



DEVELOPMENTS IN BONDHOLDER CONSENT SOLICITATIONS FOR GERMAN LAW GOVERNED BONDS

A bondholder consent solicitation is a strategic instrument that enables issuers to modify the terms and conditions of their bonds. It can be employed for liability management exercises, in a restructuring, in the context of an M&A transaction or to implement technical amendments.

INTRODUCTION

This client briefing outlines key considerations in relation to consent solicitation processes for bonds governed by German law. That is because the terms and conditions of such bonds may only be amended through a majority resolution in accordance with procedures established under the German Bond Act (*Schuldverschreibungsgesetz* – “*SchVG*”).

The *SchVG* came into force in 2009 and applies only to bonds issued thereafter. Consequently, consent solicitations under its provisions have gained momentum only since the mid-2010s. Since then, consent procedures under German law have become well-established, particularly for larger bond issuances, and are increasingly facilitated through virtual bondholder meetings and the appointment of a tabulation agent. The tabulation agent enables a streamlined “one-stop-vote” online process for bondholders.

Each year, a substantial number of bondholder consents are carried out and published in the German Federal Gazette (*Bundesanzeiger*). An indicative list of consent solicitations for larger German bonds for the years 2020 to 2025 is set out in **Annex I**.

REASONS FOR CONSENT PROCESSES

Consent solicitations under German law generally fall into two categories, which also define the level of preparation and complexity involved:

- **Technical Amendments:** These typically arise from external developments requiring adjustments to the bond terms and conditions without initiating a tender offer or refinancing. Examples include:
 - **Transition from LIBOR:**
Deutsche Bank, among others, has utilized German law consent procedures to replace LIBOR-related provisions.
 - **Guarantor Replacement:**
Adjustments in guarantee structures, particularly post-acquisition, to align with streamlined corporate holding structures.

Key takeaways

- Consent solicitations for bonds governed by German law are subject to the statutory provisions of the German Bond Act (*SchVG*).
- To pass the resolution, a 50% quorum and 75% of votes cast in favour are required at the first bondholder meeting - typically held virtually.
- German law consents happen for purely technical reasons, but in most consent processes for larger bonds, bondholder consents are used in financial restructurings.

- **Rating Methodology Updates:**
Amendments reflecting revised methodologies of rating agencies.
- **M&A Adjustments:**
Modification of Change of Control clauses to accommodate the legal framework of the acquiring entity's jurisdiction.
- **Restructuring-driven consents:** These involve substantial amendments to the terms and conditions to facilitate financial restructuring, often in pre-insolvency scenarios. Common measures include:
 - Extension of maturity dates
 - Introduction or revision of covenants
 - Adjustments to interest payment structures

Where the issuer is already subject to insolvency proceedings, specific statutory provisions govern the consent process, distinct from the typical *SchVG* mechanisms.¹

BONDHOLDER MEETINGS, QUORUM AND VOTING REQUIREMENTS

The *SchVG* governs consent solicitation processes for bonds issued under German law,² provided that its application has been expressly incorporated into the bond's terms and conditions.

This is known as the "*opt-in mechanism*", whereby issuers include a provision in the bond documentation enabling the conduct of a *SchVG*-governed consent process.

Once opted in, a resolution passed by the requisite majority of bondholders becomes legally binding on all bondholders, including dissenting or non-participating holders.

Structure of Meetings

Up to two bondholder meetings may be convened for the same consent process.

The first bondholder meeting may be held virtually and requires:

- **Quorum:** 50% of the outstanding principal amount of notes
- **Voting thresholds:**
 - Simple Majority (50%) for standard amendments
 - Qualified Majority (75%) for material changes

If the quorum is not met in the first meeting, a second meeting may be held physically, requiring:

- **Quorum:** 25% of the outstanding principal amount of notes
- **Voting thresholds:** same as above.

¹ The resolutions passed by the bondholders must be subject to the provisions of the German Insolvency Act (*Insolvenzverordnung* – "*InsO*") and other rules as specified in §19 *SchVG*.

² The *SchVG* does, however, not apply to covered bonds (*gedeckte Schuldverschreibungen*) pursuant to the German Pfandbrief Act (*Pfandbriefgesetz* – "*PfandBG*") and German treasury bonds (see §1(2) *SchVG*).

