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The Global Law of Debt

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Corporate debt financing and the restructuring of large corporations are now governed by what this Article calls the "global law of debt," a transnational system shaped more by law firms, investment banks, and investors in New York and London than by national laws or court decisions. Large companies can now optimize governing law on a transaction-by-transaction basis, for example by borrowing in New York and then restructuring that debt in the United Kingdom, or by borrowing in London through English-law governed contracts with New York-law interpretation for select provisions. This Article provides the first account of this development, tracing its origins to the 1960s, when New York and London debt professionals expanded into each other's markets, creating an entangled system that fostered mutual learning and competition. In 1978, Congress enacted a new bankruptcy law that gave American lawyers and investors corporate restructuring expertise that they later exported abroad. In the post-pandemic era, London emerged as a global restructuring hub rivaling the United States. These developments have produced a robust global debt market, but they have also unsettled long-standing assumptions about the rights of creditors as Chapter 11's primacy fades and controversial American innovations that erode creditor protections proliferate globally.

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In March 2024, Altice France ("Altice"), a European telecom giant with more than 20 million mobile phone customers and 36 million wired internet customers in France,[1] announced it wanted its creditors to agree to restructure its €23 billion (approximately $24 billion) in debt.[2] Altice threatened to force its creditors to agree to reduce their debt,[3] using what *Bloomberg* called a "U.S.-playbook" of aggressive maneuvers designed to split creditor groups and force concessions.[4] Like many innovations in corporate debt finance and restructuring, this scorched earth bargaining style had first emerged in the United States in the 2010s before being incrementally tested in London.[5] Altice's actions suggested it was now reaching Continental Europe.[6] The restructuring negotiations were a truly international affair, involving investment funds, law firms and investment banks from New York, Los Angeles, London, and Continental Europe.[7]

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[1] *See* ALTICE FRANCE HOLDING S.A., *Management's Discussion and Analysis of Financial Condition and Results of Operations* 4 (2025), https://perma.cc/XXJ2-9MAH.

[2] *See Fly on the Wall to Altice France Debt Negotiations*, *Cloud 9fin Distressed Diaries*, 9FIN (May 22, 2025), at 04:00, https://perma.cc/R8ZJ-SYMM (quoting Altice's Q4 2023 Earnings Call where an executive called for "creditor participation in discounted transactions" to bring the company's debt level down).

[3] *See* Robert Smith, *Altice France on collision course with creditors*, FIN. TIMES (Mar. 21, 2024), https://perma.cc/35W4-ZYPD (noting that the CFO refused to rule out forcing creditors to agree to a deal).

[4] *See* Irene G. Perez, *How Altice Can Push Its Creditors to Cut Billions of Debt: Q&A*, BLOOMBERG (Mar. 28, 2024), https://perma.cc/J5D6-J37J ("One option is for Altice France to follow a US-style liability management exercise, given that its debt is governed by New York law."). *See also* Chris Haffenden, Bianca Boorer, Denitsa Stoyanova, Emmet McNally, Will Macadam, Nathan Mitchell & Max Frumes, *Winding Up – 'Sacréblue! More Altice France Unrestricted Subs'*, 9fin (May 17, 2024), https://perma.cc/D38J-4S6E. For background on the development of these tactics in the US, see Jared A. Ellias & Robert J. Stark, *Bankruptcy Hardball*, 108 CAL. L. REV. 745 (2020); Diane L. Dick, *Hostile Restructurings*, 96 WASH. L. REV. 1333 (2021); Vincent S.J. Buccola & Gregory Nini, *The Loan Market Response to Dropdown and Uptier Transactions*, 53 J. LEGAL STUD. 489 (2022). *See also* CADWALADER, *European Restructuring: 2024 in Review and Outlook for 2025* (Jan. 14, 2025), at 7, https://perma.cc/3USB-DBL7 (describing Altice France as deploying "a much more aggressive approach to dealing with its creditors than the European market is used to.")

[5] For a notable early example of aggressive tactics in Europe, *see Assénagon Asset Management SA v Irish Bank Resolution Corp Ltd (formerly Anglo Irish Bank Corp Ltd)* [2012] EWHC 2090 (Ch) [1]-[5].

[6] *See* Perez, *supra* note 4 (noting Intralot SA's aggressive American-style tactics with its bondholders).

[7] *See* Irene G. Perez & Giulia Morpurgo, *Pimco, Elliott Among Altice Creditors Drafting Debt Counter-Plan*, BLOOMBERG (Sep. 12, 2024, 4:35 AM) (describing the roles of New York-based Blackrock, Elliot Investment Management, and Pacific Investment Management Co); Irene G. Perez & Benoit Berthelot, *Altice France Turns to Lazard as Standoff With Creditors Deepens*, BLOOMBERG (Mar. 21, 2024, 11:47 AM), (discussing Attestor Capital and Arini, two London based hedge funds and New York based Milbank, a law firm, and Los Angeles based Houlihan Lokey, an investment bank); Rachel Butt, *Altice France Secured Lenders Choose FA*, 9FIN. (Apr. 9, 2024)

In response to the company's threats, its creditors organized to negotiate.[8] Creditors objected to Altice's aggressive American bargaining, with their French lawyer arguing such tactics were not permitted under French law.[9] To bolster their position, creditors entered into cooperation agreements – a defensive tactic popular among American and British creditors – to prevent divide-and-conquer tactics and avoid what their lawyer called "a U.S. game" where some creditors might accept unfavorable deals to avoid being excluded.[10] The company and its creditors eventually entered into intense negotiations, which a lawyer involved described as:

> [w]e were told a meeting had been organized and we didn't know if it would be London, Paris, New York, … They tried to negotiate [different creditor groups] in parallel . . . each was a U.S.-style [negotiation], meaning Altice came into the room, put a proposal on the table, they told us you can think about it, come back to us when you have time to think. In the deals we used to do in France, it is much more face to face negotiation . . . it was definitely not the French deal that we used to do.[11]

The parties ultimately agreed to reduce debt by €8.6 billion.[12]

In this Article, we argue that corporations like Altice are borrowing money and then restructuring those debts not according to the law of any single jurisdiction but rather according to what we call the *"global law of debt."* We use this term to refer to the national laws, norms, and contractual and market practices that govern how companies raise debt financing and then restructure it. The driving force that has created the global law of debt is not any specific national government, court, or global treaty, but rather the entanglement of the major global debt centers,

(noting that the secured lenders hired Gibson Dunn, a Los Angeles Law firm, and Rothschild, a London-based investment bank).

[8] *See* Irene G. Perez, *Altice France Turns to Lazard as Standoff With Creditors Deepens,* BLOOMBERG (Mar. 21, 2024, 11:47 AM), https://perma.cc/H9KB-WAQZ.

[9] *See Fly on the Wall*, *supra* note 2, at 06:26 ("We believe that you cannot say in France that you are difficulty, you are unable to pay your debts, and in the meantime you are going to withdraw some assets for yourself….").

[10] *See id.* at 07:17. *See also* Giulia Morpurgo & Irene G. Perez, *Altice Debt Drama Brings US-Style Creditor Deals to Europe,* BLOOMBERG (Apr. 24, 2024, 6:55 AM), https://perma.cc/5W4B-G6JX.

[11] *See Fly on the Wall*, *supra* note 2, at 12:45.

[12] ALTICE FRANCE, *Altice France Announces Agreement with Creditors* (Feb. 26, 2025), https://perma.cc/SRW2-47C3.

especially New York and London.[13] As we will explain, the same law firms, financial institutions, investors and trade associations operate in both markets and, increasingly, globally, creating a transmission belt for innovations, common practices and mutual learning.[14] Although national laws and courts continue to play a role, no single government can now define how sophisticated corporations transact in the debt market.[15] Instead, corporations can mix-and-match contractual terms, governing law and bankruptcy forum on a transaction-by-transaction basis.[16] We call this a global law of debt, even though our account focuses on the U.S. and the U.K., because companies around the world transact in those two debt centers, whose debt technologies and restructuring laws serve as global models and inspire emulation.[17] These developments have important consequences for how companies borrow, how creditors protect themselves with contract, how bankruptcy law provides guardrails for restructuring, and how governments regulate corporate finance.[18]

The Altice France example *supra* exemplifies the global law of debt that sophisticated corporations use to implement their preferred debt market transactions. Altice France's business operations were only in France.[19] But the company funded its operations with a mix of euro and dollar denominated debt, governed by a mix of the laws of New York, Luxembourg and France,

[13] *See infra* Section III.
[14] *See infra* Section III. In considering how the ecosystem of corporate debt and restructuring yields the current environment, our article is in the spirit of Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563 (2021) and Mariana Pargendler, *The Rise of International Corporate Law*, 98 WASH. U. L. REV 1765 (2021). For an account of the development of the U.S. bankruptcy ecosystem, *see* Jared A. Ellias, *The Law and Economics of Investing in Bankruptcy in the United States* (Feb. 10, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3578170.
[15] *See infra* Section VI.
[16] *See id*. Some scholars urge corporations to pre-commit to a bankruptcy forum. *See* Anthony J. Casey, Aurelio Gurrea-Martínez & Robert K. Rasmussen, *A Commitment Rule for Insolvency Forum*, 4 U. CHI. BUS. L. REV. 51 (2025). The analysis presented *infra* suggests that market is moving far from that proposed solution, towards a norm of choosing a bankruptcy venue on a transaction-by-transaction basis.
[17] *See infra* Section VII.
[18] *See infra* Section VII.
[19] *See supra* note 1.

with capital from investors in Continental Europe, the United Kingdom and the United States.[20] As a result, despite being entirely French, it could have chosen to negotiate a deal with creditors through a global menu of court proceedings, such as U.S. Chapter 11 or combining U.S. Chapter 15 proceedings with a U.K. scheme of arrangement,[21] a French sauvegarde accélérée, or a Luxembourg judicial reorganization.[22] Instead, the company first restructured out-of-court with advice from, among others, European lawyers working at American law firms and investment bankers using U.S.-style tactics that may or may not have fit what was allowed under French law, just as the defensive tactics of the creditors may also have violated European law.[23] Once a deal was reached, it was implemented through court filings in France and a recognition proceeding in the United States, exemplifying the modern, deeply entangled corporate debt system.[24]

In this Article, we offer the first account of how the global law of debt developed by tracing its development from the 17th century to the modern era, presenting a unified story covering both *corporate debt finance* and *restructuring*.[25] We divide the history into five distinct periods of

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[20] *See* ALTICE FRANCE, *Preliminary Offering Memorandum from Altice France for Senior Secured Notes* (Sept. 14, 2020), at 48 ("The Notes and the Indenture will be governed by the laws of the State of New York. The Notes Collateral Documents will be governed by and construed in accordance with the laws of the Grand Duchy of Luxembourg or France, as applicable.").

[21] *See* Part 26, Companies Act 2006 (U.K.).

[22] *See* Code de commerce [C. com.] [Commercial Code] art. L. 628-1 *et seq.* (Fr.) (governing *sauvegarde accélérée*); Loi du 7 août 2023 relative à la préservation des entreprises [Law of Aug. 7, 2023 on the Preservation of Businesses], *Mémorial A* no. 483, Aug. 15, 2023 (Lux.) (implementing Directive (EU) 2019/1023). *See also Altice France Announces Agreement, supra* note 12 (discussing the different restructuring possibilities). *See generally* Anthony J. Casey & Joshua C. Macey, *Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars*, 37 EMORY BANKR. DEV. J. 463 (2021) (discussing the ease of global forum shopping).

[23] *See* Cadwalader, *supra* note 4 ("Whether these [cooperation] agreements violate stringent European anti-trust laws remains to be seen."); GIBSON DUNN, *Gibson Dunn Advises Senior Creditors' Group in Record-Setting Altice Restructuring* (Feb. 26, 2025), https://perma.cc/WT8L-7P8H.

[24] *See* ALTICE FRANCE, *Altice France Announces the Opening of Conciliation Proceedings, First Implementation Step of the Transaction* (Mar. 28, 2025), https://perma.cc/W7EJ-ZREZ; ALTICE FRANCE, *Altice France: Paris Court Approves Accelerated Safeguard Plans — A Pivotal Step for Altice France/SFR Future* (Aug. 4, 2025), https://perma.cc/B9P3-LZ2K (discussing the Accelerated Safeguard proceedings that were the next step in the process). *See* Paul Lipscombe, *Altice France Files for Chapter 15 Bankruptcy in US*, DATACENTERDYNAMICS (June 24, 2025), https://perma.cc/2P7F-Y54P (discussing the U.S. recognition proceeding.)

[25] Debt's globalization sits in contrast with the more national world of equity finance, where companies usually issue stock on a national stock exchange and are then permanently bound by local rules and local laws. *See generally* Eilís

change. Section I begins with the seventeenth century rise of London as a global debt hub that served Western Europe and also financed part of the development of the growing United States in the 18th century.[26] This early globalization of debt came to a halt after the World War I and World War II, as countries turned inward and New York started to emerge as a true rival to London.[27] From the 1940s until the 1960s, New York and London became the centers of post-war debt finance, each relying on local lawyers, courts, investment bankers and investors to serve their local market.[28] As the world recovered from the war's devastation, many European firms gradually turned to New York, issuing so-called "Yankee bonds" into its expanding bond market during the 1960s.[29] During this early period, neither the U.S. nor the U.K had a formal bankruptcy system regarded as effective for large corporations.[30]

Section II discusses the late 1960s to late 1980s, when the U.S. and U.K. debt ecosystems became entangled.[31] The major actors in each market – investment banks, investors and, more gradually, law firms – began opening offices and operating in the other debt hub, fostering mutual learning, convergence, cooperation and competition.[32] U.S. debt professionals developed new tools like commercial paper, loan syndication and high-yield bonds which then made their way to London.[33] At the same time, London bankers created the "Eurobond" market where global governments and companies borrowed money typically under English law in a range of currencies, drawing American companies to London.[34] The U.S. Congress passed the first modern corporate

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Ferran, *Regulating for Growth in an Era of Rising Economic Nationalism: U.K. and EU Perspectives*, University of Cambridge Faculty of Law Research Paper No. 14/2025 (2025).

[26] *See generally* Section I(A).

[27] *See id.*

[28] *See id*.

[29] *See infra* notes 82 through 87 and accompanying text.

[30] *See infra* notes 90 through 100 and accompanying text.

[31] *See infra* Section II.

[32] *See infra* Section II(A).

[33] *See infra* Section II(B).

[34] *See infra* Section II(C).

bankruptcy law in 1978, which became central to American corporate finance in the 1980s.[35] The U.K. began its own insolvency modernization with the Insolvency Act 1986.[36]

In Section III, we examine the emergence of the modern globalized debt markets in the 1990s leading up to the global financial crisis of 2007.[37] A central driver was the practice of leveraged buyouts – borrowing heavily to buy companies – that first emerged in the U.S. in the 1980s and, by the 1990s, had crossed the Atlantic.[38] As corporate debt grew, so did interest in trading it within and across borders, prompting the creation of debt trade associations in both New York and London to organize and professionalize the industry.[39] During this period, the U.S. bankruptcy ecosystem of law firms, investment bankers and distressed investors matured and expanded to reach troubled European corporations.[40] In New York, some European companies that had earlier issued Yankee bonds became "bankruptcy tourists," filing for Chapter 11 despite lacking U.S. operations, drawing criticism from European debt professionals.[41] In part as a response and also out of necessity, London's insolvency system improved through practitioner innovations and legislative reform, transforming the city into Europe's restructuring hub.[42] Meanwhile, the United Nations promoted reforms to enhance cross-border cooperation among bankruptcy courts, which the U.S. implemented in 2005 and the U.K. in 2006.[43]

In Section IV, we discuss the post-crisis period, where London and New York became increasingly entangled in three main ways.[44] First, competition drove London's investment banks

[35] *See infra* Section II(D).
[36] *See infra* notes 151 through 166 and accompanying text.
[37] *See generally* Section III.
[38] *See infra* Section III(A).
[39] *See infra* Section III(B).
[40] *See infra* Section III(C)(1)-(2).
[41] *See infra* Section III(C)(3).
[42] *See infra* Section III(C)(4).
[43] *See infra* Section III(C)(5).
[44] *See infra* Section IV.

to more actively offer loans with looser terms to their borrowers.[45] This continued a process of cross-market harmonization to the point that some London loan contracts became hybrids, with some clauses interpreted in accordance with New York law while the agreement itself was governed by English law and subject to the exclusive jurisdiction of English courts.[46] This convergence may have slowed, but did not stop, the interest of European borrowers in tapping New York's debt market.[47] Second, new debt research organizations such as Covenant Review and Reorg emerged that improved the quality of information in the debt market and spread news of innovations.[48] Third, the financial crisis triggered a wave of corporate restructurings and movement among professionals and legislatures. Troubled firms gravitated toward the U.S. and U.K. bankruptcy systems: some European companies used the U.K., whose appeal increased as English restructuring law was modernized, while others joined the global forum shopping into U.S. Chapter 11.[49] The U.S. bankruptcy ecosystem expanded worldwide, as American investors and law firms deepened their European presence, particularly in London, where many leading insolvency lawyers joined U.S. firms.[50] Continental Europe, meanwhile, embarked on its own wave of statutory insolvency reforms.[51]

In Section V, we assess the period after the global pandemic, where all the pre-existing trends have accelerated. Debt contract language now moves between New York and London at a historically unprecedented pace, allowing global borrowers to use transactions in both markets to get the best possible terms.[52] American corporations have also begun to join many Continental

[45] *See infra* Section IV(A).
[46] *See infra* Section IV(A).
[47] *See infra* Section IV(B).
[48] *See infra* Section IV(C).
[49] *See infra* Section IV(D)(1).
[50] *See infra* Section IV(D)(2).
[51] *See infra* Section IV(D)(3).
[52] *See infra* Section V(A).

European and Asian borrowers in using the efficient restructuring system in the U.K., marking the emergence of the first true global rival to Chapter 11.[53]

In Section VI, we examine how the global law of debt provides corporations and investors a broad array of tools to achieve their financial and strategic objectives.[54] In debt finance, we explore in greater detail how English lawyers developed loan agreements governed by English law but incorporating some undertakings (or, in the U.S., "covenants") interpreted in accordance with New York law, promoting a global trade in debt by standardizing interpretations across markets.[55] In debt restructuring, we show how companies, including U.S. publicly traded companies, now mix-and-match global bankruptcy systems to obtain results that would have been difficult or impossible when Chapter 11 was the only viable framework, including by circumventing Supreme Court decisions that have limited Chapter 11's tools.[56]

Section VII briefly identifies examples of corporations from around the world coming to New York and London to borrow and restructure, and traces how U.S. and U.K. debt market innovations and insolvency law have inspired emulation and reform abroad, underscoring that this Article's account of the U.S. and U.K. is, in fact, a global story. [57]

Section VIII considers some of the major policy consequences of the developments discussed *infra*. On a positive note, the convergence of contracting practices and restructuring tools around the norms of New York and London has likely made corporate debt financing and restructuring more accessible worldwide. At the same time, however, global markets have imported several controversial features of American debtor-creditor practice – such as weaker

[53] *See infra* Section V(B).
[54] *See infra* Section VI(B).
[55] *See infra* Section VI(B).
[56] *See infra* Section VI(B). *See also* Casey & Macey, *supra* note 22; Stephen Lubben & Oscar Couwenberg, *Good Old Chapter 11 In A Pre-Insolvency World: The Growth Of Global Reorganization Options*., 46 N.C. J. INT'L. L. 353 (2021).
[57] *See infra* Section VII.

contractual protections and increasingly aggressive out-of-court restructuring tactics – while enabling sophisticated parties to sidestep domestic legal constraints through strategic choice of governing law and forum.[58] The significant rise of the United Kingdom as a rival restructuring hub to the United States allows companies and their creditors to use a credible alternative insolvency procedure that may avoid some of Chapter 11's perceived weaknesses, such as its high costs, but also introduces new uncertainty about the rights of creditors in a corporate restructuring. For example, as we discuss *infra,* out-of-the-money creditors recently swung from severely disadvantaged in London Part 26A filings compared to Chapter 11 (in 2023) to perhaps being armed with better tools for fighting cramdown plans than Chapter 11 (in 2025), all owing to court decisions developing the new law. These developments have strained the capacities of national regulators and shifted influence away from national courts and legislatures and towards private law firms, particularly those based in the United States. Section VIII concludes.

I. The Rise of New York and London in the Pre-Modern Period: the 1600s to the 1960s.

The United States and the United Kingdom are the two centers of corporate debt finance.[59] Large corporations looking to borrow money will usually do so in the global financial capitals of New York and London, and that debt will nearly always be governed by the laws of one of those two jurisdictions – and, as we will explain below, sometimes by both jurisdictions.[60] The U.S. and U.K. are also home to the world's most important and influential bankruptcy courts and statutes,

[58] Twenty years ago, Lynn LoPucki expressed concern over the consequences of international forum shopping. See LYNN LOPUCKI, COURTING FAILURE (2005) at 200.

[59] *See* GRAHAM PENN ET AL. , THE LAW AND PRACTICE OF INTERNATIONAL BANKING (1987) (discussing at 2 ¶1.03 the pre-eminence of London and New York as centers of international finance and the importance of both English and New York law for international banking transactions). *See also* Christopher Mallon, Shai Y. Waisman, and Ray C. Schrock, *Introduction* in THE LAW AND PRACTICE OF RESTRUCTURING IN THE U.K. AND US (2017), at 1.

[60] *See infra* Section VI(B).

although, as we will describe, both have undergone significant reforms and have received substantial criticism.[61]

In this Section, we describe the underdeveloped world of corporate debt finance from 1600s to the 1960s. In Part A, we explain how corporate debt finance was still primarily a local trade: American companies borrowed in New York under New York law with the help of New York lawyers and New York investment bankers, and Western European companies did the same in London under English law with U.K. professionals. In Part B, we discuss the state of corporate bankruptcy during this early period, where troubled borrowers who ran into financial distress largely avoided formal bankruptcy or insolvency proceedings because neither the U.S., U.K., nor Western Europe had bankruptcy laws that corporations and lawyers found helpful.

A. The Evolution of Corporate Debt Finance From the 1600s to the 1960s.

While a full history of the debt markets of the 1600-1800s is beyond the scope of this Article, we begin by explaining how first London and then New York emerged as global financial centers.

