schweizer Gruppe, Wayand and SD Automotive.

A combination of dieselgate, the need to switch to producing electrical and autonomous vehicles, the tariff war and Brexit has produced a surge of enquiries to restructuring practices.

Banks' work-out departments are also set to get significantly more involved in the coming months because of the car industry, according to a survey of 104 professionals working in bank 'intensive care' units.

In the current year, the phase of declining bankruptcy numbers, which has been ongoing since 2010, is likely to end. The main culprit; the auto industry.

These last two conclusions were provided by the 14th Restructuring Barometer conducted by Struktur Management Partner (SMP), a Cologne-based boutique, in April this year. The findings are compelling.

- Of the 104 restructuring bankers, 68 per cent expect bankruptcies to increase in 2019.
- Nearly three-quarters, 72 per cent, consider companies from the automotive industry particularly critical.
- According to the survey, 52 per cent said that they had received more new crisis cases for processing in the past half-year, compared to 30 per cent last autumn.
- The share of those who reported declining numbers dropped to 12 per cent, compared to 20 per cent in the previous period.
- As for restructuring, 70 per cent predicted rising numbers, compared to 42 per cent previously. Just 2 per cent forecasted a fall.
- Georgiy Michailov, head of Struktur Management Partner, commented: "The strikingly pessimistic assessment of the restructuring experts reflects the expectation of a significant downturn."

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## Letter from the Editor

**Argument is raging over whether Germany's auto industry is entering a period of radical restructuring and whether that process has already started (see pages 1-2), or whether the whole thing is over-hyped, and anyway there's no fee-paying work for turnaround professionals quite yet.**

Whilst researching this sector, however, I stumbled across something that could have even more far-reaching consequences.

As you can see in our story on this page, the German restructuring practice at Big Four auditor EY has developed an artificial intelligence (AI) algorithm that can predict auto supplier bankruptcies with reasonably high accuracy.

Eight companies on EY's 'Stressmeter' filed for bankruptcy last year. Seven of those had been rated with an insolvency risk of over 50 per cent, with the other at 33 per cent.

This remarkable achievement was possible using publicly available information on 1,800 companies. The clever bit was the AI algorithm.

There was another surprise. When I asked whether the Stressmeter was updated every six months or monthly, the answer was "instantly - it's real time".

So it seems to me there is nothing stopping anyone with enough resources developing their own algorithm to predict - in real time - all sorts of different financial developments.

What would stop, for instance, the hedge funds that specialise in shorting the shares of companies and then publishing damaging critiques of their accounting, from following suit?

Turn to page 8 to read how the shares in Casino, the French groceries group, have lost more than 70 per cent of their value in the five years since Carson Block's Muddy Waters criticised the company's accounts.

That demolition job was achieved using 'old technology.' What happens when the hedgies start using exactly the same techniques EY has already developed?

There is a wider point, about the accelerating growth in several areas of technology, like AI and big data, which threaten to upend our whole notion of the business world.

We're all used to the refrain that 'robots will soon make us all redundant'. What's shocking is to find that something you assumed would not be possible for at least a few years yet - reasonably accurate forecasts of exactly which businesses will fail - has already become possible.

So until next month, then, unless I've been replaced by an algorithm.

*John W. Moore*

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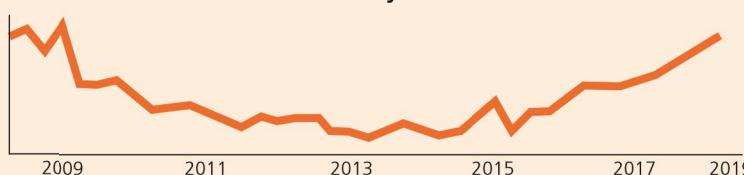
## News



# EY invents 'Stressmeter' that can predict auto supplier bankruptcies

EY's German restructuring practice has developed an algorithm or 'Stressmeter' that can predict bankruptcies in the auto industry with over 85 per cent accuracy.

Stressmeter to indicate the industry stress level



**T**he algorithm is part of a broad range of initiatives EY has taken to prepare for an anticipated wave of insolvencies and restructurings in the German auto industry, explains Bernd Richter, EY's head of restructuring services for Germany, Switzerland and Austria.

The automotive industry is facing a variety of disruptive changes such as autonomous driving, connected cars, shared mobility and the electrification of the powertrain.

Three years ago Richter himself switched from dealing with shipping restructurings to concentrate on auto, and he is now working hard with his team to develop EY's Automotive Performance Improvement Hub, designed to help companies overcome these challenges.

As part of this effort, EY partnered with a Hamburg-based start-up Nordantech to develop the Stressmeter. In a two-year development process they sampled publicly available data from over 1,800 companies, including more than 400 automotive suppliers and 200 powertrain suppliers.

In 2018, eight companies on the Stressmeter database declared bankruptcy. Of these, the algorithm had assessed seven of them as running a bankruptcy risk of over 50 per cent. The eighth company was assessed at 33 per cent. Therefore, EY concluded, the Stressmeter had an accuracy of over 85 per cent.

**Another 34 automotive powertrain suppliers on the EY Stressmeter database with a total revenue of six billion euro now show a bankruptcy risk comparable to those that went under in 2018.**

EY stressed, however, that most of the companies it surveyed had a high chance of making the successful transformation to sustainability in the years ahead. These businesses would also be able to take part in an anticipated consolidation of the auto industry through strategic acquisitions, said the firm.

**Richter said the levels of stress in the German auto industry today appeared to be similar to those in 2008 at the time of the global financial crisis.**

There was a systemic downward trend in the number of cars being manufactured by the OEMs, he said, which in turn put pressure on the suppliers, who were already operating with very low margins.

Shareholders in the suppliers were therefore caught between falling demand from the OEMs and a reluctance to increase exposure by their banks, said Richter.

This in turn meant that there was no fresh money to invest in the biggest challenge of all at the moment - digitisation, let alone the need to develop new electric powertrains. The EY partner concluded:

"The question is, who will be 'the last man standing' in certain technologies?"

The firm is planning to publish its Stressmeter algorithm soon, he added.



## Mobisol solar power company runs out of juice

Mobisol, a Berlin-based pioneer in solar-power systems for rural homes in sub-Saharan Africa, has surprised the global green energy community by applying to enter insolvency in Germany.

