



AMERICAN
BANKRUPTCY
INSTITUTE

Annual Spring Meeting

A Deep Dive into Cross-Border Real Estate Insolvencies: *Evergrande* and Beyond

Hosted by the International and Real Estate Committees

Robert E. Richards, Moderator

Dentons | Chicago

Natasha Atkinson

Pillsbury Winthrop Shaw Pittman LLP | London

Phoebe Lo

Clifford Chance | Hong Kong

Rebecca Rockey

Cushman & Wakefield | Washington, D.C.

A Deep Dive Into Cross-Border Real Estate Insolvency: Evergrande and Beyond

American Bankruptcy Institute
2025 Spring Meeting

April 26, 2025
Washington, D.C.



Introduction

- Robert Richards, Moderator, *Dentons US LLP*
- Natasha Atkinson, Panelist, *Pillsbury Winthrop Shaw Pittman LLP*
- Rebecca Rockey, Panelist, *Cushman & Wakefield*
- Phoebe Lo, Panelist, *Clifford Chance*



Key Segments of Distress

- Commercial Office
- Multi-Family Residential
- Retail
- Hospitality
- Projects Under Construction
- Industrial and Warehouse



3

Jurisdiction and Venue

- Project Location
- Jurisdiction or State/Province of Ownership or Holding Company
- Special Purpose Entities/Independent Directors
- Competing Proceedings
- Coordination of Proceedings



4

CHINA REAL ESTATE



5

China Specific Insolvencies

- Evergrande – trigger for China’s current real estate market crisis
- Domino effect led to other filings including:
 - Yuzhou Group Holdings Company Ltd
 - E-House (China) Enterprise Holdings Limited
 - China Aoyuan Group Ltd.
 - Sunac China Holdings Ltd.



6

Overview of The China Real Estate Debt Situation

Statistics available show that as of February 2025:

- The overall distressed debt involved in the Chinese real estate market crisis is estimated to be USD 160 billion (Business Times, 5 Mar 2025)
- 64 developers in China have defaulted on their offshore bonds and/or engaged in a workout process. 36 developers have completed 54 restructuring processes, covering 159 offshore bonds with a combined USD 56.6 billion in principal (Debtwire, 10 Feb 2025)
- Property market sales continued to slide, with the value of homes sold declining by 2.6% to RMB 1.03 trillion (c. USD 142 billion) compared to the year earlier (Mingtandi, 17 Mar 2025)
- In the January to February period of 2025, investment in property development fell 9.8% year-on-year to RMB 1.07 trillion (c. USD \$150 billion) while the total area of construction declined 9.1% to 6.06 billion square metres (65 billion square feet) (Mingtandi, 17 Mar 2025)

What are the main reasons leading to this situation?

- Over-leverage especially by real estate developers to drive growth and profits
- Changing regulatory environment – “three red lines” for real estate developers
- With the slowdown of the Chinese and global economies, real estate developers are struggling to generate sufficient returns to repay their lenders
- The impact of COVID-19 on the broader economy
- Continued high interest rates
- Loss of customer confidence in the real estate market in view of the crisis
- Dislocation of supply and demand

Downturn in the real estate market and government interventions

China's Property Crisis Enters a Dangerous New Phase (Bloomberg, 11 Feb 2025)

Market demand for real estate property remains weak despite regulatory efforts to stabilize the real estate property sector. Home prices fell by about 30% from their peak in 2021. Authorities intervene to rescue Vanke (万科) by taking control of it to prevent its collapse. However, the Chinese Government has focused on completing unfinished projects rather than bailing out companies, which have not provided sufficient support for the market to revive confidence.

China developers buy land at 20 percent premium in bet on market bottom (The Standard, 24 Feb 2025)

Government revenue from land sales declined by 16% in 2024 compared to 2023. More cities are encouraging developers' land purchases by easing terms and relaxing limits on the profits that developers can make from selling new homes.

How the state is propping up China's housing market (FT, 25 Feb 2025)

State-owned developers, but not private developers, now win most of the bids in residential auctions. New apartments are largely sold by state-owned developers, who made up around 70% of sales of new homes by the end of 2024.

China's Feb second-hand home prices narrows for seventh straight month (Reuters, 3 Mar 2025)

Prices of second-hand homes fell 7.3% year-on-year average in February 2025.



