R&I IN

FRANCE

Orrick’s Paris team is one of the most complete and developed in the market, with an interdisciplinary expertise and experience that is second to none. We are one of the very few international firms to offer such a high level of expertise in handling the most delicate and complex restructuring files, in combination with the added value of our corporate litigation expertise.

Our team closely follows and adapts efficiently to difficult environments and crisis situations, and is particularly known for its capacity to assist proactively in order to avoid foreseeable crises. We routinely work on complex restructurings, from negotiation and mediation to litigation and counselling. We represent debtors, creditors, committees, fiduciaries and lender groups in formal bankruptcy and insolvency proceedings in courts worldwide, as well as in intricate out-of-court financial restructurings, recapitalisations and rescue financings.

We also represent buyers and sellers of distressed loans and claims and in distressed merger and acquisition mandates.

Recently, the team intervened in the restructuring of SoLocal Group, Agripole (William Saurin), Ludendo, Ascométal and Vivarte.
GTDT: In the past year, have you seen any developments or trends in the nature and volume of insolvency filings?

Saam Golshani, Alexis Hojabr, Soleine Gautier and Léa Gredigui: The year 2017 was characterised by a favourable macroeconomic environment, which led to a tangible improvement of the global framework and resulted in a decrease in insolvency cases. According to data from the Banque de France, judicial reorganisation and liquidation proceedings dropped by 7.3 per cent compared with 2016. The real estate (-14 per cent), construction (-14 per cent), accommodation and restoration (-8.6 per cent) industries were impacted the most. That said, in other sectors, such as oil and gas and retail, that trend was not confirmed. Major global actors with a strong French footprint either settled out of court or were subjected to difficult in-court proceedings.

GTDT: Describe the one or two most notable insolvency filings in your jurisdiction in the past year.

SG, AH, SG & LG: From our point view the two most notable filings were the following.

CGG: US$2 billion restructuring
CGG, a major listed oil-services company, filed for bankruptcy protection in June 2017 in the US and France after reaching a restructuring deal with lenders and bondholders that aimed to eliminate around US$2 billion in debt from the company’s books. This was one of the largest financial restructurings in France since Eurotunnel.

The deal was highly complex given the number of stakeholders and the diversity of debt and hybrid (debt and equity linked) instruments issued by CGG. The complexity was further increased by the social and political background, noticeably with regard to the number of employee jobs at stake in France and overseas.

Despite the many challenges, the restructuring of this major industrial actor was successfully completed with the support of CGG’s biggest financial shareholder, DNCA, who pushed strongly for the adoption of CGG’s recovery and turnover plan. In addition, DNCA backstopped the terms of the financial restructuring and backed CCG in defending the Safeguard plan challenged by the minority creditors before the court.

William Saurin
William Saurin was the most profitable company of the Agripole group, a leader in the sterilised cooked meals market. However, the company suffered greatly from the serious illegal behaviour and major misconduct of its historical shareholder and, combined with insufficient cash-flow and an increase in the price of raw materials, this led to the erosion of the companies’ profit margins.

Within the context of an organised global restructuring, the group initiated the search for a new solid investing shareholder while selling its assets in order to generate enough cash and finance the business.

In a bid to maintain the trust of the company’s suppliers and protect the working capital of the business during this process, the French state agreed to support the global deal and the group by granting a €12.5 million financing line, alongside a new €50 million loan granted by state financial institutions.

Unfortunately, the search for a new investor failed and, facing insolvency, the various companies of the group filed for judicial reorganisation in order to implement the asset sale plan. In these circumstances, William Saurin was finally sold to Financière Cofigeo and Arterris.

GTDT: Have there been any recent legislative reforms? Is there a perceived need for reform?

SG, AH, SG & LG: Three reforms have recently been introduced in France.

• Law No. 2016 - 1547 dated 18 November 2016, amended, among other things, the process for modifying company by-laws as well as the share capital of the debtor under a restructuring plan. It also clarified existing doubts with respect to the reconstitution of equity and the rights of the New Money creditors. However, this law does not apply to insolvency proceedings opened before 20 November 2016.

• The French anti-corruption law addressing transparency, anti-corruption and economic modernisation dated 9 December 2016, amended the regime governing directors’ liability in insolvency scenarios in order to
encourage the recovery of honest directors of failed businesses. Article L. 651-2 of the French Code of Commerce now states that mere negligence is not a form of mismanagement that can serve as the basis of an action by the court-appointed liquidator against the director of a company in liquidation proceedings.

- Decree No. 2017-1519 for the adaptation of French law to the European Insolvency Regulation No. 2015/848 dated 20 May 2015 of 2 November 2017 created a new title IX in Volume VI of the French Code of Commerce called ‘specific provisions relation to insolvency proceedings falling within the scope of European Insolvency Regulation No. 2015/848’, which sets out rules for the implementation of the European Insolvency Regulation (see question below).

Is there a perceived need for reform?

Over the past 15 years, French insolvency law has been greatly reformed, and faster than it has during the past century. Fundamental changes have taken place in the context of a global financial crisis giving rise to a new and more appropriate set of legal tools. The nature and extent of the reforms have necessitated careful consideration from both financial actors and practitioners. Some entirely new procedures have been introduced into law, effectively preventing difficulties from arising. The reforms have also enabled the reorganisation of difficult cases, impacting cases and major actors beyond the sole area of insolvency law (including public and listed groups).

That said, France is still perceived as a debtor-friendly jurisdiction in this matter. This is a real incentive for creditors, especially financial institutions, to opt for other jurisdictions or to create alternative credit protection through sophisticated (and often expensive) collateral structures (such as the ‘double-luxcos’). The next round of reform must take this factor into account, for example, by effectively and clearly recognising the arrangements between lenders and their creditors, but also those between higher and lower-ranking creditors by the law and the courts.