Execution via Proxy and Tabulation Agent

Although the second meeting must be physical, the logistical burden for bondholders, especially international investors, is mitigated by appointing a tabulation agent as proxy. Bondholders typically authorise the agent via its online platform. The meeting is conducted by a notary, with the tabulation agent physically present to present proxy documentation and cast votes.

Bondholders may also attend in person, though participation in large international issuances tends to be conducted via proxy.

Material changes under *SchVG*

A qualified majority (75%) is required for material changes to the terms and conditions. Pursuant to the *SchVG* a material changes, among others, are any of the following:

Material changes according to the <i>SchVG</i>	
1.	Changes in the due date of interest payments
2.	Reduction or exclusion of interest payments
3.	Changes in the due date of the principal amount
4.	Reduction of the principal amount
5.	Subordination of the claims under the bonds during insolvency proceedings
6.	Conversion or exchange of the bonds into securities or other promises of performance
7.	Substitution or release of security
8.	Changes in the currency of the bonds
9.	Waiving or limitation of the bondholders' right of termination
10.	Substitution of the issuer
11.	Amendments or cancellation of the ancillary conditions of the bonds

TIMING CONSIDERATIONS

Consent solicitation processes under German law can be inherently time-sensitive and require careful advance planning. The preparation phase – covering documentation and coordination with key stakeholders such as a notary, a tabulation agent, potentially an investment bank and lawyers – can be particularly lengthy. This is especially true in restructuring contexts, where changes to the bond terms must be agreed alongside changes to other elements of the issuer's financing structure (e.g. credit facilities or *Schuldscheindarlehen*).

Depending on the complexity and significance of the proposed amendments, investor outreach may be advisable to ensure transparency and build support. A significant change may need more attention than a technical change to give investors sufficient background and assurance.

In addition to preparation time, issuers must observe statutory timing requirements under the *SchVG*, which may be further extended by the bond's terms and conditions. These include:

- 14-days registration period
- Minimum 72-hours voting period
- Two-weeks objection period
- One-month contestation period
- Optional waiting period between registration and voting, if stipulated in the terms and conditions

Post Voting Procedures and Outcomes

Following the voting period, the notary will count the votes and fulfil statutory duties prescribed under the *SchVG*. Once this step is completed, the issuer must publicly announce the results of the vote.

Outcome	Next Steps
Majority not reached	Process ends
Quorum not met	Issuer may opt for a second, physical meeting
Quorum and majority achieved	One-month contestation period begins
Issuer elects not to hold second meeting	Process ends

In case the quorum and majority have been reached and after the one-month contestation period, in the event of no contestations lodged at the relevant court or objections lodged with the notary, the notary will instruct the clearing system(s) to implement the changes into the Global Note representing the bonds. Once the changes are implemented, the changes become effective, and the issuer must publish an announcement confirming the effectiveness of the amended terms and conditions.

Where a resolution fee has been offered in the consent solicitation materials, it must be paid out in accordance with the conditions set out in the invitation to vote.

While delays can occur, they will vary on a case-by-case basis. Careful preparation helps mitigate most risks and results in a smooth process for the issuer and the bondholders.

Below is an illustration of the shortest possible timeline:³

Event	Timeline
Launch and Registration Period ⁴	T+ 0
End of the Registration Period	T+ 14
Start of the Voting Period	T+ 15
End of the Voting Period	T+ 18
Publication of the Results in the Federal Gazette	T+ 18
End of the Objection Period	T+ 32
End of Contestation Period	T+ 62
Resolution Effective Date	T+ 63
Payment of the resolution fee ⁵	T+ 66

THE POSSIBLE RISKS FOR ISSUERS WHEN CONDUCTING THE CONSENT PROCESS

Failure to obtain required majority

The bondholders may not approve the proposed resolution causing the consent solicitation to fail. This outcome is rare for technical amendments and can be caused by a misunderstanding of the proposed changes or if the consent fee is perceived as inadequate. In restructuring scenarios, consent processes typically conclude negotiations and reflect previously agreed changes, reducing the risk of rejection.

A consent solicitation may also fail if the required quorum is not met. This risk is mitigated through use of a tabulation agent that provides an online voting platform and by engaging banks as solicitation agents to ensure major bondholders are properly informed.