While Mobisol's advisers are optimistic that an M&A sales process will enable it to raise new money and pass into new ownership, the preliminary insolvency in self-administration raises serious questions about the viability of private companies supplying power in less developed parts of the world.

Mobisol is seen as a poster child by 'impact investors', development institutions that seek to achieve significant improvements in the lives of the very poorest by financing innovative companies.

Mobisol's survival is therefore also a test case for Germany's corporate rescue culture.

Since starting commercial distribution in 2013, Mobisol has supplied more than 600,000 people in remote parts of Tanzania, Rwanda and Kenya with solar electricity.

Mobisol also seemed to outperform most of its competitors regarding access to capital and was backed by prestigious financiers including KfW/DEG, Finnfund, Investec Asset Management (Africa Private Equity), FMO, and IFC.

Headquartered in Kreuzberg, a fashionable district of Berlin, everything seemed to be going well at Mobisol until earlier this year when Thomas Gottschalk, one of its founders, and Thomas Dureau, head of business development, left to start up the Access to Energy Institute, a not-for-profit with an address in the same Kreuzberg building.

In April Mobisol filed for insolvency in self-administration or **Eigenverwaltung** with the Charlottenburg district court in Berlin.

Companies can use this debtor-in-possession (DIP) procedure as long as the court is comfortable that it does not harm the interests of creditors.

### How DIP proceedings work in Germany

When the DIP proceedings are initiated, the court appoints a supervisor or custodian called a **Sachwalter**, who reports back to the court rather than making operational decisions.

Roughly 80 per cent of what happens in a preliminary administration is carried out by the management, overseen by the sachwalter.

In Mobisol's case the court appointed **Friedemann Schade** as sachwalter. Schade is from the law firm BRL Boege Rohde Luebbehusen, founded in 2006 and which today has over 250



employees in Hamburg, Berlin, Bochum, Hanover, Dortmund and Frankfurt.

The sachwalter is appointed by the court, normally upon proposal of the debtor and requiring the consent of the preliminary creditors committee. He/she technically acts like a supervisory board, but in the interest of the creditors rather than the shareholders.

Once preliminary proceedings have started the shareholder is no longer in control. The 'old equity' cannot dismiss or alter the procedure without permission from the sachwalter.

- Just prior to filing for DIP proceedings, **Andrew Goodwin**, a South African-born engineer and an existing member of Mobisol's management, was appointed by investors and lenders as the new managing director or **Geschäftsführer**.
- Mobisol's management also asked **Daniel Fritz** of Dentons in Frankfurt am Main to act as a general proxy holder or **Generalbevollmächtigter**, informally known as a chief insolvency officer (CIO).
- The court must be satisfied that the company undergoing the process has somebody in senior management with sufficient experience of insolvency procedures. Therefore, when it filed for insolvency, Mobisol chose **Stefan Weniger** as CRO or **Sanierungsgeschäftsführer**, with the formal consent of the sachwalter.

Depending on the case one might need only one CIO or one CRO, but it is not unusual to see a combination of one CRO and a CIO joining together with a former MD/CEO of the business to form the DIP management team.

## Rothschild seeks a buyer for Senvion

Rothschild is seeking bids for a leading German wind turbine manufacturer, Senvion, with Toshiba, Siemens and Blackstone in the mix as possible purchasers.

Senvion was forced to file for self administration or **eigenverwaltungsverfahren** on 9 April after several weeks of talks with creditors and potential investors had left the business with no alternative. It hasn't made a profit in several years.

The self administration process falls under section 270 of the German Insolvency Code, and leaves the management in situ, supported by a CRO and monitored by a sachwalter who reports to the court.

Senvion's 16 banks that are owed 950 million euro, together with holders of senior secured notes owed another 400 million euro, are supportive of the restructuring, and have together provided a 100 million euro DIP facility or **massekredit** for the process.

Bondholders include Anchorage and Davidson Kempner, who have bought into the debt, and are prepared to support the turnaround attempt started by CEO Yves Rannou, formerly of Alstom Wind, who took the helm in January.

### Delays and penalties

Senvion has faced delays and penalties related to big projects, while the wind industry as a whole has seen falling prices and increased competition as it moves away from governments guaranteeing generous fixed subsidised tariffs for power toward an auction-based system that favours the lowest bidders.

The wind turbine manufacturer employs around 4,000 people worldwide, more than half of them in Germany. In 2017 it had to cut 730 jobs and announced the closure of plants in North Frisia, Brandenburg and Bremerhaven.

*continued on page 6*





# Basler shows there can be life after liquidation

The transition of a global high-end women's fashion chain based in Germany from a debtor-in-possession restructuring, through liquidation and then into new ownership around the world illustrates the rapidly changing face of retail.

So says **Dr Maximilian Pluta**, a restructuring partner with PLUTA whose team supported Basler's management throughout the process.



Dr Maximilian Pluta, PLUTA

**B**asler was founded in 1936 to manufacture up-market women's jackets and coats, and grew into a global group headquartered in Goldbach, Germany, with operations eventually in France, Romania, the UK, the US and Australia.

It also expanded into wholesaling and retailing, and opened its first standalone store in 1997 in Hamburg. It opened its first in London ten years later.

At its peak, the Basler group employed over 1,100 people worldwide in 50 own-brand stores, 80 concessions and 13 outlets. But in 2017 revenue had fallen to 120 million euro from 200 million euro the year before. The writing was on the wall.

Pluta remembers when his team got involved.

**"In 2017 Basler's CFO called and said they were facing liquidity problems that the shareholder was unwilling to finance."**

"This led to me being appointed legal insolvency adviser, and in May 2017 Basler filed for self administration, with their managing director still in charge," said Pluta.

Professor Dr Lucas Flöther from the law firm Flöther & Wissing was appointed sachwalter or supervisor for the proceedings, reporting to the court but not making operational decisions. Flöther had performed the same role in the insolvency of Air Berlin last year.

Basler filed in the Local Court of Aschaffenburg, said Pluta, which was useful since that particular court was experienced in insolvency matters, and the case would be complex.

"The business needed financing from its main creditor," said Pluta. Also, all Basler's creditors were represented by a creditors' committee.

These creditors included a works council representing around 350 employees in Germany, and suppliers, who had to interact with their credit insurers.