London's emergence as an international financial center can be traced back to 1688, when it began attracting European companies seeking the expertise and capital of English debt investors, bankers and lawyers.[62] Unlike bank-oriented rival Amsterdam, London's debt finance market was market-oriented with financial intermediaries facilitating a system of non-bank finance.[63] These financial intermediaries, known at the time as "merchant houses," helped corporations find wealthy investors to fund their venture.[64] London emerged as the supreme debt financial center in

[61] *See infra* Sections II(B), III(C), IV(D), V(B), and VI(B).
[62] *See "Big Bang" Deregulation Bolsters London's Position as Global Finance Center*, GOLDMAN SACHS, https://perma.cc/Q35F-LXC8.
[63] *See generally* BANK OF ENG.*, Assessing the Resilience of Market-Based Finance* (July 13, 2021), https://perma.cc/3J92-NQ5S; Ann M. Carlos & Larry Neal*, Amsterdam and London as Financial Centers in the Eighteenth Century,* 18 FIN. HIST. REV. 21 (2011).
[64] *See* Carlos & Neal, *supra* note 63, at 32. London's position was also strengthened by the 1694 establishment of the Bank of England. *See* BANK OF ENG. *, Our History,* https://perma.cc/4MGD-BRBG (last visited Nov. 14, 2025).

Europe in the eighteenth century[65] as Amsterdam's importance gradually declined due to wars and competition.[66]

In the New World, New York quickly became the commercial hub of the growing United States but it lagged far behind the wealthier and more established London market in terms of the depth and sophistication of its capital markets until the First World War.[67] As the United States slowly industrialized after the American Revolution, London banks were well situated to finance American corporations, sustaining a transatlantic debt trade. For example, in the early-mid 1800s, British investors provided loans to fund the development of the American railroads.[68] In the 18th and 19th centuries, British merchants provided debt financing to American companies using various financing instruments, such as bills of exchange, notes, bonds, and book credit.[69] Thus, it is correct to say that from the American Revolution to World War I, New York served as a financial center for the United States with additional capital for American corporations coming from London, while European companies largely financed their activities in London.[70]

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[65] *See* Carlos & Neal, *supra* note 63.

[66] *See* Carlos & Neal, *supra* note 63 at 24 (2011). For large bond markets, London and Paris were the dominant financial centers during the second half of the 19th century and up until the First World. Unlike London, Paris would not regain its stature after World War II. *See* BANK FOR INT'L SETTLEMENTS, *The Development of the International Bond Market*, BIS Econ. Papers No. 32, at 10 (1992).

[67] Richard Sylla, *Wall Street Transitions, 1880-1920: From National to World Financial Centre*, *in* FINANCIAL CENTRES AND INTERNATIONAL CAPITAL FLOWS IN THE NINETEENTH AND TWENTIETH CENTURIES 161, 161 (Laure Quennouëlle Corre- & Youssef Cassis eds., 2011) (noting that "[New York's reputation and work as a financial hub] was mostly domestic. In contrast, the City of London, Paris, and Berlin were international financial centres where nations and enterprises from around the world came to borrow money.")

[68] *See* DAVID A. SKEEL, DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA 66 (2014) (". . . a large percentage of U.S. railroad bonds were owned by investors in England and other European nations."). *See* Leslie Hannah, *J. P. Morgan in London and New York before 1914*, 85 BUS. HIS. REV. 113 (2011). British capital also funded U.S. slavery and enabled the triangular trade between Europe, Africa and the Americas. *See also* Eric Williams, *British Commerce and The Triangular Trade,* in CAPITALISM AND SLAVERY (1994), at 51.

[69] *See* Rowena Olegario, *The History of Credit in America*, *in* OXFORD RSCH. ENCYCLOPEDIA OF AM. HIST. (May 23, 2019).

[70] *See generally* Youssef Cassis, CAPITALS OF CAPITAL 74–142 (2012).

The two world wars transformed the global world of debt.[71] World War I brought intra-European and cross-Atlantic debt markets to a halt.[72] As American and European companies turned inward, New York began to develop as a global financial center that rivaled London and London continued to serve as Europe's financial center.[73] When the cross-Atlantic debt trade resumed, the historic flow of capital reversed, and Americans would become lenders to, instead of borrowers from, Europe.[74]

In the immediate aftermath of the Second World War, debt markets were still in recovery.[75] Until the 1960s, the U.S. debt market primarily serviced U.S. investors, with a few foreign borrowers returning to what was otherwise a market serving domestic borrowers.[76] It flourished especially in the second half of the 20th century, driven by an increase in the number of U.S. banks in the U.S. and more lending to small businesses.[77] American loans and bonds were typically governed by New York law, primarily issued by U.S. companies, and sold to U.S. investors.

In Europe, the situation was different: even in the immediate post-war era, London was the leading corporate debt market for both the U.K. and Continental Europe.[78] London owed its leading position in part to the financial infrastructure inherited from the 1800s.[79] In fact, at the

[71] *See generally* THOMAS J. SARGENT ET AL , DEBT AND ENTANGLEMENTS BETWEEN THE WARS (Era Dabla-Norris ed., 2019).
[72] *See* Int'l Monetary Fund, *A History of World Debt: How Public Debt Has Changed Since 1980*, FIN. & DEV., Mar. 2011, at 28–29; Horst Köhler, *Working for a Better Globalization*, IMF ISSUE BRIEFS, Mar. 2002, at 1 (Keynote Address at the U.S. Conference of Catholic Bishops, Jan. 28, 2002).
[73] *See* Sylla, *supra* note 67, at 161.
[74] *See id.;* Gary Richardson, *The Great Depression*, FED. RSRV. HIST. (Nov. 22, 2013), https://perma.cc/5RNF-SNEC.
[75] *See* Richard Benzie, *The Development of the International Bond Market*, BIS Econ. Papers No. 32, at 10 (Bank for Int'l Settlements, Jan. 1992)
[76] *See* Barry Eichengreen, *Til Debt Do Us Part: The U.S. Capital Market and Foreign Lending, 1920–1955*, Nat'l Bureau of Econ. Rsch., Working Paper No. 2394 (1987).
[77] *See* Olegario, *supra* note 69, at 1. *See also* Hubert P. Janicki & Edward S. Prescott, *Changes in the Size Distribution of U.S. Banks: 1960–2005*, 92 FED. RESERVE BANK RICHMOND ECON. Q. 291 (2006) (noting that there were nearly 13,000 independent banks in the U.S. in 1960).
[78] London's debt market also served national governments in Continental Europe, but that is outside the scope of this Article.
[79] Leslie Hannah, *J.P. Morgan in London and New York before 1914,* 85 BUS. HIST. REV. 113 (2011).

beginning of the 20th century, London had significantly more banks than any other city in the world.[80] Many Western European corporations came to London to borrow, but the volume of foreign borrowers was modest compared to what would come towards the end of the 20th century.[81] In general, loans and bonds originated in London were governed by English law, issued mainly by U.K. companies, and sold mainly to U.K. investors. In both New York and London, most commercial banks mainly engaged in bi-lateral, relationship-based financing and held debt to maturity.

The cross-Atlantic debt trade slowly re-emerged after World War II with the slow revival of what was called (and remains known as) the "Yankee bond market."[82] In a Yankee bond financing, for example, a French company might come to New York to borrow U.S. dollars from U.S. investors without necessarily also issuing stock on an American stock exchange.[83] In the earliest decades after World War II, New York investment banks provided bond financing for foreign governments and state-owned entities, and private corporations slowly joined their governments in tapping the growing New York bond market.[84] These bonds were typically governed by New York law and usually required the issuer to promise to comply with some American laws, but not to nearly the same extent as foreign companies that sell equity in the United States.[85]

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[80] *See id*.
[81] *See* Catherine R. Schenk, *The Origins of the Eurodollar Market in London: 1955–1963*, 35 EXPLS. ECON. HIST. 221 (1998).
[82] *See* Michael H. Coles, *Foreign Companies Raising Capital in the United States,* 3 J. COMPAR. CORP. L.& SEC. REGUL. 300, 301 (1981).
[83] *See generally* LINKLATERS LLP, *Guide to Yankee Bonds* (Mar. 2021), https://perma.cc/9Z6L-XSP4.
[84] For example, in 1974, the European Investment Bank raised U.S. $100 million. *See* Coles, *supra* note 82, at 302.
[85] Yankee bonds may be SEC-registered or exempt under Rule 144A; *see Guide to Yankee Bonds*, *supra* note 83, at 1. For an example of a Yankee bond with a New York governing law, *see* SOUTHERN COPPER CORP., Final Prospectus Supplement (Nov. 5, 2012), https://perma.cc/7G35-MREN.

As the world recovered from the Second World War, New York investment banks undertook a growing volume of work for foreign governments and private corporations. From 1945 until 1963, New York's foreign company bond market was the leading non-bank source of U.S. dollar loans for foreign borrowers, reaching approximately $1 billion in 1962, and nearly double in 1963.[86] This sort of financial innovation – European companies borrowing in U.S. currency in New York using New York law to govern the terms of the debt – laid the foundation for even greater cross-border debt integration.[87]

B. The Limited Recourse to Formal Insolvency Proceedings.

In this period from the 1600s to 1960s, bankruptcy laws and insolvency practice globally were far less developed than corporate finance and corporate bankruptcy filings were rare in both the U.S. and in Europe.[88]

In the United States, court-administered corporate failures were unusual, for at least two reasons.[89] First, large firms enjoyed a long post-war boom and relied little on debt, which would increase over time, doubling between the 1970s and 1960.[90] Second, the Bankruptcy Act of 1898, which governed the formal bankruptcy system, was considered deeply flawed.[91] While several major American firms – such as Penn Central, W.T. Grant and Daylin Inc. – did file for bankruptcy,

[86] *See* Coles, *supra* note 82, at 301.
[87] *See, e.g., White & Case Advises Enel Group on US$4 Billion Yankee Bond Issuance*, WHITE & CASE, Nov. 9, 2022, https://perma.cc/CZ6Y-D38K.
[88] *See* Stephen Lubben, *A New Deal For Corporate Bankruptcy: Bring Back Chapter X*, 99 AM. BANKR. L. J. 225, 34-5 (noting the low uptake, but not zero, of the predecessor statute to Chapter 11 in the U.S.); Sarah Paterson, *Rethinking Corporate Bankruptcy Theory in the Twenty-First Century*, 36 OXFORD J. LEGAL STUD. 697, 705 (2016); Horst Eidenmüller, *The Rise and Fall of Regulatory Competition in Corporate Insolvency Law in the European Union*, 20 EUR. BUS. ORG. L. REV. 547, 550 (2019) (observing that most EU jurisdictions lacked formal corporate restructuring proceedings until the 1990s).
[89] *See* Lubben, *supra* note 88, 88 at 234-35.
[90] *See* John R. Graham, Michael T. Leary & Mark R. Roberts, *A Century of Capital Structure: The Leveraging of Corporate America*, 118 J. FIN. ECON. 658, 662-664 (2015).
[91] *See* Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129, 141 (2005).

critics complained that the system lacked "adequate mechanisms to facilitate corporate rehabilitation in a straightforward, predictable way."[92]

Similarly, Western European countries also lacked attractive options for court supervision of corporate distress in the 1970s. In West Germany, insolvency was simple for liquidation,[93] but reorganization was prohibitively costly.[94] As such, large companies preferred to negotiate solutions with their creditors outside of insolvency.[95] In France, a *syndic* (similar to an American trustee), decided how to dispose of the firm's assets.[96] The system was criticized for empowering syndics who lacked operational expertise, had no financial incentive to maximize firm value, and were stretched across multiple cases, making quick and unilateral decisions.[97] To an extent, the French economy at the time was characterized by extensive state ownership or regulation, reducing the need for a formal bankruptcy system for large firms.[98] The U.K. insolvency system also relied

[92] Bruce G. Carruthers & Terence C. Halliday, *Professionals in Systemic Reform of Bankruptcy Law: The 1978 U.S. Bankruptcy Code and the English Insolvency Act 1986*, 74 AM. BANKR. L. J. 35, 44 (2000).
[93] *See* Iraj Hashi, *The Economics of Bankruptcy, Reorganization and Liquidation: Lessons for European Transitional Economics*, 33 RUSS. & EAST EUR. FIN. & TRADE 6, 14 (1997) (noting German insolvency procedures aimed to eliminate weaker firms).
[94] *See* Volkmar Gessner et al., *Three Functions of Bankruptcy Law: The West German Case*, 12 LAW & SOC'Y REV. 499, 536 (1978); Michelle J. White, *The Costs of Corporate Bankruptcy: A U.S.-European Comparison*, *in* CORPORATE BANKRUPTCY: ECONOMIC AND LEGAL PERSPECTIVES 467, 474 (Jagdeep S. Bhandari & Lawrence A. Weiss eds., 1996); *see also* Hashi, *supra* note 93, at 14-15 ("up to 76 percent" of proceedings were aborted early due to lack of funds for bankruptcy costs).
[95] *See* Gessner et. al, *supra* note 94 at 539, noting that formal German bankruptcies were meant for distressed companies for which "no economically viable solution" was available. Capable and strategic creditors negotiate with debtors outside of and prior to bankruptcy to gain protection against "the [cost of the] bankruptcy proceedings" themselves. *Id.* at 540.
[96] *See* Philippe Aghion, Oliver D. Hart & John Moore, *The Economics of Bankruptcy Reform*, *in* TRANSITION IN E. EUR. 215, 222 (Olivier Blanchard, Kenneth Froot, Jeffrey Sachs eds., 1994). *See also* Hashi, *supra* note 93, at 16 (explaining that the French bankruptcy procedures prior to reforms in 1984 and 1985 "emphasized the speeding up of asset disposal and the satisfaction of creditors' demands.")
[97] *See* James Beardsley, *The New French Bankruptcy Statute*, 19 INT'L LAW. 973, 974 (1985).
[98] *See* Vasile Rotaru, *From Practical Innovations to Path Dependence: Institutional Evolution and Resilience of Assisted Restructurings in France* at 6 (2025) (unpublished manuscript) (on file with author).

on receiverships, which companies rarely survived.[99] Thus, while not "completely obsolete," the U.K. system also "was not adapted to the needs of modern business[es]."[100]

II. The Early Globalization of Debt: The Late 1960s to the Late 1980s.

In the early 1960s, the United States and United Kingdom had largely separate corporate debt ecosystems, with local banks, investors, and law firms serving primarily local corporations. By the late 1980s, that separation started to blur, a process we call *entanglement.* Those two formerly separate debt ecosystems began to grow into each other's territory, engaging in mutual learning, cooperation, competition, and in some cases, convergence. This Section explains why the United States and the United Kingdom's debt markets became entangled and what drove this shift. Entanglement is both the cause and effect of the growing interdependence of these two global debt markets.

Initially, as Part A explains, entanglement began as a story of people and institutions. American and British investment and commercial banks entered each other's territories, opening offices, hiring staff, and serving clients – collaborating and competing. Entanglement then became a story of capital, as investors increasingly pursued cross-border strategies, deploying funds with little regard for the country or governing law.

[99] *See* Paul J. Omar & Jennifer Gant, *Corporate Rescue in the United Kingdom: Past, Present, and Future Reforms*, 24 AUSTRALIA INSOLVENCY L. J. 40 , 40-41 (2016) (explaining that U.K. receiverships did not focus on the survival of the company.); Julian R. Franks & Walter N. Torous, *Lessons from a Comparison of US and U.K. Insolvency Codes*, 8 OXF. REV. OF ECON. POL'Y 70, 70-71 (1992) (explaining that prior to 1986, the U.K. had a "highly creditor-oriented code" that encouraged "premature liquidation.")

[100] *See* Omar & Gant, *supra* note 9999, at 41.

These ties transmitted ideas along with capital, as Part B explains, as major American debt market innovations spread to Europe and in Part C we discuss London's major innovation, the Eurobond market, which brought American and other global companies to Europe to borrow.[101]

In Part D, we discuss the development of the modern statutory insolvency regime. Our story begins in the United States, where innovations in the American debt market would not only spread to Europe – they would also help to persuade the U.S. Congress of the importance of bankruptcy modernization. Consequently, in 1978 the Congress implemented the first modern bankruptcy law in any jurisdiction. As we discuss below, bankruptcy modernization also took place in Europe during this period, particularly in the United Kingdom, but a viable European counterpart to Chapter 11 did not emerge until later and Europe continued to rely primarily on out-of-court, bank-oriented workouts or direct governmental intervention.

A. Cross-Border Debt Connections Grow.

An early driver of debt globalization was the gradual internationalization of commercial and investment banking. During the 1960s and 1970s, major international banks expanded rapidly in London. The *New York Times* reported in 1971 that American banks in London more than doubled in three years, from 15 in 1967 to 37.[102] As part of this expansion, major U.S. investment banks, including Morgan Stanley (1967) and Goldman Sachs (1970), opened their first permanent European offices.[103] These institutions were thus positioned to intermediate a globalizing trade in

[101] Space constraints will keep us from discussing every factor contributing to debt globalization during this period, such as the end of the Bretton Woods exchange rate system and U.S. capital controls. *See generally* Age Bakker & Bryan Chapple, *Capital Controls and Monetary Policy*, *in* ADVANCED COUNTRY EXPERIENCES WITH CAPITAL ACCOUNT LIBERALIZATION (Int'l Monetary Fund ed., 2002).
[102] *See* John M. Lee, *London's City: It's Not the Same*, N.Y. TIMES (May 23, 1971). *See also* Justin Douglas, *Translating the Blueprint for Financial Deregulation: The American Bank Lobby's Unyielding Quest for Legislative Profits, 1968–1982*, 20 ENTERPRISE & SOC'Y 281 (2019).
[103] *See Goldman Sachs Takes First Step to Becoming a Global Firm with London Office,* GOLDMAN SACHS, https://perma.cc/XL9X-HSFV

debt, and the larger expansion of U.S. banks in Europe was also mirrored by British banks that expanded in the United States.[104]

For their part, U.S. and U.K. law firms expanded into each other's markets much later, with White & Case an early arrival with its first London office in 1971,[105] and most elite American firms not following for decades. Among the elite U.K. Magic Circle firms, Linklaters opened the first New York office in 1977,[106] Clifford Chance in 1984,[107] but others like Allen & Overy did not follow until 2000.[108]

B. Ideas and Capital Begin to Flow Between Entangled Debt Markets.

As people and institutions began to cross borders, so did ideas and capital. American investment bankers developed new financial tools to meet domestic business needs that soon spread to London and Continental Europe. We discuss three innovations in turn: (a) commercial paper; (b) loan syndication; and (c) high-yield (or "junk") bonds. Each development would enable companies to borrow more debt on better terms and would, in time, drive a harmonization of the offerings available to corporations in New York and London. These innovations deepened entanglement, as banks and investors on both sides of the Atlantic offered the same products.

First, consider the development of commercial paper.[109] These typically unsecured promissory notes that usually mature in about 30 days are money market instruments issued by large companies and funded by banks, helping large firms bridge the timing of mismatch between

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[104] *See* Robert A. Bennett, *Barclay's High Ambitions For The American Market*, N.Y. TIMES (Jan. 31, 1982).
[105] *Announcement of the Opening of the London Office*, WHITE & CASE IN HISTORY (October 1, 1971), https://perma.cc/XT3J-HM57.
[106] *See* Kushraj Cheema, *The Magic Circle and the USA*, CHAMBERS AND PARTNERS (April 13, 2021), https://perma.cc/FV2W-F7VY.
[107] *See* Lea Deborah Pipo, *Thinking Big: A History of Clifford Chance and its German Roots – Five Anniversaries in One,* CLIFFORD CHANCE (May 2021), at 44, https://perma.cc/2UCN-APW5.
[108] *See* Legal Week, *Allen & Overy,* LAW.COM (Dec. 13, 2009), https://perma.cc/9UQU-JRYY.
[109] *See* William B. English, *The "Marketization" of Bank Business Loans in the United States* 3 (Yale Sch. of Mgmt., Working Paper, Oct. 2021) (noting the expansion of the commercial paper market).

expenses and incoming payments.[110] It boomed in the U.S. from the 1970s to the early 1990s,[111] with outstanding commercial paper volume rising sixteenfold to $500 billion.[112] Once large American firms gained access to this low-cost financing – allowing them to borrow against expected receipts – it was probably inevitable that European competitors would follow, and the practice soon took hold in London.[113]

Second, syndicated lending solved a similar financing problem: as firms on both sides of the Atlantic expanded, they needed very large loans no single bank was able to underwrite alone.[114] In a syndicated loan, multiple lenders form a consortium and provide funding to one borrower under a single loan contract on identical terms.[115] While syndicated lending today includes also non-bank investors, it initially involved regulated banks pooling resources to make larger loans.[116]

Syndicated lending first emerged in the U.S. and spread to Europe in the late 1960s and early 1970s, driven partly by the rise of the Eurodollar market.[117] According to Philip Wood, one of London's leading banking lawyers, both the structure and the documentation of early syndications were modelled on U.S. forms.[118]

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[110] *See generally* Marcin Kacperczyk & Philipp Schnabl, *When Safe Proved Risky: Commercial Paper During the Financial Crisis of 2007–2009*, 24 J. ECON. PERSP. 29 (2010).
[111] *See* Matteo Aquilina, Andreas Schrimpf & Karamfil Todorov, *CP and CDs markets: a primer,* BIS QUARTERLY REV. (Sept. 2023), at 65.
[112] *See id*.
[113] For an excellent account of the syndicated lending in the United Kingdom, *see* MARK CAMPBELL & CHRISTOPH WEAVER , SYNDICATED LENDING: PRACTICE AND DOCUMENTATION (7th ed., 2019).
[114] *See* Ileana Racianu, *The Banque de France, the Bank of England, and the Stabilization of the Romanian Currency in the Late 1920s*, *in* FINANCIAL CENTRES AND INTERNATIONAL CAPITAL FLOWS IN THE NINETEENTH AND TWENTIETH CENTURIES ch. 9, at 9.1.1, 9.1.3 (Laure Quennouëlle-Corre & Youssef Cassis eds., 2011).
[115] *See* EILÍS FERRAN, ELIZABETH HOWELL & FELIX STEFFEK , PRINCIPLES OF CORPORATE FINANCE LAW 339 (2023).
[116] *See generally* CAMPBELL & WEAVER , *supra* note 113*; see also* Elisabeth de Fontenay, *Do the Securities Laws Matter? The Rise of the Leveraged Loan Market,* 39 J. CORP. L. 725 (2014).
[117] *See* LOAN MKT. ASS'N, *Foundations of the Loan Market*, *in* THE LMA: 25 YEARS IN THE LOAN MARKET 20, 20 (Amelia Slocombe & Nicholas Voisey eds., 2021).
[118] See *id.*

Syndicating lending accelerated debt globalization in two important ways. First, it promoted cross-border lending, learning and global cooperation, as U.S. and U.K. banks joined forces to fund loans too large for any single bank's capacity.[119] Second, the boom in syndicating lending in Europe meant that U.K. and European banks were able to offer U.S. dollar-denominated loans which were not subject to U.S. law.[120]

