

LMEs: The Covenant Playbook

Shoshanna Harrow

Senior Director
Covenant Review

CREDITSIGHS
OUTLOOK
CONFERENCE

04.12.2025

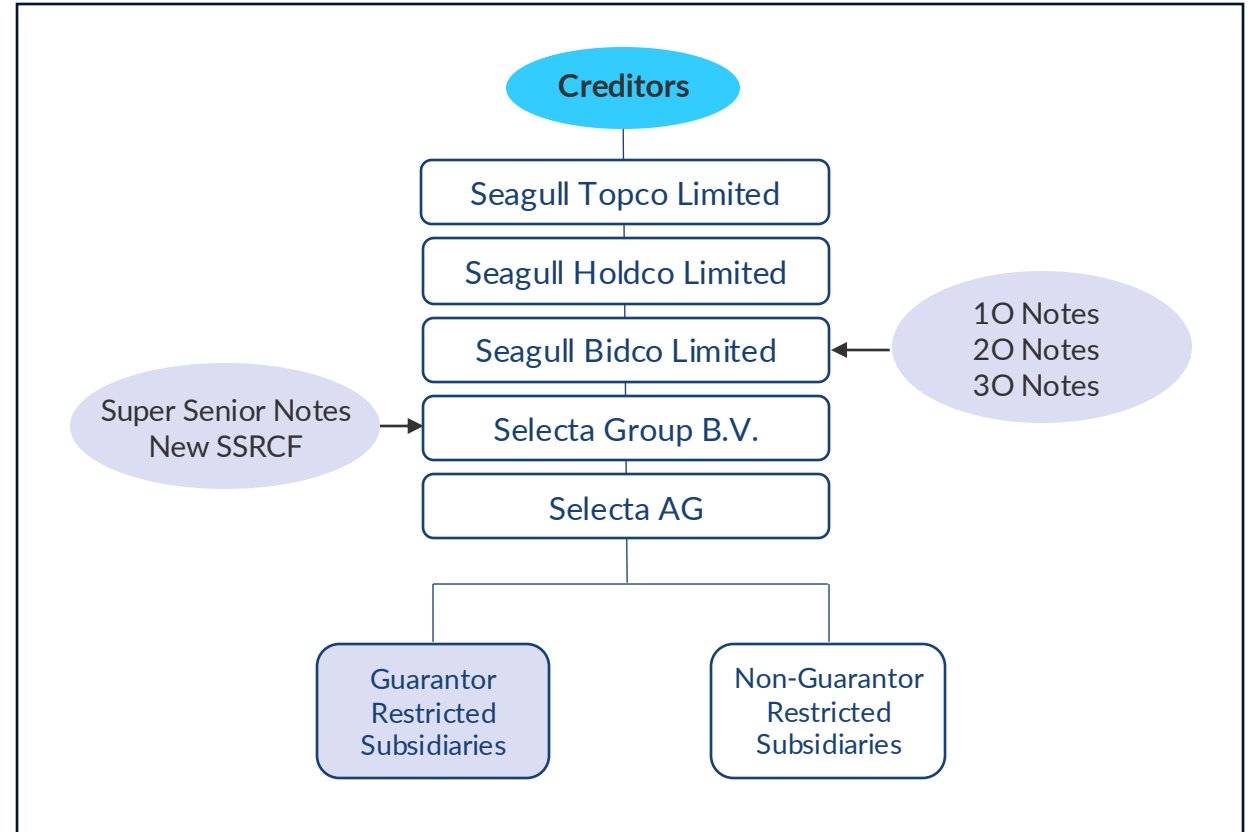
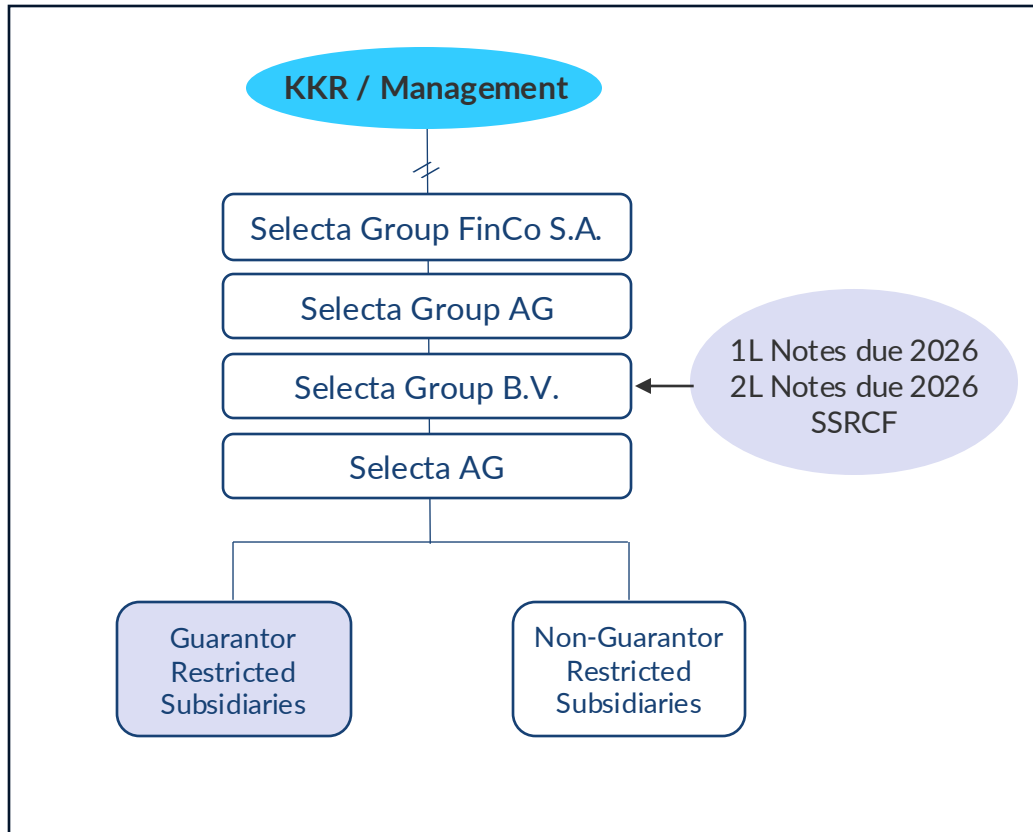
LONDON