Pluta's team supported Basler's management in the whole self-administration proceeding, which included arranging the payment of insolvenzgeld, German state-supported insurance payments to workers during an insolvency process. The support extended to

handling of customers and suppliers, and orders for the new season and so on.

## The transition to new ownership

In order to keep the business running, recalled Pluta, they had to borrow a lot of money, and relied on support for bridging finance from Basler's main UK-based secured creditor.

They appointed EY to conduct an M&A sales process, and although there were several interested parties, it proved impossible to sell the group in one piece. Instead in October they closed the 50-odd stores in Germany and sold the global rights and intellectual property to TriStyle Group, a womenswear business based in Munich owned by Equistone Partners Europe.

TriStyle already owned womenswear brands Peter Hahn and Madeleine Mode, as well as UK retailer Long Tall Sally. TriStyle said its aim at Basler was to develop a new

wholesale collection.

Meanwhile Pluta's team helped the remaining management, supported by retail experts European Retail Services (ERS), to close the stores in Germany and sell off over 700,000 items of stock. This included consulting with employees and agreeing a social plan with the relevant trade union council.

The global operations were dealt with mostly on a country-by-country basis, with insolvency firms from the BTG Global Advisory network playing key roles, including Zalis in France, BTG Advisory in the UK and GlassRatner in the US (see below).

Today the Basler brand has been relaunched around the world, and different parts are still involved in manufacturing and wholesaling. Basler no longer runs its own bricks and mortar shops, however, being an early victim perhaps of the 'Amazon effect' on the world's high streets.

## Basler Firms & Faces

### Germany

In June 2017 The Basler Fashion Group filed for debtor-in-possession proceedings with the Local Court of Aschaffenburg. The management team was supported by restructuring experts from PLUTA in Munich.

The PLUTA team was headed by **Dr Maximilian Pluta** and **Steffen Beck**, together with **Dr Matthias Lehr**, **Nadja Raiss** and **Stefan Warmuth**.

**Professor Dr Lucas Flöther** from Flöther & Wissing was appointed sachwalter or supervisor for the proceedings. Flöther performed the same role in the insolvency of Air Berlin last year.

The main secured creditor was represented by Noerr, a pan-European law firm headquartered in Munich.

### France

The biggest part of Basler's restructuring and wind-down was handled in France by Zalis, led by turnaround head **John Lloyd**, who acted as CRO.

### The UK

BTG Advisory, led by **Nigel Atkinson**, initially supported Basler's management during the restructuring. The British side of the business underwent an Administration in the UK in 2017 handled by **Arron Kendall** and **Simon Thomas** of Moorfields Advisory.

### Romania

In Romania the Basler production company was sold without an insolvency process.

### The US

The US member of the BTG Global Advisory network, GlassRatner, dealt with the restructuring in an out of court process. GlassRatner was led by co-founder **Ian Ratner**, together with **Jim Fox** in New York.

### Australia

UK-based fashion distributor Robert de Keyser bought the Australian retail operations of Basler with plans to turn it into a multi-brand business.



# Retail dip hits Germany as Monsoon liquidates, Gerry Weber shuts stores

A gathering retail slump in Germany has forced the local operations of UK-based Monsoon Accessorize, an operator of jewellery and fashion stores, to shut down its 31 shops and sack all 200 employees.

It isn't just UK-based retail groups that are in trouble. A much bigger business, German luxury womenswear brand Gerry Weber has just announced a deep restructuring using preliminary insolvency proceedings under self-administration, with the closure of 230 shops and loss of 450 jobs.

**vo-Meinert Willrodt**, a partner with PLUTA in Munich, was appointed provisional administrator of Monsoon Accessorize GmbH on 24 January, after it opened insolvency proceedings in the Local Court of Ingolstadt.

Insolvency proceedings commenced on 27 March and the final wind-down of the business is set for completion in June.

PLUTA's team also included attorney **Marlene Scheinert** and interim manager **Hans-Christian Källner**.

Willrodt said the German operations had no choice but to file for insolvency when the UK parent refused to take over the German shops.

Only two of the German Monsoon stores were cash positive, he said, and revenues for the German operation were running at only 75 per cent of last year. So when no buyers emerged for the business, said Willrodt, liquidation was the only option.

**The Munich-based lawyer said that any rescue had been facing several challenges.**

The Monsoon CEO for the German operations was also responsible for all the company's subsidiaries outside the UK, which included France and Switzerland. All purchasing and marketing was dealt with in the UK, which didn't necessarily work best in local German conditions. And HR and accounting functions had been centralised in the Paris office.

Willrodt said: "We tried to get these services cheaper elsewhere, and had negotiations with the English parent company about buying new goods to sell in our shops. But the licence for the shops was based in the UK. Who would invest in the German shops? We tried hard to find a new investor but we failed. So in the end it had to be liquidation."

As in many countries around the world, restructuring cases in Germany are becoming more international affairs, involving an increasing number of operations and stakeholders in multiple jurisdictions, even for relatively small corporates. This benefits large multinational advisory firms as well as small boutiques that are members of global networks.

## Meanwhile in the UK

Meanwhile in the UK a quartet of major real estate companies are demanding an equity stake in Monsoon Accessorize in return for supporting a financial restructuring.

**British Land, Hammerson, M&G Investments and Roubaix Group have joined forces to negotiate improved terms from a proposed deal with Peter Simon, Monsoon's owner.**

The four landlords, who won a number of Monsoon Accessorize's stores, wrote to Simon in May to request that they be given a shareholding in his business if they agree to substantial rent cuts.

Simon had planned to use an English law Company Voluntary Arrangement (CVA) to close dozens of stores and force through big rent reductions, having hired Deloitte on 15 April to prepare a plan.

Landlords frequently object to CVAs in the UK as the mechanism allows debtors to force



through store closures and rent cuts while leaving other stakeholders whole. A similar 'landlord rebellion' against a proposed CVA has been taking place at Arcadia, for instance, Phillip Green's embattled retail empire.

Currently, Debenhams and Paperchase as well as Monsoon and Arcadia are planning to use CVAs to restructure, with a combined loss of over 150 stores.

That comes on top of more than 900 store closures in the UK in the past two years at chains including HMV, House of Fraser and Toys R Us.

