

La Seda de Barcelona SA

Carlos Gila

Gila & Co

Richard Tett

Freshfields Bruckhaus Deringer LLP

Alan Tilley

Bryan Mansell & Tilley LLP

1. **Synopsis**

La Seda de Barcelona SA is a leading manufacturer of food and beverage packaging and plastics, with operations across Europe and over 2,000 employees. In May 2010 it became the first Spanish company to use an English scheme of arrangement to restructure its syndicated debt. The scheme, combined with the injection of significant additional capital through a successful rights issue, a debt-for-equity swap and the careful rescheduling of the company's trade debts (all undertaken under considerable time pressure), saved a business that was perilously close to insolvency.

For the wider European restructuring market, the most significant aspect was that a non-English company restructured using an English scheme and, crucially, did so without moving its centre of main interests from Spain to England. Instead, the company relied on having a sufficient connection with England and an English establishment to use an English scheme to restructure its English law-governed debt. At the time, the effectiveness of such a strategy was doubted due to uncertainties as to the recognition in Germany of the Equitable Life English scheme. While the issue there concerned German law obligations being restructured by an English scheme, for some in the market those concerns also tainted the use of an English scheme to restructure English debt borrowed by non-English companies.

La Seda was seen as a watershed. It has since been followed by the restructurings of German companies Telecolumbus, Rodenstock and Primacom and a second Spanish company, Metrovacesa – none of which moved their centres of main interests to England or, going one step further, had an English establishment. In other words, they relied solely on a sufficient connection with England.

With so many European companies borrowing under English law loan agreements, the issue is particularly important for the European restructuring market. Accordingly, the restructuring of the company has become a template for the use of an English scheme to restructure non-English companies with English law debt obligations. The advisers on the restructuring were Gila & Co, Bryan, Mansell & Tilley LLP and Freshfields Bruckhaus Deringer LLP.

2. **Background**

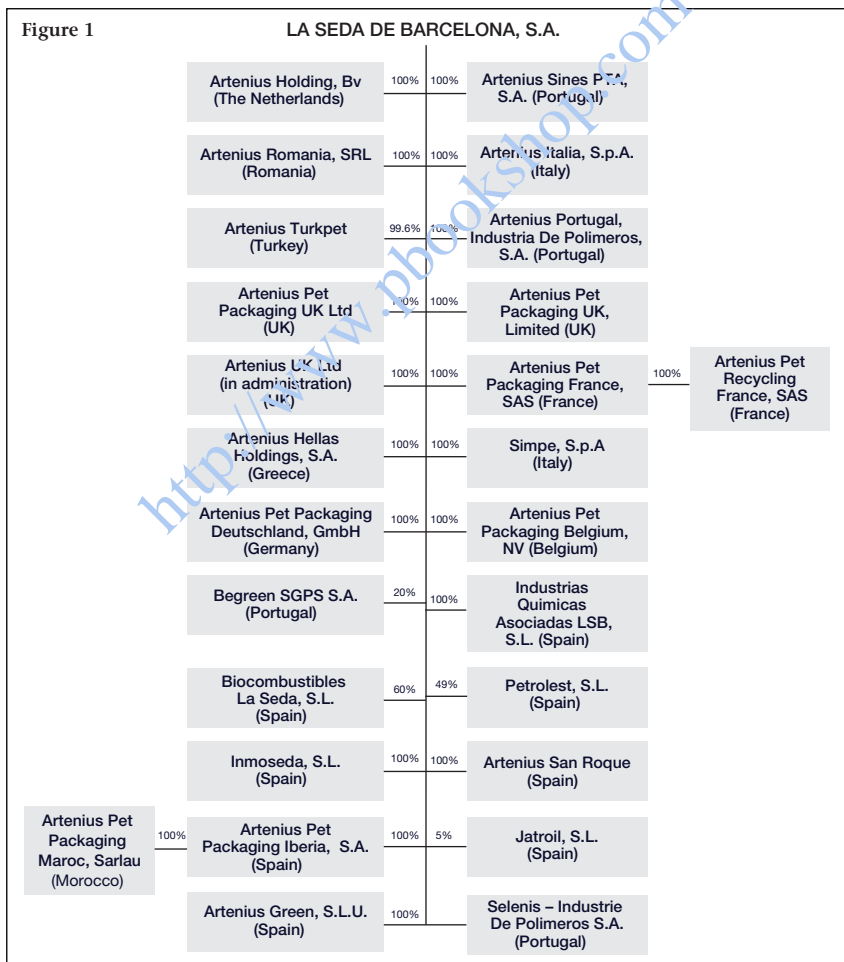
La Seda, and the group which it heads, is one of the leading manufacturers of purified terephthalic acid (PTA), polyethylene terephthalate (PET), packaging materials, PET recycling products, resins and polyester fibres. These materials and products are used primarily in the production of food and beverage packaging. At the