The syndicated loan market has since grown dramatically, with U.S. corporate lending driven by leveraged buyouts in the 1980s,[121] and rapid European growth following the euro's introduction in 1999.[122] Today, the global syndicated loan market is estimated to have reached U.S. $2 trillion.[123]

A third major innovation emerged in the 1970s and 1980s: what are now called "high-yield bonds" and were then known as "junk bonds."[124] These debt instruments allowed riskier, non-investment grade firms to borrow more money than was ever possible before.[125] The insight behind this market was simple but transformative, as financial intermediaries realized that investors would be willing to make larger loans, to riskier companies, on worse terms, so long as they were compensated for that risk.[126]

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[119] *See e.g.* Rainer Haselmann & Paul Wachtel, *Foreign Banks in Syndicated Loan Markets*, 35 J. BANKING & FIN. 2679 (2011).
[120] *See* LOAN MKT. ASS'N, *supra* note 117, at 20. Syndicated loans also contributed to the creation of the London Interbank Offered Rate in London ('LIBOR'), which became the globally dominate benchmark for interbank lending. *See* Kirstin Ridley & Huw Jones, *A Greek Banker, the Shah and the birth of Libor,* REUTERS (Aug. 7, 2012).
[121] Jim Armstrong, *The Syndicated Loan Market: Developments in the North American Context*, BANK OF CANADA FIN. SYS. REV. 69, 71 (2003).
[122] *See* Horst Köhler, *The Euro--An Emblem of the Successes and Challenges of European Integration,* IMF (Dec. 14, 2001), https://perma.cc/QWG4-ZXLM .
[123] *See* Jas Singh, Tejash V. Singh & Brian Schelter, *Broadly Syndicated Loans: Market Size, Structure and Historical Return Profile*, BLOOMBERG (Jun. 06, 2025).
[124] *See generally* Glenn Yago, JUNK BONDS: HOW HIGH YIELD SECURITIES RESTRUCTURED CORPORATE AMERICA (1991).
[125] *See* MCKNIGHT, PATERSON & ZAKRZEWSKI ON THE LAW OF INTERNATIONAL FINANCE 10.2.6.1 (Sarah Paterson & Rafal Zakrzewski eds., 2d ed. 2017).
[126] *See* Walter Russell Mead, *How High-Yield Bonds Become a Junkyard Dog*, L.A. TIMES (Feb. 18, 1990), https://perma.cc/4EV6-GFW3

The U.S. junk bond market grew from U.S. $9 billion in 1977 to U.S. $180 billion at the end of 1988,[127] reflecting robust demand from both issuers and investors. High-yield debt quickly attracted strong interest from European investors and borrowers alike. Introduced to Europe in the late 1990s and early 2000s,[128] the market expanded steadily through the mid-2000s and reached a record monthly issuance of €23 billion in June 2025.[129]

C. The Eurobond Market Thrives.

In 1971, London would become the center of a new global debt market, the so-called "Eurobond" market.[130] In Eurobond transactions, global companies raised capital from international investors in various currencies with the help of primarily London investment banks.[131] The first Eurobond, issued in 1963, by the Italian motorway company, Autostrade, raised U.S. $15 million in fifteen-year notes.[132] The issue was led by British investment bank S.G. Warburg & Co with the help of investment banks from Belgium, Germany and the Netherlands.[133]

Eurobonds became popular in the early 1980s and boomed in 1990s.[134] Robust U.S. and European growth during that decade generated savings that flowed into Eurobonds, while European companies also borrowed in dollars, solidifying London's role as the center of a "dollar

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[127] *See The High-Yield Bond Market: Hearing Before the Subcomm. on Gen. Oversight & Investigations of the H. Comm. on Banking, Fin. & Urban Affairs*, 101st Cong. 3 (1989) (statement of Richard L. Fogel, Assistant Comptroller Gen., Gen. Gov't Programs).
[128] *See* Bruno Biais & Fany Declerck, *European High-Yield Bond Markets: Transparency, Liquidity, Efficiency* 5 (Int'l Cap. Mkt. Ass'n 2007).
[129] *See* Euan Healy, *European Junk Bond Sales Hit Record as Investors Cut US Exposure*, FIN. TIMES (Jul. 02, 2025), https://perma.cc/7BKY-EN4C
[130] *See generally* CHRIS O'MALLEY , BONDS WITHOUT BORDERS: A HISTORY OF THE EUROBOND MARKET (2014). *See also* MCKNIGHT, PATERSON & ZAKRZEWSKI , *supra* note 125, at 536 n.1 (noting the Eurobond market began as a dollar market and then expanded to more currencies).
[131] Darius P. Miller & John J. Puthenpurackal, *The Costs, Wealth Effects, and Determinants of International Capital Raising: Evidence from Public Yankee Bonds*, 11 J. FIN. INTERMEDIATION 455, 461 (2002).
[132] *See* History of the Eurobond Market, INT'L CAPITAL MKT. ASSN., https://perma.cc/7UFE-MUVB.
[133] *See id*.
[134] Anouk Claes, Marc J.K. De Ceuster & Ruud Polfliet, *Anatomy of the Eurobond Market 1980-2000*, 8 EUR. FIN. MANAGEMENT 373, 374 (2003).

empire."[135] American corporations—including Metropolitan Life, Pacific Bell, and Emerson Electric—also turned to London to issue pound-denominated debt.[136] By the 1980s, London had become "an international banking bazaar."[137] As Leo Panitch and Sam Gindin observed, "[t]he Yankee bond market did not in the long run retard the growth of the Eurobond market: the two financial centres in New York and London, with U.S. banks the central agents in both of them, continued to grow through the 1970s."[138]

D. The United States Leads the Way in Global Bankruptcy Modernization.

In the late 1970s and 1980s, the modern bankruptcy system emerged through legislative reform and the growth of institutions, including law firms and trade associations. We summarize developments below first in the United States then in Western Europe, where the most important changes occurred in the United Kingdom.

In the United States, the Bankruptcy Act of 1978 introduced several key innovations: the debtor-in-possession model, under which existing management runs a restructuring process instead of a trustee; a "market pay" norm that substantially increased the pay of bankruptcy lawyers; and a central role for bankruptcy judge, among other advances.[139] In its early years, the system was widely regarded as the world's most pro-debtor, making it attractive to large corporations.[140]

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[135] *See* Steve Lohr, *The Eurobond Market Boom*, N.Y. TIMES (Dec. 31, 1985) (In 1985 "American corporations and banks tapped the Euromarkets as never before, raising nearly $36 billion in the Eurobond market, up 71 percent from 1984.").
[136] *See id*.
[137] *See Capital City*, THE ECONOMIST (Oct. 19, 2006).
[138] Leo Panitch & Sam Gindin, *Political Economy and Political Power: The American State and Finance in the Neoliberal Era*, 49 GOVERNMENT AND OPPOSITION 369, 376 (2014).
[139] *See generally* Ellias, *Investing in Bankruptcy*, *supra* note 14.
[140] *See* Stephen Labaton, *Bankruptcy Bar: Never So Solvent*, N.Y. TIMES (Apr. 01, 1990) ("Based upon a policy of rehabilitation and giving companies a fresh start, the American system favors debtors more than any other system in the world.")

As corporate borrowing expanded – the U.S. high-yield market grew from $10 billion in 1980 to $189 billion by decade's end[141] – large companies began turning to the new law.[142] Many early debtors, such as Federated Department Stores and Revco,[143] filed for Chapter 11 after issuing junk bonds.[144] As one leading lawyer observed in 1988, an attractive bankruptcy system and the debt market interacted symbiotically: higher debt use produced a more experienced bankruptcy system, which made higher debt levels safer, which led to more bankruptcies, and so on.[145]

Just as significant as the statutory reforms was the emergence of investors who raised capital to profit from corporate distress, transforming bankruptcy expertise into a source of returns and creating a new class of law firm clients.[146] One early example was Halcyon Asset Management, which in the 1980s began investing in bankruptcy cases, learning how to profit from betting on the outcome of bankruptcy litigation and how to do capital structure reorganization.[147] Initially dubbed "vulture investors", these market participants soon became known by the less pejorative title of "distressed debt investors."[148]

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[141] *See* U.S. GEN. ACCOUNTING OFF., *Summary of Statement of Richard L. Fogel, High Yield Bond Market* (GAO/T-GGD-89-9), at 3 (Mar. 2, 1989), https://www.gao.gov/assets/t-ggd-89-9.pdf.

[142] *See generally* Charles J. Tabb, *The History of Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. 5 (1995).

[143] *See* Matthew Winkler, *Federated's Junk Issues Are a Hard Sell*, WALL ST. J. (Oct. 21, 1988); Robert F. Bruner, DEALS FROM HELL: M&A LESSONS THAT RISE ABOVE THE ASHES 127, 132 (2015).

[144] *See* Labaton, *supra* note 140 ; James E. Lebherz, *A Primer on Junk-Bond Investing*, WASH. POST (Jul. 01, 1989) (discussing Texaco's use of junk bonds).

[145] *See* Raymond P. Boulanger, *Corporate America Isn't a Debt Debauchee*, WALL ST. J. (Nov. 22, 1988) (noting that the development of the new Chapter 11 statute made it easier to rehabilitate firms with a lot of debt, reducing the danger of debt to American corporations).

[146] *See Managed & Personal Investing: Money Managers' Noticeboard,* WALL ST. J. EUR. (Aug. 9, 2000), at 18. ("Halcyon brings its experience in distressed securities and bankruptcies"). *See also* Jared A. Ellias, *Bankruptcy Claims Trading*, 15 J. EMPIRICAL L. STUD. 772 (2018); Douglas G. Baird, *The Bankruptcy Exchange*, 3 BROOKLYN J. CORP., FIN. & COMM. L. 23 (2010); Adam J. Levitin, *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOKLYN J. CORP., FIN. & COMM. L. 74 (2010); Jared A. Ellias, *Do Activist Investors Constrain Managerial Moral Hazard in Chapter 11?*, 8 J. L. ANALYSIS 493 (2016); and Ellias, *Investing in Bankruptcy*, *supra* note 14.

[147] *See* KATE WELLING & MARIO GABELLI , MERGER MASTERS: TALES OF ARBITRAGE 160 (2018).

[148] *See* Sarah Paterson, *Bargaining in Financial Restructuring: Market Norms, Legal Rights and Regulatory Standards,* 14 J. CORP. L. STUD. 333, 338 (2014).

Outside the United States, several European countries modernized their insolvency regimes in the 1970s and 1980s. The U.K., France, and Germany reformed their insolvency laws because earlier statutes were viewed as ill-suited to large corporate bankruptcies, but local practitioners would be less satisfied with the results than their American counterparts.[149] Because European companies largely borrowed from concentrated bank syndicates, the cost of out-of-court restructuring might have been lower than in the United States, reducing the demand for bankruptcy modernization relative to the American world of more dispersed creditors.[150]

The U.K. faced many of the same issues that prompted the 1978 reform in the United States.[151] At that time, U.K. firms could propose "schemes of arrangement," under section 425 of the Companies Act 1985 and common law, which enabled companies to restructure with creditors and shareholders, subject to creditor votes and court approval. The scheme of arrangement is classified as a *company law* "restructuring procedure," where a court oversees a settlement with some (but not all) creditors, without supervising the corporation's full asset base as in U.S. Chapter 11, making the process less involved and faster.[152] For an "insolvency procedure," companies could seek court supervision for liquidations, and creditors could seek the appointment of a

[149] *See* Simon Deakin, Viviana Mollica & Prabirjit Sarkar, *Varieties of Creditor Protection: Insolvency Law Reform and Credit Expansion in Developed Market Economies,* 15 SOCIO-ECON. REV. 359, 364-365 (2017) (noting major insolvency reforms in France, Germany, the UK and the US in a period spanning from the late 1960s to the early 2000s). *See also* K. Cork (Chairman), *Insolvency Law and Practice: Report of the Review Committee* (Cmnd. 8558, 1982) (the "Cork Report"), at 9.

[150] *See generally* Horst Eidenmüller, *Comparative Corporate Insolvency Law,* ECGI L. Working Paper No. 738/2023, at 25 (Nov. 2023) (noting there is less need for a formal reorganization procedure in jurisdictions with concentrated debt structures); Raghuram G. Rajan & Luigi Zingales, *Banks and Markets: The Changing Character of European Finance*, *in* THE TRANSFORMATION OF THE EUROPEAN FINANCIAL SYSTEM 123, 126-129 (Vítor Gaspar, Philipp Hartmann & Olaf Sleijpen eds., Eur. Cent. Bank 2003) (explaining that by the early 1980s, finance in Continental Europe was still largely a relationship-based system whereby capital essentially circulated within a set of related firms and institutions); John Armour, Brian R. Cheffins & David A. Skeel Jr., *Corporate Ownership Structure and the Evolution of Bankruptcy Law: Lessons from the United Kingdom,* 55 VAND. L. REV. 1699, 1774 (2002) (providing a detailed comparison of the distinct debt structures in the UK and the US)

[151] *See Cork Report*, *supra* note 149, at 9.

[152] LOUISE GULLIFER & JENNIFER PAYNE, CORPORATE FINANCE LAW: PRINCIPLES AND POLICY 711–52 (4th ed. 2025); *see also* Stephan Madaus, *The New Age of Debt and the Common Function of Insolvency and Restructuring Law*, EUROFENIX, Spring 2017.

receiver.[153] These options were seen as relatively cumbersome and costly, leading practitioners to favor informal restructurings over formal court-supervised procedures.[154]

Sarah Paterson notes that the inadequacies of the statutory options in the U.K. in this period revealed themselves in the restructuring of a troubled commercial bank called the Stern Group in 1973.[155] Stern Group's lawyers first sought to do a scheme of arrangement, which proved too difficult; the reorganization instead was accomplished informally through an out-of-court structure with the assistance of the Bank of England.[156]

Learning from this experience, the Bank of England would nudge the U.K.'s major banks towards principled out-of-court restructurings like the Stern Group's.[157] The Governor of the Bank of England explicated principles in 1993 for how banks should handle troubled borrowers: (1) refrain from foreclosing on assets; (2) provide rescue financing; (3) set a date for realizing losses; and (4) behave fairly.[158] These principles could be enforced by the Bank of England, as regulator of the major U.K. banks.[159] This became known as the "London Approach" to corporate distress, contrasting with the market- and court-oriented Chapter 11 approach developing simultaneously in the U.S.[160]

Dissatisfaction with the existing statutory options led the U.K. to initiate a significant modernization process beginning in the late 1970s.[161] Sir Kenneth Cork, a leading insolvency

[153] The liquidation procedure was seen as "poorly adapted" for going concern sales of operating businesses. *See* SARAH PATERSON , CORPORATE REORGANIZATION LAW AND FORCES OF CHANGE 41 (2020).
[154] *See* Omar & Gant, *supra* note 99, at 43 (discussing problems in U.K. insolvency law)
[155] *See* Paterson, *supra* note 153, at 39.
[156] *See id.*
[157] *See id.* at 40.
[158] *See id.* at 39.
[159] *See id.* 40.
[160] *See id.* at 40. *See generally* John Armour & Simon Deakin, *Norms in Private Insolvency: The "London Approach" to the Resolution of Financial Distress*, 1 J. CORP. L. STUD. 21 (2001).
[161] *See* Armour, Cheffins & Skeel, *supra* note 150, at 1742-47.

expert, chaired a committee that proposed reforms in 1982.[162] The Cork Committee concluded that existing statutory procedures were insufficient to save financially distressed companies.[163] Among other recommendations, the Committee proposed two rescue-oriented procedures later enacted in the U.K.'s Insolvency Act 1986: the company voluntary arrangement (CVA), for companies before formal insolvency, and administration, for those closer to insolvency.[164] In administration, an insolvency practitioner acted as trustee over the debtor's assets.[165] The procedure proved less appealing than expected, and U.K. businesses continued to reorganize with the informal London Approach.[166]

France enacted its own insolvency modernization law in 1985, which was widely criticized for prioritizing employees and providing creditors with little voice in the process.[167] Under the 1985 law, troubled companies entered a monitoring period of up to 18 months during which a court-appointed administrator held broad powers to hire, fire, and sell assets.[168] Creditors had no voting rights, and the administrator made all decisions with an eye towards preserving jobs.[169]

Given the weaknesses of the formal insolvency framework, judges in Paris independently developed a type of court-assisted workout procedure in which they confidentially appointed expert facilitators to help firms and their creditors negotiate.[170] This procedure – later codified in

[162] *See* Cork Report, *supra* note 149, at 1
[163] *See* Omar & Gant , *supra* note 99, at 46.
[164] *See id*. at 48.
[165] *See* Insolvency Act 1986, c. 45, pt. II (UK).
[166] On The London Approach, *see generally* Armour, Cheffins & Skeel, *supra* note 152 . *See also* Hashi, *supra* note 93, at 14 . *See also* Armour & Deakin, *supra* note 160, at 31-38.
[167] *See* Régis Blazy, Bertrand Chopard, Agnès Fimayer & Jean-Daniel Guigou, *Employment Preservation v. Creditors' Repayment Under Bankruptcy Law: The French Dilemma?*, 31 INT'L REV. L. & ECON. 126, app. 1 (2011).
[168] *See id*.
[169] *See* Sergei A. Davydenko & Julian R. Franks, *Do Bankruptcy Codes Matter? A Study of Defaults in France, Germany, and the U.K.*, 63 J. FIN. 565, 566 (2008) ("the role of creditors is reduced to an advisory function").
[170] *See* Rotaru, *supra* note 98, at 19.

1994 as the *mandat ad hoc* – functioned as a middle ground between the entirely out-of-court London Approach and a public Chapter 11-style process.[171]

Meanwhile, West Germany's corporate bankruptcy system was quite basic, governed by a statute dating to 1935.[172] The statute was designed for solo entrepreneurs, not large corporations, and offered no reorganization option equivalent to U.S. Chapter 11.[173] This gap stimulated reform efforts in the 1970s and 1980s, but no new statute was passed until the 1990s.[174]

At the same time, members of the European Economic Community (later the European Union) sought a unified insolvency framework in the 1960s and 1970s but failed to reach agreement.[175] The core question was whether multinational companies should file for separate proceedings wherever they operated ("territorial") or a single proceeding in one jurisdiction ("universal").[176] The European Economic Community produced a series of draft documents that would have solved the problem of "multiple insolvency proceedings" for large companies by creating a single, universal proceeding in one country, but they were never adopted.[177]

III. The Acceleration of Global Debt Entanglement: 1990 through 2007.

In this Section, we discuss major developments from the 1990s to the 2007 global financial crisis, a period when the global debt world became increasingly entangled. As before,

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[171] *See id*. at 15.
[172] *See* Manfred Balz, *Symposium Commentary: Market Conformity of Insolvency Proceedings: Policy Issues of the German Insolvency Law*, 23 BROOK. J. INT'L L. 167, 170 (1997).
[173] *See* Maximilian Schiessl, *On the Road to a New German Reogranization Law – A Comparative Analysis of the Draft Proposed by the Insolvenzrechtskommision and Chapter 11 of the Bankruptcy Code*, 62 AM. BANKR. L. J. 233, 241 (1988).
[174] *See id*. at 234.
[175] *See generally* Antonio Leandro, *Introduction to the European Insolvency Regulation*, *in* THE EUROPEAN INSOLVENCY REGULATION AND IMPLEMENTING LEGISLATIONS: A COMMENTARY 1 (Gilles Cuniberti & Antonio Leandro eds., 2024).
[176] *See id*. at 4.
[177] *See id*.

entanglement reflects the American and British debt ecosystems evolving in conversation with one another.

In Part A we examine a force that reshaped the U.S. and Europe: the American financial institutions that popularized leveraged buyouts in the U.S. in the 1980s expanded to Europe in the 1990s,[178] enabling U.S. and European banks and investors to finance the debt for European acquisitions.[179] European investment firms also emerged that would emulate and innovate on the American debt and restructuring strategies.[180] As leveraged finance grew so would interest in trading debt, especially bank loans, and Part B discusses the rise of debt trade associations that connected debt finance and bankruptcy professionals within and across markets. During this period, the global restructuring system advanced significantly and started to become entangled, which we cover in greater detail in Part C.

A. Growth of Private Equity.

A key driver of globalized corporate finance was the rise of leveraged buyouts, as private equity firms looked to profit from buying companies all over the world with borrowed money.[181] This investing strategy began in the U.S. in the mid-1970s and then exploded in domestic popularity in the 1980s,[182] growing from $1.4 billion in total volume in 1979 to $77 billion by 1988.[183] U.S. and European investors began executing similar transactions in Europe in the 1980s, but it did not take off in earnest until later: European LBO volumes surged from €20 billion in

[178] *See generally* Marc Moore & Chris Hale, *Private Equity's Neglected Pre-History: A Trans-Atlantic Perspective* (UCL Legal Stud. Rsch. Paper Series, Paper No. 09/2024, 2024).
[179] *See* Oliver Barnes & Alexandra Heal, *KKR Strikes €2.6bn Deal with EQT for E45 Maker Karo Healthcare*, FIN. TIMES (Apr. 8, 2025), https://perma.cc/97JJ-9P9E .
[180] For an example of one fund, *See Company,* CINVEN, https://perma.cc/J9WR-RQK6 (last visited Nov. 19, 2025) (noting the fund was founded in 1977).
[181] *See* Steven N. Kaplan & Per Strömberg, *Leveraged Buyouts and Private Equity*, 23 J. ECON. PERSP. 121 (2009).
[182] *See* Brian R. Cheffins & John Armour, *The Eclipse of Private Equity*, 33 DEL. J. CORP. L. 1, 17-21(2008).
[183] *See generally* Michael C. Jensen, *The Eclipse of the Public Corporation*, 67 HARV. BUS. REV. 61 (1989).