7

Recent Offshore Debt Restructuring of PRC Corporates Overview



Knock-on impact of the real estate sector on the broader PRC economy

- Financial trust companies which sold investment products with higher returns backed by real estate-related collateral
- PRC banks which lent significant sums to real estate developers
- Engineering and construction industries which are hit by decrease in work activity
- General consumption, export and commodities industries which are affected by decreased household spending and slowdown in the economy

Key features of debt restructuring of PRC corporates

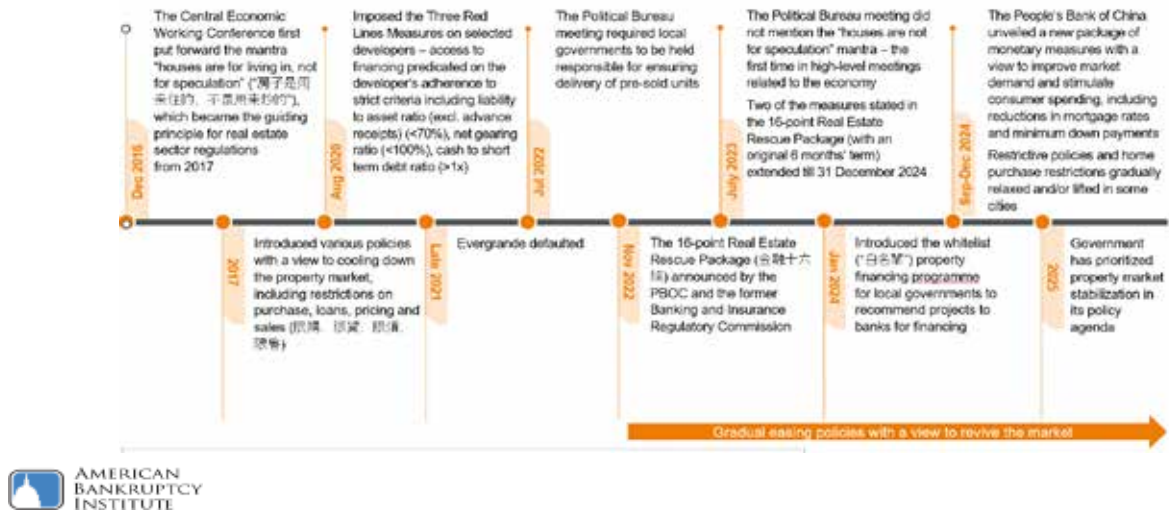
- Onshore creditors first, offshore creditors second
- “Social stability” as a priority – protecting and preserving onshore jobs, homeowners, businesses, economy
- Use of debt extensions, new debt instruments and/or equitisation as restructuring tools
- Complex capital structures leading to prolonged restructuring timeframe
- Need for multiple restructuring processes
- Difficulty in assessing requirements for sustainable capital structure



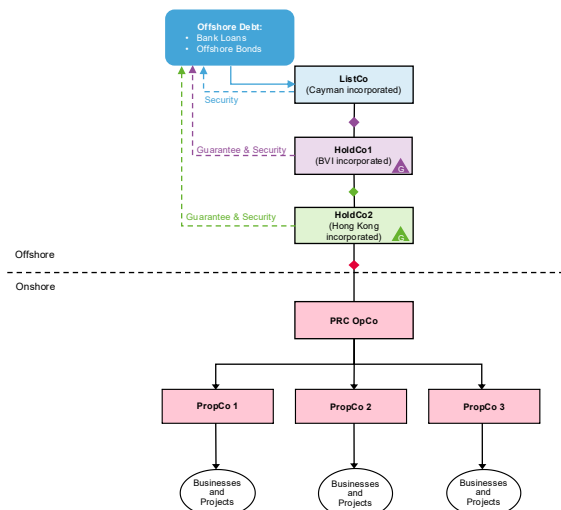
8

Current Regulatory Environment for PRC Property Developers

Overview of Real Estate Sector Policies: 2016 - Present



Typical Corporate and Capital Structure



Challenges for offshore creditors:

- Structural subordination of offshore debt
- No applicable single restructuring process – onshore and offshore debt subject to separate processes
 - Offshore: scheme of arrangement / restructuring plan
 - Onshore: LME / workout / bankruptcy (rare)
- Challenges in extracting value offshore
 - Enforcement
 - Regulatory hurdles
- Local government measures and liquidity solutions further restrict the flow of cash offshore

UK AND EMEA RESTRUCTURING TECHNIQUES AND US CHAPTER 15



11

Exploring The Distressed Real Estate Market in the UK

Key Legal Tools And Lessons For Non –UK Restructuring Lawyers, Investors, and Bondholders