## Offers expected for Gerry Weber

**It isn't just UK-based retail groups that are in trouble, observed Weinrodt. One of his colleagues at PLUTA is handling a bigger retail insolvency, that of Gerry Weber, a global luxury womenswear group headquartered in Halle, Westphalia.**

The group is engaged in wholesale as well as retail and includes four brands, Gerry Weber, Taifun, Samoon and Hallhuber.

The company was optimistic that it would receive a binding offer from a new investor by the end of the month, at a creditors meeting on 4 June. The meeting confirmed the self-administration, as well as the appointment of the sachwalter **Stefan Meyer** of PLUTA and the creditors committee.

The restructuring seeks to ensure the survival of the company, but at the cost of at least 120 store closures in Germany.

The closures will happen in three phases, ending in September, the company said.

The sachwalter is a custodian who supervises the case on behalf of the court without being involved in operational matters.

Sometimes sachwalter is translated into English as 'trustee' but this can be misleading, said Willrodt, as it has no direct equivalent in UK or US bankruptcy law. **Florian Franck**, an existing member of Gerry Weber's executive board, has been appointed CRO.

On 25 January 2019, Gerry Weber International AG applied for preliminary insolvency proceedings under self-administration. Then on 1 April the local court of Bielefeld ordered the scheduled opening of insolvency proceedings under self-administration.



# Galapagos clinches lock-up agreement with creditors

Galapagos SA, which is owned by European private equity house Triton Partners, has clinched a lock-up agreement with its creditors aimed at a restructuring, following problems at its two German industrial subsidiaries, Enxio and Kelvion.

Earlier this year Triton seemed to be headed for a showdown with Galapagos Holding SA bondholders when they appointed advisers, since they feared the German companies might breach debt covenants.

Galapagos's problems stem from two units it bought from German conglomerate GEA Group AG in 2014 for 1.3 billion euro.

The private equity owner is now seeking to sell Enxio, which makes cooling equipment used in power plants and which is feeling the impact of a global switch to renewables.

Enxio lost more than a third of its sales in the first nine months of 2018 and is making consistent losses.

There have also been management changes at the second acquisition from GEA, Kelvion. Kelvion makes heat exchangers for a range of industries, including energy, and has proved vulnerable to volatile oil prices.

## Kelvion has had four finance chiefs in four years.

On 7 June Galapagos announced that it had "received overwhelming support from financial stakeholders to its proposed balance sheet restructuring transaction."

These included holders of senior secured notes (SSN), all of the lenders under its super senior revolving credit facility (RCF) agreement and those under its super senior guarantee facility agreement, as well as certain Triton-managed funds.

The company says it plans to execute a "balance-sheet restructuring transaction, which will see a major recapitalisation of the business, a

de-leveraging of the group's balance sheet and an extension of the group's debt maturities, subject to the satisfaction of certain conditions."

Triton is injecting 140 million euro of equity and/or subordinated debt, and providing a new 24.8 million interim funding in the form of a RCF. The senior secured notes will be restructuring using an English Scheme of Arrangement, and Triton will remain the majority shareholder.

The aim is to complete the transaction by 31 October. The banks will supply a new 65 million euro RCF and new guarantee facilities of 260 million euro.

Galapagos also said it was in discussions with an ad hoc group of holders of the 7 per cent senior notes due 2022, with which they hope to reach a consensual agreement. If not, the company said it may exercise its rights under the intercreditor agreement.

## COMI shift to the UK

The UK may be engaged in a never-ending Brexit drama, which has raised serious questions about its future as a cross-border restructuring hub. Nevertheless, Galapagos has decided to shift its COMI to the UK in order to use an English Scheme of Arrangement.

## Seniors v juniors

Galapagos bondholders are not a homogeneous group. Junior bondholders holding 250 million euro had grown nervous in recent months that seniors representing issues totalling 525 million euro had got organised and hired Moelis and Akin Gump (see below).

Galapagos's secured bonds have traded recently at 60-70 cents on the euro, stable since January. The 250 million euro of junior notes have been quoted at about 18 cents, down from well over 20 cents at the beginning of the year.

## Galapagos Firms & Faces

### The company

Galapagos is represented by Kirkland & Ellis, with a team led by **Sean Lacey** in London.

Financial adviser is Macquarie, led by **Dr Max Mayer-Eming**, head of the financial restructuring division for Germany, Austria and Switzerland. He is assisted by **Markus Freund**.

### The senior secured notes

An ad hoc group of the senior secured notes (SSN) are represented by Akin Gump, led by **Neil Devaney**.

Financial adviser is Moelis, led by **Charles**

**Noel-Johnson** and **Marcel Brouwer**.

### The RCF banks

The banks providing the super senior RCF and guarantee facilities are represented by Linklaters, led by **Rebecca Jarvis** and **James Douglas**.

### The subordinated bonds

The subordinated bonds are represented by Milbank, led by **Yushan Ng**. Financial adviser is Gleacher, led by **Deniz Akgul** and **Dorian Lowell**.

*continued from page 3*

## Senvion Firms & Faces

### The company

Senvion has hired Rothschild, led by **Henning Block** in Frankfurt Am Main, to find a buyer. The company is represented by Kirkland & Ellis, with a team led by **Leo Plank**.

The CRO in charge under the self administration process is **Thorsten Bieg** from the law firm GÖRG in Hamburg, together with his colleague **Gerrit Hölzle**. The duo previously performed the same turnaround role at KTG Energie.

The sachwalter, or monitor reporting to the district court of Hamburg on the self-administration, is **Christoph Morgen**, a lawyer from Brinkmann & Partner.

DLA Piper and White & Case have also advised the executive board.

### Centerbridge

Senvion's main shareholder, Centerbridge, is represented by Latham, with a team including restructuring partner **Frank Grell**.

### The banks

A total of 16 banks including Deutsche Bank,

BNP Paribas, BayernLB and JP Morgan are represented by Clifford Chance. The law firm is deploying a team of German, British and American lawyers including restructuring partner **Stefan Sax** in Frankfurt. There is a 125 million euro super senior RCF and an 825 million euro super senior guarantee facility, mostly drawn.

### The bondholders

The bondholders are represented by Sidley Austin, led by **Kolja von Bismarck**, and White & Case, led by **Keine Nennungen**.