1999 to over €160 billion by 2006, signaling the integration of U.S. and European companies into a single debt-fueled takeover market driven by U.S. and European investment firms.[184]

B. Development of Debt Trade Associations.

In the mid-1990s, trade associations emerged that would seek to standardize and improve liquidity in developing syndicated loan markets. The Loan Syndications and Trading Association (LSTA) was founded in New York in 1995,[185] followed by the Loan Market Association (LMA) in London in 1996, modeled on the LSTA.[186] Both organizations advanced the syndicated loan market by creating standardized documentation, promoting best practices, and lobbying.[187]

The New York–based LSTA and London–based LMA also evolved into coordinating bodies that shared best practices across markets.[188] For example, in 2009, the LMA's "Lehman Provisions" incorporated lessons from the Lehman Brothers collapse[189] and in 2020 an errant payment by Revlon to Citigroup in the U.S. led to immediate changes in the standard LMA forms.[190]

The growing standardization of loan documentation across the U.S. and Europe helped globalize the syndicated loan market, as banks on both sides of the Atlantic lent far beyond their

[184] *See* House of Commons Treasury Comm., *Private Equity*, HC 567-I (Sess. 2006–07) (UK).
[185] *See About*, LSTA, https://perma.cc/4NZH-QDT4 (last visited Nov. 19, 2025).
[186] *See generally About Us*, LMA, https://perma.cc/638Y-U3Q6 (last visited Nov. 19, 2025); LOAN MKT. ASS'N, *supra* note 117, at 20.. While the LSTA and LMA emerged in the mid-1990s for secondary loan markets, the International Capital Markets Association, founded in Zurich much earlier in 1969, has shaped the development of international bond markets. *See* ICMA, About ICMA, ICMA (last visited Nov. 25, 2025), https://www.icmagroup.org/About-ICMA/
[187] *See e.g.* LOAN MKT. ASS'N & EUR. LEVERAGED FIN. ASS'N, *Best Practice Guide for Term Sheet Completeness* (Dec. 2021), https://perma.cc/JHM4-JVG9
[188] *See* MARK CAMPBELL & CHRISTOPH WEAVER , *supra* note 113, at 3-10.
[189] *See* SLAUGHTER & MAY, A BORROWER'S GUIDE TO THE LMA'S INVESTMENT GRADE AGREEMENTS 377–80 (6th ed. 2022) (discussing the Lehman provisions on defaulting lender, impaired agent bank, and issuing bank).
[190] *See* Citibank, N.A. v. Brigade Capital Management, LP, 18 F.4th 62 (2d Cir. 2021).

home jurisdictions.[191] Between 2005-2007, for example, approximately 24% of syndicated loans issued to U.S. companies were originated by leading European banks in Europe.[192]

C. The American Bankruptcy Ecosystem Matures and Europe's Begins to Grow.

In the 1990s and early 2000s, the American bankruptcy ecosystem matured and grew, both domestically and internationally. This Part explains how those domestic evolutions were tested abroad.

We begin by summarizing key advances that made the American bankruptcy system more effective. The vulture investors of the 1980s evolved into the far larger distressed debt hedge fund industry of the 1990s and 2000s, providing struggling American companies with the capital to reorganize and recover.[193] These investors and their lawyers then made a series of innovations that improved Chapter 11, all without legislative intervention. Because these innovations came from market actors – law firms, investment funds, and trade associations – they were more portable and adaptable to foreign contexts than statutory reforms requiring legislation. American bankruptcy professionals also learned to navigate the bankruptcy code with innovative tactics that enabled them to accomplish their client's goals, an expertise still evident in cases such as Altice France *supra*, where practitioners were accused of disregarding conflicts with French law.[194] This expertise likely facilitated exporting these tactics abroad even when they conflicted with governing law or practice, as with the Barings example *infra*.

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[191] *See* Victoria Ivashina et al., *Dollar Funding and the Lending Behavior of Global Banks*, 130 Q. J. ECON. 1256, 1256–59 (2012).
[192] *See* id. at 1256–58.
[193] *See* Christine Williamson, *The Right Place at the Right Time*, PENSIONS & INVS., June 10, 2013, at 28; Edward I. Altman, Brooks Brady, Andrea Resti & Andrea Sironi, *The Link Between Default and Recovery Rates: Theory, Empirical Evidence, and Implications*, 78 J. BUS. 2203, 2211 (2005). The distressed debt industry managed about $40 billion by 2002, rising to $150 billion by 2005 and between $400 billion and $500 billion by 2018. *See* Edward I. Altman & Edith Hotchkiss, *Investing in Distressed Securities*, *in* CORPORATE FINANCIAL DISTRESS AND BANKRUPTCY 187 (3d ed. 2005).
[194] *See supra* note 9 and accompanying text.

An example illustrates the progress in U.S. Chapter 11. One of Chapter 11's key advantages – allowing existing management to remain in control while reorganizing – can become a liability if managers stall, pursues inefficient transactions, or seeks holdup payments for out-of-the-money shareholders. Distressed investors addressed this problem by adapting the common practice of providing reorganization financing into a more sophisticated model, conditioning funding on quick bankruptcy exits and, later, on implementing specific restructuring transactions.[195] As judges accepted this practice, Chapter 11 became more attractive to investors because it reduced the risk of lengthy, costly proceedings.[196]

As a result, the American bankruptcy industry was poised to expand abroad and capitalize on Europe's economic dislocations. Part 1 describes how American distressed debt investors expanded overseas and Part 2 discusses how U.S. law firms became major players in the European restructuring market by opening offices and recruiting some of the leading European insolvency lawyers. Part 3 examines the rise of so-called "bankruptcy tourism," in which European and other non-U.S. companies filed for Chapter 11 to benefit from the increasingly efficient American bankruptcy system. Part 4 summarizes how Europeans responded to weaknesses in their own insolvency systems, illuminated by American competition, with practitioner-led innovation and statutory reforms. Finally, Part 5 discusses the United Nations-led initiative that prompted both the United States and the United Kingdom to adopt laws recognizing foreign bankruptcy orders, thereby deepening international court cooperation.

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[195] *See, e.g.*, Kenneth M. Ayotte & Jared A. Ellias, *Bankruptcy Process for Sale*, 39 YALE J. ON REG. 1 (2022); Barry E. Adler, Vedran Capkun & Lawrence A. Weiss, *Value Destruction in the New Era of Chapter 11*, 29 J.L. ECON. & ORG. 461 (2013); Douglas G. Baird & Robert K. Rasmussen, *The End of Bankruptcy*, 55 STAN. L. REV. 751, 784 (2002); David A. Skeel, Jr., *Creditors' Ball: The "New" New Corporate Governance in Chapter 11*, 152 U. PA. L. REV. 917, 919 (2003); Kenneth M. Ayotte & Edward R. Morrison, *Creditor Control and Conflict in Chapter 11*, 1 J. LEGAL ANALYSIS 511, 514 (2009).

[196] *See* Wei Jiang, Kai Li & Wei Wang., *Hedge Funds and Chapter 11*, 67 J. FIN. 513 (2012); Victoria Ivashina *et al.*, *The Ownership and Trading of Claims in Chapter 11 Restructurings*, 119 J. FIN. ECON. 316 (2016).

1. Distressed Debt Funds Grow and Invest Abroad.

In the 1990s, the American bankruptcy ecosystem – lawyers, investment bankers, and investors – began serving distressed European corporations.[197] Some American investors became known in Europe as "vulture investors," ready to intervene when companies faltered and offered a market-based solution to the government-led rescues typical of European practice.[198] In an early example, American distressed hedge funds played a major role in a Dutch truckmaker's 1993 bankruptcy, perhaps their first foray into Continental Europe.[199]

American distressed investment funds expanded significantly in European markets during the 1990s. For an example, consider Halcyon Asset Management, one of the American distressed investors cited *supra* that cut its teeth on major U.S. bankruptcy cases in the 1980s and shocked London's insular insolvency world with its aggressiveness in the late 1990s.[200] Halcyon invested in Barings,[201] a 200-year-old British merchant bank that collapsed after catastrophic trading losses from a rogue trader's fraud.[202] Barings entered the U.K. administration in February 1995,[203] and

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[197] *See* Alan Tilley, *European Restructuring: Clarifying Trans-Atlantic Misconceptions*¸ 8 J. PRIV. EQUITY 99, 100 (2005) ("In the late 1990s, high leverage bond financing grew rapidly in Europe. U.S. investment banks and attorneys bought into the European market or established regional offices. London grew rapidly as the dominant financial center of Europe. Increasingly U.S. capital crossed the Atlantic . . . When the bubble burst in 2001 and defaults occurred, it was often those same organizations that advised in the subsequent restructuring. Many of the investors were American and so the solutions they sought were U.S.-based. But the legal playing field was European").

[198] *See e.g. supra* note 156 and accompanying text (discussing the Stern Group).

[199] *See* Daniel Fisher, *Chinese Walls, European-style*, FORBES (Dec. 14, 1998) *(*discussing DAF's bankruptcy where European investors "sold out at a loss" rather than engage in risky litigation while "Americans running distressed-securities investment boutiques pressed the trustee to sue its half-owner over the collateral guarantee").

[200] *See* e.g. In re Ionosphere Clubs, Inc., 119 B.R. 440, 441 (Bankr. S.D.N.Y. 1990) (discussing Halcyon as one of the "speculators who specialize in purchasing creditors' claims in bankruptcy estates").

[201] At its collapse, Barings was the City of London's longest-standing merchant bank. *See Report of the Board of Banking Supervision Inquiry into the Circumstances of the Collapse of Barings*, HC 673, at 4 (Sess. 1994–95) (UK),https://perma.cc/GLC7-UBXG

[202] *See id.* at 18-23.

[203] Bank of England Statement on Barings, REUTERS (Feb. 26, 1995). *See also Report of the Board, supra* note 201*,* at 4.

the administrator quickly transferred its operating assets to new ownership.[204] This left Halcyon and other hedge funds to fight over the remaining assets, insurance proceeds and litigation recoveries.[205]

The American hedge funds became notorious in London for how aggressively they prosecuted a theory that one of the company's three bond issuances deserved better than the administrator's proposed settlement.[206] As Sarah Paterson observed, "[o]nce the debt traded into their hands, to the horror of the English market, they voted the deal down [in 1998] and held out for another two years for a new plan which they regarded correctly priced the various tranches of debt."[207] The vulture funds rejected the settlement, believing the offer undervalued the estate and allocated an outsized share of recoveries to other bondholders.[208] Negotiations stalled for two years, and a renewed deal was blocked again in mid-2001[209] before the parties finally settled.[210] By then, court documents indicated the U.S. vulture funds had already doubled their investment.[211] A Magic Circle London law firm later cited the case as an early example of American distressed investors using voting rights under English insolvency procedures to extract value and the arrival of modern American bankruptcy tactics across the Atlantic.[212] This example also illustrates why

[204] *See* e.g., Dirk Beveridge, *ING Takes Charge of Collapsed Barings*, ASSOC. PRESS, Mar. 5, 1995.
[205] The purchaser, Dutch bank ING, did not assume Barings' outstanding bond obligations. *See* Alexander Smith, *Vulture Funds Scotch Barings Deal*, REUTERS (Nov. 11, 1998).
[206] *See* Neil Behrmann, *Barings Bonds Settlement Soon*, BUS. TIMES (SING.) (Feb. 22, 1997).
[207] *See* SARAH PATERSON, CORPORATE REORGANISATION LAW AND FORCES OF CHANGE 101 (2020).
[208] *See* Alexander Smith, *Investors Reject Barings Deal*, REUTERS (Nov. 11, 1998).
[209] *See* Chris Hughes, *Barings Dispute Goes to Trial as PwC Fails to Agree Deal with Liquidators*, THE INDEPENDENT (Jul. 31, 2001).
[210] *See Deloitte in the Clear as Barings Case Ends*, ACCOUNTANCY AGE (Apr. 27, 2004); Stephanie Gruner, *Auditors, Liquidators of U.K.'s Barings Bank Reach Settlement Over Firm's Collapse*, DOW JONES BUSINESS NEWS (Oct. 9, 2001).
[211] *See* Nikki Tait, *US Vulture Funds Double Barings Bond Investment*, FIN. TIMES (May 8, 2002).
[212] Ian Johnson & Ed Couzens, *Insolvency and Restructuring – Focus on the English Law Regime*, SLAUGHTER AND MAY (2020), https://perma.cc/PQ28-JLAS.

they are (and remain) controversial, as their successful intervention here was purely redistributive and imposed significant cost and delay on the eventual resolution.[213]

Without a doubt, American hedge funds began to see opportunity in Europe during this period. In one case, an American investor who had worked on the 1970s Penn Central Railroad restructuring moved to Europe and set up an investment firm. He told the *New York Times* in 1994: "[i]n Europe today, bankruptcy is a dirty word, like it was in the United States 25 years ago . . . When a company is in trouble, the white-shoe banks in London and Paris run. The last thing they want is to be associated with it. It will be years before they realize that bankruptcy, spelled another way, is opportunity."[214]

2. American Law Firms Expand into Europe, Creating Greater Connections Between the American and European Restructuring Communities.

The movement of American distressed investors to Europe created opportunities for their American law firms to build European insolvency practices and gradually hire many of Europe's leading lawyers. To give a sense of how quickly things changed, as Figure 1 shows, in 2002, American law firms represented only 5% of the best London insolvency practices. Around that time, elite American bankruptcy law firms such as Kirkland & Ellis LLP began building European bankruptcy practices, [215] and the market transformed rapidly: by 2010, U.S. firms held over 20% of top rankings; by 2017, more than 40%; and by 2025, more than 50%.

[213] An important argument is that distressed hedge funds, when they intervene in situations like this, promote debt financing by obtaining court orders affirming priority to value that was bargained for *ex ante*. *See* Ellias, *Activist Investors*, *supra* note 146, at 502.
[214] *See* Jacques Neher, *Financial Vulture Cashes In*, N.Y. TIMES (Jun. 20, 1994).
[215] *See* KIRKLAND & ELLIS LLP, *Kirkland & Ellis International LLP Marks 10 Years in London* (Sept. 2004), https://perma.cc/S6DJ-BQ96 .

Figure 1. American Law Firm Share of Elite London Insolvency Practice, by Year.

Figure 1 displays the percentage of all Chambers and Partners ranked law firms that are based in the United States in "insolvency" in the U.K., in each calendar year where data is available. The graph shows the most elite law firms ("Band 1 lawyers") and all ranked lawyers.

An even clearer pattern emerges when examining where London's top insolvency lawyers practice. As Figure 2 shows, *Chambers and Partners* surveys show that in 2002 only 7% of ranked practitioners -- and none of the most elite group -- worked at U.S. firms. By 2006, more than 20% of both ranked and the most elite lawyers practiced at American firms, and by 2016 that share approached 40%. Following the COVID-19 pandemic, U.S. firms came to dominate the field, employing more than half of all ranked London insolvency lawyers and three-quarters of the most elite group. Initially, these European lawyers at American firms advised U.S. clients on European

matters but eventually expanded to advising European clients on purely European deals, shifting from the periphery to the heart of European insolvency practice.[216]

Figure 2. Ranked U.K. Insolvency Lawyers Working for American Law Firms, by Year.

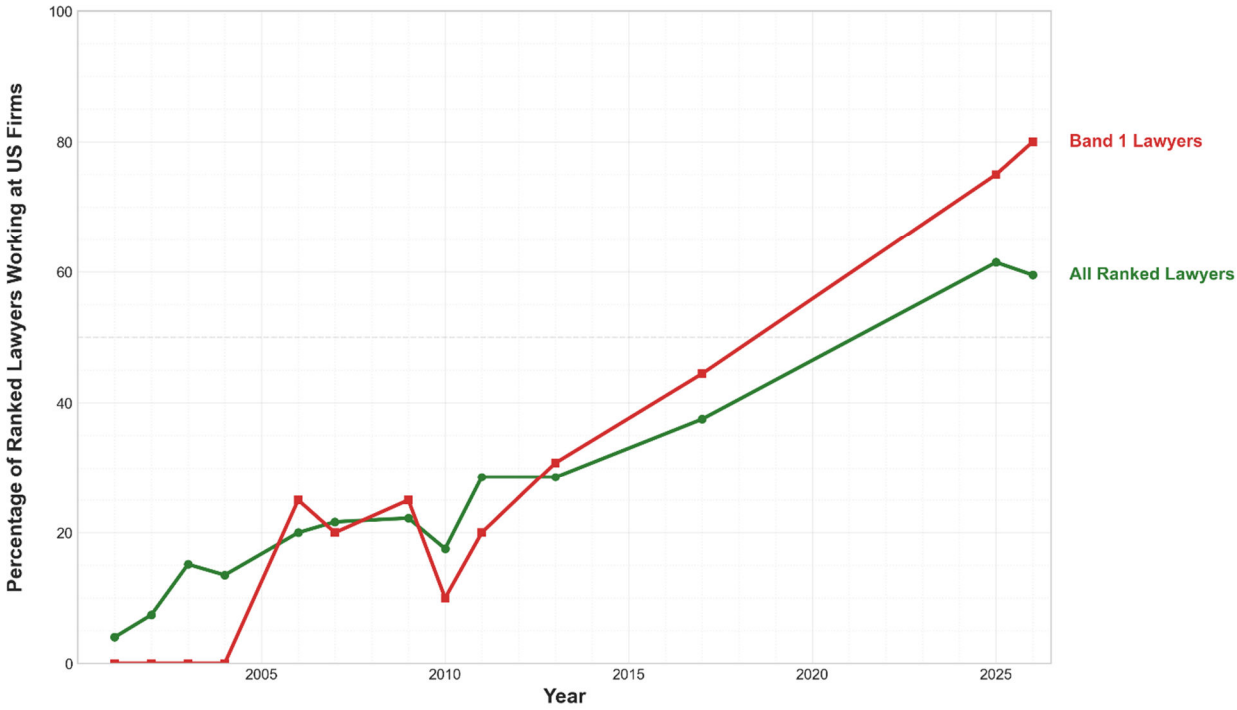

Figure 2 displays the percentage of all Chambers and Partners ranked U.K. lawyers, in insolvency in each calendar year where data is available who worked for a U.S.-based law firm. The graph shows the most elite lawyers ("Band 1 lawyers") and all ranked lawyers.

Importantly, most of these practitioners were English qualified lawyers, not American, but working at U.S. firms brought them into close contact with American colleagues and exposed them to U.S. restructuring tactics.[217] In the Altice France case discussed *supra*, the creditor group's counsel was led by an American partner in New York and a French partner in Paris, supported by additional U.S. and French lawyers, while the company was represented by two U.S. firms—one staffed by French lawyers in Paris and another combining American and English-qualified lawyers

[216] *See* James Crombie, *US Law Firms Bring Distressed Debt Swap Playbook to Europe*, BLOOMBERG (Sept. 12, 2025, 8:11 AM), https://perma.cc/XQ35-8KJJ.
[217] *See Altice France Announces Agreement* , *supra* note 12.

in London and New York.[218] The case illustrates how deeply integrated European insolvency practice had become with American law firms and methods.

3. European Companies Become American Bankruptcy Tourists.

American bankruptcy courts soon confronted what scholars later called "bankruptcy tourism," as foreign companies sought access to the U.S. system.[219] As discussed *supra*, many European companies had tapped the American bond market in the 1980s and 1990s.[220] When some of those firms later required restructuring, U.S. bankruptcy courts accommodated them, encouraging other foreign borrowers to file in the United States and positioning American bankruptcy courts to potentially become the main bankruptcy system for global commerce. [221]

In 2000, Global Ocean, a Greek-based shipping carrier that had sold $126 million in high-yield Yankee bonds in 1997 became the first European issuer to file for Chapter 11.[222] The company was struggling and reached an agreement with its creditors – a group of American distressed hedge funds – that it sought to implement in a U.S. Chapter 11 filing.[223] In the Delaware bankruptcy court, a small bondholder argued that the company did not belong in Chapter 11 because it did not do business in the United States.[224] Judge Walrath nonetheless held that the court had jurisdiction, citing the company's small U.S. bank account and a retainer account at a U.S. law firm.[225] In effect, her holding suggested that a European company with New York-law governed debt could file for bankruptcy in the United States based on ordinary features of a

[218] *See supra* notes 1 through 12 and accompanying text.
[219] *See generally* Jay L. Westbrook, *Bankruptcy Tourism*, 3 J. INTL. PROCEDURAL L. 159 (2013); Stephen Lubben & Oscar Couwenberg, *Corporate Bankruptcy Tourists*, 70 BUS. LAW. 719 (2015); Adrian Walters, *United States' Bankruptcy Jurisdiction over Foreign Entities: Exorbitant or Congruent?*, 17 J. CORP. L. STUD. 367 (2017).
[220] *See supra* notes 82 through 87 and accompanying text.
[221] *See generally* Westbrook, *supra* note 219.
[222] *See In re* Global Ocean Carriers Ltd., 251 B.R. 31, 35 (Bankr. D. Del. 2000).
[223] *See* Global Ocean Carriers, 251 B.R. at 35.
[224] *See id.* at 37.
[225] *See id.* at 35-9.

financing transaction (e.g., bank accounts) and routine aspects of restructuring negotiations (e.g., a retainer account with a U.S. law firm).[226]

After Global Ocean, the path was open for similar companies to file for U.S. Chapter 11. Three years later, a British shipper, Cenargo, followed suit with a rockier outcome.[227] Based in England and operating across the U.K. and Europe, Cenargo had no U.S. business operations but, like Global Ocean, financed itself with $175 million in high-yield Yankee bonds sold to American investors in 1998.[228] When Cenargo struggled to repay that debt, it retained Cadwalader, Wickersham & Taft, the only American firm then regarded as having an elite insolvency practice in both London and New York,[229] and, under pressure from U.S. distressed investors, filed for Chapter 11 on January 14, 2003. Its lawyers viewed the filing as consistent with prior cases in which non-U.S. shipping companies successfully restructured through Chapter 11 despite minimal American connections.[230]

Unlike Global Ocean, however, a major creditor – a unit of the Royal Bank of Scotland ("RBS") – petitioned the English High Court to place Cenargo into administration in London, arguing Chapter 11 was an improper forum for a company with no U.S. ties.[231] The move surprised Cenargo: the only affected creditors were the high-yield noteholders, and RBS had already participated in the early Chapter 11 proceedings without objection.[232] Reviewing the matter

[226] *See also Bank of Am., N.T. & S.A. v. World of Eng., N.V.*, 23 B.R. 1015, 1016 (N.D. Ga. 1982)
[227] *See In re* Cenargo Int'l, PLC, 294 B.R. 571, 576 (Bankr. S.D.N.Y. 2003).
[228] *See Shipowner Cenargo to Raise $175 Mln in Bond Issue,* REUTERS, June 9, 1998.
[229] *See Insolvency/Corporate Recovery: United Kingdom*, *in* CHAMBERS GLOBAL: THE WORLD'S LEADING LAWYERS FOR BUSINESS 792 (2002–2003); *Insolvency/Corporate Recovery: New York*, *in* CHAMBERS GLOBAL: THE WORLD'S LEADING LAWYERS FOR BUSINESS 908 (2002–2003).
[230] *See* Cenargo Int'l, 294 B.R. at 576–77.
[231] *See id.* at 588
[232] *See id.* at 581-9.

afterward, the U.S. bankruptcy judge found no real prejudice to RBS other than a general policy objection to its English borrowers "fil[ing for] Chapter 11 proceedings."[233]

A U.K. news source noted that this was:

> the first time a U.S. bankruptcy proceeding [for a company with Yankee bonds] has been seriously challenged. Non-U.S. creditors have long complained that chapter XI protection unfairly allows foreign companies to hide from their debts. Companies often have to show only the most tenuous links to America to be eligible. . . . Global Ocean Carriers was . . . able to win U.S. jurisdiction based on a relatively small amount of money in bank accounts.[234]