Natasha Atkinson, Partner, Pillsbury Winthrop Shaw Pittman LLP
(Restructuring and Insolvency) (London)



12

Market Dynamics in UK / EMEA for 2025

- **Uptick in Commercial Real Estate activities in 2024/2025:** The UK emerged as Europe's most active commercial real estate investment market in 2024, with volumes rising 11% year-on-year to £32.7bn, surpassing Germany and France combined. London led the region, attracting £11bn in transactions, a 14% year-on-year increase.
- **'Refinancing Gap':** Estimated to be around **€14 billion** (approximately 12% of the European total) from now until 2027 (CBRE February 2025).
- **Investment Forecast:** Colliers forecast annual investment volumes to reach £45–50bn, driven by stabilising gilt yields and growing clarity around rate policy.
- **Political Stability:** A decisive Labour general election win in mid-2024 reinforced political stability in the UK, contrasting with volatility in other European markets like France and Germany.
- **Legal Restructuring:** The interplay between insolvency law and property rights as they pertain to distressed loans, and negotiation strategies between banks, institutional investors, and restructuring professionals. The risks to non-UK creditors of the deteriorating values of UK realisable value in secured real estate.
- **Emerging Trends: Sustainability and Innovation:** The sustainability agenda and advancements in AI are becoming increasingly important for investors and developers as well as the additional ESG costs layer to refinancings and acquisitions. These factors are likely to influence restructuring strategies and asset management.



13

Bondholder Perspective: UK Security and Uncertain Realisable Value

US Bondholders face key challenges in the UK Commercial Real Estate Market:

- **Falling Valuations and Liquidity Crunches:** US bondholders often hold fixed income securities tied to real estate projects facing declining valuations and liquidity issues.
- **Borrower Defaults:** Increased borrower defaults add to the complexities for bondholders.
- **Collective Action Clauses (CACs):** These clauses allow majority approval to bind all bondholders, including dissenters, to restructuring proposals.
- **Collateral Valuation Disputes:** As valuations decline, disputes over collateral valuation and priority of claims can arise.
- **Early Due Diligence:** US bondholders should prioritise early due diligence and engage restructuring advisors to navigate the UK market.
- **Legal Remedies:** Spot the signs. Awareness and assessment of legal remedies under UK frameworks and early/pre-emptive stakeholder discussions and value in aligning creditor interests for debt modifications or restructurings is key (**Evergrande**)



14

Cross Border: Why Are UK Restructuring Tools Being Used?

- **UK Restructuring Tools:** New York law governed bonds typically require consent from holders with 100% of the outstanding principal amount to amend principal and interest payment dates, waive guarantor liabilities or to waive a non-payment default.
- **Schemes of Arrangement:** Schemes must be approved by a majority in **number and 75% in value of the members of each class of scheme creditors.**
Recognition: schemes of arrangement compromise of NY governed bonds recognised under Chapter 15 should be considered to be effective by the English and HK courts, *however- Rule in Gibbs* applies to HK and English governed debt.
- **UK Restructuring Plans:** Foreign companies continue to view the UK as a desirable destination to restructure their liabilities. *Adler*, being a German real estate company with German law debt, sought to restructure its liabilities in the UK. To create a 'sufficient connection' to the UK (so that it could utilise a restructuring plan), the governing law of its finance documents was changed from German law to English law. (**CINEWORLD**, **INTU** are real estate examples)