Bondholder contestation

Bondholders may contest the resolution for a period of one month following the announcement of the results. Objections must be lodged with the competent court.

Grounds for contestation include:

- Breach of bond terms and conditions
- Violation of the *SchVG*
- Inaccurate, incomplete, or withheld information that a reasonable bondholder would consider material for their voting decision

³ This is assuming no administrative delays, no delays by the clearing system(s) or paying agent(s) in implementation, no objections, and no contestations lodged.

⁴ Please note that the terms and conditions may impose an additional few days in between the registration period and voting period.

⁵ This is assuming the resolution fee will be paid within 3 business days of the resolution effective date.

- Gross negligence or wilful misconduct that can be imputed to the issuer as a result of a technical malfunction

The content of the resolution itself (i.e. the merits of the consent, e.g. whether or not the resolution fee was high enough or whether the issuer's proposed changes were sensible) is not contestable. In other words, the contestation can only relate to formal or procedural flaws in the process.

In case of an objection on the ground of inaccurate or incomplete or withheld information, the bondholders must demonstrate that from an objective perspective of a bondholder the relevant information would have materially impacted their voting decision. This threshold is high, as there are no formal requirements for a consent solicitation memorandum other than outlining voting procedures and the proposed changes. Contextual disclosures (e.g. rationale for the consent solicitation) remain optional.

The contestation must be filed by the bondholder with the local court of the issuer's registered office. For issuers outside Germany, jurisdiction falls to the local court (*Amtsgericht*) of Frankfurt am Main.

A legal challenge suspends the implementation of the resolution, potentially causing substantial delays to associated transactions such as financial restructurings or M&A. Ultimately, such delays in case of a contestation depend on the speed of the relevant court deciding the case, which cannot be predicted upfront.

Delays in effectiveness of sought amendments

The enforceability of proposed amendments against non-consenting bondholders depends on successful completion of all procedural and statutory requirements, including the incorporation of the amended terms and conditions into the Global Note by the clearing system(s), following request from the notary.

Additional agenda items proposed by bondholders

Under the *SchVG*, bondholders, represented by legal counsel, are entitled to submit additional agenda items for the bondholders meeting. These proposals often arise when bondholders perceive the issuer's changes as not sufficiently protective of their interests. While less frequent in technical or M&A-related amendments, such interventions are more common in restructuring contexts, where proposed changes tend to be more material.

KEY DOCUMENTS REQUIRED

Documents List:	
Convening Notice	<p>Shorter version of the Consent Solicitation Memorandum containing brief details about the time, date and venue of the noteholder meeting, the rationale and background, voting procedures, expected timeline and any other details as needed.</p> <p>Must be published on the Federal Gazette (<i>Bundesanzeiger</i>) and issuer's website (if available).⁶</p>

⁶ The terms and conditions may impose additional publication requirements such as on the stock exchange where the notes are listed.

Documents List:	
Consent Solicitation Memorandum	Key document. It outlines the rationale for the consent, the voting procedures, expected timeline, includes templates for voting with the notary and any other details as needed. Must be published concurrently with the Convening Notice on the Federal Gazette (<i>Bundesanzeiger</i>) and issuer's website (if available). ⁷
Company Resolutions	Authorisation from the board / the shareholders to conduct the consent solicitation and to pay any relevant fees.
Solicitation Agency Agreement ⁸	Agreement governing the relationship between the banks and the issuer (and sometimes guarantor) in relation to the consent solicitation.
(Potentially) Legal Opinion(s) ⁹	May be requested by the banks giving comfort in relation to the entering into the Solicitation Agency Agreement.
Tabulation Agent Agreement ¹⁰	Agreement governing the relationship between the issuer / guarantor and the tabulation agent for it acting as proxy.
Voting Report ¹¹	Table prepared by the tabulation agent containing the voting instructions received from the bondholders and sent to the notary as proxy.
Voting Report Settlement ¹²	Table prepared by the tabulation agent containing the amount of resolution fee payable to each bondholder and payment instruction to the clearing system(s). ¹³
Announcement of Voting Results	Formal announcement stating whether the resolution was passed or not. Must be published on the Federal Gazette (<i>Bundesanzeiger</i>) and issuer's website (if available). ¹⁴
Announcement of Effectiveness	Formal announcement stating that the implementation into the Global Note has occurred and that the changes are effective from this day onwards.