Soon thereafter, the U.S. distressed investors reached an agreement with the Royal Bank of Scotland to reorganize the company through U.K. insolvency proceedings, and the American bankruptcy judge suspended the Chapter 11 case.[235]

4. The United Kingdom's Corporate and Insolvency Ecosystem Improves while the Rest of Europe Lags Behind.

At the same time that bankruptcy tourism was becoming a feature of European corporate life, U.K. governmental officials and regulators were working to reform their own laws to make English courts more attractive to distressed firms and investors. In addition to competition from the United States, the push for insolvency reform in Europe stemmed from the growing presence of U.S. distressed hedge funds, who preferred negotiating based on strict legal entitlements rather than the informal, relationship-driven "London Approach" of an earlier era.[236] A nineteenth-century English decision established what is now known as the "rule in *Gibbs*,"[237] under which English-law-governed loan contracts can be discharged only by an English court, creating significant

[233] *See id.*
[234] *See Cenargo Stuck in Legal Tug-of-War*, TRADEWINDS, Feb. 7, 2003.
[235] *See* Cenargo Int'l, 294 B.R. at 592.
[236] *See* Paterson, *supra* note 148, at 341-43, 364 (describing the fall of the London Approach).
[237] *See Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux (1890) 25 QBD* 399.

demand for an insolvency procedure capable of dealing with the large volume of English-law-governed debt.[238]

The first major U.K. reform was statutory: Companies Act 1985 was replaced by the landmark Companies Act 2006, which modernized company law, including by inserting the fiduciary duties of directors to consider creditors' interests.[239] In particular, it codified that a directors' duty to promote the success of the company sometimes includes the interests of creditors.[240] The Companies Act 2006 also formalized schemes of arrangement through Part 26.[241]

The second, practitioner-driven reform positioned the U.K. as Europe's restructuring hub. In 2005, U.S. auto supplier Collins & Aikman persuaded the English High Court to coordinate the restructuring of its 24 European subsidiaries across ten countries through administration.[242] Having already filed for Chapter 11 in the U.S., the company sought a single European forum to obtain court orders the U.S. bankruptcy court could not offer and to avoid the cost and delay of multiple local proceedings.[243] The English High Court accepted jurisdiction on the basis that several subsidiaries' "centres of main interests" (a concept we discuss in greater detail below)[244] were in England.[245] To deter creditors from initiating parallel proceedings in other jurisdictions, the

[238] *See* Sarah Paterson, *A Qualified Defence of the Rule in Gibbs* (London Sch. of Econ., Legal Stud. Working Paper No. 6/2025, 2025).
[239] *See generally* PAUL L. DAVIES, SARAH WORTHINGTON & CHRISTOPHER HARE , GOWER: PRINCIPLES OF MODERN COMPANY LAW (11th ed. 2021); *see also West Mercia Safetywear Ltd (in liquidation) v Dodd* [1988] BCLC 250. Other statutory reforms included The Insolvency Act 2000 and The Enterprise Act 2002.
[240] *See* Companies Act 2006, c. 46, § 172 (UK); *West Mercia Safetywear Ltd (in liquidation) v Dodd* [1988] BCLC 250.
[241] *See* GULLIFER & PAYNE*, supra* note 152*,* at 711; Jennifer Payne, *Debt Restructuring in English Law: Lessons from the US and the Need for Reform,* 130 L. Q. REV. 282 (2014); Jennifer Payne, *The Role of the Court in Debt Restructuring*, 77 CAMBRIDGE L. J. 124 (2018).
[242] *See* Kannan Ramesh, Judge, Sup. Ct. Sing., *Synthesising Synthetics: Lessons Learnt from Collins & Aikman*, Keynote Address at the 2nd Annual Global Restructuring Review Live New York 3 (Sept. 26, 2018), https://perma.cc/8MSL-7245. *See also* Adam Deacock, *Re Collins & Aikman Corporation Group*, 3 INT'L CORP. RESCUE 88 (2006).
[243] Mitchell Pacelle & Neal Boudette, *Collins & Aikman Files for Chapter 11*, WALL ST. J., (May 17, 2005), https://perma.cc/7ZVQ-42BK.
[244] *See infra* note 251 and accompanying text.
[245] *See In re* Collins & Aikman Europe SA [2006] EWHC (Ch) 1343 (Eng.).

administrators promised to honor the priorities created by local bankruptcy laws when relevant, such as the priority Spanish law created for trade creditors.[246] This became known as a "synthetic proceeding," where the English court showed it could simulate the outcome creditors would get under other European insolvency laws.[247]

The success of Collins & Aikman signaled that London, much like the United States, had the legal infrastructure and strong expertise to oversee the insolvencies of very large companies that operated globally. The U.K.'s insolvency rules during this period had drawbacks compared to U.S. Chapter 11, but British practitioners continued to innovate, "influenced by U.S. legal and banking professionals who have established European offices . . ."[248] By the mid-2000s, London had become "the place to go" in Europe for restructuring, given its "highly sophisticated and experienced bar and judiciary."[249]

Outside of London, in the 1990s, Continental Europe began its own process of bankruptcy modernization. At the level of the Council of Europe, a 1990 convention developed the important "centre of main Interest" (or COMI) concept[250] which envisioned a system of one main bankruptcy proceeding and secondary proceedings where needed to effectuate a restructuring.[251] While this convention was never ratified, it developed a conceptual framework for future successful reforms.[252]

Nationally, countries like Germany created their first domestic restructuring procedures, but these remained inferior to the U.S. and U.K. insolvency systems, lacking effective debtor-in-

[246] *See* Ramesh*, supra note* 242*,* at 4.
[247] *See generally id*.
[248] *See* Tilley, *supra* note 197, at 100.
[249] *See* Eidenmüller, *supra* note 88, at 552.
[250] Council of Europe, *European Convention on Certain International Aspects of Bankruptcy*, ETS No. 136, Istanbul, 5 June 1990, https://rm.coe.int/168007b3d0.
[251] *See* Antonio Leandro, *supra* note 175, at 5–6 .
[252] *See* Kurt Malangré (Comm. on Legal Affs. & Citizens' Rts.), *Report on the Convention on Insolvency Proceedings of 23 November 1995*, Parl. Eur. Doc. (A4-0234/99) (1999).

possession mechanisms among other weaknesses.[253] France implemented a new procedure, the *sauvegarde,* in 2006, which permitted intra-class cramdown, though it was not immediately widely used.[254] The inadequacies of Continental European procedures drove forum shopping for bankruptcy courts, with the first known instance happening in 2004, where complex legal engineering—transferring shares to an English company and converting the German entity to a partnership—allowed a German debtor to access U.K. courts.[255] At the time, this transaction was described as "ground-breaking," for leveraging the flexibility of U.K. insolvency rules to complete debt-for-equity swaps, which were not possible under German law at the time.[256]

5. The Legal Infrastructure for Coordinating International Bankruptcy Proceedings Develops.

By the late 20th century, commentators noted a growing mismatch between global business and domestic insolvency laws, which complicated restructurings for firms with assets in multiple jurisdictions.[257] Because national systems often reflected local policy priorities—such as protecting jobs in France or trade creditors in Germany[258]—cross-border cooperation risked forcing courts to honor foreign priorities. Early efforts to harmonize rules failed, leaving

[253] *See* Eidenmüller, *supra* note 88, at 552.
[254] *See* Rotaru, *supra* note 98, at 27-29. Bankruptcy lawyers would draw on this new procedure to adapt the U.S. Chapter 11 pre-packaged bankruptcy, which was then codified by French law in 2010. *See id* at 27-30.
[255] *See* Dominic Cahill & Sally Willcock, *Director's Duties: Dealing with the Minefield in a Cross-Border Restructuring*, PRAC. L. UK (Oct. 15, 2007) ("[t]he first widely reported instance of a migrating corporate COMI occurred in the [2004] restructuring of a German coin manufacturer, Deutsche Nickel AG)"); Annerose Tashiro & Volker Beissenhirtz, *German Companies Heading Towards England for Their Rescue*, 4 INT'L CORP. RESCUE 171 (2007).
[256] *See* Andrew Hosking, *Deutsche Nickel & EU Coin Group*, QUANTUMA (Apr. 17, 2019), https://perma.cc/QC8V-32WP.
[257] *See* U.N. COMM'N ON INT'L TRADE L., UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY (1997), https://perma.cc/M7LC-3432.
[258] *Harmonizing European Insolvency Laws - A British Perspective*, BANKR. CT. DECISIONS (Wkly. News & Comment), Dec. 10, 1992, at A3.

companies to navigate conflicting national regimes that made efficient settlements "very difficult, costly, and often disruptive."[259]

In 1997, the United Nations addressed this gap through the UNCITRAL Model Law on Cross-Border Insolvency, creating a framework for mutual recognition of foreign bankruptcy proceedings.[260] The basic concept was that companies could file in one country and seek recognition orders abroad to reach assets or creditors there.[261]

The International Association of Restructuring, Insolvency and Bankruptcy Practitioners (INSOL), formed in the 1980s as a globalized U.K. Insolvency Practitioners Association, became the leading advocate for global adoption of the Model Law and for globalization of the insolvency profession. Through conferences and white papers, INSOL promoted the Model Law and developed globally oriented insolvency principles.[262]

Over time, INSOL's efforts helped spur adoption by major economies, establishing mutual recognition as a cornerstone of modern cross-border restructuring.[263] The framework became a foundation of the global bankruptcy system, enabling companies to combine different national regimes with reciprocal recognition to achieve their restructuring goals.[264]

The United States implemented the framework in 2005 through Chapter 15 of the Bankruptcy Code, allowing U.S. courts to recognize foreign bankruptcies as "foreign main

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[259] *See* Harold S. Burman, *Harmonization of International Bankruptcy Law: A United States Perspective*, 64 FORDHAM L. REV. 2543, 2544 (1996).
[260] *See* U.N. COMM'N ON INT'L TRADE L., *supra* note 257257. *See generally* André J. Berends, *The UNCITRAL Model Law on Cross-Border Insolvency: A Comprehensive Overview*, 6 TUL. J. INT'L & COMP. L. 309 (1998).
[261] *See id.*
[262] *See* Leonard Salter, *INSOL IV: International Insolvency Practitioners Convene in Australia*, COM. L. BULL. (1993) (noting the first four INSOL meetings were in the U.S., Monaco, Canada, and Australia); Paul J. Omar, *Upstreaming Rescue: Pre-Insolvency Proceedings and the European Insolvency Regulation*, *in* THE GRAND PROJECT: REFORM OF THE EUROPEAN INSOLVENCY REGULATION 59, 63 (Stefania Bariatti & Paul J. Omar eds., 2014) (noting that a 2011 European Parliament report on the Insolvency Regulation echoed recommendations from the INSOL Europe report).
[263] *See* Dolan D. Bortner, *Mind the Gap: Fighting Forum Shopping in Transnational Bankruptcies Under Chapter 15*, 98 AM. BANKR. L.J. 416, 443 (2024).
[264] *See id*.

proceedings."[265] Recognition extends powerful U.S. bankruptcy protections, such as the automatic stay and avoidance of post-petition transfers, to foreign debtors. One early case involved *La Mutuelles du Mans Assurances*, whose U.K. scheme of arrangement was recognized in 2005 by the Southern District of New York.[266] The U.S. court's ruling protected the company's U.S. assets and barred creditors from pursuing parallel U.S. litigation, illustrating how mutual recognition enables coherent, multinational restructurings.[267]

For its part, the United Kingdom adopted the UNCITRAL Model Law on Cross-Border Insolvency in 2006 through the Cross-Border Insolvency Regulations 2006.[268]

IV. Globalization of Corporate Finance after the Financial Crisis: 2008 to 2020.

In Section III, we examined the growing entanglement of global debt markets. These links not only spread financial innovations but also introduced a major risk: contagion, the possibility that distress in one region could trigger a global credit contraction.[269] That risk materialized in 2007 and 2008, when fears about U.S. real estate froze worldwide lending and pushed the global economy into recession.[270] Yet unlike the retreat from globalization of the interwar period, cross-border ties among debt professionals and institutions deepened, marking a turning point in the globalization of corporate finance.

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[265] *See New York Bankruptcy Court Examines COMI for Purposes of Chapter 15 Recognition of Foreign Restructuring Proceedings Involving Multinational Companies*, JONES DAY (July 7, 2025), https://perma.cc/L6N9-8QPQ.
[266] *See* Order Granting Recognition and Relief in Aid of Foreign Main Proceeding Pursuant to 11 U.S.C. §§ 1517, 1520, 1521, *In re* Lloyd, No. 05-60100 (BRL) (Bankr. S.D.N.Y. Dec. 7, 2005), ECF No. 9.
[267] *See id*. at 4. ("ORDERED that all persons and entities are hereby permanently enjoined and restrained from taking any actions or steps in the United States inconsistent with, or to the detriment of, the Foreign Proceeding").
[268] *See The Cross-Border Insolvency Regulations 2006,* SI 2006/1030 (UK), https://perma.cc/N4G8-CCW3.
[269] *See generally* Frederic S. Mishkin, *Is Financial Globalization Beneficial?*, 39 J. MONEY CREDIT & BANKING 259 (2007).
[270] *See* Viral V. Acharya, Thomas Philippon, Matthew Richardson & Nouriel Roubini, *The Financial Crisis of 2007–2009: Causes and Remedies*, 18 FIN. MKTS. INSTS. & INSTRUMENTS 89, 89 (2009).

After the financial crisis, regulators cracked down on risky lending in ways that deepened global debt entanglement.[271] Confronted with distressed loans and stricter capital requirements, banks accelerated their shift to a syndication model, originating loans to sell to investors rather than lending from their own weakened balance sheets.[272] As banks largely retreated from traditional corporate lending, investment funds filled the gap, joining loan syndicates and directly extending credit to companies through an investment strategy known as "private credit," providing new opportunities for global investment funds to expand their role in credit provision.[273]

Even as governments, regulators and courts shaped policy and law from above, market innovation continued to link debt markets. As we will explain in Part A, London banks, responding to competition from U.S. banks at home and abroad, adopted features of the New York market, which did not keep some European borrowers from borrowing from New York's syndicated loan market, especially during the European sovereign debt crisis, which we discuss in Part B. Additionally, as we discuss in Part C, new research organizations were founded to provide global insights about debt finance and restructuring developments, In Part D, we consider important developments in debt restructuring.[274]

A. London Offers U.S.-style Covenant Terms in The Face of U.S. Competition.

As the financial crisis catalyzed debt entanglement, London's debt professionals responded with two important contractual innovations to compete with New York.

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[271] *See e.g.* Elisabeth Paulet, Mia Parnaudeau & Tamym Abdessemed, *The SME Struggle for Financing: A Clampdown in European Banks Post-Crisis*, 2 J. BUS. STRATEGY 35, 36-45 (2014).
[272] *See* Rustom M. Irani, Rajkamal Iyer, Ralf R. Meisenzahl & José-Luis Peydró, *The Rise of Shadow Banking: Evidence from Capital Regulation*, 34 REV. FIN. STUD. 2181 (2021).
[273] *See generally* Narine Lalafaryan, *Private Credit: A Renaissance in Corporate Finance*, 24 J. CORP. L. STUD. 41 (2024); Jared Ellias & Elisabeth de Fontenay, *The Credit Markets Go Dark*, 134 YALE L. J. 779 (2025).
[274] *See* Ignacio B. Aldana, *Introduction to* INVESTING IN DISTRESSED DEBT IN EUROPE: THE TMA HANDBOOK FOR PRACTITIONERS 8 (Ignacio Buil Aldana ed., 2017).

The first was the more active adoption of "covenant-lite" loans, which spread from the United States to the United Kingdom, then to Continental Europe and beyond.[275] While covenant-lite loans existed in the United Kingdom also prior to the financial crisis, they became increasingly widespread from 2012 onwards.[276] Covenant-lite loans omit the financial maintenance covenants which were typical of bank loans and instead use more flexible incurrence covenants, long common in high-yield bonds.[277] Maintenance covenants require borrowers to meet financial ratios on an ongoing or periodic basis, whereas incurrence covenants impose such requirements only when borrowers take specific actions, such as issuing new debt.[278] American investment bank Donaldson Lufkin and Alex Brown first introduced covenant-lite loans in 1997,[279] and their rise in Europe reflected strong investor demand for high-yield debt and the growing influence of global private equity sponsors in Europe, whose borrower-friendly loan forms increasingly shaped European leveraged finance.[280]

A second major development deepening global debt entanglement in the 2010s was the emergence in the London market of secured loan contracts governed by English law with some provisions interpreted according to New York law.[281] This hybrid-law structure made London financings more accessible to American investors, who could then rely on law they understood for important contractual provisions. We discuss this in greater detail in Section VI(A) *infra*.[282]

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[275] *See generally* Mitchell Berlin, Greg Nini & Edison G. Yu*, Concentration of Control Rights in Leveraged Loan Syndicates*, 137 J. FIN. ECON. 249 (2020).
[276] *See* Alan M. Christenfeld & Barbara M. Goodstein, *Covenant-Lite Loans Rise Again*, 250 N.Y. L. J. 67 (2013).
[277] *See, e.g.*, Bo Becker & Victoria Ivashina, *Covenant-Light Contracts and Creditor Coordination* (Swedish House of Fin. Rsch., Working Paper No. 16-09, 2016. *See also* GULLIFER & PAYNE, *supra* note 152*,* at 213.
[278] *See* GULLIFER & PAYNE, *supra* note 152152*,* at 213.
[279] *See* S.P., *Covenant-lite*, WASH. POST, Mar. 5, 2006, at F03.
[280] Sarah Paterson, *The Rise of Covenant-Lite Lending and Implications for the U.K.'s Corporate Insolvency Law Toolbox*, 39 OXFORD J. LEGAL STUD. 654 (2019).
[281] It is believed that one of the first Term B loans with a combination of English law and New York law was made in London approximately fifteen years ago. *See e.g. Senior Secured Facility Agreement*, Ex. 99.2 to INTERXION HOLDING N.V., Report of Foreign Private Issuer (Form 6-K) (Apr. 14, 2014), https://perma.cc/V6FQ-7VHY.
[282] *See e.g., Senior Facilities Agreement*, Ex. 99.(a)(1)(S) to ATLAS LUXCO S.À R.L., Tender Offer Statement (Schedule TO) (Aug. 5, 2024), https://perma.cc/WY7P-J8UV.

B. U.S. Investment Banks Increase Their Share of European Bank Loans.

These changes in London loan contracts did not keep some of the U.K. and Continental European borrowers from going to New York to raise debt capital, a move largely driven by the European sovereign debt crisis. Beginning in 2012, commentators noticed a trend of so-called "Yankee loans."[283] Like the earlier "Yankee bonds," Yankee loans involved European borrowers – often with little or no direct business in the U.S. – raising syndicated credit in New York from U.S. investors.[284] Typically governed by New York law, Yankee loans featured U.S.-style incurrence covenants with few or no maintenance covenants.[285] They also fostered a "cross-pollination of legal concepts," influencing European loan documentation.[286]

European companies turned to New York largely because of post-crisis retrenchment by European banks and abundant U.S. investment capital.[287] In particular, European banks faced severe funding challenges from macroeconomic instability as a result of the European sovereign debt crisis and Basel III's capital adequacy requirements,[288] leaving many European banks reluctant to finance riskier, non-investment-grade European companies. On the other hand, U.S. investors, facing limited domestic high-yield opportunities, were eager to lend.[289] European borrowers, in turn, found U.S.-style covenant-lite facilities with incurrence covenants very

[283] *See* Dana Cimilluca & Serena Ng, *Europe Turning to U.S. for Loans*, WALL ST. J. (May 29, 2012).
[284] *See* Andrew Brown, *The Rise of 'Yankee Loans' in Europe*, LAW360 (Mar. 04, 2015).
[285] *See id*.
[286] *See* Daniel Winick & Andrew Young, *Across the Pond and Back Again: US and European Leveraged Finance Terms*, 30 J. INT'L BANKING & FIN. L. 148 (2015).
[287] A *See, e.g.*, David J. Billington, Carlo de Vito Piscicelli & Pierre-Marie Boury, *Here We Go Again – Convergence in the Leveraged Finance Markets, and What It Means for Future Restructurings*, CLEARY GOTTLIEB (June 10, 2015), https://perma.cc/KJ22-JSHN.
[288] In December 2010, The Basel Committee issued Basel III rules, which are global regulatory standards on bank capital adequacy and liquidity (e.g., higher and better quality capital, better risk coverage, etc.).
[289] *See* Dana Cimilluca & Serena Ng, *Europe Turning to U.S. for Loans*, WALL ST. J. (May 29, 2012).

appealing.[290] Additionally, globalized investment funds following a "private credit" investment strategy emerged to fill the gap left by the retreat of banks from corporate lending.[291]

C. Debt Research Organization and Cross-Border Debt Dialogue.

The growth of debt research organizations and news outlets after the financial crisis greatly expanded global debt professionals' awareness of one another's activities. These platforms first emerged in the United States after the 2001 recession, with Debtwire (2003)[292] and Covenant Review (2006)[293] pioneering specialized coverage of debt and restructuring. Debtwire soon expanded to Europe, followed by CapitalStructure in London (2008) and Reorg (now Octus) in the United States (2013).[294] U.S. Covenant Review's 2015 acquisition of U.K. CapitalStructure and Reorg's London launch that same year further deepened transatlantic coverage.[295] In 2016, the Global Restructuring Review debuted as the first global publication covering domestic bankruptcies as similar global events that a reader can understand with a single lens.[296] Often staffed by former lawyers and bankers, these outlets provided insider-level analysis, conferences, and commentary, accelerating the globalization of debt markets.

D. U.S. and European Bankruptcy Law Modernization Continues.

The collapse of Lehman Brothers and the ensuing financial crisis triggered a global corporate debt crisis as companies worldwide sought to restructure their liabilities, accelerating

[290] *Accessing US Market Liquidity - Executing 'Yankee Borrower' Financings in Europe*, WEIL, GOTSHAL & MANGES LLP (May 30, 2013), https://perma.cc/6BZH-HWZS.
[291] *See generally supra* note 273.
[292] *See Company Profile: Debtwire*, PITCHBOOK, https://pitchbook.com/profiles/company/99504-01 (last visited Nov. 19, 2025).
[293] *See* Leeds Equity Partners Closes on Investment in Covenant Review, PR NEWSWIRE (Sept. 30, 2014), https://perma.cc/37BQ-WBXF.
[294] *See About Us*, OCTUS, https://perma.cc/N3SZ-RL6B.
[295] *See Reorg Research Opens London Office*, HEDGEWEEK (Apr. 9, 2015), https://perma.cc/8GQ9-V7KD.
[296] *Archive*, GLOB. RESTRUCT. REV., https://globalrestructuringreview.com/archive (last visited Nov. 19, 2025).

trends that began in the 1990s: (1) continued forum shopping by global corporations to the United States and by European firms to the United Kingdom; (2) the expansion of American distressed investors and law firms into Europe; and (3) European statutory reforms – especially in the U.K. – that made its corporate and insolvency regime far more attractive. We discuss each development in turn.