15

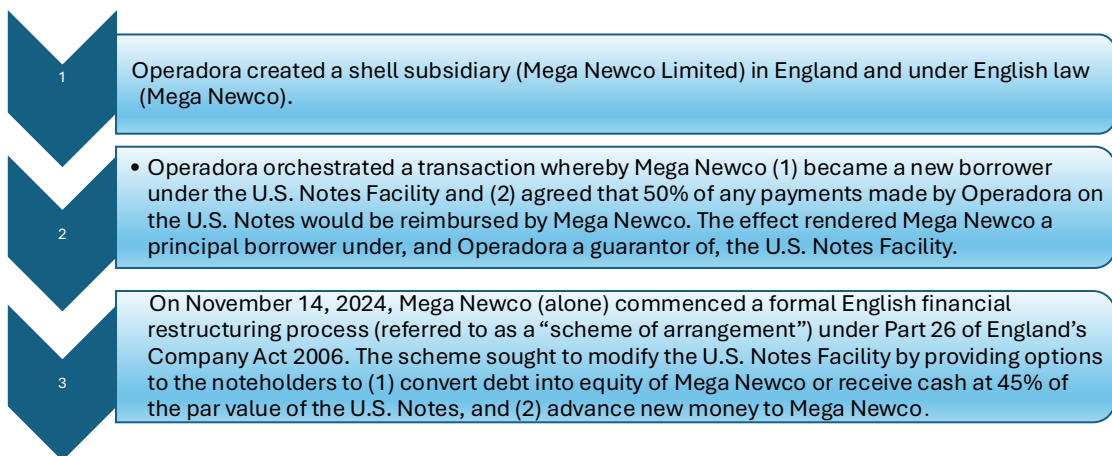
Chapter 15 of the U.S. Bankruptcy Code

- **Model Law (U.S.'s Chapter 15):** The United Nations Model Law on Cross-Border Insolvency is designed to facilitate the recognition of insolvency proceedings commenced in another nation.
- **Recognition and Enforcement:** The Model Law contains tools for the discretionary enforcement of orders and judgments from foreign courts, and for cooperation between courts in multiple countries.
- **Jurisdictional Requirements:** To obtain chapter 15 recognition of a foreign insolvency proceeding, that proceeding must be either (1) a "foreign main proceeding" or (2) a "foreign non-main proceeding." To qualify as a foreign nonmain proceeding, the debtor must have an "establishment" in the foreign jurisdiction, i.e., "an actual place from which economic market-facing activities are regularly conducted."
- **Scheme of Arrangement:** Recognition and enforcement in the United States of a UK Scheme of Arrangement that provides releases to a non-debtor parent from liability to creditors—who did not vote for or object to the Scheme—on debt instruments governed by U.S. law may also be available, if not challenged by creditors.



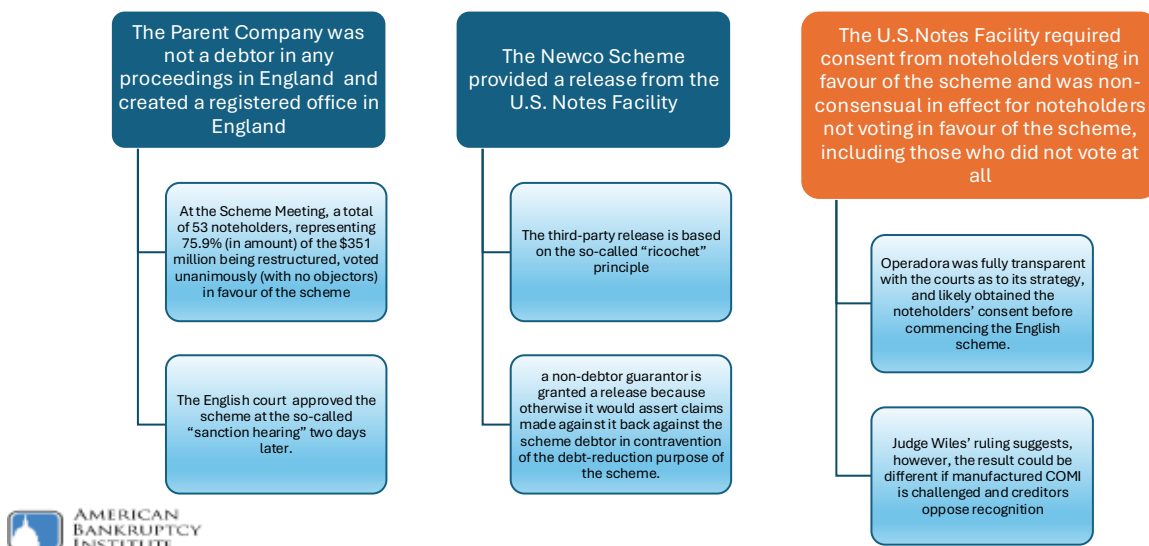
16

Three Steps to “Forum Change Recognition” Under Chapter 15 Mega Newco Limited (Operadora de Servicios Mega)



17

Key Takeaways – Mega Newco Limited (Operadora de Servicios Mega)



