



**CreditSights**

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**XEROX:**

HOW DID XEROX  
CONSUMMATE THE JOINT  
VENTURE FINANCING  
UNDER THE TERMS OF ITS  
EXISTING TERM LOAN  
FACILITY?

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## Xerox: How Did Xerox Consummate the Joint Venture Financing Under the Terms of its Existing Term Loan Facility?

### The Bottom Line:™

- Xerox appears to have created a joint venture that does not meet the definition of “Subsidiary” under its existing credit agreement in order to consummate the recent joint venture financing.

### **Overview**

On February 17, 2026, Xerox Corporation (the “Company”) reported on a [Form 8-K](#) that it had entered into what is tantamount to a drop-down financing transaction, but with a joint venture rather than an unrestricted subsidiary. The steps are as follows: (1) the Company formed a joint venture (“IPCo Holdings”) with certain of its lenders (the “IPCo Lenders”) pursuant to which the IPCo Lenders received Class A Units in IPCo Holdings and the Company received Class B Units in IPCo Holdings, (2) the Company contributed certain intellectual property and related assets, including the trademarks in respect of the Xerox brand (the “IPCo Assets”) to IPCo Holdings, (3) the IPCo Lenders funded a \$405 million senior secured term loan (the “IPCo Term Loan”) to IPCo Holdings (the “Joint Venture Financing”), and (4) the proceeds of the Joint Venture Financing were distributed to the Company and are “expected to be used for general corporate purposes.”

The Company is the borrower under a \$550 million first lien senior secured term loan facility (the “Existing Term Loan”) which is governed by the credit agreement, dated as of November 17, 2023 (the “Existing Credit Agreement”).<sup>1</sup>

In our prior [report](#), we examined the secured debt capacity that the Company would have under its secured bonds and loans. Given the limited capacity under the loan and bond documents, Covenant Review subscribers have been asking how the Company was able to incur the Joint Venture Financing. This report examines how the Company structured this transaction in a manner to be able to incur additional debt under the Existing Credit Agreement.

### **How could the Company contribute material IP to IPCo Holdings and incur the debt?**

Given the limited debt capacity to incur secured under the Existing Credit Agreement, IPCo Holdings is presumably not subject to the negative covenants in the Existing Credit Agreement. The covenants are generally applicable to only Xerox Holdings Corporation (“Holdings”), the Company, and their Restricted Subsidiaries.<sup>2</sup> Accordingly, for IPCo Holdings to be exempt from complying with the covenants, it must not be a Restricted Subsidiary. In most LMT cases, one would expect that IPCo Holdings must therefore be an unrestricted subsidiary.

<sup>1</sup> See the Existing Credit Agreement [here](#) and our report on the Existing Credit Agreement [here](#).

<sup>2</sup> See Article VI of the Existing Credit Agreement.

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However, the structure of the Joint Venture Financing indicates that IPCo Holdings is in fact not an unrestricted subsidiary. This is because the Existing Credit Agreement includes a J. Crew blocker. The definition of “Unrestricted Subsidiary” in the Existing Credit Agreement provides that:

“No Subsidiary of the Borrower may be designated as an Unrestricted Subsidiary if it owns or exclusively licenses any Material Intellectual Property at the time of designation. No Loan Party or Restricted Subsidiary may transfer, assign or exclusively license any Material Intellectual Property (whether pursuant to a disposition, Investment, Restricted Payment or otherwise) to any Unrestricted Subsidiary. No Unrestricted Subsidiary shall at any time own (or hold exclusive license to) any Material Intellectual Property.”<sup>3</sup>

The Existing Credit Agreement defines “Material Intellectual Property” as:

“Intellectual Property owned by Holdings or any Restricted Subsidiary that is material to the business of Holdings and its Restricted Subsidiaries, taken as a whole, as determined by the Borrower in good faith.”<sup>4</sup>

The Joint Venture Financing included a contribution of the IPCo Assets to IPCo Holdings. The IPCo Assets included, among other things, the trademarks in respect of the Xerox brands. While materiality is a determination that can be tricky (especially from the outside looking in), it is difficult to see how the trademarks in respect of the Xerox brand would not constitute Material Intellectual Property. As a result, IPCo Holdings is likely not an Unrestricted Subsidiary.