European LME Landscape

Notable Transactions and Litigation

Simplified Pre-Transaction and Post-Transaction Structures





New Money

- Super senior notes and RCF
- Provided by 1L/2L ad hoc group



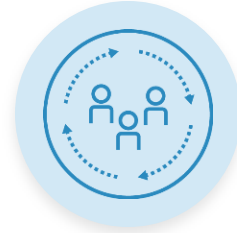
Distressed Disposal

- Share pledge enforced
- Selecta and 1L/2L liabilities sold to Bidco
- 1Ls → New 3O Notes at 85% plus 15% Topco Class B shares
- 2Ls → 1% Topco Class B shares



Private Transactions

- Exchange 3O Notes / equity for New 1O Notes at par
- Purchase / backstop New 2O Notes plus Class A Topco equity
- Only for ad hoc group



Public Offers

- Same 3O Notes exchange offer (but sacred rights suspended under New 1O Notes for 12 months)
- Chance to purchase New 2O Notes plus Class A Topco equity



Litigation

- Netherlands: appeal of Dutch court approval of share pledge enforcement
- New York: antitrust and contract claims

Distressed Disposal as an LME Tool

- Powerful intercreditor mechanic
- Includes disposal of shares or assets at direction of “Instructing Group” after acceleration event
 - Normally creditors representing a percentage of senior secured liabilities (often simple majority; sometimes $2/3$)
- Security agent typically authorized to:
 - Release liens over the assets being sold
 - Release or sell liabilities of entity whose shares are being sold
- FMV requirement typically applies to sale
- Cash / cash equivalent consideration often required but exceptions can provide workarounds
 - Competitive sales process
 - Fairness opinion
 - Set-off or daylight facility
 - Cash offers received are less than liabilities
- Proceeds must be applied in accordance with waterfall
- May be more protective to junior creditors than minority senior secured creditors

New York Litigation

Antitrust claims

- Coop agreement and company / ad hoc group agreements

Indenture claims

- Failure to distribute enforcement proceeds pro rata
- Failure of security agent to act for benefit of all secured creditors
- Impermissible override by intercreditor agreement
- Failure to pay principal / interest in cash

English law claim

- Breach of minority protection principle

Other claims

- Breach of implied covenant of good faith and fair dealing
- Tortious interference with contract
- Breach of fiduciary duty under Dutch law



The Cooperation Agreement is a classic example of an anticompetitive and collusive agreement between competitors ... to control the price for Selecta Group B.V.'s first lien debt and to exclude Plaintiffs from the market for anticompetitive purposes.