# Saudi Arabian court gives green light to AHAB restructuring under new law

At the end of May a Saudi commercial court accepted a filing by AHAB to have its decade-long dispute with creditors resolved under the kingdom's new bankruptcy law, and rejected a demand to liquidate the company filed by HSBC and Raiffeisen Bank.

**S**audi Arabia sees its new insolvency law as key to representing itself as a business friendly jurisdiction. The ten-year dispute between the two family business empires of the Al Gosaibis and Maan Al Sanea has not helped this effort. There are high hopes that the latest court decision will clear the way for a restructuring.

Following an appeal, the Dammam Commercial Court reconsidered its previous rejection of AHAB's filing for a financial restructuring procedure and approved it.

AHAB earlier this year applied for a "protective settlement procedure" under the law, but it was rejected. The court is now expected to appoint a bankruptcy trustee who will collect and assess creditors' claims.

The conglomerate was the first high-profile company to file for a settlement under Saudi Arabia's new bankruptcy law.

## Cayman trial

Last year a Cayman Islands court ruled the collapse of AHAB in 2009, was the result of a US\$6 billion fraud from within, with the judge labelling the scheme a "cauldron of corruption".

AHAB brought claims against Maan Al Sanea, who married into the family and managed its financial empire. Al Sanea was accused of committing fraud that crippled the company.

AHAB said he forged documents to borrow billions of dollars of unauthorised debt and transferred much of it to accounts in the Cayman Islands. The Saudi company also made claims against Al Sanea's liquidators in an attempt to reclaim the wealth.

While the judge found that Al Sanea had indeed falsified accounts and committed fraud to enrich himself, he ruled that he had done so with full knowledge of the AHAB partners who were the 'primary architects' of the scheme.

## Relief for TIBC

The International Bank Corporation (TIBC), a defaulted Bahraini bank that has nearly US\$3 billion in claims against AHAB, welcomed the court's decision to accept financial restructuring, saying this would provide clarity going forward.

"The appointed independent trustee may recognise the cost implications of continued legal challenges against TIBC's claims ... and review our claims objectively," a TIBC spokesman told journalists.

TIBC, now administered by Bahrain's central

bank, raised money in international markets, transferring the funds to AHAB.

## Goldman Sachs buys claim

Goldman Sachs has acquired a debt claim against TIBC, the Bahraini bank whose failure ten years ago triggered a financial crisis in Saudi.

The US investment bank bought US\$100 million of TIBC debt from Germany's Commerzbank at the end of last year, reflecting Goldman's increased interest in Saudi.

After TIBC defaulted on a foreign exchange deal with Deutsche Bank in 2009, AHAB, which

denies knowledge of the scheme, collapsed, along with another Saudi conglomerate Saad, leaving an estimated US\$22 billion in unpaid debts.

TIBC has a claim of around US\$3 billion against AHAB, a TIBC spokesman said, while more than 60 banks that have lent money to TIBC remain unpaid.

TIBC obtained an enforcement order of around US\$1.6 billion against AHAB from the Joint Directorate of Enforcement at the General Court in Al Khobar (JDEK) last year.

## DIC creditors must wait on Doncasters' UK£800 million restructuring

**C**reditors owed US\$1 billion by the failed private equity firm Dubai International Capital (DIC), which completed its restructuring in May, must now wait on the separate restructuring of its one remaining asset, UK engineering group Doncasters.

Doncasters is facing looming maturities on its UK£800 million of debt, which has forced it to pursue asset sales and a deal with its creditors. The UK company has appointed Deloitte to seek buyers for its assets. Weil Gotshal is representing the company in the restructuring talks.

Meanwhile Doncasters' creditors are represented by Latham, and are seeking to appoint a financial adviser for the talks.

Doncasters' debt includes a US\$615 million first-lien loan that matures in March 2020, a US\$290 million second-lien loan maturing in September 2020, and a US\$153 million ABL facility from banks including Bank of America Merrill Lynch, Credit Suisse, Royal Bank of Scotland and Wells Fargo that matures in January 2020.

Doncasters is the remaining asset of DIC, which was founded in 2004 and acquired the company in 2006. The PE firm has now ceased trading after finalising its own US\$1 billion debt restructuring.

Under the terms of that restructuring agreement, lenders have agreed that DIC's main shareholder Dubai Holding has no responsibility for DIC's remaining debt, which will now be paid from any funds that can be funnelled up from Doncasters following the asset sales and the

repayment of Doncasters' own debt.

The maturities on the remaining US\$1 billion debt have been pushed out until December 2020, with an option to extend it further depending on how the debt situation with Doncasters stands.

**DIC's creditors are very exposed to Doncasters. Since DIC has shut down, the only way its lenders will get paid is with whatever is left once Doncasters lenders are repaid.**

So the focus is on the value of Doncasters' many businesses. They would have to generate a lot of value through sales for any of it to flow up to DIC, and that prospect is looking remote.

The expectation is that DIC's lenders, who are predominately Middle Eastern banks, will have to write off the debt. DIC has been selling off its assets over the last seven years after completing a previous US\$2.5 billion debt restructuring in 2012.

The firm held stakes in British-based budget hotel chain Travelodge and German alumina products maker Almatris among others, but Doncasters is now its single remaining asset after a failed attempt to sell it to Chinese telecoms engineering firm Beijing Xinwei in 2017.

Doncasters makes parts for the aerospace, automotive and energy sectors.





# Casino wins 18-month breathing space - but will French banks accept haircut?

High profile French businessman Jean-Charles Naouri has bought himself an 18-month breathing space to put together a restructuring plan for his Casino Guichard-Perrachon SA groceries group by putting it into sauvegarde protection.

On 23 May the Paris court appointed two of France's best-known 'administrateurs judiciaires' to run the sauvegarde process, **Hélène Bourbouloux**, perhaps best known for having restructured the debt of Vivarte, and **Frédéric Abitbol** of SCP Abitbol & Rousselet.

Naouri uses Casino, his top holding company with debts of 2.7 billion euro (US\$3.4 billion), to control a series of operating companies including Rallye, Foncière Euris, Finatis and Euris. These opcos are also highly leveraged, with a net debt totalling 3.3 billion euro.

They in turn own several leading French retail brands such as Monoprix, Franprix and Geant.

As long as the price of the shares in Casino that Naouri has personally pledged to the banks remains above a certain level, the magnate maintains that control.