1. Continued Forum Shopping toward the U.S. and the U.K.

During and after the financial crisis, forum shopping intensified: large global corporations continued to file for bankruptcy in the U.S. and major European groups turned to the U.K. We illustrate both trends, emphasizing the U.K.'s growing prominence during this period.

In the United States, foreign companies continued to file Chapter 11 petitions based on minimal U.S. connections without parallel proceedings abroad.[297] In 2011, for example, Dutch shipping company *Marco Polo Seatrade* filed for Chapter 11 in New York.[298] The Royal Bank of Scotland moved to dismiss, arguing the debtor had no U.S. operations, creditors, or contracts governed by U.S. law, but the court held that a law firm retainer and bank account were sufficient for jurisdiction.[299] Holdings like this prompted a prominent European scholar to observed that U.S. courts "have no... compunctions about serving as a restructuring forum for foreign companies," criticizing America as "too much a safe haven" that risked "undermining important policies held dear by other countries."[300]

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[297] *See* Lubben & Couwenberg, *supra* note 219, at 721 (analyzing a dataset of foreign Chapter 11 filings and finding that the foreign debtors file to "impose a global discharge on assets . . . [in contrast] with the efforts of UNCITRAL to facilitate crossborder- cooperation among jurisdictions.")

[298] Timothy A. Davidson II & Joseph Rovira, *International Shipping Companies Successfully Navigate Chapter 11 With Prenegotiated Plans of Reorganization*, HUNTON ANDREWS KURTH (June 18, 2014), https://perma.cc/8X65-2VF3.

[299] *See id.*

[300] *See* Gerard McCormack, *Bankruptcy Forum Shopping: The UK and US as Venues of Choice for Foreign Companies*, 63 INT'L & COMP. L. Q. 815, 816 (2014) (criticizing the US as "too much a safe haven" for foreign debtors).

Within Europe, the U.K. insolvency system continued to thrive and attract forum shoppers and provoke frustration in other jurisdictions.[301] For example, in 2009, the Luxembourg holding company of *Wind Hellas*, one of Greece's largest telecommunications companies, filed for administration in London after renting modest office space, appointing UK-based directors, and conducting all restructuring negotiations there.[302] *The Guardian* lamented that the U.K. was becoming "the insolvency brothel of Europe" by making it so easy for foreign corporations to file.[303]

2. The American Bankruptcy Ecosystem Continues to Expand to Europe.

The 2007 financial crisis intensified the transatlantic migration of bankruptcy professionals, as U.S. law firms, investment funds, and banks exported U.S.-developed restructuring tools to Europe, drawing in much of the continent's leading restructuring talent. As Figure 3 illustrates, American law firms launched a hiring surge that, by 2025, left them employing 40% of Germany's most elite insolvency lawyers, nearly 60% of the top practitioners in France, and, as discussed *supra,* over 75% in the United Kingdom.

[301] See e.g Eidenmüller, *supra* note 88, at 552 (noting that the UK has emerged as the "market leader" for European corporate restructurings).
[302] *See* Michael Rutstein & Linton Bloomberg, *Forum Shopping, Portable COMI, and the Lessons of Wind Hellas*, JONES DAY BUS. RESTRUCT. REV. (Nov./Dec. 2010), https://perma.cc/J8Y5-CY8D.
[303] *See* Elena Moya, *London Risks Becoming 'Brothel' for Bankruptcy Tourists*, THE GUARDIAN (Jan. 30, 2010), https://perma.cc/C2CG-TFS6. *But see* John Paul Tribe, *Bankruptcy Tourism in the European Union: Myth or Reality?* (May 18, 2016), https://ssrn.com/abstract=2781500 ("the English and Welsh court's reputation as a 'Bankruptcy Brothel' is one that should be embraced").

Figure 3. Percentage of Most Elite European Insolvency Lawyers Working for U.S. Law Firms, by Country.

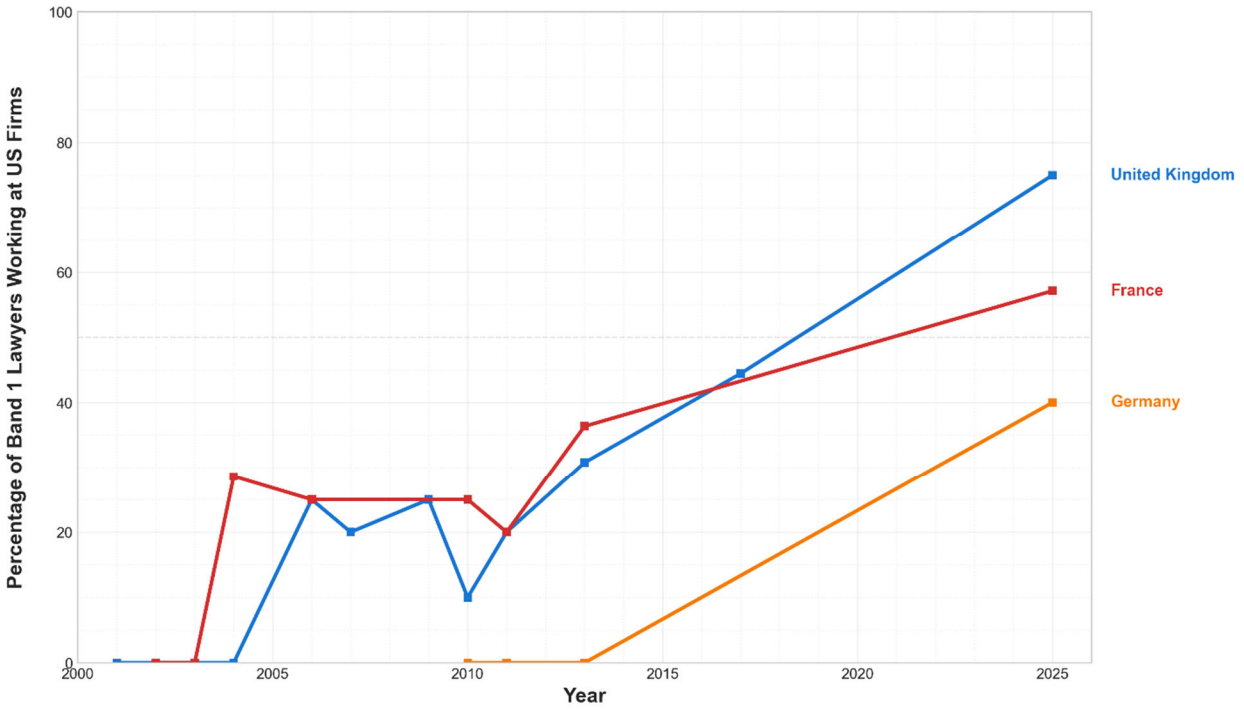

Figure 3 displays the percentage of the most elite lawyers in the United Kingdom, France and Germany, as ranked by Chambers and Partners, who work for law firms based in the United States, by year.

The growing American presence within Europe's elite restructuring firms both reflected and reinforced a more globalized profession attuned to cross-border options for clients.

As American law firms expanded in Europe, post-crisis regulatory reforms further opened the European loan market to U.S. distressed investors.[304] In the United States, banks had long sold troubled loans to distressed funds, but European banks, which were more focused on relationship lending, were reluctant to sell debt to "vulture funds."[305] That changed in 2011, when regulators

[304] *See* Hernandez, *supra* note 288, at 65 (discussing how the financial crisis opened the door to more trading in distressed bank loans).
[305] *See* Claire Ruckin, *Linklaters City Finance Partner Howard Quits to Join Sullivan in London*, law.com (May 22, 2013), https://perma.cc/4BG3-RNP9.

pressured banks to strengthen capital.[306] French banks' sale of loans in a major distressed retailer to a group including Oaktree Capital Management signaled that loan sales to American distressed investors were now acceptable.[307]

American distressed funds responded to the opening by deploying capital and personnel to Europe, with firms like Angelo Gordon – active in U.S. distressed investing since 1988 and managing some $73 billion – opening offices in London (2000), Amsterdam (2006), and later Frankfurt and Milan (2016).

A prominent example of this shift was the 2014 Apcoa restructuring.[308] The debt-burdened German parking operator saw the American investor Centerbridge acquire €400 million of its loans from European banks at the end of 2013.[309] After contentious negotiations with a German governmental creditor failed, Apcoa changed the governing law of its debt from German to English law to use the U.K.'s popular scheme of arrangement, which required approval from only 75% of creditors which would silence the German government's objections. The German creditor complained that Centerbridge was a "vulture" investor acting in a selfish and aggressive way.[310] The English High Court still approved the plan making Centerbridge the majority owner, underscoring London's comfort with sophisticated distressed investors.[311]

3. European Insolvency Law Modernization Accelerates.

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[306] *See* Claire Ruckin, *RLPC-Centerbridge Mulls Options for Apcoa Refinancing*, Reuters (Apr. 22, 2014), https://perma.cc/MRQ3-DGJY.
[307] *See* Emily Glazer, *Investors Breathe Life Into European Banks' Bad Loans*, WALL ST. J. (Mar. 30, 2014), https://perma.cc/8R8U-D38Z.
[308] *See* Jonathan Hebditch, *Apcoa Is Europe's Largest Car Park Manager, Operating in 12 European Countries*, PRESS & J. (June 18, 2015). *See generally* Matthew Abraham, *In the Matter of APCOA Parking (U.K.) Ltd & Ors* [2014] EWHC 997 (Ch), 11 INT'L CORP. RESCUE 429 (2014).
[309] *See* Jonathan Hebditch, *Finanzinvestor nimmt offenbar Parkhausbetreiber Apcoa ins Visier* [Financial Investor Apparently Targets Car Park Operator Apcoa], REUTERS (Nov. 5, 2013).
[310] *See In re* APCOA Parking (U.K.) Ltd. [2014] EWHC 997 (Ch) [22] (Eng.).
[311] *See id*.

The global financial crisis underscored the importance of effective insolvency laws and helped trigger a wave of important statutory reform across the European Union. Long before the crisis, scholars in the United Kingdom,[312] Sweden,[313] and Germany,[314] and elsewhere had criticized European restructuring regimes as weak compared to U.S. Chapter 11[315] and urged reforms adapted to national circumstances. Policymakers also viewed modern insolvency laws as essential both to enable corporate turnarounds and to deepen Europe's corporate debt markets, which in 2015 were only one-third the size of those in the United States.[316] Lawyers warned that inconsistent and unpredictable insolvency rules increased the risk of European debt.[317]

As such, the European Union launched a reform process in the 2010s. [318] A 2011 European Parliament resolution called for harmonized bankruptcy standards,[319] followed by the European Commission's 2014 recommendation urging Member States to create frameworks for efficiently restructuring viable firms.[320] The Commission emphasized that divergent national laws deterred investment and disadvantaged weaker legal systems.[321] In 2019, the EU adopted a Directive 2019/1023 requiring Member States to enact laws allowing, among other things, approval of

[312] *See generally* Payne, *Debt Restructuring*, *supra* note 152 .
[313] *See* Bo Becker, *The EU's Insolvency Reform: Right Direction, Not Enough, and Important Issues Left Unaddressed*, VOXEU (June 27, 2019), https://perma.cc/9JEX-RJB8.
[314] *See generally* Balz, *supra* note 171.
[315] *See* Maria Brouwer, *Reorganization in U.S. and European Bankruptcy Law*, 22 EUR. J. L. & ECON. 5 (2006).
[316] *See also* GERARD MCCORMACK, ANDREW KEAY & SARAH BROWN, EUROPEAN INSOLVENCY LAW: REFORM AND HARMONIZATION 4-5 (Edward Elgar Publ'g 2017). ("An insolvency regime that encourages more debt restructuring may in turn enhance the creditworthiness of viable companies by facilitating their deleveraging.")
[317] *See* Zoe Thomas, *Is the party over?*, 33 INT'L FIN. L. REV. 24 (June 2014).
[318] *See* Francesco Guarascio, *EU Proposes U.S.-Style Rules to Give Failing Firms Second Chance*, REUTERS (Nov. 22, 2016).
[319] *See* Horst Eidenmüller & Kristin van Zwieten, *Restructuring the European Business Enterprise: The European Commission's Recommendation on a New Approach to Business Failure and Insolvency*, 16 EUR. BUS. ORG. L. REV. 625 (2015).
[320] *See* Commission Recommendation 2014/135/EU, of 12 March 2014 on a New Approach to Business Failure and Insolvency, 2014 O.J. (L 74) 65.
[321] *See id*.

reorganization plans without unanimous creditor consent.[322] While the EU pursued top-down harmonization, national governments launched parallel reforms in what one practitioner described as "a race to catch up with the English restructuring framework and prevent the 'escape' to English law of many debtors and creditors."[323] With the exception of Poland, all EU Member States reformed their insolvency laws between 2021 and 2023, leaving Continental Europe with a largely new and untested set of restructuring regimes.[324] Germany and the Netherlands introduced particularly promising procedures heavily inspired by Chapter 11 – the German StaRUG and the Dutch WHOA.[325] The WHOA in particular may be poised to position Amsterdam as a rival restructuring hub to London.[326] However, the dominance of London's debt market which yields English-law governed debt, combined with the "rule in Gibbs," which, as discussed *supra*, requires an English court to discharge English-law governed debt, will make competing with London for insolvency cases a challenge.[327]

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[322] *See* Horst Eidenmüller, *Contracting for a European Insolvency Regime*, 18 EUR. BUS. ORG. L. REV. 273 (2017). One group of researchers point out that the Preventative Restructuring Directive of 2019 "offers a menu, rather than a truly harmonized framework . . . ." *See* Emilie Ghio, Gert-Jan Boon, David Ehmke, Jennifer Gant, Line Langkjaer & Eugenio Vaccari, *Harmonising Insolvency Law in the EU: New Thoughts on Old Ideas in the Wake of the COVID-19 Pandemic*, 30 INT'L INSOLVENCY REV. 427, 436 (2021). The procedures addressed by the 2019 EU Restructuring Directive are often described as "pre-insolvency procedures," rather than as part of "insolvency law." This distinction—between restructuring mechanisms designed to avoid formal insolvency proceedings and those that take place after insolvency—is more prominent in Europe than in the United States. The EU has also initiated a process of reform for "insolvency law," which is in progress at the time of the publication of this Article. *See* Constantin Borowiak, *Moving Closer to Harmonising Insolvency Law Within the EU*, TAYLOR WESSING (Aug. 7, 2025), https://perma.cc/3Y5L-AA37.

[323] *See* Ignacio B. Aldana, *Preface* to INVESTING IN DISTRESSED DEBT IN EUROPE: THE TMA HANDBOOK FOR PRACTITIONERS xv (Ignacio Buil Aldana ed., 2017).

[324] *See* Conf. on Eur. Restructuring & Insolvency L. (CERIL), Statement and Report 2024-1: Transposition of the EU Preventive Restructuring Directive 2019/1023 22 (2024).

[325] *See* Stephan Madaus, *The Restructuring of a Cross-Border Group in German StaRUG Proceedings – Some Takeaways from Spark Networks SE*, 2024 EUR. INSOLV. & RESTRUCT. J., no. 2, at 1 (discussing an early use of the StaRUG); Omar Salah & Bob Wessels, *How Is the Dutch WHOA Doing?*, 21 INT'L CORP. RESCUE 273 (2024).

[326] *See id.;* Jennifer Marshall, Jonathan Cho & Géza Orbán, *The Big Three: the UK Restructuring Plan, the Dutch Scheme and US Chapter 11 Proceedings*, INSOLVENCY WORLD (Q2 2020), at 27. *But see* Stephan Madaus, *Has Nothing Changed (Yet) After All? England Seems to Remain the Financial Restructuring Hub in Europe,* ECGI BLOG (June 20, 2023), https://perma.cc/EL39-V46Q.

[327] *See supra* notes 237 through 238 and accompanying text.

As the European Union launched its insolvency reform process and Continental restructuring alternatives emerged, the United Kingdom – already departing the EU after the 2016 Brexit vote – initiated its own insolvency reforms to retain its "world-leading" jurisdictional status.[328]

V. The Global Pandemic to the Present Day.

Post-pandemic, perhaps the most significant shift in global debt markets is the changing balance between Europe and the United States. Whereas earlier decades were defined more by the flow of American capital, expertise, and institutions into Europe than vice versa, the 2020s have seen a multidirectional exchange of debt technology, capital, and innovation, with ideas increasingly moving from Europe back to the United States and London playing a growing role in global debt finance and restructuring. By the mid-2020s, American companies had become major borrowers in London; as the *Financial Times* reported in 2025, "for the first time ever, U.S. issuers now account for a larger share of Europe's non-financial investment-grade market than borrowers from any other country."[329] Similarly, in 2019, the first significant American company filed for a scheme of arrangement in London instead of Chapter 11, and a few years later, in November 2025, the first public American company followed with its own English restructuring plan.[330]

In this Section, we briefly consider these important developments. As we discuss in Part A *infra*, jurisdictional competition may be eroding lender protections, as large borrowers –

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[328] *See* Lorraine Conway, Corporate Insolvency Framework: Proposed Major Reforms, H.C. LIBR., Briefing Paper No. CBP 8291 (Dec. 16, 2019), https://researchbriefings.files.parliament.uk/documents/CBP-8291/CBP-8291.pdf.
[329] *See* Fergal O'Brien & Madhumita Murgia, *'Reverse Yankee' Deals Hit Record as US Companies Flock to Euro Debt Market*, FIN. TIMES (May 14, 2025) (discussing how American companies were increasingly issuing "reverse Yankee bonds" in Europe); *see also* Abhinav Ramnarayan & Ronan Martin, *Giant US Companies Are Rushing to Europe to Borrow Money*, BLOOMBERG (May 21, 2025).
[330] *See infra* Section VI(B)(3). *See also* Brett Barragate & Kay Morley, *Cross-Border Restructurings Case Study: Syncreon*, 76 SECURED LENDER, May 2020, at 22 (discussing the 2019 case of Syncreon); Reshmi Basu & Irene García Pérez, *New Fortress Energy Mulls U.K. Restructuring Instead of Chapter 11*, BLOOMBERG (Oct. 29, 2025).

especially private equity firms, through their portfolio companies – negotiate favorable terms in one market and reimport them to another. Part B examines how the modernization of corporate and insolvency laws especially in the United Kingdom, but also the European Union, has created genuine competitors and alternatives to Chapter 11, though most remain untested outside the U.K. We argue that while these reforms may offer superior debt financing and restructuring options, they also provide new avenues for strategic investors seeking to implement preferred restructuring plans with legal tools that can muzzle creditor dissent. As we explain, alternatives to Chapter 11 may remedy some of that regime's shortcomings while presenting distinct weaknesses of their own.

A. A Globalizing Trade in Debt Covenants.

The integration of U.S. and European debt markets has created a system in which global private equity sponsors can negotiate borrower-friendly terms in New York or London and then export them across the Atlantic. In this Part, we illustrate this two-way trade with three examples that capture the dynamics of the global covenant market. Together, these examples suggest that the cross-Atlantic trade in debt covenants has largely favored borrowers who want credit on better terms, though it may also have created opportunities for credit investors who benefit from globally standardized contract terms.

First, to illustrate how American loan language can weaken in translation to Europe, consider the equity cure provision.[331] These provisions allow private equity sponsors to remedy a breach of a financial covenant, such as a leverage ratio, by injecting additional equity into the borrower to

[331] *See* Cleary Gottlieb Steen & Hamilton LLP, *Latest in European Leveraged Finance – Equity Cure Clauses*, CLEARY GOTTLIEB (June 4, 2024), https://perma.cc/6QT6-7VJR.

avoid default.[332] Because the LMA provides no recommended form for this provision, the clause is heavily negotiated and must specify that equity contributions are used solely to cure the breach.[333] In English law loan documents, other provisions, such as those restricting dividends or subordinated debt repayments, must also be adjusted for the clause to function properly.[334] Some European contracts imported the U.S.-style equity cure without these adjustments, enabling "round-tripping," in which injected equity could immediately be paid back to shareholders, undermining the creditor protection intended by the provision.[335]

Second, another example of the dynamic interconnection between London and New York is the evolution of the "disposals covenant," which shows how language travels back and forth between markets. A disposals covenant governs how borrowers may sell assets.[336] Traditionally, English law governed loans adopted a restrictive approach, with asset sales potentially triggering default. By contrast, U.S. loans allowed sales if conducted at fair value, with proceeds reinvested and payment made in cash, avoiding valuation disputes over stock consideration and ensuring creditors were not disadvantaged. In the 2020s, American private equity firms negotiating London deals secured even greater flexibility than at home: while U.S. borrowers generally had to receive mostly cash, London borrowers could accept equity or debt as well. This shift – believed to have

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[332] *See* Simmons & Simmons, *11. Equity Cures — Key Points for Consideration*, SIMMONS & SIMMONS (Aug. 13, 2015), https://perma.cc/FTY7-LGSE.

[333] *Equity Cure Rights*, PRAC. L. (last visited Nov. 19, 2025) (noting that equity cure rights retest financial covenants on a pro forma basis, accounting for additional cash, and parties negotiate whether injected funds improve cash flow/EBITDA or reduce borrowings via prepayment or blocked accounts), https://perma.cc/MD7U-BQA9.

[334] A loan agreement may require that any equity injection be used to improve cash flow or increase EBITDA, or instead to prepay debt or fund a restricted account, and it should also limit the frequency and timing of any equity cure. *See Term Loan B (TLB),* PRAC. L. (last visited Nov. 19, 2025), https://uk.practicallaw.thomsonreuters.com/Glossary/U.K.PracticalLaw/Iacc1d0881c9a11e38578f7ccc38dcbee?transitionType=Default&contextData=(sc.Default)&firstPage=true.

[335] *See* Simmons & Simmons, *supra* note 332 (warning that cure amounts must not be immediately paid back via dividends or subordinated debt repayment, which would allow sponsors to "round-trip" cash for artificial covenant compliance without permanently providing capital).

[336] *See* Anne Cathrine Ingerslev, *The Changing Nature of Disposals Covenant on European Leveraged Financings: Should You Go LMA-Style, High-Yield Bond-Style, or Mix It Up?*, 34 J. INT'L BANKING & FIN. L. 93, 93 (2019), https://perma.cc/49UX-TGH7.

first appeared in a 2021 Brookfield-backed Modulaire Group transaction – significantly expanded borrower flexibility. The weaker version of this covenant later migrated back to the United States, illustrating how concessions in one market quickly become market practice in the other.