18

2025 ANNUAL SPRING MEETING

Flexible Terms	There are no limits on what can be proposed, offering a blank canvas for companies looking to reorganise their businesses. A RP can, and has in some cases, been used to effect a debt-for-debt or debt-for-equity swap, restructure landlord claims, manage a solvent wind-down, enable the issue of new notes and equity interests, and amend and extend maturity dates, loan facilities, or bonds. Unlike a company voluntary arrangement an RP can be used to restructure both secured and unsecured debt.
Cross-Class Cram Down	The most notable feature of the RP is the ability for the court to cram down dissenting creditors and/or shareholders (subject to the court being satisfied that they would be no worse off than in the relevant alternative and the plan being agreed by a class that would receive payment under the plan). Cram down limits the ability of creditors to "hold out" or block a proposal, which has support of those creditors that retain an economic interest in the business. The court has found that low- or no-voting by a class that might otherwise be crammed-down will not prevent the court exercising that power.
Cross-Class Cram Up	A RP might also allow junior creditors to "cram up", forcing a plan on more senior creditors provided that they are no worse off than in the relevant alternative.
Voting	The voting threshold is lower in a RP, compared to a scheme of arrangement (or Chapter 11 plan). The plan simply requires 75% in value of each class of creditor to approve it. There is no requirement for a majority in number to vote in favour.
Disenfranchisement of Creditors	A class of creditors or members can be excluded from voting if the court is satisfied that they have no economic interest in the company, preventing "out of the money" creditors derailing a plan but still binding them to it.
No Absolute Priority Rule	RPs give greater flexibility than a Chapter 11 because it allows (where treatment is justified) for differential treatment of creditors. This means that shareholders or junior ranking creditors may, in certain circumstances, be paid before senior ranking creditors are paid in full.
Court Involvement	Although the court oversees the process, once sanctioned, the company implements the plan without having to go back to court to get permission to action its decisions.
Debtor in Possession	Management remains in control of the business
More Options for Foreign Companies	The RP offers an option for a foreign company to reorganise its business in circumstances where that company's local laws do not permit or enable that. This could be advantageous in situations where the only option locally might be to liquidate the company, which could destroy the integrity and value of the company.
Rule in Gibbs	The rule in Gibbs provides that obligations governed by English law cannot be discharged by foreign proceedings, unless the party submits to those proceedings. This could lead to parallel proceedings (and more cost) if a company wishes to restructure English law governed debts in its local jurisdiction. Using an RP to restructure could overcome this rule and would address this. However a number of foreign companies successfully use an RP, in conjunction with a parallel process in their own jurisdiction, making an RP a popular tool for companies based outside of this jurisdiction. (SinoOcean RP- February 2025).
Mid-Market Restructuring Tool	Typically, a scheme of arrangement has been used to restructure multinational corporations. The RP was introduced as a tool that could also be used to assist smaller, mid-market companies and the English courts are keen to promote that. The court has sanctioned a number of SME RPs, but the cost of the process can be prohibitive.
Valuation is key	The Restructuring Plan enables the compromise of the debt and equity claims of creditors and/or shareholders which the court is satisfied have no "genuine" economic interest in the company. The consent of these persons with no genuine economic interest is not required and they have no right to participate in the Restructuring Plan approval process. This is a nuanced change from Schemes where, whilst it is established that persons who are not affected by the Scheme need not be invited to vote, there is no formal consideration of a genuine economic interest at the first hearing. Therefore a significant and often contested amount of evidence at the first hearing relates to the valuation in the assessment of "Economic interest".

19

RP Case Study Sino-Ocean, a Company Registered in HK

Facts: Sino-Ocean Group Holding Limited (the Plan Company) proposed a Part 26A restructuring plan (the Plan) under the Companies Act 2006 to compromise approximately US\$6 billion of offshore debt. The Plan Company and its subsidiaries (the Group) had been affected heavily by the ongoing People's Republic of China (PRC) real estate crisis. The Plan is a part of the Group's wider restructuring, which also involves an inter-conditional, parallel scheme of arrangement in Hong Kong.

Decision: The High Court of England and Wales (Court) handed down its judgment sanctioning the Plan on February 3, 2025, despite opposition from a dissenting creditor on numerous grounds.

Sino Ocean Restructuring Plan: Novel Points

First restructuring plan in which one of the cramming classes comprised only foreign law-governed debt (in this case, Hong Kong law) in circumstances where a parallel process was being run in the relevant foreign jurisdiction (i.e., the Hong Kong scheme of arrangement).

First restructuring plan in which a *pari passu* creditor class had “crammed down” another *pari passu* creditor class.

First restructuring plan where the majority shareholders of the Plan Company (Institutional Shareholders) retained a proportion of equity for justified reasons in that it was overall better for all creditors if the Plan Company retained its state-owned enterprise status.