As Casino's woes have deepened, however, the price has fallen dangerously close to that breaking point. At this stage, it seems highly unlikely he has the means to purchase any further shares, so he is in a difficult position, despite his status as a darling of the French establishment.

Casino shares have lost more than 70 per cent of their value in the past five years after the group's complex financial structure was criticised by short sellers and hedge funds including Carson Block's Muddy Waters.

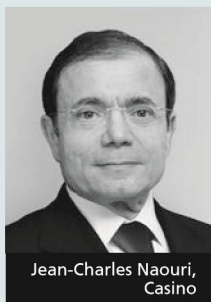
In order to get a restructuring done, Naouri must convince a Parisian court that in two years his holding company can generate enough free cash flow to start paying down his empire's debts, both principal and interest.

Naouri also has to convince the French banks to take a deep haircut. Observers suggest this could be between 20 and 50 per cent.

This is after those same banks came up with 500 million euro of new money in December to support the embattled groceries group.

## Players in the Casino case

**Jean-Charles Naouri** has called upon Rothschild to help him put together a plan for Casino. He has long been closely associated with Rothschild, who have helped previously with raising finance, and it is the business evaluation side of the investment bank that will be advising him now, rather than the restructuring team.



Jean-Charles Naouri,  
Casino



Saam Golshani,  
White & Case

Meanwhile Casino's banks are being advised by White & Case, led by **Saam Golshani**, a restructuring lawyer who moved from Orrick's Paris office last year.

The bondholders are represented by Willkie Farr.

The sauvegarde process provides a moratorium against creditor actions for an initial 12 months, which can be extended to 18 months. Casino's agreed restructuring plan would then come into force in around two years' time and run for ten years.

One might have expected Casino's banks to form a creditors' committee and seek to propose a plan of their own, as is possible in most leading jurisdictions.

But uniquely in Europe, French shareholders enjoy a key advantage over creditors even in the 'zone of insolvency' - the 'plan imposé'.

## Can France's 'plan imposé' survive the EU Directive?

Plan imposé literally means the 'plan imposed,' in this case by the debtor, without any outside input from creditors or other stakeholders. Under French law, creditors can only form a committee and get a say in the process if the company satisfies certain minimum conditions, such as having at least 150 employees or a certain turnover.

Crucially, Naouri's holding company, Casino, has a handful of employees and no turnover.

So no creditors' committee. Instead, the debtor gets to impose his or her plan on the process – plan imposé.

Naouri can propose a ten-year restructuring plan for Casino, to start after a two-year debt holiday, as long as the court agrees it. Creditors and other shareholders have no say.

It explains a lot about international investors' caution regarding the French market in past restructurings like Eurotunnel and Coeur de France.

Many French restructuring professionals privately doubt whether the plan imposé can survive the EU's Preventive Restructuring Framework Directive, under which member states must incorporate into their own laws certain minimum features of a pre-insolvency rescue mechanism within the next two years.

Where there is a likelihood of insolvency (but importantly where the debtor is not yet insolvent as defined by national law), EU member states must provide debtors with access to a restructuring framework that enables them to prevent insolvency and ensure their viability.

A lot will ride on how France decides to enact the Directive.

For instance, under the Directive, the debtor will still have a right to submit a restructuring plan. It will be up to member states to decide whether and when creditors and insolvency officeholders will also have the right to submit a plan.

Moreover, member states can decide to exclude certain persons from having a right to vote on the restructuring plan, including shareholders.

It will be fascinating to see which way President Macron's France will jump on this issue.

The Directive was originally prompted by the determination to make sure all EU member states had a mechanism equivalent to the English Scheme of Arrangement, which had driven so many European debtors to migrate to the UK to take advantage of it because of its superiority over local insolvency procedures.

Ironically, the EU Directive may complete its task just as the UK finally leaves the EU.



# Lendy insolvency casts shadow over peer-to-peer lending sector

The collapse into administration of peer-to-peer (P2P) lender Lendy following action by the UK's Financial Conduct Authority (FCA) has prompted a crackdown on how much money individuals can invest in these platforms – which could trigger the closure of dozens of more lenders.

**L**endy's insolvency comes just a year after it received full authorisation from the FCA, and is likely to leave investors with tens of millions of pounds in losses.

The company was a high-profile property lender that sponsored the famed Cowes Week yacht regatta, and had accrued more than UK£165 million from 22,000 investors on its loan book by the time administrators from RSM were called in May 2019. Of this, UK£90 million is in default.

The company operated a P2P lending platform through a website facilitating crowdfunded loans, which were used to fund the purchase and development of property.

On 24 May 2019, following action taken by the FCA, Lendy Ltd, a regulated Peer-to-Peer (P2P) firm, appointed Damian Webb, Phillip Sykes and Mark Wilson of RSM Restructuring Advisory LLP as administrators.

The same administrators were appointed for two further related, but unregulated, firms, Lendy Provision Reserve Ltd, and Saving Stream Security Holding Limited.

The FCA added “there is an ongoing investigation into the circumstances that have led to this action”.

Separately in June another UK property specialist, BondMason, said it would pull out of its P2P business, while Aim-listed GLI Finance, which invests in several P2P providers, said one of its platforms was facing “significant financial difficulties” and needed immediate investment to continue trading.

The UK has become one of the world's leading markets for P2P lending. British companies lent UK£6.7 billion over the past 12 months, UK£1 billion more than the rest of Europe combined.

The FCA estimates that 275,000 people have cash in peer-to-peer lending platforms in the UK, investing across 68 providers. The market was initially encouraged by politicians and regulators after the global financial crisis of 2007-8 as a way to make up the shortfall from traditional bank lending. P2P lending matches savers looking for higher returns than traditional savings account with companies and individuals who want to borrow.

P2P firms tend to be thinly capitalised platforms sandwiched between lenders and borrowers, so there is no big pile of assets to fund an administration.

Borrowers and investors all need the institution to continue functioning while it is wound down.

## New guidelines

The FCA this month introduced new guidelines for the industry, which observers fear may have the unintended effect of pushing more P2P lenders into insolvency.

The new guidelines say that investors will no longer be able to put more than 10 per cent

of their investable assets into P2P loans unless they have received regulated financial advice.

Companies will also be required to give better information to customers and test their knowledge and experience of investment if they have not received any advice.

