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Wirecard: German District Court Rules Double-Dip Structure is Enforceable

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At a Glance

The Munich District Court in July delivered a first-instance verdict in the *Wirecard* insolvency,[1] allowing holders of convertible notes issued by a Wirecard subsidiary and guaranteed by Wirecard to ultimately recover under two separate claims against the estate (*double-dip*).

Such double-dip structures (and similar) have a long legacy in corporate financing transactions and have become particularly topical in the context of liability management transactions as a tool to maximise creditors' recoveries by establishing multiple independent claims against the same pool of collateral assets. Double-dip financings can be used to raise new money, address maturities and reduce interest expense; the structure can incentivise creditor participation, given participating creditors receive "two bites at the apple" without technically priming existing creditors.

The Munich District Court is the first German court to opine on the enforceability of a double-dip structure under German insolvency law.

Background

A special purpose vehicle wholly owned by Wirecard had issued €900 million of notes that were convertible into Wirecard stock. Proceeds from the issuance were on-lent to Wirecard, which guaranteed repayment of the notes under an independent guarantee. The repayment claims under the proceeds loan served as collateral for the conversion and were assigned to the paying agent appointed under the convertible notes. The terms provided that the assigned claims would be stapled to the notes and that the loan claims would be transferred to Wirecard to the extent noteholders exercised their conversion rights; the remainder claims would be transferred back to the lender. Noteholders were expressly excluded from asserting any rights under the assigned loan claims.

When Wirecard filed for insolvency, the subsidiary lender accelerated the proceeds loan and filed a proof of claim. Holders of the convertible notes filed proofs of claims in respect of their guarantee claims. Wirecard's insolvency administrator rejected the filing of the proceeds loan lender, arguing that the claims remained with the holders of the notes who were contractually excluded from asserting them. The administrator further argued that admitting both the guarantee claims and the claim under the proceeds loan would ultimately double noteholders' recoveries to the detriment of all other creditors (*double-dip*), which would constitute an impermissible double filing (akin to the "rule against double proof" in English law), a violation of public policy, a voidable prejudice to creditors and a voidable gratuitous benefit.

Judgment

The Munich District Court sided with the lender of the proceeds loan and allowed its claim filing next to those of the noteholders. The court held as follows:

- Contrary to the administrator's submissions, the lender was the legal owner of the loan claim and entitled to assert this claim in the *Wirecard* insolvency.
    - The proceeds loan was validly accelerated. As a consequence, the condition precedent for the assignment of the claims to Wirecard could no longer be satisfied, triggering the contractual provision for the reverse transfer of the claims to the lender. Following this transfer, the lender was entitled to assert the claims under the proceeds loan in its own name.
    - The court did not follow the administrator's reading of the contractual arrangements that the prohibition for holders of the notes to assert any rights under the loan claims in an insolvency of Wirecard implied that the noteholders were intended to be the legal owners of the claims and limited to their recovery under the guarantee. According to the court, the contractual wording was clear that the holders of the notes never became the legal owners of the loan claims. The claims were instead assigned to the paying agent, and the stapling of the claims to the convertible notes only served to facilitate the implementation of the conversion right. This purpose was forfeited once the proceeds loan was accelerated and a conversion no longer possible. With the reverse transfer of the

    loan claims to the lender, the stapling lost its purpose and became irrelevant for the insolvency proceedings.

- The conditions for an impermissible double filing were not satisfied and did not apply by analogy.
    - The German Insolvency Code does not allow co-debtors to file their recourse claim against the debtor of the principal claim if and to the extent the creditor of the principal claim has submitted a claim filing. The reasoning is that a recourse claim and its corresponding principal claim are economically identical and should not dilute the claims pool to the detriment of other creditors. The claim under the proceeds loan does not constitute such a recourse claim.
    - According to the court, this prohibition on double filing did not apply by analogy to the present case because there is no gap in the law, which would be a prerequisite for such an analogy to be made. The German Insolvency Code explicitly regulates the treatment of co-debtors and the claims filed against them, and the structure used by Wirecard violated neither the letter nor the spirit of these provisions. Wirecard made commitments towards separate creditors under separate arrangements to further its own interests. Crucially, a payment under the guarantee did not reduce the balance of the proceeds loan, nor vice versa. The case at hand is therefore not comparable to the scenario underlying the prohibition on double filing. The German Insolvency Code explicitly allows creditors of co-debtors to file their full claim against each co-debtor and to participate with their full claim in any distributions, protecting other creditors only by capping recoveries at the par value of the claim. According to the court, there was no realistic concern that the holders of the convertible notes could end up with a recovery above par.

- The issuance of notes via a financing vehicle and the issuance of a separate guarantee for the benefit of the noteholders is a customary structure that does not give rise to any public policy concerns or provide grounds for an avoidance action. Requiring a separate guarantee as credit support is a legitimate downside protection that does not, per se, constitute impermissible prejudice to creditors. The lender under the proceeds loan received no gratuitous benefit, and Wirecard in turn benefitted from the proceeds loan.

Appeal

The insolvency administrator has appealed the decision to the Higher Regional Court of Munich and may take the matter all the way to the Federal Court. Until the Federal

Court has rendered a final decision on the enforceability of double-dip structures, no definitive guidance can be given, and caution is advised.

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1. LG München I, judgment dated 2 July 2025 – 40 O 5103/24. ↩

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