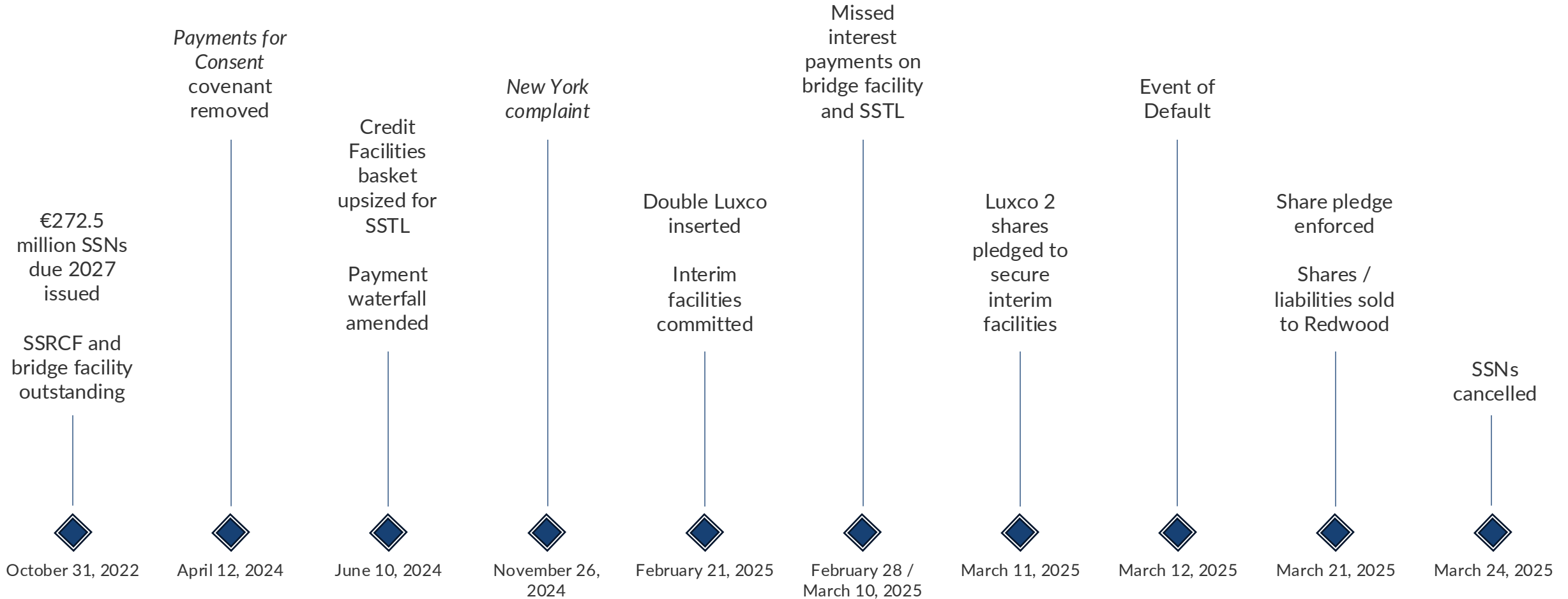
Detroit Directional Opportunities Master Fund Limited et al v. Selecta Group B.V. et al

Minority Protection Principle

English Common Law Principle

- Majority must exercise power in good faith for benefit of the class as a whole and not in a manner that is oppressive or unfair to the minority
- Assénagon (2012)
 - Effectively ended exit consents for English law-governed debt
- Principle being raised in connection with Selecta and Hunkemöller share enforcements
 - Decision could have wide-ranging implications for European LMEs with English law governed ICA in structure





