

# LDK Solar: Implementing a global restructuring of a China-based corporate family

Phillip Taylor reports on a cutting edge restructuring using a combination of US and European tools



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**A**s the attention of restructuring experts moves east, the LDK Solar group (“LDK”) has set a precedent as one of the first China-based groups to successfully restructure debt issued in the international capital markets through a court-based process.

LDK and its advisers used tools developed at the cutting edge of European and US restructuring to overcome a number of issues inherent in restructuring a financially and geographically diverse corporate group.

## Background

LDK is a vertically integrated manufacturer of photo-voltaic (PV) solar panels and systems, largely based in China. Prior to the restructuring, LDK had been affected by a number of business issues, including a general decline in the European market: partly due to overcapacity and partly to European governments withdrawing subsidies for renewable energy. LDK was also affected by the dramatic fall in the price of polysilicon, a material used to produce solar panels, which its subsidiary LDK Silicon supplied to other panel companies. Following the decline in polysilicon market prices, there was no business reason for LDK Silicon to produce polysilicon for anything other than use by the group; consequently, some of LDK Silicon's plants were mothballed.

## Group financing

The group parent: LDK Solar Co. Ltd. (“LDK Solar”) was listed

on the New York Stock Exchange, and had issued high yield debt in the capital markets. Some of its historic debt had been restructured through a series of bilateral agreements, but its Senior Notes (the “Senior Notes”) had not, with \$293 million outstanding when they matured in February 2014. LDK Silicon had also issued redeemable preferred shares, which, if redeemed, would constitute a secured liability of \$390 million. In addition, LDK Solar had various project finance facilities and other smaller facilities.

In addition to this “offshore” debt, LDK’s PRC (People’s Republic of China) subsidiaries had borrowed over \$2 billion of “onshore” debt in facilities secured and cross-guaranteed across the majority of its “onshore” assets (i.e., those incorporated or situated in the PRC).

It was clear from the outset that the continued support of LDK’s onshore lenders depended largely on a successful restructuring of its offshore liabilities. If the offshore restructuring were to fail, the result would have been a messy liquidation of the group.

## Restructuring support agreement

By the time the Senior Notes matured, negotiations with stakeholders had been underway for some months. An informal committee of Senior Note holders had been organised, and their advisers were discussing restructuring options with LDK. LDK was also in discussion with certain holders of preferred shares and their advisers.

The discussions resulted in a restructuring support agreement (“RSA”), which set out the key terms of the restructuring and a framework for its implementation. The agreed objectives of the restructuring were to extend the maturity and payment profile of LDK’s offshore debt by converting Senior Notes and preferred shares into 2018 and 2016 Convertible Bonds, respectively. In addition to the Convertible Bonds, the Senior Note and preferred share holders agreed to exchange some of their debt for equity, which would ultimately reduce the offshore debt by around ten per cent.

## Cayman provisional liquidation

When the notes matured in February 2014, LDK was concerned to prevent action being taken by creditors who were either unaware of the restructuring negotiations or who might seek to circumvent them. The directors of LDK Solar applied to the Grand Court of the Cayman Islands for the appointment of provisional liquidators: Eleanor Fisher and Tammy Fu of Zolfo Cooper were appointed (the “JPLs”).

The JPLs set about concluding the negotiation of the RSA and it was signed by majorities of the Senior Note and preferred share holders on 28 March 2014. The RSA also envisioned a restructuring of LDK’s ordinary unsecured liabilities (“Ordinary Claims”) in addition to the Senior Notes and preferred shares.

The RSA originally allowed stakeholders who did not wish to receive equity and new convertible



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bonds elect to “cash-out”; however, the availability of the option depended on LDK raising sufficient funding. Although challenging, enough cash was raised to pay a cash-out amount to the holders of Ordinary Claims.

### Implementation by schemes of arrangement

Despite the Senior Notes being governed by New York law, implementation of the restructuring was primarily based on schemes of arrangement. Schemes were selected over Chapter 11 of the US Bankruptcy code because they were sufficiently flexible to implement the restructuring agreed by the majority of the stakeholders in the RSA.