Finally, for an example of a term that originated in London and made its way to the New York market, consider the "high watermark" provision.[337] Loan agreements typically contain "baskets" that allow companies to move or invest funds without breaching covenants, exceptions to the general rule requiring lender consent for major investments that might divert value from creditors.[338] These baskets usually expand with earnings. Since at least 2020, European loans have included high watermark clauses permitting companies to size their baskets based on their highest historical earnings rather than their most recent results. Until recently, New York borrowers could not obtain similar terms, but they succeeded in doing so by 2021.[339]

B. The United Kingdom's Restructuring System Emerges as a Credible and Dynamically Developing Global Option.

The United Kingdom substantially modernized its corporate and insolvency laws in 2020 through the Corporate Insolvency and Governance Act 2020 (CIGA).[340] Inspired in part by U.S. Chapter 11,[341] CIGA introduced a new statutory restructuring procedure—Part 26A of the Companies Act 2006—modeled largely on the existing scheme of arrangement under Part 26.[342]

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[337] *See* David Early, *'High Water Marking' Provisions on the Rise in UK Mid-Market Leveraged Financings*, PINSENT MASONS (Jan. 10, 2025), https://perma.cc/PBJ9-KWQ7.
[338] *See* COVENANT REVIEW, *High Watermark Provisions Enable Sponsors to Maximise Basket Capacity Through the Cycle* (2020).
[339] *See Senior Secured Facility Agreement*, Ex. 41 to ALPHA 3 B.V., Form 6-K (Apr. 14, 2014), https://perma.cc/PJS8-MJKS. *See also* COVENANT REVIEW, *Market Alert: For U.S. Loans, a High Watermark for Highest Watermark Provisions* (Aug. 16, 2024), at 1.
[340] Corporate Insolvency and Governance Act 2020, c. 12 (U.K.). Some commentators describe this law as the most significant change to English corporate insolvency since the mid-1980s reforms. *See* Jennifer Payne & Kristin van Zwieten, CORPORATE RESTRUCTURING LAW IN FLUX 2 (2025).
[341] *See* Sarah Paterson, *Judicial Discretion in Part 26A Restructuring Plan Procedures*, SSRN (Jan. 24, 2022), at 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4016519.
[342] Part 26A applies if two conditions are satisfied: first, the company must face actual or impending financial difficulties affecting its viability as a going concern; and second, it must propose a compromise with creditors or members designed to mitigate those difficulties. *See* Companies Act 2006, c. 46, § 901A (U.K.).

Simplifying things, Part 26A allows courts to approve restructuring plans for distressed companies over some creditors' objections if there is sufficient support from others, a process known as "cross-class cramdown.[343] It has become popular, with the U.K. company *Deep Ocean* completing the first Part 26A Plan in 2021.[344]

The English courts have also reaffirmed their openness to debtors with sufficient U.K. connections, signaling to distressed firms worldwide that London remains "open for business." In 2015, the High Court heard an unusual scheme of arrangement for a Spanish gaming company operating in Europe and Latin America with New York-law governed debt and no genuine U.K. nexus.[345] The company's "centre of main interests" was not in the U.K., nor was its debt governed by English law, yet it faced a problem the English court could solve: it needed a court order to restructure its bonds. It could not use U.S. Chapter 11 without jeopardizing its gaming licenses, because Chapter 11 is an insolvency proceeding, whereas, importantly, the U.K. scheme of arrangement – a *company law* mechanism – can be used for pre-insolvency restructurings that normally do not affect such licenses.[346] Accordingly, the company created a new U.K. subsidiary which would then guarantee the company's bond debt and then file for a U.K. scheme of arrangement.[347]

Initially, the English High Court was reluctant to extend jurisdiction over what Newey J described as "an extreme form of forum shopping," since the only U.K. nexus was a subsidiary created solely to access the courts. However, he was ultimately persuaded that the scheme produced "the best possible outcome for creditors," noting that "there can sometimes be good

[343] Approval requires 75% by value of a class of voting creditors *See id.* §§901F(1).
[344] *See* Kate Stephenson, *The First UK Cross-Class Cram-Down*, KIRKLAND & ELLIS (Jan. 28, 2021), https://perma.cc/X292-X649
[345] *See* Iain White, *Codere: The Case for Good Forum Shopping*, CLIFFORD CHANCE BRIEFING (Jan. 2016), at 2–3, https://perma.cc/2HWU-8HK2.
[346] *See* Companies Act 2006, c. 46, Pt. 26 (U.K.). *See also* White, *supra* note 345, at 2.
[347] *See* White, *supra* note 345, at 2.

forum shopping."[348] The U.K. scheme was later successfully paired with U.S. Chapter 15 recognition to bind the New York-law governed debt to the restructuring plan. In some ways, debtor–creditor law increasingly resembles international tax planning, with corporations using subsidiaries and technical tests to secure their preferred jurisdiction.

The popularity of the U.K.'s scheme and new Part 26A as well as the UK's willingness to entertain "good forum shopping" has frustrated some commentators, who see English practitioners and courts as keen to maintain the U.K.'s key role as a global debt forum after Brexit and questioning the level of protection that the U.K.'s process provides for creditors.[349] Much of this tension stems from Parliament's decision not to adopt an equivalent of the absolute priority rule, opting instead for the "relevant alternative" test as the principal creditor protection.[350] That test requires the English judge to determine a creditor opposing a cramdown plan will receive more than in the "relevant alternative," which may entail comparing a proposed plan payout to a disorderly liquidation.[351]

To see how this plays out in practice, consider both the 2023 Part 26A restructuring plan of *McDermott*, a Houston-based energy company, as well as the subsequent departure from its reasoning by English judges.[352] McDermott sought to address two major problems through its scheme of arrangement, lackluster recent performance and an adverse arbitration award that produced a $1.3 billion judgment in favor of a trade creditor.[353] Accordingly, McDermott proposed a restructuring that would extend the maturity dates of its secured loans, extinguish the arbitration

[348] *See id*.
[349] *See generally*, e.g., R.J. de Weijs, *WHOA en private equity: Aandeelhoudersvriendelijk en daarmee private equity-vriendelijk insolventierecht* [WHOA and Private Equity: Shareholder-Friendly and Therefore Private Equity-Friendly Insolvency Law], HERO, Apr. 2021, art. P-014 (Neth.).
[350] *See id.*
[351] *See id.*
[352] *See In re* CB&I UK Ltd, [2024] EWHC 398 (Ch).
[353] *See id.* at [36-53].

award for a small payment, and leave existing shareholders in place.[354] In short, secured lenders would agree to wait longer for repayment, but only the arbitration creditor would suffer a permanent loss.[355] Such a transaction would likely be impossible in U.S. Chapter 11, where the absolute priority rule normally prevents shareholders from retaining ownership over the objection of unsecured creditors; in Chapter 11, the arbitration creditor would have had an opportunity to become McDermott's new owner.[356]

Accordingly, McDermott therefore sought to implement the transaction through a Part 26A plan, which appeared to permit deals of this kind with the approval of an English court.[357] The first iteration of the plan proposed paying the arbitration creditor between 0.04% and 0.2% of its claim—effectively nothing.[358] Although this figure later increased,[359] Green J indicated that the initial amount would probably have been sufficient to satisfy Part 26A under the rule that had been created in a 2021 decision in *Virgin Active*, where Snowden LJ seemed to suggest that out-of-the-money creditor views should be given little weight.[360]

The *McDermott* decision came under criticism, and the English Court of Appeal continued a revolution that was already underway through a "trilogy" of decisions – *Adler*, *Thames Water*, and *Petrofac* – that substantially redefined the course that *McDermott* would suggest Part 26A was

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[354] *See id.* at [54-60].
[355] *See id.*
[356] *See generally* Douglas G. Baird, *Priority Matters: Absolute Priority, Relative Priority, and the Costs of Bankruptcy*, 165 U. PA. L. REV. 785 (2017).
[357] *See* HERBERT SMITH FREEHILLS, *Part 26A Restructuring Plans: Like Buses* 6 (Sept. 17, 2024), https://www.hsfkramer.com/insights/2024-09/part26-restructuring-plans-like-buses.
[358] *See CB&I UK Ltd, supra* note 352, at [45].
[359] The amount increased because of bargaining power that the arbitration creditor obtained through the parallel Dutch WHOA. *See* R.J. de Weijs, *supra* note 349.
[360] *See* Freya Gilbert, *Webinar: Petrofac Paves the Way for 'Economic Terrorism' Against Out-of-the-Money Creditors*, GLOB. RESTRUCTURING REV. (Nov. 3, 2025), https://globalrestructuringreview.com/article/webinar-petrofac-paves-the-way-economic-terrorism-out-of-the-money-creditors. (discussing some commentators' view of the Virgin Active decision, which has now been overruled by *Adler, Thames Water* and *Petrofac*).

set to take.[361] *McDermott* would have seemed to suggest that Part 26A plans can provide low ranked, out-of-the-money creditors with nominal payouts – fractions of pennies on the dollar -- without ever engaging them in negotiations so long as the decision to do so was not egregious.[362] The trilogy of cases, especially *Petrofac* (as applied in a later case called *Waldorf*), created a different process: now, Part 26A debtors must engage out-of-the-money creditors in negotiations and offer them a fair share of the benefit of the Plan.[363] One law firm partner warned that these new rules would dramatically alter the bargaining power of low ranked creditors, who went from facing expropriation with little recourse under the approach used in *McDermott* to having the power to compel hold-up payments that amount to "economic terrorism" after *Petrofac*.[364]

As of this writing, the U.K. now has an insolvency regime that has important advantages over Chapter 11 and has grown into a bona fide global rival. To be sure, Chapter 11 still has several advantages, including an automatic stay of other litigation that Part 26A lacks.[365] But the insolvency law in the U.K. permits limited proceedings affecting only one class of debt, may be more cost efficient, and may permit deals that would not be allowed in the U.S., as discussed *infra*.[366] English judges are clearly diligently interpreting and developing the law, and the head-turning shift in the bargaining power of out-of-the-money creditors described above points to the ambiguity inherent in a new statutory system and also demonstrates the responsiveness, expertise

[361] *See Strategic Value Capital Solutions Master Fund LP* & others v *AGPS BondCo PLC* [2024] EWCA Civ 24 (Adler); *Re Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 475; *Saipem* & others v *Petrofac* [2025] EWCA Civ 821. *See also In re Waldorf Production U.K. plc* [2025] EWHC 2181 (Ch).
[362] *See supra* notes 352 through 360 and accompanying text.
[363] *See* Kevin Coates, *Post-Petrofac: What Are the Implications for the Restructuring Plan?*, GRANT THORNTON (Sept. 15, 2025), https://perma.cc/X8N2-CUR7.
[364] *See* Gilbert, *supra* note 360.
[365] *See* Maya Nuyts, *Stuck in Motion: Tracing the Absence of a Stay in English Corporate Restructurings* (2025) (unpublished manuscript, on file with author). *See also* Sarah Paterson, *Restructuring Moratoriums Through an Information-Processing Lens*, 23 J. CORP. L. STUD. 37, 37 (2023).
[366] *See* Jared A. Ellias, *Has Chapter 11 Become More Expensive?*, YALE J. ON REG. (forthcoming 2026) (discussing the increasing costs of Chapter 11).

and agility of English judiciary in administering the system.[367] In July 2025, Douglas Baird, President of the National Bankruptcy Conference, testified before the U.S. Congress that the United States may soon need to adopt a procedure similar to the U.K.'s to remain competitive.[368] For the first time, another country's insolvency regime is exerting reform pressure on what has long been the global "gold standard."

VI. The Modern, Globalized World of Debt.

In Sections I through V, we traced how corporate debt finance evolved after the Second World War from a national to a global system, allowing companies to borrow across jurisdictions with funds from international investors and to restructure their debt across borders. This Section examines the legal technologies, innovations, and practices that sustain this entangled global debt market.

Part A highlights an important financial innovation originating in London: a type of loan contract that blend elements of English and New York law, offering investors consistent interpretations of important contract terms across both systems. Part B turns to bankruptcy practice, showing how practitioners increasingly combine features of multiple regimes to execute "entangled" restructurings—designing deals first and then selecting the most efficient jurisdiction to implement them. In our examples, London's insolvency system enables transactions that Chapter 11 would restrict or complicate, allowing parties to sidestep its constraints.

[367] *See* Gilbert, *supra* note 360.
[368] *See Bankruptcy Law: Overview and Legislative Reforms: Hearing Before the Subcomm. on Antitrust, Com. & Admin. L. of the H. Comm. on the Judiciary*, 119th Cong. (2025) (statement of Douglas G. Baird).

A. Entangled Debt Documents: The English-New York Law Hybrid.

In the European debt markets, a key innovation that has enabled global banks and credit funds to further expand their investment in London syndicated Term B loans is a hybrid loan combining elements of English and New York law.[369] In these loan facilities, standard for London institutional term loans, English law governs the intercreditor agreement[370] and the loan facility agreement, but some undertakings in the latter are interpreted according to New York law.[371] This multilayered design, which is yet to our knowledge be tested by litigation, contemplates that New York-law interpreted provisions will, if necessary, be interpreted by English courts, who have exclusive jurisdiction over these agreements.

A $2.9 billion (approximately £2.3 billion) loan arranged in August 2024 by a group of European and American banks in London for a French telecom company illustrates how this hybrid law arrangement works.[372] Clause 39 of this Term B loan facility on "*Governing Law*" states the following:[373]

> This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law, provided that Schedule 11 (*Information Undertakings),* Schedule 12 (*General Undertakings*), Schedule 13 (*Events of Default*) and Schedule 14 (*Certain New York law Defined Terms)* of this Agreement and any non-contractual obligations arising out of or in connection with those Schedules, which shall be interpreted in accordance with the laws of the State of New York (without prejudice to the fact that this Agreement is governed by English law)."

[369] To be more specific, these contracts are known as "Term Loan B" or "TLB," where is the portion of a syndicated term loan reserved for institutional investors. *See e.g.* Mark Laber & John Yozzo, *Covenant-Lite Leveraged Loans: Time-Tested or Time Bomb?*, 36 AM. BANKR. INST. J., Oct. 2017, at 26.
[370] Richard Hooley, *Release Provisions in Intercreditor Agreements*, (2012) J.B.L. 213.
[371] *See* Gareth Eagles, Emma Foster, Sylvana Lee & David Ridley, *Two Continents Separated by a Common Language? Harmonising US and European Loans*, 2024 J. INT'L BANKING & FIN. L. 671, 671 ("There has been an ever-increasing convergence of US and European syndicated term loan B (TLB) loan terms in recent years.").
[372] *See Senior Facilities Agreement, supra* note 282.
[373] *See id*.

New York law terms in these agreements often include borrower commitments to lenders, such as information provision ("affirmative or positive covenants") and refraining from actions weakening the business ("negative or restrictive covenants").[374] Known in London originally as "undertakings" and in New York as "covenants," these clauses are central to modern debt governance, constraining borrower opportunism and enabling lenders to monitor the firm and intervene if necessary.[375] Common examples include limits on additional indebtedness, dividends, new liens, asset sales, and mergers.[376]

Another key set of terms that may be interpreted in accordance with New York law in hybrid Term B facilities are the "events of default." These provisions are critical, as they allow lenders to demand repayment and pursue legal remedies when a borrower breaches key obligations.[377] For instance, in a recent English-law facility agreement, lenders' right to immediate repayment if the borrower failed to make timely interest payments, perhaps the most fundamental duty under a corporate loan were interpreted in accordance with New York law.[378]

As these loan contracts are governed by English law and subject to exclusive jurisdiction of English courts, it will be English-qualified solicitors and barristers, as well as English judges who construct and interpret these crucial provisions and resolve any disputes concerning these, although they will be expected to consult New York law to interpret the financial covenants. By incorporating New York law for interpreting specific provisions, the contractual parties effectively

[374] *See* GULLIFER & PAYNE, *supra* note 152, at 195–214.
[375] *See* Lalafaryan, *supra* note 273, at 41; Louise Gullifer & Graham Penn, *The Boundaries of a Borrower's Freedom to Act: Negative Covenants in Loan Agreements*, *in* CONTENTS OF COMMERCIAL CONTRACTS: TERMS AFFECTING FREEDOMS 139 (Paul S. Davies & Magda Raczynska eds., 2020).
[376] *See* GULLIFER & PAYNE, *supra* note 152, at 198–200.
[377] *See* Philip Wood, INTERNATIONAL LOANS, BONDS, GUARANTEES, LEGAL OPINIONS ¶ 14-001 (3d ed. 2024).
[378] *See Senior Secured Facility Agreement*, *supra* note 281. The hybrid credit agreement may also provide for certain New York Law defined financial terms, such as "Permitted Investment", "Permitted Liens", "Refinancing Debt", "Security Interests", and "Subordinated Debt." For an example, *see Senior Facilities Agreement*, *supra* note 282.

gain access, through English courts, to the extensive American caselaw on financial covenant interpretation.[379]

Several factors explain the rise of these loan contracts. One important reason is that investors, especially American investors, in a globalized debt market seek consistency and standardization across transactions and may prefer applying New York law throughout their portfolios. Additionally, the partially New York-law interpreted provisions offer greater flexibility for aggressive transactions with creditors as in Altice France *supra* because New York law appears to be generally more open to them than English law.[380]

B. Entangled Bankruptcy Laws.

Historically, the space for deal-making in corporate restructuring was limited either by the need for the requisite consent to alter a loan contract or the substantive and procedural limitations of Chapter 11, which provides a lower consent threshold for many transactions, such as writing down principal or interest along with the ability to do cross-class cramdown that forces a deal on recalcitrant creditors. However, the modernization in global insolvency law, especially in the U.K., creates new opportunities for dealmaking, as different legal regimes impose different substantive and procedural limits on how debtors can reorganize. We provide three concrete examples.

1. Using U.K. Insolvency Law to Get Around Established U.S. Law.

In 2024, shareholders of *Ambatovy Minerals Société Anonyme ("Ambatovy")*, a distressed Madagascar-based mining company, executed a restructuring that preserved their control despite heavy creditor losses in a transaction that would not have been nearly as easy to do under U.S.

[379] *See e.g. Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614, 614 (N.Y. App. Div. 2024).
[380] *See Assénagon Asset Mgmt. SA v. Irish Bank Resol. Corp.* [2012] EWHC 2090 (Ch) (where the English High Court ruled against a coercive exit, viewing it as oppression of the minority by the majority)

Chapter 11. Ambatovy, facing $2.3 billion in debt, completed the transaction in three steps. [381] First, shareholders provided the company with more than $70 million in a new "super-senior" loan, ranking ahead of existing debt.[382] Second, Ambatovy sought U.K. court jurisdiction under Part 26A of the Companies Act 2006, which was a proper venue because some of its debt was governed by English law. Third, it used the "cross-class cramdown" mechanism introduced into Part 26A of the Companies Act 2006 through the Corporate Insolvency and Governance Act 2020 to confirm a restructuring plan over creditor objections. The plan – praised by the debtor's counsel as "one of the most ambitious" since Part 26A's introduction – was also the first to use "recently injected super-senior new money" as the cramming class.[383]

Such a structure would likely be impossible under U.S. bankruptcy law, which policies insider priming loans through equitable subordination and recharacterization doctrines that lack close U.K. equivalent.[384] U.S. courts often subordinate or reclassify shareholder loans as equity, emphasizing substance over form, whereas U.K. courts typically respect the transaction's legal form, treating shareholder loans as debt.[385] This doctrinal difference allows shareholders, like those in *Ambatovy*, to inject priming loans and use them to drive cramdown restructurings with far less judicial scrutiny, creating a model that other global firms may be tempted to emulate.

2. Using Global Bankruptcy Law to Navigate *In re Purdue Pharma*.

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[381] *See* Sullivan & Cromwell LLP, *S&C Advises on Ambatovy Project's Restructuring Plans*, https://perma.cc/BBB5-8NV5.
[382] While creditors were solicited to participate in the loan, only shareholders did so. . *See In re* Ambatovy Mins. SA [2025] EWHC 279 (Ch) at 2-3 (Eng.).
[383] *See id*.
[384] Equitable Subordination is codified at § 510(c) of the U.S. Bankruptcy Code. Recharacterization is equitable, not statutory. *See* Tanner Bowen, *Recharacterizing Recharacterization Law: An Analysis of the Use of Recharacterization Law in U.S. Bankruptcy Courts* (2025) (unpublished manuscript) (on file with authors).
[385] *See Equitable Subordination in Bankruptcy* (U.K.), PRACTICAL L.; *Debt Recharacterization in Bankruptcy*, PRACTICAL L.

The globalization of restructuring law enables companies to pursue deals unconstrained by national legal limits. Historically, a hallmark of U.S. Chapter 11 practice has been the use of nonconsensual third-party releases, which are discharges shielding non-debtors from liability over creditor objections.[386] In July 2024, the U.S. Supreme Court held that Chapter 11 does not authorize such releases in *Harrington v. Purdue Pharma L.P.*, eliminating a tool that had been used to negotiate many Chapter 11 plans. Critics contended that the decision weakened Chapter 11's effectiveness by removing a tool that could facilitate comprehensive settlements and maximize creditor recoveries.[387]

With *Purdue* closing that path, Chapter 15's low threshold for recognizing foreign reorganizations—and its emphasis on comity—has become a potential back door to such releases.[388] In February 2025, *Crédito Real*, a major Mexican lender, asked a Delaware bankruptcy court to recognize a Mexican court-approved reorganization that released directors and officers from liability despite approval by only 56.55 percent of unsecured creditors.[389] Objectors argued that Chapter 15, which has an exception to recognizing foreign bankruptcy proceedings that violate U.S. public policy, required rejection because *Purdue* barred similar relief under U.S. law.[390] Rejecting this argument in April 2025, Judge Horan recognized the plan, holding that Chapter 15's comity principle allows relief inconsistent with domestic bankruptcy rules so long as recognition does not violate fundamental U.S. policy.[391] Weeks later, Judge Glenn in the Southern District of

[386] *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024).
[387] *See* Anthony J. Casey & Joshua C. Macey, *Purdue Pharma and the New Bankruptcy Exceptionalism*, 2024 SUP. CT. REV. 365 (2025).
[388] *See* Olya Antle & Miguel P. Medrano, *Chapter 15 Loophole? Implications of the Ruling in Purdue Pharma on Recognition of Foreign Non-Consensual Third-Party Releases*, INSOL INT'L, TECHNICAL PAPER SERIES No. 64, at 1-8 (2024).
[389] *See In re Crédito Real, S.A.B. de C.V.*, 663 B.R. 490, 494-5 (Bankr. D. Del. 2024).
[390] *See id.* at 497.
[391] See *id.* at 517. ("Lack of specific availability in U.S. courts does not equate to manifest contrariness to U.S. public policy, especially where, as here, the contested relief is available in other contexts [domestic asbestos mass tort cases]").