New York

Payments for Consent covenant

- Consideration offered to Redwood to remove covenant

Issuance of Redwood's notes

- Redwood's notes not "substantially identical" to original notes
- Did not exchange Redwood's original notes for notes that provide the same benefits
- Issued new notes to replace notes that were cancelled

UK

Distressed disposal challenge

- Not a valid Instructing Group
- Redwood failed to act in the interests of the class of senior secured creditors as a whole

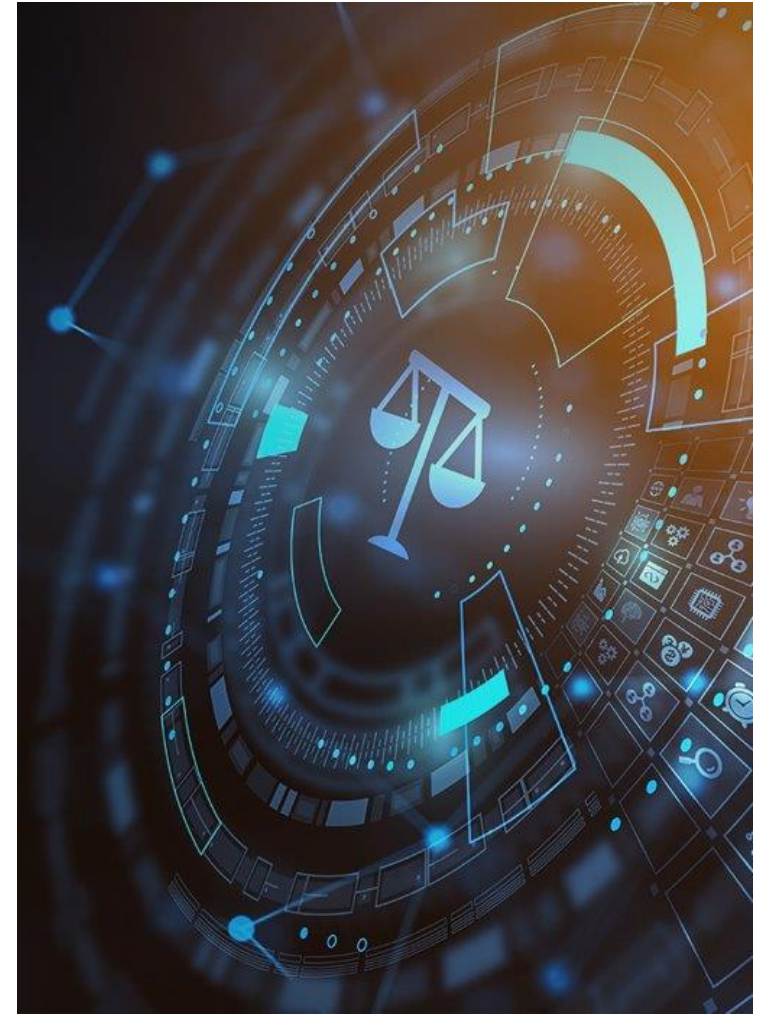
Netherlands

Tort claims expected

- Holdco and directors as defendants

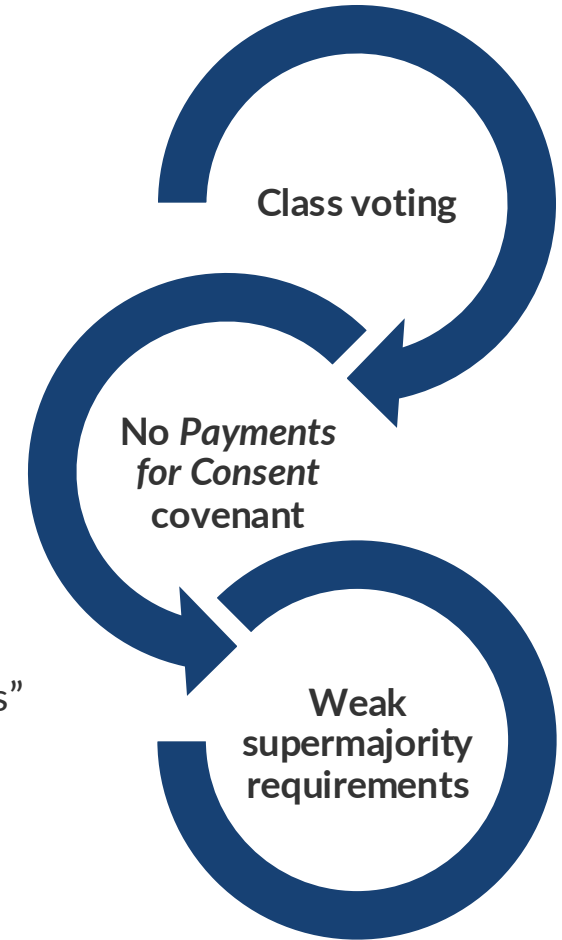
Luxembourg

Share enforcement challenge



All Stick and No Carrot for Smaller Series

- Two series of bonds issued under same indenture
- Exchange offer and consent solicitation for 2026s
 - Offered new 2029s
 - Asked to extend maturity and reduce coupon for original 2026s
- Consent solicitation for both series
 - Covenant strip
 - Subordination in right of payment and lien priority to new 2029s
- Side deal for ad hoc group
 - Exchange 2026s and 2028s for 2029s “at prices negotiated in individual bilateral transactions”
- Consents in hand at launch
 - >90% of 2026s
 - >77% across both series



Post-LME Covenants

Post-LME Covenants Increase Protection

Tighter Terms

Blockers

- General prohibition on liability management transaction
- J. Crew / Pluralsight / Envision blocker(dropdown)
- At Home / Sabre blocker (double dip)
- Chewy blocker (guarantee release)
- Wesco / Incora blocker (vote rigging)
- Serta blocker (uptier)

Enhanced consent requirements

- Lien and payment subordination
- Release of credit support
- Amendments to blockers, events of default, grace periods

Others

- *Payments for Consent* covenant
- Removal of Unrestricted Subsidiary concept



What's Ahead?

This Report is for informational purposes only. Neither the information contained in this Report, nor any opinion expressed therein is intended as an offer or solicitation with respect to the purchase or sale of any security or as personalized investment advice. CreditSights and its affiliates do not recommend the purchase or sale of financial products or securities, and do not give investment advice or provide any legal, auditing, accounting, appraisal, valuation or actuarial services. Neither CreditSights nor the persons involved in preparing this Report or their respective households has a financial interest in the securities discussed herein. Recommendations made in a report may not be suitable for all investors and do not take into account any particular user's investment risk tolerance, return objectives, asset allocation, investment horizon, or any other factors or constraints.