time of the restructuring, the company had 22 production sites and more than 2,000 employees. The group also had operations and subsidiaries in a number of other countries, including Portugal, Greece, Italy, Turkey, Romania, the United Kingdom, Belgium, Germany and France.

From 2005 the group grew significantly through a series of acquisitions within the European PTA, PET and PET packaging sectors. These acquisitions were intended to transform the group from a fibre producer to one of the largest integrated PTA, PET and PET packaging groups in Europe. The goal of this growth strategy was to achieve scale and become the leader in the PET production and PET packaging markets in Western Europe.

3. Pre-restructuring corporate structure

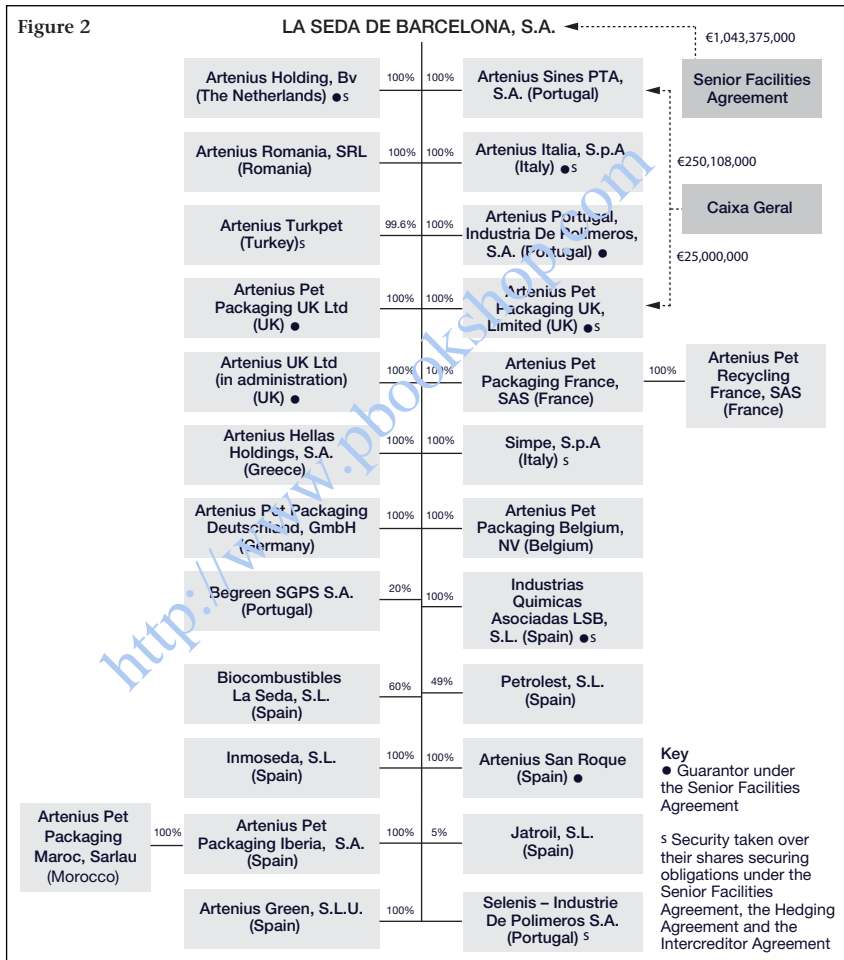
Figure 1 sets out a simplified corporate structure chart for the group before the restructuring.



