CLIENT UPDATE

FRENCH BANKRUPTCY LAW BECOMES MORE CREDITOR-FRIENDLY

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The French government has recently published a new regulation (*ordonnance* n°2014-326 dated March 12, 2014) amending France's bankruptcy law. Its aim is to facilitate further restructurings of French companies, in particular with respect to pre-insolvency consensual restructurings, and to give creditors a greater say in the restructuring process.

PRE-INSOLVENCY CONSENSUAL RESTRUCTURINGS

The new regulation seeks to promote and support pre-insolvency consensual restructurings developed with the assistance of a court-appointed professional (*conciliateur*). This procedure is generally known as '*conciliation*' and is, in addition to the other form of 'amicable' proceeding (i.e. consensual restructuring proceeding prior to the onset of formal insolvency proceedings) which exists in France, the appointment of an ad hoc representative (*mandataire ad hoc*). A number of new measures have been introduced by the new regulation to encourage pre-insolvency consensual deals as follows: (i) a stay is introduced preventing the termination of contracts on the basis of the opening of proceedings permitting pre-insolvency contractual arrangements (whether *conciliation* or the appointment of a *mandataire ad hoc*) and any such termination will now be unenforceable; (ii) the court may now be able to extend maturities with respect to creditors who do not join in the restructuring (the maturities of these creditors' claims can be pushed out to a maximum

of 10 years with 100% principal being maintained); (iii) the *conciliateur's* mandate may now include arranging for the sale of all or part of the debtor's business; and (iv) protection can now be afforded to new money with the court being able to approve new money contributions made during the course of the restructuring process.

MORE WEIGHT TO CREDITORS

Creditors can now become more involved in the development of restructuring plans in the two formal insolvency proceedings which exist in France, namely 'safeguard' (*sauvegarde*) - a proceeding loosely based on US Chapter 11 - and 'rehabilitation proceeding' (*redressement judiciaire*) - an actual court-administered insolvency proceeding which comes into effect after a formal suspension of payments (*cessation de paiements*) by the debtor company. Both of these proceedings involve the establishment of creditor committees (one for financial/bank creditors and the other for trade creditors), with bondholders, whose rights are affected by the plan, being separately considered in their own bondholders' meeting. Previously creditors were not able to submit their own restructuring plans but are now able to do so (and do not simply have to rely on influencing any plan submitted to the court by the debtor company). This may now give creditors more leverage.

Additionally, debt for equity swaps may now be facilitated in that the court can order that any capital increase by the debtor company be voted through by a simple majority (50+%) rather than the normal statutory majority of two-thirds (66 ⅔%) in amount of claims voting. Also creditors may set-off their approved debt claims (as reduced by any restructuring) against the subscription price for new shares subscribed by them as part of any capital increase in the restructuring.

IMPROVEMENTS TO ACCELERATED SAFEGUARD PROCEEDING (*SAUVEGARDE FINANCIÈRE ACCÉLÉRÉE*)

The accelerated safeguard proceeding was introduced in 2010 and designed to speed up the approval of a rescue plan with financial creditors. It was originally designed for holding companies but has seldom been used (only six reported cases since its introduction).

As a result of the new regulation, a debtor company can initially commence a consensual restructuring by means of opening a '*conciliation*' proceeding and, within that procedure, develop a plan acceptable to all creditors (financial or otherwise) (or which would be approved by the requisite majority in all creditor committees) and then apply for the more formal accelerated safeguard procedure to be implemented. In such case, proofs of claim are simplified in that the debtor provides the list of debts directly to the court, which filing

is treated as the proof of claim by each creditor, subject to a creditor objecting or filing its proof of claim separately. The court must then approve the plan (assuming two-thirds majority (66 ⅔%) of each of the creditor committees and the bondholders' meeting vote in favour) within one month (if the plan includes only financial creditors and bondholders) or within three months (if the plan includes trade creditors) of the plan being submitted to it. Any approved plan can then be used to bind all relevant creditors, including any non-consenting minority.

CREDITORS' ADVISORS' FEES

The new regulation also prohibits the charging of creditors' advisors' fees to the debtor company above a certain amount to be specified.

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The new regulation will apply to proceedings opened as from July 1, 2014. Before that date, certain ancillary regulations (for instance, legislating for the size of debtors allowed to seek accelerated safeguard proceedings and detailing how the proof of claim process will be made less burdensome) will need to be published.

A number of the changes introduced by this regulation have been put forward by market professionals and this regulation is likely to be welcomed generally by those involved in French restructurings.

However, while it provides a greater opportunity for creditors to influence restructurings, the law maintains certain core features of the French bankruptcy system, namely: the heavy involvement of the courts throughout the restructuring process and the need to satisfy two other goals of French bankruptcy law (in addition to the satisfaction of creditor claims) namely, the continuation of the company's business and the protection of jobs and employment.

Also, there will still remain the rule (which Anglo-Saxon practitioners puzzle over) that all financial creditors be part of the same creditor committee, irrespective of their ranking and priority, whether first or second lien, unsecured or subordinated. This rule may impact positively or negatively on the potential for binding minority non-consenting creditors depending on the sizes of relevant tranches of debt. It is, however, subject to the court determining that 'the interests of all creditors are sufficiently protected' and 'consideration' of priorities has been made in the plan submitted to creditor committees.

In conclusion, it remains to be seen how much the new regulation will change the course of restructurings in France in practice. However, a new set of tools has been added to the toolbox for practitioners to utilise in order to try and implement more effective restructurings of French companies.

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Please contact us with any questions you may have on the foregoing.

March 26, 2014