21

Cross Border Considerations

A creditor class, comprising foreign law-governed debt, is not necessarily prevented from being a cramming class under an English Restructuring Plan, where there is also a foreign parallel restructuring process:

- First restructuring plan to be sanctioned where a creditor class with foreign law-governed debt was used as a cramming class against creditor classes whose debts are governed by English law.
- Highlights that the Court will assess the entirety of a restructuring with multiple processes as a whole, to assess the appropriateness of class composition across such restructuring processes.
- Question: whether such classes are artificial or abusive in nature? In this case, the majority of the Class A creditor class (with Hong Kong law-governed debt) had submitted to the jurisdiction of the English courts, which gave substantial effect of the Restructuring Plan on such Class A creditors.
- However, the Hong Kong Scheme was still necessary to bind those Class A creditors that did not actively participate in, or vote in favour of, the UK Restructuring Plan.



22

Commercial Office and Multifamily Real Estate and Commercial Real Estate Trends



23

How Large Is CRE?

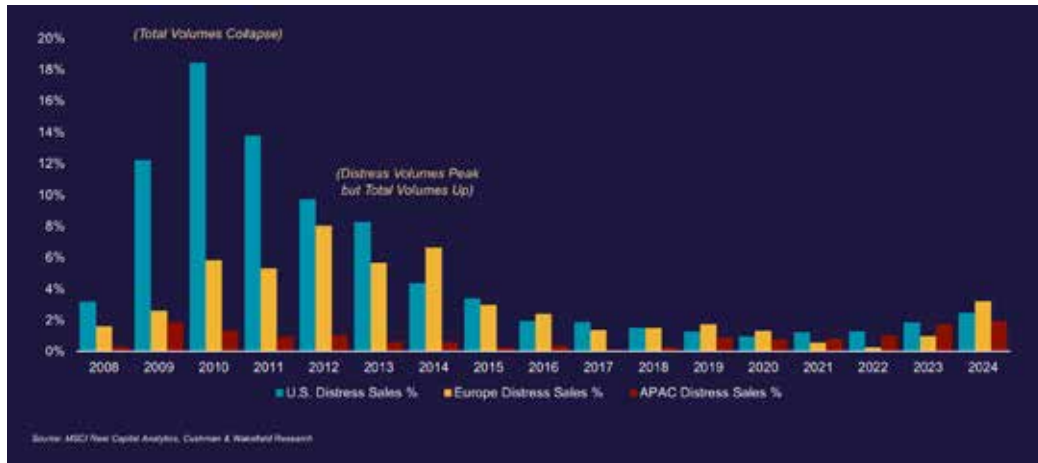
Well, it's big, we can say that for sure...