At the time of the restructuring, the La Seda board was made up of six directors. Three of the directors were the companies – or were directly related to the companies – that ultimately made the new capital investment into the company as part of the restructuring. Of the three remaining directors, two were company executives and the third, Mr Carlos Gila, was appointed to assist with the restructuring.

4. Pre-restructuring capital structure

Figure 2 sets out a simplified diagram of the group’s capital structure before the restructuring.



In summary, by a senior multi-currency term and revolving facilities agreement of June 8 2006 between the company and Deutsche Bank AG (acting as arranger, agent and security trustee), the lending institutions under the facilities provided the company with the following facilities of up to €603.3 million. (of which €578.6

million. had been drawn when the scheme was launched):

- Facility A – a term loan of up to €163.3 million, which amortised every six months commencing on December 31 2007 and matured on June 30 2013. At the time of the restructuring, the principal amount outstanding under Facility A was approximately €145.8 million.
- Facility B – a term loan of up to €265 million, which matured with a bullet repayment on June 30 2014. At the time of the restructuring, the principal amount outstanding under Facility B was approximately €257.8 million.
- Facility C – a term loan of up to €100 million, which amortised every six months commencing on December 31 2010 and matured on June 30 2013. At the time of the restructuring, the principal amount outstanding under Facility C was approximately €100 million.
- Revolving facility – a revolving credit facility of up to €75 million. At the time of the restructuring, the principal amount outstanding under the Revolving Facility was approximately €75 million.

The senior facilities agreement was governed by English law.

In addition, the following documents were entered into in relation to the senior facilities agreement:

- a hedging agreement between the company and the hedge counterparty, under which those parties entered into a number of interest rate swap agreements to hedge part of the interest rate liabilities under the senior facilities agreement; and
- an intercreditor deed, under which, among other matters, it was agreed that the liabilities that were owed under the senior facilities agreement and the hedging agreement would rank equally.

Additionally the obligations under the senior facilities agreement (together with any obligations under the hedging agreement and intercreditor agreement) were secured by the company granting security over the shares of a number of its subsidiaries (see Figure 2).

The obligations under the senior facilities agreement were guaranteed by a number of the company's subsidiaries (see Figure 2). There were also share pledges over key subsidiaries; however, no asset level security was given by those subsidiaries.

In addition to the senior facilities agreement, the following main bilateral facilities were granted by the Portuguese state bank Caixa Geral de Depósitos, SA to:

- Artenius Sines PTA, SA and the company as guarantor, in respect of a number of bridging loans relating to the construction of a petro-chemical industrial plant in Sines, Portugal – at the time of the restructuring, €250,108,000 had been drawn under these facilities; and
- two UK subsidiaries to provide working capital – at the time of the restructuring, €25 million had been advanced under this facility for short-term liquidity purposes, as the group was running out of cash.

5. Restructuring triggers

In 2008 the company experienced severe trading difficulties as demand for its finished products weakened, oil price-related raw material costs rose and low-cost competition from the Far and Middle East significantly eroded its margins. These factors had a serious negative impact on the group's operations, causing it to suffer a severe lack of liquidity.

By the fourth quarter of 2008, these difficulties resulted in the company breaching a number of its financial covenants under the senior facilities agreement. Further breaches occurred during the course of the following year and the debt ceased to be serviced, resulting in payment defaults.

