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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

the insolvency estate.

A transitional regulation for in-court agreements approved under the former regime and breached within a two-year period following the entry into force of the RDL exists, as to apply the regime of the RDL subject to certain majorities.

The RDL has also included relevant changes such as removing certain obstacles for the sale of the business within the insolvency proceedings.

The buyer is automatically subrogated into the debtor's position in any agreements, licences or administrative authorisations without the counterparties' consent being required, provided that: (i) they relate to the debtor's business or professional activity; and (ii) the buyer does not expressly refuse the subrogation.

The RDL also exempts buyers from assuming the debtor's debts prior to the sale, unless the buyer expressly assumes subrogation or any regulation provides otherwise (such as debts owed to the Social Security).

A process for selling business units is designed, which is not clearly mandatory for the receiver. The judge may, even before the auction, opt to sell them through a specialised person if considered to be in the best interest of the insolvency estate – the fees incurred being deducted from the receiver's remuneration. The judge also has broad discretion to approve, among the offers received within a threshold of up to 10% of the price, the offer that best guarantees the continuity of the going concern or, where relevant, employment and debt settlement issues.

The regulation applicable to the consequences of the transfer of assets linked to specially privileged claims when relating to the business unit sold is modified too, determining whether or not the security survives. In addition, their sale may be carried out for a price lower than the secured claim value if approved by the specially privileged creditors entitled to separate enforcement or representing at least 75% of those liabilities.

The judge is authorised to retain up to 10% of the insolvency estate as security against future appeals based on discrepancies with creditors regarding liquidation.

Debt-for-assets deals as part of the liquidation plan are also permitted if: (i) no public creditors are affected; and (ii) the enforcement framework for assets related to special privileged claims is satisfied.

The above mentioned measures should encourage the survival of the distressed business. In-court creditors' agreements are now more flexible and prevent privileged creditors who do not hold a real secured value from blocking the restructuring (although public creditors still cannot be forced to certain deals). The sale of businesses as going concerns will also be easier in practice thanks to the automatic subrogation in contracts, but the fact that buyers must assume debts due to the Social Security might drive to a reduction in the price.

THE SALE OF BUSINESSES AS GOING CONCERNS WILL ALSO BE EASIER IN PRACTICE THANKS TO THE AUTOMATIC SUBROGATION IN CONTRACTS

In-court restructuring majorities regime:

Measure	Approval: % of ordinary creditors	% of privileged creditors belonging to the class to be crammed down
Full payment with a grace period ≤ three years	Simple majority	60%
Prompt payment with debt discharges ≤ 20%	Simple majority	60%
Debt discharge (≤50%)	50%	60%
Debt discharge (≤100%)	65%	75%
Payment deferral (≤ 5 years)	50%	60%
Payment deferral (5-10 years)	65%	75%
Conversion into profit participating loans (≤ 5 years) (not applicable to public creditors)	50%	60%
Conversion into profit participating loans (5-10 years) (not applicable to public creditors)	65%	75%
Debt-for-assets and debt-for-equity (not applicable to public creditors)	65%	75%