24

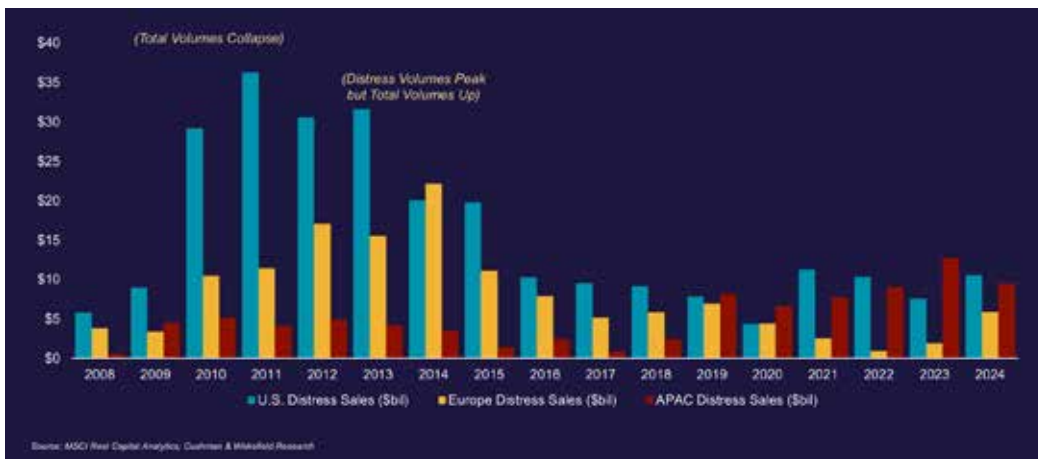
CRE Distress Cycle in Early Stage

Distress sales share

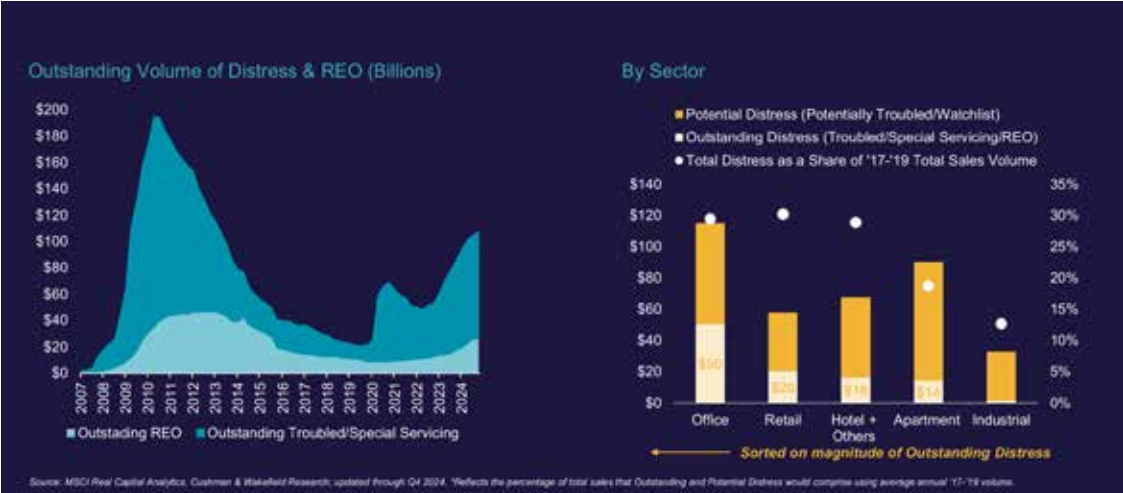


CRE Distress Cycle in Early Stage

Distress sales volumes



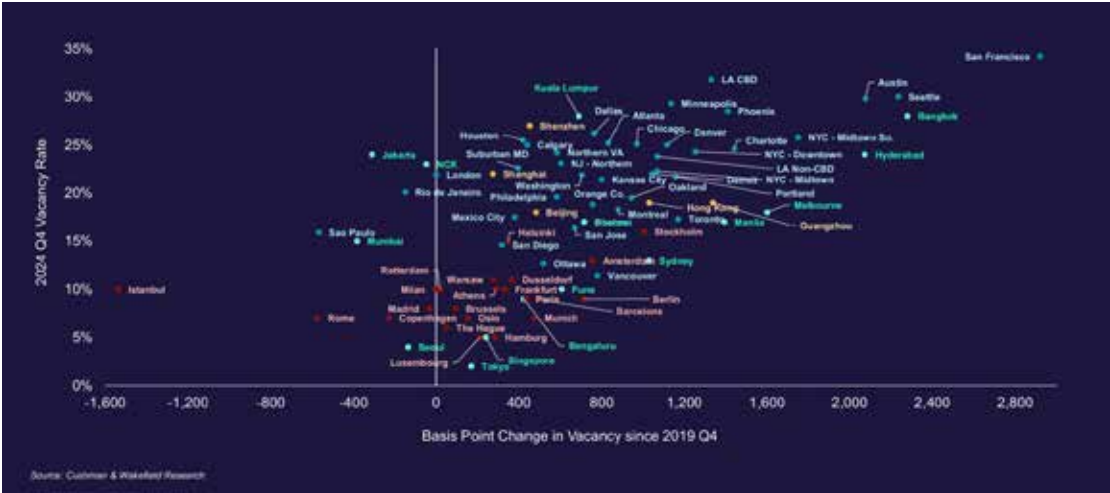
U.S. Distress Cycle Picking Up



27

Global Office Vacancy Rates

Office sector gets outsized attention, still – vacancy up in 83% of global markets



28

Every Asset Has Its Own Story

Office gets outsized attention, still



What's Next?

- Impact of Potential Sustained Trade Wars
- Impact of Uncertainty/Disruption
- Future Direction of Interest Rates
- Impact on Bank Solvency and Bank Approach to Loan Workouts
- Required or Voluntary ESG Modifications to Buildings
- Back to Work Requirements
- Global Capital Inflows and Outflows

Faculty

Natasha Atkinson is a partner with Pillsbury Winthrop Shaw Pittman LLP in London and has experience in corporate restructurings and managing stakeholders' interests when experiencing financial stress, both locally and offshore. Her practice encompasses advising boards of directors and management teams to develop effective contingency planning strategies, as well as global investment funds, asset managers, banks, bondholders, and other lenders on debt and corporate restructurings, with a particular focus on advising retail, energy, construction aviation, manufacturing, FS and government clients. Ms. Atkinson also has regulated experience with supplier of last resort proceedings (SoLR), having acted on Avro Energy's transition and sale to Octopus Energy, as well as Omni Energy, and the large-scale, complex financial services regulatory special administration of investment bank Dolfín Financial (U.K.). Additionally, she has represented insolvency practitioners in both transactional and contentious corporate restructurings, notably advising Alvarez & Marsal, Teneo and Interpath, and leading a multidisciplinary legal team on the pre-pack administration sales of retailers Missguided, Ted Baker and Hotter. Ms. Atkinson is a member of R3 and the Insolvency Lawyers Association (ILA), International Insolvency Network (RAIIDAR), INSOL and Commercial Lawyers Association Network (CLAN). She received her LL.B. in Law from the University of Birmingham.