In April 2009 the audit revealed significant past accounting malpractice and, as a result, the preliminary 2008 results were significantly downgraded from an operating loss of €153 million to €561 million. A KPMG report uncovered questionable trades and other irregularities which became the subject of investigations by the authorities. The chairman and the chief operating officer resigned and a new chairman and Mr. Carlos Gila were appointed to lead the Company's turnaround efforts. At the same time, Bryan, Mansell & Tilley LLP was appointed as restructuring and turnaround adviser to the group.

Difficulties for the group continued to increase throughout 2009. For instance:

- in July 2009 one of the group's UK subsidiaries, Artenius UK Limited, (AUK) was placed into administration in the United Kingdom – this was prompted by a winding-up petition that was issued against AUK by a creditor;
- two of the group's largest production plants in Spain were temporarily closed due to liquidity problems;
- the large-scale Sines project in Portugal was halted, with the contractors leaving the site and the construction project management company threatening legal action; and
- the claims against the group by overdue trade creditors had reached approximately €130 million.

In June 2009 the company agreed to a standstill agreement with the senior lenders. This standstill was extended a number of times. With the protection of the standstill, the company focused on maintaining liquidity while identifying the group's viable core business and preparing a business plan and restructuring programme with the aim of attracting new capital.

6. Composition of lending syndicate and syndicate dynamic

The syndicate consisted of a mixture of funds and banks, many of which were Iberian. There was secondary trading and some special situations and distressed debt investors bought into the debt. However, no secondary fund built a significant stake and the majority of the debt remained with the primary par lenders.

A steering group of senior lenders with a significant proportion of the debt under the senior facilities agreement was constituted to handle preliminary negotiations. This included agent bank Deutsche Bank, HSBC Madrid and Caixa Geral, plus other Spanish and London-based banks. The significance of the steering role varied

throughout the process and many of the fees were paid only at the end of the restructuring.

7. Restructuring negotiation process

The key aim of the restructuring was to secure a stable and sustainable platform to allow new money to be invested into the group.

Midway through 2009, negotiations took place to identify potential parties to inject new investment into the group. Caixa Geral, which was a significant shareholder in the company as well as a lender to it, introduced BA Vidros SA, a Portuguese glass packaging manufacturer, as a potential new investor. BA Vidros SA, along with Liquidambar Inversiones Financieras SL and Caixa Geral, indicated that together they were prepared to invest €100 million into the company. However, before they made such an investment, these new equity investors required the company, among other matters, to restructure its financial debt, address some of the ongoing problems at its subsidiaries (AUK in particular) and enter into reasonable agreements with its unpaid trade creditors.

In relation to the restructuring of the financial debt, being primarily the amounts owed under the senior facilities agreement, meetings between the company, the equity investors and representatives of the senior lender took place from September to November 2009 in Madrid, Lisbon and London. In addition, a number of all-party senior lender conference calls were held over the same period. These meetings and calls resulted by mid-November in a preliminary agreement for a rescheduling of part of the sums owed under the senior facilities agreement, together with a proposed debt-for-equity swap.

7.1 The restructuring

The proposed restructuring comprised the following components:

- group operational changes, which included:
 - a refocusing of the business on PET applications;
 - divestment of the raw materials part of the business;
 - a major cost-cutting programme; and
 - a wholesale change of senior management;
- new investment into the company of at least €150 million; and
- the restructuring of the company's debt under the senior facilities agreement.

7.2 New equity investment

The equity investors stated that, subject to the fulfilment of certain conditions, they would invest a total of €100 million in the company. To facilitate these investments, the company proposed to increase its share capital. However, the company additionally sought money from other sources in order to obtain a further €50 million investment.

In summary, it was proposed that there be an equal distribution of equity between the new equity investment of €150 million (which would in part comprise the €100 million investment proposed by the equity investors) and the senior lenders. Thus, it was proposed that €150 million of the debt under the senior