New York adopted the same reasoning to enforce a Brazilian reorganization over objections that it granted constructive nonconsensual releases.[392]

3. Using U.K. Insolvency Law to Avoid Procedural Weaknesses in Chapter 11.

Another emerging trend is that companies clearly eligible to file in the United States are increasingly considering the potentially more cost-effective and efficient U.K. insolvency law.[393] A recent example is *Fossil Group*, a NASDAQ-traded, Texas-based company burdened by approximately $300 million in debt.[394] Fossil executed a coercive "uptier" exchange that shifted value from retail bondholders and smaller institutional investors to larger institutional investors.[395] Although all noteholders were nominally offered participation in new-money financing, structural barriers effectively limited this opportunity to the largest institutional holders, who received significant additional compensation.[396] The transaction bifurcated $150 million of *pari passu* notes

[392] *See In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial*, 669 B.R. 457, 474 (Bankr. S.D.N.Y., 2025) ("Following the logic of *Credito Real* and *Purdue*, the court finds the text section of 1521 permits the grant of a nonconsensual third-party release in support of a foreign debtor's plan of reorganization.")
[393] *See, e.g.*, *In re* Syncreon Grp. B.V. [2019] EWHC 2412 (Ch) (New York–law–governed debt, 2019 U.K. scheme of arrangement), https://perma.cc/B8A5-YF3J; *In re* Mega Newco Ltd. (Mexican company, New York–governed debt, Singapore-listed, 2025 U.K. scheme of arrangement); Reshmi Basu & Irene Garcia Perez, *New Fortress Energy Mulls UK Restructuring Over Chapter 11*, BLOOMBERG (Oct. 28, 2025).
[394] *See* FOSSIL GRP., INC., Annual Report (Form 10-K), at 40 (Mar. 12, 2025), https://perma.cc/PD9X-9EMU (discussing the business); Declaration of Randy Greben in Support of Verified Petition for Recognition of Foreign Main Proceeding and Certain Related Relief, at 4, *In re* Fossil (UK) Glob. Servs. Ltd., No. 25-90525 (Bankr. S.D. Tex. Oct. 20, 2025), ECF No. 7 (discussing the capital structure).
[395] *See* Kevin Eckhardt, *Court Opinion Review: Fossil's UK Two-Step, First Brands' Glorious Mess, Village Roadshow Tests Trust in Hollywood, and Dr. Phil Goes to Chapter 7 Conversion Therapy*, OCTUS (Nov. 2025), https://perma.cc/384K-U356.
[396] *See id*. *See also* Matthew Czyzyk, Natalie Blanc, Natalie Raine, Leonard Klingbaum, Sam Badawi, Matthew M. Roose, Faiza N. Rahman & Patrick Prin, *LME Meets UK Restructuring Plan: Ropes & Gray Advised Supporting Noteholders on High Court-Sanctioned Single-Class Part 26A Restructuring Plan for Fossil Group*, ROPES & GRAY (Nov. 14, 2025), https://perma.cc/QU65-EXTC ("This transaction is the first in the U.K. market to combine an up-tiering solution with a streamlined single-class Part 26A restructuring plan, sanctioned by the High Court").

into first-priority and second-priority tranches, relegating non-participating noteholders to junior status.[397]

To implement the restructuring, Fossil secured 59% creditor support and converted its indenture from New York to English law.[398] When consent stalled at 75%, the company incorporated a U.K. subsidiary and filed a Part 26A plan in London.[399] The English High Court sanctioned the plan on November 10, 2025, and a U.S. court granted Chapter 15 recognition two days later.[400]

In explaining their trip to London, Fossil's advisors argued that Chapter 11 was "too harsh" and prohibitively expensive for a company requiring only financial restructuring.[401] Beyond avoiding the high costs and operational oversight of Chapter 11,[402] the transaction also might have run afoul of recent U.S. court decisions requiring, at minimum, a market test for new-money financing and, potentially, the absolute priority rule, which mandates that shareholders absorb losses before creditors.[403] As with Ambatovy *supra*, pre-transaction shareholders retained their ownership while creditors made concessions, which is not a normal outcome of Chapter 11.[404] The

[397] The first-priority lenders were then best positioned to provide financing in any subsequent restructuring, a common outcome following the type of liability-management exercise implemented in this transaction. *See* Jared A. Ellias & Elisabeth de Fontenay, *Law and Courts in an Age of Debt*, 171 U. PA. L. REV. 2025 (2023).
[398] *See Greben Declaration, supra* note 394, at 8.
[399] *See* Dawn Grocock, *US-Based Fossil's UK Restructuring Plan Raises Questions Over Choice of Forum – Legal Analysis*, ION ANALYTICS (Oct. 21, 2025), https://perma.cc/QM94-JHWQ.
[400] *See* Ronit J. Berkovich, David Griffiths & Jessica Liou, *Fossil Group Restructuring Gains U.S. & U.K. Approval*; Weil Debuts Stapled Exchange, WEIL RESTRUCTURING (Nov. 13, 2025), https://perma.cc/8QJ5-HSPW.
[401] *See id*.
[402] *See* Alexander Wood et al., *Scheme Hot Topics Bulletin: Part III: Schemes vs Chapter 11*, WEIL, GOTSHAL & MANGES LLP (June 2015), https://perma.cc/85AB-3C2X ("Chapter 11 is . . . generally much more expensive than an English scheme, owing to the greater number of court hearings and disputes")
[403] *See* Eckhardt, *supra* note 395. ("Fossil is attempting to accomplish in the United Kingdom what it might not be able to accomplish in Houston post-*ConvergeOne*, a court-approved backstop-fueled uptier for big holders that discriminates against smaller holders, without any kind of effective market test for the opportunity.")
[404] The pre-bankruptcy shareholders did agree to give a small amount of equity to the creditors, but it was not a true debt for equity swap as the new equity (in the form of common stock and warrants to buy more) was only issued in exchange for new money. *See* FOSSIL GRP., INC., Free Writing Prospectus (Form FWP), at 11 (Nov. 13, 2025), https://perma.cc/95N3-4PZP.

law firm that devised the transaction touted it as a "groundbreaking method for companies to restructure debt that avoids equity cancellation" without the "stigma of Chapter 11" and "the first time a U.S. public company has gone outside the U.S. to conduct a restructuring of U.S.-governed debt."[405]

VII. A Truly Global Law of Debt.

Although this Article focuses on developments in the U.S. and the U.K. that laid the foundation for today's entangled debt world, the system we describe is truly global. It is global in a two-dimensional sense: (A) the U.S. and the U.K. are the two centers of global debt origination especially for large corporations[406] and where many of these corporations also restructure their debt; and (B) jurisdictions worldwide inspired by the two adopt practices popular in those two markets. In this brief section, we support this claim with illustrative examples. Space constraints prevent us from addressing these jurisdictions in greater detail, but they clearly now form part of a unified entangled debt system, sharing debt technologies, market practices and common law firms.

A. Global Debt and Restructuring Bazaars.

Global debt markets have been fundamentally reshaped over the past two decades by the deepening integration of large corporations from all over the world into a common debt architecture. For example, in 2015, the largest telecommunications company in Colombia borrowed $500 million in the New York market.[407] In 2017, the Chinese tech giant *Alibaba*

[405] *See* Berkovich *et al.*, *supra* note 400.
[406] Amin Doulai, Patrick Schumann & Jake Unsworth, *The Use of English Law in International Finance Transactions*, KING & SPALDING, Nov. 24, 2025, https://www.kslaw.com/news-and-insights/the-use-of-english-law-in-international-finance-transactions
[407] *See Colombia Telecomunicaciones $500 Million Hybrid Offering,* DAVIS POLK (Mar. 30, 2015), https://perma.cc/TPY9-HVKE.

borrowed $5.15 billion in London's syndicated loan market.[408] In 2021, the Mexican corporation *Saavi Energía* borrowed $350 million in 2021 in a New York-law governed bond offering.[409] *Telstra*, a large Australian telecommunications company, issues Euro-denominated debt through an English-law governed debt issuance program in the London market.[410]

Similarly, companies from all over the world return to the United Kingdom and the United States to restructure that debt, choosing the most appropriate venue that fits its transaction goals. For example, a Dutch company, *Magyar Telekom*, changed the governing law of its debt indenture notes from New York law to English law to enable a scheme of arrangement in the U.K.[411] In an African example, the Mauritius-based *Smile Telecom Holdings Ltd,* filed for Part 26A relief in London.[412] In the early 2020s, two of Latin America's biggest airlines, Chile's *Latam Airlines* and Mexico's *Grupo Aeroméxico* restructured through U.S. Chapter 11.[413] In 2025, *Sino-Ocean*, a Hong Kong-incorporated real estate developer filed for a Part 26A plan in London.[414]

B. Other Debt Markets Follow New York and London's Lead.

While the largest global borrowers continue to travel to the U.S. and the U.K. for debt and restructuring, the same globalizing trends in debt and restructuring that characterize those markets are increasingly visible in debt markets in Asia, Latin America, and Africa. This is not to

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[408] *See Second Amendment and Restatement Agreement*, Ex. 4.20 to ALIBABA GRP. HOLDING LTD., Annual Report (Form 20-F) (July 21, 2023), https://perma.cc/3SYE-9PQA.
[409] *See Latham & Watkins Advises on Inaugural Bond Financing for GIP's Newly Acquired Mexican Portfolio Company*, LATHAM & WATKINS (Sept. 23, 2021), https://perma.cc/7CNA-3WC5.
[410] *See* TELSTRA GRP. LTD., *Debt Issuance Program Offering Circular* (ASX Market Announcement) (Aug. 25, 2025), https://perma.cc/46G9-XHPN.
[411] *See* Stephen D. Lerner, John Alderton & Devinder Singh, *Restructuring Foreign Companies in England Using a Restructuring Plan* (Apr. 2022), SQUIRE PATTON BOGGS, https://perma.cc/WE84-CWYS.
[412] *See Smile Telecoms: English Court Approves First Restructuring Plan to Disenfranchise Out-of-the-Money Stakeholders and First to Compromise Shareholders in a Foreign Company*, KIRKLAND & ELLIS LLP, (Mar. 30, 2022), https://perma.cc/7BBZ-4RCU.
[413] *See* Todd K. Wolynski et al., *Navigating Turbulence: Latin American Airlines in Chapter 11*, WHITE & CASE (Nov. 6, 2023), https://perma.cc/VW84-GPYA
[414] Weil Gotshal & Manges LLP, *Sino-Ocean Restructuring Plan Sanctioned: Shareholders Benefit from First Cram-Across of Pari Passu Creditors* (Feb. 17, 2025), https://perma.cc/H88F-ZWXZ

say that all markets are converging on identical norms and practices, but rather that financial hubs worldwide are clearly becoming part of an entangled global debt market.

For example, covenant-lite loans and high-yield bonds, once centered in the United States, have spread to the U.K., then to Europe, Latin America, and, more recently, Asia.[415] Although Latin American firms seeking large loans still largely travel to the United States to issue New York-law–governed debt, Asia now hosts significant local markets for covenant-lite loans and high-yield bonds, with total regional covenant-lite issuance reaching $120 billion in 2024.[416] In a parallel adoption of global innovations, Singapore developed the so-called Asian Dollar Market in 1971, inspired by the then-nascent Eurodollar market.[417] Restructuring practices have spread as well: in 2022 Canadian telecommunications company *Mitel Networks* executed an uptier liability-management exercise,[418] and in 2025 Brazil's second-largest airline, *Azul Airlines*, undertook a similar transaction.[419]

Finally, there has been a wave of insolvency reform around the world, inspired by U.S. and U.K. examples, that may generate new restructuring hubs. Brazil adopted a new bankruptcy code in 2005;[420] Chile followed in 2014;[421] Bahrain and Saudi Arabia each did so in 2018, all drawing on Chapter 11.[422] Singapore in 2017 adopted a new insolvency law with an eye towards

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[415] *See* Duncan Kerr, *Banks Prepare Asia's First Cov-Lite Loan*, FIN. NEWS (Oct. 16, 2007), https://perma.cc/VW84-GPYA.
[416] *See* Raksha Sharma, *Covenant-Lite Loans Market Size, Share, Growth & Trends*, DATAINTELO (last visited Dec. 4, 2025), https://dataintelo.com/report/covenant-lite-loans-market.
[417] *See* Catherine R. Schenk, *The Origins of the Asia Dollar Market 1968–1986: Regulatory Competition and Complementarity in Singapore and Hong Kong*, 27 FIN. HIST. REV. 17 (2020).
[418] *See Ocean Trails Co. v. MLN Topco Ltd.*, No. 2024-00169, 2024 WL 5248898 (N.Y. App. Div. Dec. 31, 2024).
[419] *See* Marco Schaden, *Cleary Advising Azul Bondholders on LME Deal*, GLOB. RESTRUCTURING REV. (June 19, 2023), https://perma.cc/VF2D-WNHQ.
[420] *See* Aloisio Araujo et al., *The Brazilian Bankruptcy Law Experience*, 18 J. CORP. FIN. 994 (2012).
[421] *See* Patrick E. Mears, *Chile Embraces the Corporate Rescue Culture of U.S. Chapter 11 Reorganizations and Facilitates Cross-Border Cases by Revising Its Insolvency Law*, NAT'L L. REV. (Apr. 29, 2014), https://perma.cc/ZG4J-K6LN
[422] *See Comparative Gulf Bankruptcy Guide: What You Need to Know About the UAE, Saudi, and Bahrain*, SIDLEY (Mar. 5, 2025), https://perma.cc/7VLN-FRA3

competing to be Asia's restructuring hub, implementing a system that takes as an inspiration both U.S. and U.K. law[423] and Australia implemented a new law in 2017 that, while a modest reform, was described by one lawyer as "one step towards Chapter 11."[424] In 2020, Nigeria adopted a new insolvency framework drawing on the U.K. Insolvency Act 1986.[425] In late 2025, the Chinese Legislative Affairs Commission proposed a reform that would align Chinese bankruptcy law more closely with U.S. and U.K. practice.[426]

These new statutory frameworks, like their Continental European counterparts, are largely untested, but the world now overflows with modernized insolvency statutes, and learning to obtain bargaining power by mastering these new options is sure to become a growth area for elite global law firms and distressed investors.

VIII. Policy Consequences.

In this Section, we briefly consider the dual-edged consequences of the emerging global law of debt. First, on the one hand, as markets converge around the contracting techniques and restructuring norms that prevail in New York and London, debt capital is likely to become cheaper, more flexible, and more widely available worldwide, and restructuring that debt will become easier. On the other hand, global debt markets have already absorbed features of American debtor-creditor practice that many view as undesirable, such as weak contractual protections in loan contracts and hotly criticized American restructuring practices, such as scorched-earth bargaining and litigation and aggressive liability management transactions.

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[423] *See* Gerard McCormack & Wai Yee Wan, *Transplanting Chapter 11 of the U.S. Bankruptcy Code into Singapore's Restructuring and Insolvency Laws: Opportunities and Challenges*, 19 J. CORP. L. STUD. 69 (2019).
[424] *See* Ben Sewell, *One Step Toward Chapter 11: Australian Safe Harbour Reform*, SEWELL & KETTLE (May 2018).
[425] *See* Temitope Akosile, *An Appraisal of the Legal Regime for Bankruptcy and Insolvency in Nigeria: Striking a Balance for Economic Stability*, LEXWORTH LEGAL PARTNERS (Sept. 2024), https://perma.cc/F4GJ-ADUE.
[426] *See* Xiahong Chen, *A Milestone in the Evolution of China's Bankruptcy Law: Brief Comments on the EBL Draft 2025,* OXFORD BUS. L. BLOG (Oct. 15, 2025), https://perma.cc/X3J9-JXD5.

London's emergence as a rival restructuring hub has created a credible global alternative to Chapter 11 that may yield cheaper and more efficient restructurings, but one that is still evolving.[427] Moreover, the growth of entangled debt and restructuring transactions is eroding the importance of national laws and challenging the toolkits of national regulators, as private actors can simply contract around limits in domestic law to achieve transaction-specific objectives. Finally, even as American courts appear poised to play a diminished role, American law firms increasingly occupy a central position in global debt markets. We elaborate on each point in turn.

First, as we have discussed *supra*, the global law of debt has increased the financing tools available to global businesses. Useful American debt market innovations like syndicated lending and high yield bonds have all made their way to Europe and now globally. As a result, corporations around the world can tap these markets in London, New York or in local markets, reducing the cost of capital and promoting economic activity. The growing harmonization of these products on the investor side likewise increases the willingness of global investors to participate, expanding the supply of debt capital at the same time that instruments such as commercial paper expand demand. These are undeniably positive consequences of debt globalization.

However, as American debt-market technologies travel, they also bring frameworks many consider problematic. One example, discussed *supra*, is the proliferation of covenant-lite loans, which many criticize as producing riskier debt by leaving lenders with fewer contractual protections. Another is the rise of aggressive debtor–creditor tactics outside formal bankruptcy,

[427] *See* supra notes 352 to 364 and accompanying text.

often involving involve an agreement between a debtor and a subset of its creditors to extend the maturity date of the loan while conferring benefits on majority holders that minority investors do not share. This practice, which became prominent in the United States in the 2010s, is widely viewed as inefficient and unfair to smaller debt investors.

As with many U.S. innovations, these aggressive liability management transactions have now migrated to Europe.[428] Some early techniques common to liability management exercises began to make their way to the United Kingdom as early as 2012.[429] The practice recently exploded throughout Continental Europe, with *Altice France* threatening a liability management transaction in March 2024, *Ardagh* (an Irish metal company) implementing one around the same time, and *Hunkemöller* (a Dutch lingerie maker) completing an "uptier" in June 2024.[430] Many observers would consider the arrival of these techniques in Europe to be an undesirable aspect of debt entanglement, especially when contrasted with the genteel world of the London Approach.[431]

Similarly, the emergence of the Part 26A London Restructuring Plan as an accepted global alternative to Chapter 11 may spark debate as distressed investors learn how to use it for maximum profit. The version of Part 26A administered under *McDermott*, discussed *supra*, appeared to afford minority creditors *fewer* protections than Chapter 11, while the version developed in subsequent caselaw, especially *Petrofac*, may afford them *greater* protections than in the U.S., though it is too early to assess how this will work in practice.[432] The ability of

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[428] *See* John Burge, Victoria Kuhn & Alexander Wood, *Liability Management Exercises in Europe: What Do They Mean for Lenders? – Part One*, 22 INT'L CORP. RESCUE 6 (2025).
[429] *See Assénagon Asset Management SA v. Irish Bank Resolution Corp Ltd.,*[2012] EWHC 2090 (Ch)
[430] *See* Nick Baker, Jonathan Mitnick, & Dasha Bechade, *The Latest Developments in Liability Management*, Global Turnaround, Aug. 2024, at 8.
[431] *See* Mark Roe & Vasile Rotaru, Liability Management's Limited Runway (unpublished draft, on file with author).
See supra notes 352 to 364 and accompanying text.

companies to engage in global bankruptcy forum shopping, locating regimes that strike even subtly different balances of power between debtors and creditors, will likely prove contentious especially as other alternatives grow in prominence.

Another important consequence of debt globalization is that cross-border contracting and restructuring have diminished the significance of national legal regimes. European borrowers with English-law debt, for example, rarely pursue liability management transactions because the *Assénagon* decision constrains coercive exchanges, yet they can (and frequently do) select New York law to avoid that restriction.[433] Likewise, after the U.S. Supreme Court barred nonconsensual third-party releases in *Purdue Pharma*, some companies eligible for Chapter 11 sought comparable outcomes in foreign courts. As most defaults now occur through out-of-court exchanges, bankruptcy law increasingly functions as background law.[434] Under the global law of debt, however, for sophisticated parties there increasingly are not really any binding background rules.

Similarly, national regulators are likely to have greater difficulty monitoring their corporate sector as debt transacting and restructuring take place in a globalized marketplace. For example, a Mexican firm can borrow in New York, file for an English scheme of arrangement in London and then bind its New York law creditors through a U.S. Chapter 15 recognition order.[435] It is challenging enough for U.S. regulators to understand Chapter 11, it is likely to be even harder for them to learn to understand the corporate restructuring process in England.[436]

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[433] Charles Balmain et al., White & Case LLP, *Legitimate Coercion or Unlawful Abuse? Assénagon and the Power to Bind the Minority in Liability Management Exercises Revisited* (Oct. 27, 2022), https://perma.cc/E2VP-MYF3.
[434] *See* Edward I. Altman & Eric Rosenthal, *Distressed Debt Exchanges: A Prominent Form of Out-of-Bankruptcy-Court Corporate Restructuring (The Consequences for the Ailing Firm and Its Creditors)* (unpublished manuscript, Sept. 2025) (noting that 19% of broadly syndicated loan defaults in 2024 came from formal bankruptcy court proceedings, down from 88% in 2015; distressed debt exchanges were 73%, up from 5%). Similar trends are at work in the high yield bond market. *See* id.
[435] *See In re* Mega Newco Ltd., 2025 WL 601463 (Bankr. S.D.N.Y. Feb. 24, 2025).
[436] *See* Jared A. Ellias & George Triantis, *Government Activism in Bankruptcy*, 37 EMORY BANKR. DEV. J. 509 (2021).

Perhaps the greatest beneficiaries of debt globalization are American law firms, whose expertise and resources have enabled them to become dominant players in Europe. Even if more American public companies follow Fossil Group's lead and turn to the English restructuring system rather than Chapter 11, it will almost certainly be American law firms planning the restructuring. Thus, even if American courts and American law become less central, U.S. law firms remain poised to emerge as major winners, with significant implications for the practice of law around the world.

IX. Conclusion

In this Article, we have traced the emergence of what we call *the global law of debt*. The global law of debt now governs corporate debt finance and restructuring – a transnational system in which legal rules and market norms are shaped more by the networks of law firms, investment banks, and investors. The global law of debt results from the entanglement of debt ecosystems of New York and London. In the twenty-first century, ideas, professionals, and capital now move across the Atlantic at unprecedented speed. As a result, companies, investors, and other participants in the global debt ecosystem benefit from multidimensional opportunities for corporate finance and restructuring. Yet the modern global debt system, while offering enormous efficiencies, also raises complex policy challenges for regulators, legislators, and courts and brings practices around the world that many view as undesirable, such as liability management exercises.

These developments carry profound implications for the future of corporate debt finance and insolvency. We believe that courts and national regulators will need to be attentive to the shifting nature of debt and restructuring and that the entangled nature of corporate debt should be taken into account by judges, legislators and regulators.