Lowenstein Bankruptcy Lowdown Video 43 – The Rise of Part 26A: A Real Alternative to Chapter 11?

By Eric Chafetz and Daniel B. Besikof

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Daniel B. Besikof: Welcome to this edition of the Lowenstein Bankruptcy Lowdown.

One of the most interesting recent developments in cross-border restructurings has been the rise of the UK Part 26A restructuring plan. Our team represented Argo Blockchain in one of the first U.S.-connected Part 26A cases, giving us a firsthand look at this relatively new restructuring scheme.

Eric Chafetz: For decades, Chapter 11 has been the restructuring tool of choice for distressed companies, and that remains true today. However, recent cases—including Argo, Fossil, and New Fortress Energy—demonstrate that Part 26A is no longer a niche restructuring tool restricted to UK companies.

That evolution isn’t surprising because the two schemes have common features: they both allow a company to restructure debt through a court-supervised process, involve creditor voting by class, and permit a court to bind dissenting classes through a form of cramdown.

Daniel B. Besikof: The differences, though, are quite significant. Unlike chapter 11, Part 26A allows restructuring of only certain debts, not the entire capital structure; there is no automatic stay or absolute priority rule; and there is limited court oversight, which can make it quicker, less expensive and less disruptive to the business.

Our experience in *Argo* highlighted another important advantage. The company was able to complete a balance sheet restructuring while preserving its Nasdaq listing and keeping existing equity holders in place. For a public company, that can be enormously valuable.

Eric Chafetz: One of the more interesting developments is that companies are intentionally creating the jurisdictional nexus needed to access Part 26A. Both Fossil and New Fortress Energy made changes to their org chart and capital structure to create, or bolster, their connection to the UK, allowing the companies to pursue a Part 26A plan.

Daniel B. Besikof: Part 26A certainly isn't the right answer in every case. If a company needs to sell assets, pause collection efforts or litigation, reject contracts, obtain priming DIP financing (debtor-in-possession), or undertake a broader operational restructuring, Chapter 11 remains the gold standard. And the recent *New Fortress* Chapter 15 decision also reminds us that U.S. courts will carefully examine whether a company has established a legitimate UK nexus before recognizing a Part 26A plan.

Eric Chafetz: So, what's the takeaway? For companies whose primary objective is a balance-sheet restructuring, the choice of forum has become a strategic decision rather than a foregone conclusion. And for practitioners, understanding both regimes is increasingly essential to advising clients on the best path forward.

Thanks for joining us, and we'll see you next time.