⁷ The terms and conditions may impose additional publication requirements such as on the stock exchange where the notes are listed.

⁸ Assuming the banks are involved.

⁹ Assuming the banks are involved.

¹⁰ Assuming a tabulation agent is appointed.

¹¹ Assuming a tabulation agent is appointed

¹² Assuming a tabulation agent is appointed

¹³ This is because the payment of the resolution fee will be procured through the clearing system(s).

¹⁴ The terms and conditions may impose additional publication requirements such as on the stock exchange where the notes are listed.

Documents List:	
	Must be published on the Federal Gazette (<i>Bundesanzeiger</i>) and issuer's website (if available). ¹⁵
Notarial Minutes of the Voting (<i>Protokoll</i>)	The notary shall record any resolution passed by the bondholders' meeting in the minutes. ¹⁶
Eligible Noteholder List (<i>Teilnehmerverzeichnis</i>)	The notary shall prepare a list of bondholders eligible to vote based on the evidence provided. ¹⁷
Notarial Request for Implementation into the Global Note (<i>Umsetzungsschreiben</i>)	The notary shall forward the minutes to the clearing system(s) requesting that the Global Note is supplemented or amended. ¹⁸

PRACTICAL MEASURES TO ENSURE SUCCESS OF A CONSENT SOLICITATION

To enhance the likelihood of securing approval at the initial bondholder meeting, issuers or acquirers can proactively engage with stakeholders using the following strategies:

Role of Solicitation Agents and Financial Advisors

- **Engagement of Banks:** Issuers commonly retain banks as solicitation agents to advise on the strategy and conduct of the consent solicitation, including stakeholder engagement and fee structuring.
- **Investor Communication:** In complex transactions – especially restructurings – advising banks or financial advisors lead investor outreach, prepare relevant materials, and serve as primary contact points for bondholders, assisting with understanding and evaluating the proposed amendments.
- **Dialogue Management:** Advisors often facilitate direct discussions with key bondholders, helping build consensus and address concerns early in the process.

Use of Resolution Fees

- **Purpose:** Issuers may offer a resolution fee to encourage participation in the voting process.
- **Equal Treatment:** In accordance with the *SchVG*, all participating bondholders must be treated equally. Fees cannot be contingent on voting

¹⁵ The terms and conditions may impose additional publication requirements such as on the stock exchange where the notes are listed.

¹⁶ If bondholders meeting is held in Germany, if it is held abroad then the minutes prepared shall be equivalent to the minutes prepared by a notary (see §16(3) *SchVG*).

¹⁷ See §18(4) *SchVG*.

¹⁸ See §21(2) *SchVG*.

direction, timing of participation, or early engagement outside the statutory framework.

- **Voting Outcome Neutrality:** Resolution fees must be paid irrespective of whether a bondholder votes for, against, or abstains subject to conditions specified in the invitation to vote.
- **Restructuring Context:** In restructuring scenarios, resolution fees are less common due to the substantive nature of changes being implemented.

Role of Legal Counsel(s)

- **Document Preparation:** Legal counsel(s) ensure that all necessary documents are prepared accurately and timely, applying the appropriate level of disclosure even in the absence of specific statutory guidelines.
- **Key Stakeholder Engagement:** Legal counsel(s) play a key role in engaging the right stakeholders early on, helping align perspectives, and proactively address any concerns.
- **End-to-End Process Coordination:** Given the involvement of multiple parties, effective coordination is essential to keep the matter on track and ensure all statutory requirements are met.

HOW WE SUPPORT

Our team at Clifford Chance Germany offers end-to-end support throughout the consent solicitation process from strategic advisory and investor engagement to drafting, execution, and dispute management. We are happy to assist with all questions concerning bondholder consents and guide you through each stage of your transaction.

ANNEX I

Examples of relevant consent solicitations of German law governed bonds with an aggregate outstanding amount of at least EUR 100,000,000 from the past five years.

