Reforms planned in France

Jean-Luc Vallens outlines the planned reforms to insolvency law in France, coming nine years after the last reform

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The French Government has been instructed by Parliament (Law n° 2014-1 of 2 January 2014) to reform the commercial code in order to improve the insolvency law. A Project was drawn, now submitted for consultation to the judiciary and the insolvency practitioners. The reform will amend the existing proceedings and will set up new rules. The Order should be approved before 3 October 2014.

This reform comes nine years after the last one, of 2005. It takes into consideration the demands of numerous practitioners, the case-law orientations and the reforms under way under the aegis of the European Commission. It is also following in the wake of another reform, one concerning the Commercial Courts, which would provide for the concentration of the insolvency proceedings in a number of larger courts and would open the possibility for the commercial judges to take a seat at the Court of Appeals.

Scope of the reforms

Pre-insolvency proceedings (counselling)

The counsellor should be able to prepare a partial or total sale of the company during the negotiations. He/she would also be in control of the carrying out of the amicable agreement. This agreement could also be proposed by the guarantee-holders, often the directors having accepted this position, after the model of the safeguard proceedings. Finally, the privilege for 'new money', granted

to the creditors having brought a new investment following the amicable agreement, would be extended to all financial contributions brought during the negotiations.

Accelerated financial safeguard proceedings

This kind of proceedings would be replaced by anticipated safeguard proceedings in the case of big companies (limits to be fixed). These proceedings would apply, like today, to companies having benefited from counselling proceedings, without having obtained a unanimous agreement from the main creditors. But these new proceedings would have to be accepted by all creditors, not only by the financial kind of creditor, except if the Court decided otherwise.

Safeguard proceedings

The debtor company would be able to ask that the proceedings be extended to another company, especially with the aim of preparing a plan of global restructuring. The extension of the proceedings would lose its sanctioning character in order to become a tool serving the restructuring process. An administrator and a liquidator in common would have to be appointed for several companies in order to coordinate the operations.

The safeguard plan would expressly mark the possibility for the new shareholders to

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compensate their claim by the capital increase subscribed. The members of the creditors' committee would be themselves able to present a plan to the judicial administrator. Finally, the subordination agreements concluded between the creditors would be applied. As part of a safeguard plan, the clauses of the agreements would be valid, in contradistinction to being part of a restructuring plan, where they would not.

Restructuring proceedings

If the reform Project is approved by the Parliament, the Court would be able to order the sale of the social shares, even as part of a safeguard plan, which would mark a change in French law, as it would negatively affect the associates' rights in order to implement the safeguard plan. The judicial administrator would thus ask for the appointment of a trustee in charge of the vote for the modification of the capital, in case certain associates would be opposed.

Assetless debtors

For this category of debtors the Project describes enquiry proceedings allowing for the re-establishment of the debtor without passing through liquidation (in the absence of assets), assorted by a liberation from debts. These short proceedings (four months long) respect the indications of the European Commission with regard to very small companies and the possibility of a "new start" for unlucky but bona-fide debtors.

Judicial liquidation

It will be easily closed even if a few assets remain, but they are mostly valueless or difficult to sell, and even if dispute proceedings are still going on. The dissolution of the company would be accomplished when closure is achieved and no longer at the moment of the liquidation order. For this, the civil code will be amended.

The project also recommends that the list of acts bearing a prejudice to the creditors during the suspect period should include the notaried non-attachable statement through which a debtor could put aside a real estate asset before becoming insolvent, against the benefit of the creditors.

Proceedings changes

The Project would recommend the amendment of the process of checking of claims and would give more power to the judge who, under the present conditions, cannot do anything else but recognise that certain claims are not seriously debatable.

The opening of proceedings at the direct suggestion of the Court, considered non-constitutional because of non-respect of the defense rights, is definitely repealed. ■

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