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France: French insolvency law recognises insolvency of groups of companies

The Ordinance of 12 March 2014 and its Decree of 30 June 2014 have enacted a set of provisions aiming at the coordination of insolvency proceedings applicable to groups of companies facing financial difficulties (C. com, Articles L. 662-8 and R. 662-18 & seq.).

The Ordinance creates a new function through the coordinator for groups which are defined according to the companies law, depending on the ownership of a majority of shares and control (C. com, Article L. 233-3)

The coordinator will be appointed upon application of any of the administrators or liquidators in charge of insolvency proceedings.

The Decree provides a criterium for choosing the coordinator, among administrators and liquidators, on the basis of the maximum number of employees or turnover.

The administrator's main task will consist of assessing plans with a view to proposing a global solution; assisting the liquidators of various proceedings with checking claims between companies of the group and evaluating proposals issued from debtors and/or creditors.

Moreover, they would be in the position to adopt protocols in matters of coordination; the judges and public prosecutor will be duly informed of it.

The fees to be paid to the coordinator will be defined by a judge from the Court of Appeal, and shared among different proceedings, with a possible challenge before the President of the Cour of Appeal.

Administrators and liquidators will have the duty to use properly these new tools for groups.

Courts will have to combine these new provisions with the future text amending the EU Regulation on insolvency proceedings which contains a specific chapter dealing with such coordination measures.

However, the new French law does not address some of these issues, as for example opposite interests and judicial cooperation between courts.

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Spain: Further reforms concerning in-court restructurings

Pursuant to the amendment to the Insolvency Act enacted in March 2014, relevant measures were created as to favour out-of-court restructurings which remained not possible for agreements within the insolvency proceedings.

The Royal Decree-Law 11/2014 of 5 September on urgent insolvency measures (the "RDL") has solved this.

Indeed, the March amendment was a historical and substantial change in the Spanish *in rem* rights system, since for the first time in case of out-of-court refinancing agreements approved by a Judge, the secured claim is determined as per the value of the collateral, without bringing a foreclosure claim. The RDL implements this system in case of insolvency.

For such purposes, each creditor's secured claim value i.e. the privilege, which cannot be less than zero or exceed the amount of the secured claim, is now calculated by the receiver as follows (the remaining part of the claim would rank as ordinary), such a calculation being subject to challenge before the judge:

90% of the fair value of the collateral
–
claims with prior ranking security over the collateral
=
Secured claim value

Special and general privileged claims are sub-classified as: (i) labour; (ii) public; (iii) financial (irrespective of being subject to financial supervision); and (iv) others.

Purchasers of claims after the declaration of insolvency, regardless of being subject to financial supervision, are also granted voting rights (unless they are "specially-related persons" to the debtor, whose scope has been increased, affecting indirect shareholders).

All creditors holding an interest in the syndicated loan will be deemed as having adhered to the proposal if at least 75% (or a lower majority under the syndicated loan agreement) of the syndicated liabilities vote in favour.

Debt-for-assets deals are possible provided that the underlying assets (i) are not considered necessary for carrying out the debtor's business; and (ii) their fair market value does not exceed the extinguished claim or, if so, the excess is applied toward