	Issuer	Consent reason	Resolution Fee	Year
1.	ADLER¹⁹	Restructuring	no fee ²⁰	2025
2.	Harbour Energy	Technical	15 bp	2025
3.	Securo Pro Lux S.A.	Convened on request of bondholders (issuer entering into a side agreement)	no fee	2025
4.	DEMIRE	Restructuring (maturity extension)	no fee ²¹	2024
5.	Obotritia Capital	Restructuring (postponement of the interest rate step-up dates combined with a reduction in the interest rate increase, creditor put and others)	no fee	2024
6.	R-Logitech	Liability management (extend maturity date, increase coupon payment, acquisition rights for newly issued bonds and others) ²²	no fee	2024
7.	ESPG	Liability management (suspension of certain covenants and others)	no fee	2024
8.	Harbour Energy	M&A context, replacing the guarantor and technical	25 bp	2024
9.	Securo Pro Lux S.A., Compartment VERIUS IHS II	Voluntary liquidation of acquired company (change to the maturity date) ²³	no fee	2023
10.	PREOS Global Office Real Estate & Technology AG	Restructuring (retroactive termination of interest payments, conversion right for the issuer etc.)	no fee	2023
11.	Deutsche Bank	Technical (replacement of LIBOR)	50 bp	2023
12.	METALCORP	Restructuring (exchange of notes into acquisition rights, and others)	no fee	2023
13.	Cardea Europe	Refinancing and restructuring of the bond (changes to the maturity date and the interest rate)	no fee	2023
14.	VIC Properties	M&A context (CoC clause, maturity extension, etc.)	1 bp	2023

¹⁹ Ongoing at the date of this briefing.

²⁰ Presumably because the notes were also tendered.

²¹ Presumably because the notes were also tendered.

²² Although not part of a *StaRUG* or other restructuring plan, the issuer used the consent solicitation to avoid insolvency.

²³ Although not part of a *StaRUG* or other restructuring plan, the issuer used the consent solicitation because it was not able to pay the bondholders.

	Issuer	Consent reason	Resolution Fee	Year
15.	Corestate	Restructuring (maturity extension, reduction of principal amount etc.)	no fee	2023
16.	Corestate	Restructuring (maturity extension, deferral of interest payment etc.)	no fee	2023
17.	Aggregate	Liability management (change to interest rate, maturity date extension, etc.)	no fee	2023
18.	Corestate	Restructuring (seeking bondholder approval for the restructuring plan)	no fee	2022
19.	RWE / Innogy	M&A context (replacing the guarantor, replacing the issuer) and technical	5 bp	2020
20.	TUI	Liability management, concurrent with necessary new indebtedness	100 bp	2020
21.	TLG	M&A context (replacing the issuer, cancellation of the guarantee)	25 bp	2020

CONTACTS

**Dr. Cristina
Freudenberger**
Partner

T +49 69 7199-1574
E cristina.freudenberger
@cliffordchance.com

Dr. Axel Wittmann
Partner

T +49 (0) 69 7199 1528
E axel.wittmann
@cliffordchance.com

Dr. George Hacket
Partner

T +49 69 7199 3103
E george.hacket
@cliffordchance.com

Dr. Henrik Gildehaus
Counsel

T +49 69 7199 1834
E henrik.gildehaus
@cliffordchance.com

Andrei Manea
Counsel

T +49 69 7199 3121
E andrei.manea
@cliffordchance.com

Maks Mencin
Senior Associate

T +49 69 7199 4305
E maks.mencin
@cliffordchance.com

**Gordana Golubic-
Huertas**
Senior Associate

T +49 69 7199 1511
E gordana.golubic-
huertas
@cliffordchance.com

Carla Winslow-Kruger
Senior Associate

T +49 69 7199 1583
E carla.winslowkruger
@cliffordchance.com

Paulina Fecht
Associate

T +49 69 7199 1655
E paulina.fecht
@cliffordchance.com

Lara Esser
Associate

T +49 69 7199 1209
E lara.esser
@cliffordchance.com

Valeria Umanet
Transaction Lawyer

T +49 69 7199 1554
E valeria.umanet
@cliffordchance.com

Felicita Fischer
Transaction Lawyer

T +49 69 7199 1373
E felicitas.fischer
@cliffordchance.com

Lilli Neubauer
Transaction Lawyer

T +49 69 7199 1850
E lilli.neubauer
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Junghofstraße 14, 60311
Frankfurt am Main, Germany

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