The schemes were conducted through the courts of the Cayman Islands and Hong Kong, and were linked and inter-conditional. The five schemes were essentially mirror images of each other, but applied to slightly different companies and creditors. The scheme creditors comprised three classes – the Senior Notes, the Preferred Obligations, and the Ordinary Claims, although it was not necessary for all three classes to approve each of the five schemes; for example the holders of Ordinary Claims were not creditors of two of the three scheme companies.

In Hong Kong, there was some uncertainty as to whether a scheme could be sanctioned for a company that is not incorporated in Hong Kong. Lam J. decided this in LDK’s favour, holding that the Hong Kong court did have jurisdiction to sanction schemes in respect of the Cayman companies, and ought to exercise its discretion to do so based on a “sufficient connection” test similar to that which applies in English law schemes – see *LDK Solar Co., Ltd (in provisional liquidation)*<sup>1</sup>. The sufficient connection test was satisfied by the very reason for conducting a Hong Kong scheme: the schemes sought to compromise debt that was governed by Hong Kong law.

### Chapter 15 recognition obtained

It was important to obtain US recognition of the scheme under Chapter 15 of the US Bankruptcy Code (the USA’s enactment of the UNCITRAL Model Law on Cross Border Insolvency), because the Senior Notes were governed by New York law. This application was based on LDK Solar having its centre of main interests (“COMI”) in the Cayman Islands. Cases such as *Bear Stearns*<sup>2</sup> had cast doubt on whether a Cayman Islands holding company could be said to have its COMI in the Cayman Islands for Chapter 15 purposes. However, in LDK’s case, the JPLs conducted most of their activities from the Cayman Islands, putting the location of the COMI beyond doubt by the time they made the Chapter 15 application. The US Bankruptcy Court for the District of Delaware made the Chapter 15 orders shortly after the schemes were sanctioned.

### Chapter 11 pre-packaged plans confirmed in one month

The Chapter 15 orders recognised and gave effect to the Cayman scheme as far as US law was concerned, but some uncertainty remained around the release of US-based subsidiary guarantors. Pre-packaged Chapter 11 cases were filed in order to ensure that the restructuring could not be circumvented by creditors seeking to enforce against assets of the US subsidiary guarantors. As the name suggests, pre-packaged cases can be limited to a matter of weeks and cost considerably less than full Chapter 11 proceedings, especially if they can take advantage of cost savings available from coordinating the documentation with the scheme documents. The pre-packaged Chapter 11 plan for the three LDK US subsidiary guarantors was confirmed by the Bankruptcy Court just one month after their cases were commenced.

### European operations

LDK held a number of European interests, including a majority shareholding in Sunways, a German-based manufacturer and supplier of solar energy components. Sunways went into insolvency proceedings in Germany shortly after LDK filed for provisional liquidation. Schultz and Braun were retained by the JPLs to handle negotiations with the insolvency administrator and to advise as to German law. Other European assets were placed into solvent liquidations as part of the global restructuring.

### Conclusion

LDK is an example of how a combination of restructuring proceedings can be used to achieve a successful restructuring of complex and cross-border financing arrangements governed by different laws and issued to creditors across the globe. Techniques developed in the UK, European and US markets were adapted and used effectively in other jurisdictions. As many corporate groups based in Asia are structured in a way similar to the LDK corporate structure, LDK’s restructuring will be a model for future cases in a region where restructuring has become increasingly relevant.

LDK and the JPLs were advised by Sidley Austin LLP, Campbells and Schultze & Braun; as well as by barristers Michael Crystal QC, Adam Al-Attar; and in Hong Kong by Charles Manzoni SC and Clifford Smith SC. ■

#### Footnotes:

- 1 Unreported, HCMP 2215/2014, December 10, 2014, (LDK)
- 2 *In re. Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.* (in provisional liquidation) 2007 WL 2479483 (Bankr. S.D.N.Y. Aug. 30, 2007), amended and superseded by 374 B.R. 122 (Bankr. S.D.N.Y. 2007).



**TECHNIQUES DEVELOPED IN THE UK, EUROPEAN AND US MARKETS WERE ADAPTED AND USED EFFECTIVELY IN OTHER JURISDICTIONS**



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