The Company therefore appears to have used a different method of getting the negative covenants to not apply to IPCo Holdings. The key seems to be the structure of IPCo Holdings. While the organizational documents for IPCo Holdings were not publicly filed, the clue is that the Company was issued Class B Units and the IPCo Lenders were issued Class A Units. It is therefore possible that the structure of IPCo Holdings is such that it no longer meets the definition of “Subsidiary” under the Existing Credit Agreement. The Existing Credit Agreement defines “Subsidiary” as:

“any corporation, partnership, limited liability company or other entity of which more than 50.0% of the voting Equity Interests are at the time owned by such Person.”<sup>5</sup>

So long as the Company holds 50% or less of the voting Equity Interests of IPCo Holdings (for example, if each of the Company and IPCo Holdings holds exactly 50%), then IPCo Holdings would not be a “Subsidiary” under the Existing Credit Agreement. This solves both problems the Company was likely facing, as the Debt and Liens covenants do not apply to an entity that is not a Subsidiary (in order to be a Restricted Subsidiary, an entity must first be a Subsidiary) and the J. Crew blocker only prohibits transfers of Material Intellectual Property to unrestricted subsidiaries—not entities that are not Subsidiaries.

The Company’s interests in the IPCo Assets could have been protected despite the IPCo Lenders holding a majority of the voting equity in IPCo Holdings in a number of ways such as consent rights over major decisions. However, this is speculation as the IPCo Holdings organizational documents have not been filed.

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<sup>3</sup> See the definition of “Unrestricted Subsidiary” in the Existing Credit Agreement.

<sup>4</sup> See the definition of “Material Intellectual Property” in the Existing Credit Agreement.

<sup>5</sup> See the definition of “Subsidiary” in the Existing Credit Agreement.

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### **Investments covenant capacity**

The Company would have needed capacity under the Investments covenant in order to invest the IPCo Assets in IPCo Holdings. Two relevant baskets appear to grant material capacity: (1) the builder basket (including the > of \$215 million / 25% of EBITDA starter amount),<sup>6</sup> and (2) the general investments basket (> of \$260 million / 30% of EBITDA (which is shared with the JV investments basket)).<sup>7</sup> This would have given the Company a total of > of \$475 million / 55% of EBITDA of capacity. In addition, the Company can make any investments on an uncapped basis, so long as it is in pro forma compliance with a 3.5x Gross Total Leverage Ratio<sup>8</sup> or potentially on the basis of prior qualified equity issuances and contributions.<sup>9</sup>

Notably, all of the foregoing capacity is available to make investments in *any* joint venture (and there is no requirement that the joint venture have a “bona fide” business purpose, any ordinary course limitation, or any other conditions on what constitutes a joint venture).

It is unclear what valuation the Company placed on the IPCo Assets, but between these baskets, the Company appears to have gotten comfortable that it had capacity to make an investment of the IPCo Assets in IPCo Holdings.

### **Prepayment of the IPCo Term Loan**

The IPCo Term Loan is not subject to the Junior Debt Prepayments covenant under the Existing Credit Agreement and can be prepaid without restriction. The Junior Debt Prepayments covenant only applies to a Junior Financing.<sup>10</sup> Junior Financing, in turn, is defined as debt that is (1) unsecured or contractually subordinated in right of payment, (2) secured on collateral by junior liens, and (3) permitted refinancings of the foregoing, in each case, in excess of the greater of \$130 million and 15% of EBITDA.<sup>11</sup> The IPCo Term Loan is secured on a first lien basis on assets that are no longer collateral under the Existing Credit Agreement.<sup>12</sup> It does not fall into any of the categories of a Junior Financing.

### **Conclusion**

The Joint Venture Financing is yet another new transaction structure that creative lawyers have come up with to circumvent lender protections in credit agreements. It remains to be seen how lender counsel will react to try to prevent this type of a transaction in the future. Covenant Review will continue to assess this situation as it develops.

— *Covenant Review*

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<sup>6</sup> See Section 6.04(3) of the Existing Credit Agreement. Note that the CNI-based and new equity portions of the builder basket is subject to compliance with a 1.25x Gross First Lien Leverage Ratio, which may have limited the amount of capacity that it could provide.

<sup>7</sup> See Section 6.04(29) and the definition of “Shared Investment Cap” in the Existing Credit Agreement. Note that the JV investments basket in this case (Section 6.09(38)) is generally limited to investments required by customary buy/sell arrangements in the ordinary course).

<sup>8</sup> See Section 6.04(33) of the Existing Credit Agreement.

<sup>9</sup> See Section 6.04(28) of the Existing Credit Agreement.

<sup>10</sup> See Section 6.09 of the Existing Credit Agreement.

<sup>11</sup> See the definition of “Junior Financing” in the Existing Credit Agreement. Note that certain of the existing unsecured notes are excluded from the definition of Junior Financing.

<sup>12</sup> Section 10.19(1)(b) of the Existing Credit Agreement provides for automatic release of collateral that is transferred to a non-loan party.

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