One expected change is that the remaining UK peer-to-peer firms will move towards the US model of sourcing a large proportion of funding from institutional investors instead of retail customers.

## P2P: a catalogue of woes

### 2015: TrustBuddy

In 2015 TrustBuddy became the first P2P platform in the UK to become insolvent.

The Swedish company was the first listed P2P platform in Europe, and launched a UK version of its platform in 2014, promising returns of up to 12 per cent for retail investors.

Around UK£23 million was invested through the platform, before “serious misconduct” was revealed, and the platform's regulatory permissions were revoked.

In October 2015, TrustBuddy went into administration with millions of pounds still outstanding to investors. The District Court in Stockholm appointed Lars-Henrik Andersson of Lindahl (now at CIRIO) as trustee of the bankruptcy.

The following year, Andersson announced that outstanding loans had been sold off for just 25 per cent of their value, leaving many lenders out of pocket.

### 2017: Trillion Fund

Renewable energy platform Trillion Fund put itself up for sale in March 2017 after an end to wind farm subsidies meant that the business was no longer viable. Trillion Fund

allowed lenders to invest in renewable energy projects across the UK, but after government subsidiaries were withdrawn in 2015, the platform stopped listing loans.

### 2018: Collateral

The most high-profile P2P collapse until Lendy, Collateral entered administration with Wigan-based Refresh Recovery in February. A month later the FCA obtained a court order overturning the appointment, saying it had been made without the Regulator's permission. In order “to ensure that investors are protected as the law requires,” the court replaced them with Shane Crooks and Mark Shaw of BDO.

A report from the administrators this April said that they were still investigating discrepancies in the valuation of assets and bank account balances as Collateral prepares to be moved into creditors voluntary liquidation.

Collateral's property finance arm lent out around UK£14.8 million, which was secured by assets with a book value of around UK£22 million.

However, borrowers in some of the largest loans have been unable and unwilling to pay, with BDO taking recovery action against five loans worth almost UK£8 million in total.

## China's US\$200 billion P2P market

**T**he UK's P2P sector is dwarfed by that of China, now standing at around US\$200 billion, despite efforts by the authorities to clamp down on it.

Last year there were a wave of defaults,

prompting a ‘rectification campaign’ by the authorities and further worries about China's 2,000-odd functioning platforms, which channel loans from around 4 million investors.

# British Steel extends deadline for bids

A deadline for bids for British Steel has been pushed back to the end of June to allow prospective buyers more time to prepare offers, after entering compulsory liquidation under the UK's Official Receiver (OR) on 22 May.

The Official Receiver (OR), supported by a large team of 'special managers' from EY, had originally called for bids for the UK's second largest steel maker by 12 June, but this has now been extended to the 30th.

It is understood the OR has received expressions of interest from over 80 parties.

British Steel fell into insolvency after its demands for a second government bailout were rejected, throwing into doubt some 4,500 jobs directly and another 20,000 in the supply chain, as well as the future of the large Scunthorpe plant in North Lincolnshire.

British Ministers had earlier lent the company UK£120 million to buy carbon credits to cover its emissions, after the delay in Brexit led Brussels to suspend the award of new allowances to UK companies.

The extra time for interested parties to conduct due diligence will buoy hopes among employees that British Steel can be rescued.

## PE owner seeks to cherry pick

Greybull Capital, the private wealth fund criticised for its role in British Steel's collapse, was preparing a bid to cherry pick the company's European assets in France and the Netherlands, which are not in liquidation.

Trade unions want British Steel's UK and European units to be sold as one, arguing that offers the best chance of long-term survival in an industry beset by overcapacity.

Greybull acquired the metal manufacturer from India's Tata Steel for UK£1 in 2016 and says it invested UK£20 million of its own money.

But the buyout firm has faced scrutiny for extracting management fees from British Steel and loading it with a high-interest loan.

The UK's insolvency service, of which the OR is a part, said the sales process was "ongoing" and that the OR continued to talk with interested parties, but declined to give further details because the negotiations were "commercially sensitive".

## British Steel Firms & Faces

### The company

British Steel's board is being advised on the restructuring by PricewaterhouseCoopers (PwC), with a team led by **David Kelly**, **Isabelle Gross** and **Chris Rooney**. CMS is providing legal advice, led by **Glen Flannery** and **Gareth Saynor**. CMS has experience of restructuring heavy industry, having advised the Administrators on the pre-pack of UK Coal in 2013.

### The Official Receiver and Special Managers

British Steel was placed into Compulsory Liquidation under the UK's Official Receiver (OR) on 22 May.

The OR is supported by EY as 'special managers', led by **Sam Woodward**, **Hunter Kelly** and **Alan Hudson**.

Clifford Chance, led by **Phillip Hertz**, is representing the OR and the special managers.

### The British Government

KPMG and Ashurst are advising the British Government, which is a big lender, and which rejected a last ditch plea for a UK£30 million loan. The Government had already agreed a UK£120 million loan in previous weeks to the loss-making company.

The KPMG team is led by **Gareth Williams**. The Ashurst team is led by **Giles Boothman** and includes **Olga Galazoula**.

### The senior lenders (ABL)

Crowell & Moring represented the syndicate of British Steel's senior lenders that included PNC Business Credit as syndicate agent, ABN AMRO and Secure Trust Bank.

The law firm initially advised them in connection with the UK£120 million short-term government bridge loan, making it possible for British Steel to comply with its obligations under the EU Emissions Trading Scheme (ETS) and avoid a significant EU fine.

The company required further funding, and the Crowell & Moring team continued to serve as counsel to the senior lenders, all asset-based financiers.

The Crowell & Moring team is led by finance partner **Andrew Knight**, with restructuring partners **Cathryn Williams** and **Paul Muscutt**.

Knight previously acted for the same senior lenders when they financed the acquisition of British Steel by Greybull from Tata Steel in 2016, and again last year, when the original asset-based lending facility was restructured to layer in an additional UK£90 million senior secured FILO ('first lien, last out') facility provided by a US fund.

Deloitte are the company's auditors.

## 'The first real victim of Brexit'

Cathryn Williams, one of the restructuring partners at Crowell & Moring that advised British Steel's senior lenders, commented:

"British Steel appears to be the first real victim of Brexit, as delays and business uncertainty have resulted in the company's order book from Europe falling off a cliff.