GTDT: In the international insolvency field, has there been any legislative or case law developments in terms of coordination of cross-border cases? What jurisdictions are you most likely to have contact with?


The main features of the Regulation are:

- the extension of its application to pre-insolvency proceedings that promote the rescue of economically viable but struggling companies and give entrepreneurs a second chance;
- the creation of a Pan-European online insolvency registers;
- the possibility of avoiding the opening of multiple proceedings and preventing ‘forum shopping’;
- updating the rules on secondary insolvency proceedings to, inter alia, extend to ‘pre-insolvency’ or ‘hybrid’ proceedings;
- amending the rules on information regarding creditors and the lodging of claims; and
- the introduction of new procedures to facilitate cross-border coordination and cooperation between multiple insolvency proceedings in different member states relating to members of the same corporate group.

On 2 November 2017, a Decree was published in France to specify the terms of the Regulation and to facilitate its implementation.

What jurisdictions are you most likely to have contact with?

Before Brexit, a flourishing restructuring business was developing in the UK as the English courts approved pleas of arrangement for companies
incorporated outside of England. We were therefore most likely to have contact with UK jurisdictions.

However, even though the impact of Brexit on the availability of the UK arrangement system as a restructuring tool for foreign companies remains uncertain, EU companies are nowadays probably more reluctant to petition UK courts. As such, we might be less likely to have contact with UK courts and in turn increase our contacts with other European jurisdictions.

**GTDT: In your country, is there a particular court or jurisdiction that sees a higher concentration of insolvency filings? What is the attraction of that forum?**

**SG, AH, SG & LG:** In France, the courts that see the highest concentration of insolvency filings are the specialised insolvency courts created by Law No. 2015-990 of 6 August 2015 (ie, Bobigny, Bordeaux, Dijon, Evry, Grenoble, Lyon, Marseille, Montpellier, Nanterre, Nantes, Nice, Orléans, Paris, Poitiers, Rennes, Rouen, Toulouse and Tourcoing).

The specialised insolvency courts have jurisdiction over companies that reach certain thresholds in terms of number of employees or turnover, and which are subject to safeguard, reorganisation or liquidation proceedings. With respect to conciliation proceedings, specialised insolvency courts have jurisdiction provided that it has been requested by the Public Prosecutor or that the president of the court has given his or her consent.

Specialised insolvency courts also have jurisdiction with respect to insolvency proceedings falling within the scope of European Insolvency Regulation 2015/848 when the debtor’s COMI is located in France or where the debtor is located outside the territorial scope of the European insolvency regulation but has an establishment in France.

Among those courts, Paris and Nanterre naturally remain most active for bigger deals and cases, given the number of global actors legally incorporated in both areas.

**GTDT: Is it fair to describe your jurisdiction as either ‘debtor-friendly’ or ‘creditor-friendly’ in terms of how insolvency filings proceed?**

**SG, AH, SG & LG:** The founding law of the French bankruptcy regime of 1985 was quite debtor-friendly and the French restructuring system was for a very long time therefore perceived as a debtor-friendly system. However, a certain shift began in 2005 with, in particular, the introduction of the committees and the strengthening of controllers’ power. The shift was further emphasised with Decree No. 2014-326 dated 12 March 2014, for example, which granted creditors the right to propose a restructuring plan (when committees are constituted). More recently, the law dated 6 August 2015 introduced a shareholder squeeze-out system under which shareholders may be forced to sell their shares if they do not consent to share capital increases required to redress the distressed business.

This shift in the French legislation has been followed by the French courts, which have favoured a number of lender-led restructurings carried out by lenders, allowing lenders or a group of lenders to take control of the debtor, outside the reach of its existing shareholders (mainly financial sponsors). Furthermore, a number of hedge funds have strengthened their focus on the French market and as such provided liquidity to French banks willing to sell their claims on the secondary market.
GTDT: What opportunities exist for businesses wanting to purchase assets out of an insolvency, and how efficient is the process? What are the best ways to take advantage of opportunities in this area?

SG, AH, SG & LG: Businesses wanting to purchase assets out of an insolvency can do so either under a classic sale plan or under a so-called prepack sale.

**Classic sale plan**
A sale plan involves the transfer of assets, contracts and employment contracts of the debtor to a third-party purchaser without the consent of the transferred party. As the sale plan is constructed as an asset deal, debt and claims are therefore not transferred to the purchaser of the distressed business (except for security interest granted in favour of creditors who financed the acquisition of the secured assets).

Another advantage for companies wanting to purchase assets out of an insolvency is the sale price, which is typically very low, as the main criteria retained by French courts are the number of jobs preserved and the purchaser’s ability to continue operating the business.

However, the sale plan process is interpreted as an open bidding process where there is no exclusivity to the benefit of one bidder and the courts often base their decision (and election of the final bidder and transferee) mostly on employment-driven criteria.

**Pre-pack sale plan**
The Decree dated 12 March 2014 introduced in France the concept of prepack sales, which consist of companies appointing a mandataire ad hoc or a conciliator in charge of supervising a partial or total sale of the company’s assets that will then be adopted under ‘in court’ insolvency proceedings after the solicitation of the Public Prosecutor’s consent and the formal (but not binding) opinion of the participating creditors. Prepack sales offer the possibility to avoid compulsory public advertising for submission of offers and therefore can provide the buyer chosen under the amicable proceeding with a certain form of exclusivity.

Prepack sales are also faster than asset plans implemented under reorganisation proceedings.