

Deal Wrap–Up

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With the ever changing financing landscape and the variety of financing solutions and structures growing, White & Case has continued to deliver innovative solutions to our clients. Transactions we have recently advised on include those for TLBs, yankee loans, borrowing base facilities, pre-export financing, HY notes, private placements, a *Schuldschein* notes issue, ship financing, restructurings and leveraged buy-outs (including a take private). Structuring this broad array of transactions requires an expert understanding and depth of experience, not only of existing products and structures but in developing new ones to deal with regulatory developments, investor base changes and market movements. As can be expected, White & Case has been at the fore of developing solutions to the increasingly complex area of finance. Please see below more details of some recent transactions that White & Case has advised on.

RCF/HY Notes

White & Case advised Cabot Group on a transaction that amended a £200 million English law revolving credit facility agreement (including an accordion and amendments to accommodate Cabot Group's growth in certain other jurisdictions) and issued €310 million in New York law senior secured floating rate notes. The proceeds were partially used to prepay a £90 million acquisition bridge facility. Highlights include:

- the deal was innovative as the revolving credit facility agreement and the senior secured floating rate notes, along with the additional debt issued, are regulated by two intercreditor agreements yet secured by the same security package (with different rankings)
- additionally, the security package includes, amongst other security documents governed by Luxembourg law or Irish law, two separate English law debentures, each subject to a different intercreditor agreement
- following a major acquisition by one of Cabot's subsidiaries of the Marlin Financial Group in February 2014, Cabot did not terminate the existing Marlin intercreditor agreement regulating the debt of the acquired Marlin Financial Group due to the existence of £150 million senior secured fixed rate notes issued by a Marlin company. Instead, Cabot amended it to align with its own conditions, meaning the consolidated group's financial indebtedness has since been regulated by two intercreditor agreements
- this extremely sophisticated deal forged an innovative legal solution for acquiring companies with complex existing debt arrangements.

RCF/Private Placement Structure

White & Case represented the Aliaxis group in respect of an approximately €850 million cross border financing which included financings under English law, New York law and German law. Highlights include:

- a €680 million English law revolving facility agreement and two notes issuances – an approximately €50 million New York law private placement and a €120 million German law *Schuldschein*
- despite complex competing governing law requirements and the raising of capital via different debt products, White & Case crafted matching or complementary provisions across all of the debt instrument documentation to the satisfaction of all parties.

Mid-cap's Blurred Lines

White & Case's strength in the hybrid mid-cap/large cap market is highlighted by our representation of the Iris Software group (an HgCapital portfolio company) in connection with its GBP430 million refinancing. Notable points include:

- mid-cap deal with a mix of large-cap deal terms highlighting how the lines are becoming blurred between deal terms on offer for mid-cap and large-cap transactions. Certain strong mid-cap credits (such as Iris) have attracted large-cap terms, sometimes more so than large-caps with a more challenging credit history. The traditional approach of looking solely at the value of the deal no longer applies
- a divergent lender group with a mix of credit funds and traditional mid-cap market bank lenders.

White & Case has acted on other deals involving financing arrangements for corporates, which have been structured on the basis of similarly "covenant loose" documentation.

Russian Financing

White & Case's stronghold in Russia has been demonstrated by our representation of a number of Russian clients in recent times including Eurochem. Highlights from the Eurochem transaction include:

- up to \$750 million secured hybrid pre-export financing
- one of the biggest pre-export financings in Russia.

Serbian Take Private

The Mid Europa Partners acquisition of Danube Foods Group BV and Clates Holding BV required a rigorous timeline. Highlights include:

- an unusual mix of Serbian and non-Serbian lenders in relation to the €375m senior and a €60m PIK financed by the European Bank for Reconstruction and Development
- three listed Serbian operating companies, two of which were partially owned (i.e. 80% and 60%) with a voluntary takeover bid for the remaining shares in the two partially owned Serbian companies at financial close

Financial Institution Restructuring

White & Case has spent many years advising on the restructuring of Kaupthing hf., which became effective from December 23, 2015. Highlights include:

- with liabilities of more than US\$45 billion and creditors in more than 100 countries, Kaupthing hf. is one of the largest ever bank insolvencies
- the successful restructuring enabled the distribution of billions of euros in cash, as well as other instruments, to senior unsecured creditors

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- it also facilitated those creditors taking control of the company and its remaining assets. Completing the restructuring before the end of 2015 also ensured that Kaupthing was not subject to an Icelandic stability tax on its assets, preserving value for creditors.

Shipping Restructuring

White & Case advised the steering committee on the restructuring of TORM AS, a Danish listed shipping company. Highlights include:

- restructuring by way of an English scheme of arrangement which involved a mandatory cancellation of 'out of the money' debt in return for warrants and an optional exchange under which scheme creditors were eligible to exchange additional scheme claims or secured indebtedness for shares
- a merger of equals between Oaktree and TORM by way of contribution in kind in exchange for the majority of shares in TORM
- the provision of a new US \$75m working capital facility.

Borrowing Base Facilities

White & Case represented Trafigura on its flagship \$2 billion refined metals borrowing base financing.

Conclusion

2016 continues to be another year of innovation and diversity in financing structures, which will be necessary to deal with events such as the collapse of oil and gas prices and the slowdown in M&A activity. This will undoubtedly provide interesting opportunities for issuers, borrowers, sponsors, investors, banks and direct lenders alike.

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