ALEXANDRE LE NINIVEN
Senior Associate, Squire Patton Boggs, Paris (France)

France: Nineteen specialised commercial courts to deal with the largest insolvencies

The French government has made the assessment that certain smaller commercial courts were regularly finding themselves confronted with cases of great complexity, without the human resources and means to manage and handle them, only because the company in difficulty had its head office in the jurisdiction of these courts. It has therefore been decided to reform the system in order to improve its efficiency.

The Macron law of 6 August 2015, named after the current Minister of the Economy, anticipated the establishment of specialised commercial courts (TCS) which will process the most complex insolvency proceedings.

Currently, any of the 134 French commercial courts can be applied to, the choice being mainly the location of the distressed company's headquarters. This new arrangement aims to improve efficiency and to increase the number of specialised judges (because in France, commercial judges are lay judges). The aim of the reform is to save jobs. The choice of the specialised commercial court is justified by the complexity and urgency of many matters and the need for a quick response time.

On 27 November 2015 the former Minister of Justice, Mrs Taubira, revealed a first list of 18 specialised commercial courts. This list (which has implications for workforce transfers and supplementary funds allocation) has resulted in intense debates between the Chancery (Ministry of Justice) and Bercy (Ministry of Economy), as they disagreed on the number of specialised commercial courts required (wanting to appoint between 8 and 35 from the 134 existing courts).

The relevant courts were initially Besançon, Bordeaux, Évry, Grenoble, Lille Métropole, Lyon, Marseille, Montpellier, Nanterre,

Nantes, Nice, Orléans, Paris, Poitiers, Rennes, Rouen, Strasbourg and Toulouse.

One should be surprised that Bobigny, Créteil and Versailles were not on the list, even though they deal with important matters and ensure that the Paris area is not under-represented.

In this respect, many leading figures of the Bobigny Commercial Court, the second busiest court in terms of activity in the Paris area, have recently pointed out the qualities of their jurisdiction and requested the government to review its list, in the interest of those legally accountable. They have highlighted the risk of having to face a true "loss of skills" to the other nearby commercial courts (Nanterre or Evry), when judges transfer, having been attracted by the prospective ability of handling the most important cases. Bobigny is also at the heart of the "Grand Paris project" and a dynamic employment area which, according to them, justifies the choice of this court among the top 19.

The recent resignation of the Minister of Justice, Christina Taubira, and her replacement by Jean-Jacques Urvoas has slowed down the process by a couple of weeks.

The final list published on 26 February 2016, included jurisdictional changes with the courts of Besancon and Lille being replaced by those of Bobigny, Dijon and Tourcoing. It appears that the lobbying by the judges and lawyers of Bobigny has paid off.

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Latvia: Further developments concerning the status of the insolvency administrator

In January 2015, Eurofenix published an article, "Latvia: A fundamental reform of the status of the insolvency administrator", in which the readers were informed about the reform of the insolvency administrator's status: the administrators were going to be considered public officials. A year has gone by, and thus this article is dedicated to the recent developments in this regard.

Since half of the insolvency administrators in Latvia consists of sworn attorneys and the concept of a public official is closely linked with restrictions regarding the combining of several occupations, a number of them submitted a complaint to the Constitutional Court of the Republic of Latvia indicating that the new regulations restrict their freedom to continue practicing both professions.

On 21 December 2015 the Constitutional Court pronounced the reform anti-constitutional in respect of sworn attorneys. The Court recognised that, in principle, there are no obstacles for the legislator to change the status of the insolvency administrators to public officials. The reform is aimed at protecting the creditors' and debtors' legitimate interests and the new legal provisions allow for a greater control over the administrator's actions within insolvency proceedings. However, the Court, at the same time, emphasised that several restrictions concerning the position of public officials are not compatible with the principles of independence of an attorney and with the client-attorney confidentiality.

Firstly, according to the respective legal provisions, public officials are obliged to submit declarations which include information about their agreements with other persons, namely details of their clients and the amount of their fee. This information, although not publicly accessible, is available to a certain circle of public authorities and can be misused.

Secondly, it is not allowed to advertise a public official's services, but such a prohibition negatively affects the interests of the sworn attorneys who have to advertise about the legal assistance they can provide.

The Constitutional Court emphasised that there are other alternative, less restrictive means to achieve the legitimate aim of the reform, the new status of the administrators, especially by introducing new legal provisions specifically designed for insolvency administrators also practicing as sworn attorneys. Such provisions would not allow disclosure of information regarding the attorney-client relations and would not interdict the advertisement of their legal assistance capacity.

It should be also mentioned that on 22 February the Constitutional Court terminated judicial proceedings in a similar case brought by board members in a capital company and tax (financial) consultants. The Court noted that in contrast to sworn attorneys, the new legal provisions do not include restrictions for board members and tax (financial) consultants to practice as insolvency administrators.

Notwithstanding the conclusions in the first Constitutional Court's judgment, this February has brought new problems, soon to be fixed, hopefully. On 4 February 2016 the Parliament of the Republic of Latvia has adopted new regulations providing that insolvency administrators also practicing as sworn attorneys will have the obligation to submit a public official's declaration as of 1st September of 2016. This decision has already been criticised as contrary to the Constitutional Court's judgment and as complicating even more the introduction of the reform of the insolvency administrator's status. Such a decision from the legislator, again, is met with incomprehension and brings new questions without answers, at least for the moment.

The rest of the insolvency administrators, who are not sworn attorneys, are considered as public officials as of 1st January 2016. Such a reform in Latvia is unusual for the European states' approach in this regard and, in the view of the author, is incompatible with the fundamental principles of the insolvency administrator's rights and duties.

> THE CONSTITUTIONAL COURT PRONOUNCED THE REFORM ANTI-CONSTITUTIONAL IN RESPECT OF SWORN ATTORNEYS

JĀNIS EŠENVALDS
Insolvency administrator and sworn attorney, Partner at Law office "Rasa & Ešenvalds", Riga (Latvia)