Information included in any article that includes analysis of documents, agreements, controversies, or proceedings is for informational purposes only and does not constitute legal advice. No attorney client relationship is created between any reader and CreditSights as a result of the publication of any research report, or any response provided by CreditSights (including, but not limited to, the ask an analyst feature or any other analyst interaction) or as the result of the payment to CreditSights of subscription fees. The material included in an article may not reflect the most current legal developments. We disclaim all liability in respect to actions taken or not taken based on any or all the contents of any research report or communication to the fullest extent permitted by law.

Reproduction of this report, even for internal distribution, is strictly prohibited. Receipt and review of this research report constitutes your agreement not to redistribute, retransmit, or disclose to others the contents, opinions, conclusion or information contained in this report (including any investment recommendations or estimates) without first obtaining express permission from CreditSights. The information in this Report has been obtained from sources believed to be reliable; however, neither its accuracy, nor completeness, nor the opinions based thereon are guaranteed. The products are being provided to the user on an "as is" basis, exclusive of any express or implied warranty or representation of any kind, including as to the accuracy, timeliness, completeness, or merchantability or fitness for any particular purpose of the report or of any such information or data, or that the report will meet any user's requirements. CreditSights may issue or may have issued other reports that are inconsistent with or may reach different conclusions than those represented in this Report, and all opinions are reflective of judgments made on the original date of publication. CreditSights is under no obligation to ensure that other reports are brought to the attention of any recipient of the Products.

Certain data appearing herein is owned by, and used under license from, certain third parties. Please see Legal Notices for important information and limitations regarding such data. For terms of use, see Terms & Conditions.

If you have any questions regarding the contents of this report contact CreditSights at legal@creditsights.com.

© 2025. CreditSights, Inc. All rights reserved.



CreditSights
a FitchSolutions Company