Phoebe Lo is a partner with Clifford Chance in Hong Kong, where she specializes in noncontentious corporate insolvency and restructuring work. She has advised creditors, debtors and insolvency officeholders in corporate restructuring and formal insolvency processes, including issues on enforcement of security, creditors' schemes of arrangement, and loan and security assignments. Ms. Lo has advised various stakeholders providing strategic advice on their exposures to distressed Chinese real estate developers, various stakeholders on their exposures in relation to PRC private tutoring businesses that have been adversely impacted by onshore regulatory directives, the liquidators of certain entities in the Pacific Andes group (including with respect to ongoing U.S. bankruptcy proceedings with other entities within the group — named Finance Deal of the Year: Restructuring & Insolvency Asia Legal Awards 2017), the ABS Group with respect to a restructuring of its US\$230 million senior facilities and US\$160 million senior secured PIK guaranteed notes, an ad-hoc committee of lenders in connection with the restructuring of Noble Group, China Development Bank in the Brazilian judicial reorganization of Oi S.A. and its subsidiaries, and a major international bank with respect to its exposure against a distressed textiles and garment business based in the PRC and listed on the Hong Kong Stock Exchange. She is a member of IWIRC and INSOL. Ms. Lo received her LL.B. from the University of Hong Kong.

Robert E. Richards is chair of Dentons' Global Restructuring, Insolvency and Bankruptcy practice group in Chicago and practices in the areas of bankruptcy and insolvency-related transactions and litigation. His practice includes chapter 11 representations, distressed-asset acquisitions, distressed loan purchases and foreclosure sales, and out-of-court transactions and transaction structuring. Mr. Richards has been involved in numerous chapter 11 debtor representations in various industries in numerous jurisdictions, including AmCom General Corp., Central Hardware Company, Custom Shop Corp., Digital Teleport, Inc., Eddie Haggard, Ltd., First Guaranty Mortgage Corp., First Merchants Acceptance Corp., NewComm Wireless Services as production and Verity Health Systems. He also has represented unsecured creditors' committees in such cases as UAL Corp., Xchem, Inc. and Regal

Cinemas, Inc., and he regularly represents private-equity funds and other acquirers of financially distressed businesses and loans, including in enforcement matters. Mr. Richards has been listed in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law (2016-24), in *Chambers USA* for Bankruptcy/Restructuring (2015-24) and in *Legal 500* for Restructuring (including Bankruptcy): Corporate (2023), and he was named one of BTI Consulting Group's 2015 BTI Client Service All-Stars in recognition of superior client service. He is a member of ABI and the Turnaround Management Association, and he is a co-recipient of the Small/Medium Turnaround of the Year Award from TMA's Midwest Chapter in recognition of the out-of-court restructuring of SourceLink, Inc., a marketing services firm with multiple U.S. locations. Mr. Richards received his B.A. from Johns Hopkins University and his J.D. *cum laude* from the University of Michigan Law School.

Rebecca Rockey is deputy chief economist and global head of Forecasting at Cushman and Wakefield in Washington, D.C. She manages the production of national/metro-level commercial real estate forecasts for various property types across the Americas, develops predictive econometric and statistical models to enhance the firms' analytical capabilities, and contributes to numerous white papers, webinars, media requests and industry/client presentations. In her global role, Ms. Rockey extends this expertise to other regions. More recently, she has become a strategic internal and external advisor across service lines and regions, connecting research themes to actionable and tactical views on the market. Ms. Rockey is frequently cited in the media, guest lectures at New York University and is an advisor to the NYC Office of Management and Budget (OMB) and the DC Policy Center. She received her B.S. in international studies and her B.S. in economics, both *magna cum laude*, and her B.A. in French and Francophone studies *magna cum laude* from Pennsylvania State University. She also received a Master's in applied economics *magna cum laude* from Johns Hopkins University.