"Whilst politically this is a huge issue for the Government, it is of more concern to the 4,500 people directly employed by British Steel and the further 20,000 jobs in

the supply chain which will be significantly impacted. The ramifications hardly represent a good start to life outside the EU," said Williams.

"Sadly, Brexit uncertainty lingers," she added. "Despite lengthy efforts to save British Steel, we have seen [these] developments – the challenge now is to provide business clarity on the future so that other British companies and their people can not only survive, but continue to thrive."



## Why liquidation by the Official Receiver?

Why did British Steel's creditors opt for compulsory liquidation under the Official Receiver? Why not an ordinary Administration, with a pre-pack sale to a new owner?

They chose this technique for similar reasons that Carillion did last year; because of the very significant health and safety and environmental issues thrown up by big industrial sites.

**Under UK insolvency law, insolvency practitioners have wide powers, but the flip side of that is that they have personal liability.**

Even though that is mitigated by insurance, the litigation downside of operating a giant, 100-year-old industrial site like Scunthorpe would be too much even for the largest firms. So the Official Receiver took the 'up-front risk', as it were, with the EY team doing the vast majority of the day-to-day work.

The Official Receiver is an old office, originating in the nineteenth century, established to deal with insolvencies where there are not enough assets to pay the insolvency practitioner's fees; or where there are pressing public interest reasons, such as fraud; or where the risks involved in running the case are too great for a private firm, however large.

## Greybull Capital

Launched nearly a decade ago, British Steel's private equity owner Greybull was set up by French-born brothers Nathaniel and Marc Meyohas alongside Richard Perlhagen, a friend who has since left, to invest the wealth of their affluent families.

It is based in London's Knightsbridge district and looks to acquire and turn round struggling companies in the UK. The Meyohas brothers, who are now UK residents, were born in Paris but schooled at Clifton College in Bristol.

Marc is the elder; Nathaniel is married to Michaela Nahmad, daughter of Lebanese billionaire Ezra Nahmad. Daniel Goldstein, a former Lehman Brothers trader, later joined the group as a partner, while Nathaniel, another former Lehman banker, has since left to set up his own business.

Greybull's repeated pleas for further government aid received a sceptical response, in part because of its past role in two other big UK companies it owned that also collapsed.

In 2012 retailer Comet filed for administration with the loss of over 6,000 jobs. In October 2017 Monarch Airlines entered Administration, forcing the British Government to arrange the return of 110,000 stranded tourists, the largest repatriation by the UK since the Second World War, at an estimated cost to the British taxpayer of UK£60 million.

## Break-up of Thomas Cook nears as Fosun and Triton prepare bids

The Chinese owner of Club Med and the private equity firm Triton are both readying bids for different parts of Thomas Cook, the 178-year-old British travel company, making a break-up of the group highly likely.

Thomas Cook is working with advisers from AlixPartners, led by Simon Appell, on its balance sheet and cost reduction plans, with legal representation from Latham.

The company's UK£300 million revolving credit facility (RCF) syndicate of around a dozen lenders is being advised by FTI Consulting. The banks are being advised by Allen & Overy, the same firm that represented them in Thomas Cook's previous restructuring in 2015.

The company's shares have fluctuated wildly in the past month amid turbulence prompted by a UK£1.5 billion half-year loss. That loss largely stemmed from a UK£1.1 billion goodwill writedown relating to its 2007 merger with MyTravel.

Shares in the travel group have fallen by more than 85 per cent during the last 12 months, and came under further pressure in

May when analysts at Citi wrote that its equity was worthless.

The company's bonds maturing in 2022 have been trading around 40 cents on the euro. The cost to insure against a Thomas Cook bond default using five-year credit default swaps (CDS) shot up following the announcement of the writedown.

**Thomas Cook's shares have been heavily shorted by hedge funds.**

EY, Thomas Cook's auditor, provided a going concern opinion on its accounts but warned that it faced 'material uncertainty' without a deal to sell its airline business.

Thomas Cook's biggest shareholder with

an 18 per cent stake, is understood to be preparing an offer for the bulk of the business. The deal would not include the airline division due to EU aviation ownership rules.

JP Morgan is advising Fosun on the bid.

Agreeing a transaction with the Chinese investor will be complicated by separate interest from Triton in acquiring Thomas Cook's airline and tour operating assets in northern Europe.

Triton, which bought the travel company Sunweb Group last December, is seeking to buy a portion of Thomas Cook that collectively employs roughly 20 per cent of Thomas Cook's workforce.

If a deal is struck between those parties, it would have a bearing on both Fosun's interest in the tour operating division and other talks that are taking place between Thomas Cook and suitors for its remaining airline operations.

## calendar of events

date	event	organiser
16 - 18 June 2019	International Insolvency Institute's (iii) 19th Annual International Insolvency Conference, Barcelona	International Insolvency Institute (iii)
20 June 2019	INSOL International One Day Seminar, Guernsey	INSOL International
11 July 2019	R3/INSOL Europe International Restructuring Conference, Ambassadors Bloomsbury Hotel, London	R3/INSOL Europe
26 - 29 September 2019	INSOL Europe Annual Congress 2019, Copenhagen	INSOL Europe
17 October 2019	ILA Annual Dinner, London	Insolvency Lawyers Association (ILA)
14 - 15 November 2019	ABI 15th Annual International Restructuring Conference, Intercontinental Hotel, Paris	ABI
26 - 28 February 2020	ABI VALCON, Four Seasons Hotel Las Vegas	ABI
15 - 18 March 2020	INSOL International Conference, Cape Town	INSOL International
14 -17 March 2021	INSOL International Eleventh Quadrennial Congress, Manchester Grand Hyatt San Diego	INSOL International

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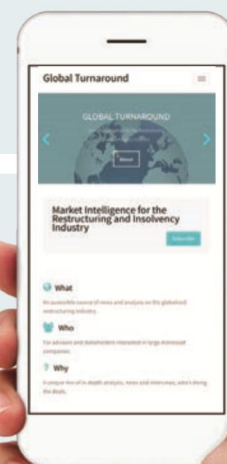
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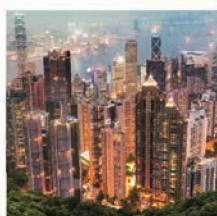
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