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# AUTODIS: A SURGICAL RESTRUCTURING À LA FRANÇAISE

The recent restructuring of Autodis, a French car parts company, is a perfect illustration of the positive consequences of the reform of the French bankruptcy code in effect since February 15, 2009. The combined use of the French conciliation procedure for the operating company and the French safeguard procedures for the holding companies were agreed upon between the debtor and its creditors pursuant to the first pre-pack agreement executed in France.

## BACKGROUND

In February 2006, Investcorp, an international investment bank, acquired the French group of Autodistribution. This investment was structured as a typical French LBO transaction with senior and second lien loans at the level of Autodis, a special purpose vehicle created to purchase the shares of Autodistribution, the operating company. Autodis also had mezzanine debt structured as ordinary bonds (*obligations*), which is standard for mezzanine investments in France. Parts Holdings France, the immediate parent company of Autodis, also issued vendors' loans notes to the shareholders of Autodistribution before 2006.

In 2008, Autodis had a turnover of more than €1 billion and approximately 6,700 employees, including 5,200 in France. In light of the collapse of the automotive markets and tense economic difficulties, Autodis entered into negotiations with its shareholder and its various classes of creditors in order to achieve a financial restructuring.

Pursuant to the 2006 LBO documentation, significant restructuring steps, including the write-off of claims or the conversion of claims into equity, were subject to the unanimous consent of Autodis's lenders. Given this veto right, it quickly became apparent that a successful restructuring entailed the use of the new French safeguard procedure that allows a restructuring plan to be approved at a qualified majority of 66-2/3 percent by the credit institutions' committee, the supplier committee, and the general meeting of the bondholders.

But a French safeguard procedure typically lasts six months, which was perceived as too long a period. During an insolvency procedure, customers and suppliers are generally worried about the long-term prospects of the debtor. Customers tend to reduce their

orders, and suppliers no longer grant credit to the debtor, which has to finance all of its supplies in advance. In addition, Towerbrook, the new investor, was reluctant to invest the funds necessary to restructure the business before the end of the safeguard procedure.

In order to reduce the duration of the safeguard procedure, it was essential that the restructuring plan be approved among the various stakeholders contemporaneously with the launch of the safeguard procedure, which was subject to a pre-pack agreement signed by all the Autodis constituents. The safeguard procedures of Parts Holdings and Autodis started on February 18, 2009, and ended on April 6, 2009, a period of less than six weeks, which in our view qualifies the Autodis restructuring as a surgical restructuring. The closing of the transaction was subsequently implemented a few days later.

## THE RESTRUCTURING PLAN OF AUTODIS

The French safeguard procedure allows the debtor to negotiate a restructuring plan with its creditors. If the debtor is unable to reach an agreement with its creditors, the bankruptcy court can impose only a reschedule of the debt over a period of 10 years. The bankruptcy court has no power to impose a write-off or a debt-equity swap to dissenting lenders. If the debtor reaches an agreement with its creditors, the restructuring plan can include all kinds of restructuring measures, including a debt rescheduling over a period exceeding 10 years, a write-off, or a debt equity swap. The 2008 reform of the bankruptcy code also made it clear that a restructuring plan is not obliged to treat all the lenders on an equal basis, provided that the situation of the lenders calls for such differentiation.

However, not all companies are eligible for this restructuring regime. Companies having less than €20,000,000 of turnover or 150 employees, such as holding companies in an LBO deal, for example, must obtain a prior authorization from the magistrate in charge of the case (*juge-commissaire*). Accordingly, before the opening of a safeguard procedure, discussions with the president of the court having jurisdiction over a debtor are well advised. These discussions may occur in the course of the pre-insolvency proceedings available in France, such as the *mandat ad hoc,* and the conciliation procedure.

The Autodis restructuring plan was agreed upon among Parts Holdings, Autodistribution, Autodis, the senior lenders, the second lien lenders, the hedging bank, the mezzanine lenders, the holders of vendors notes, Investcorp, and Towerbrook pursuant to a pre-pack agreement dated February 27, 2009, and a court order dated April 6, 2009.

Under the plan, Towerbrook would set up a Dutch Cooperative Association ("HoldCo") as the SPV that would become the ultimate shareholder of Parts Holdings. The investment of Towerbrook and Investcorp would amount in the aggregate to €109,900,000. Indebtedness would be reduced from €733,000,000 to €146,300,000, including a senior debt tranche of €107,400,000. The lenders who opted for the debt-equity swap would hold 19.1 percent of the outstanding share capital of HoldCo, and the lenders who did not (or could not, for regulatory reasons) opt for the debt-equity swap would receive €2,600,000 in notes issued by Parts Holdings.

The restructuring plan provided for different treatment of each category of creditors[1]:

For the Senior Lenders:

- conversion of 70 percent of their claims into (i) approximately 9 percent of the outstanding share capital of HoldCo, or (ii) €9,500,000 in principal amount of EP notes issued by Parts Holdings, with the right to receive €25,500,000, anti-embarrassment notes.
- the balance of their claims (approximately 30 percent) would be structured as a senior loan substantially similar to the 2006 senior loan with a revised security package and a revised subordination agreement.

For the Second Lien Lenders:

- conversion of 100 percent of their claims into approximately (i) 3.6 percent of the outstanding share capital of HoldCo, or (ii) €1,800,000 in principal amount of EP notes issued by Parts Holdings.

1. For more details, please refer to the publicly available court orders of the commercial court of Evry dated April 6, 2009.

For the Hedging Bank (assuming a claim of €14,000,000):

- write-off of approximately 50 percent of its claim.
- payment of €2,000,000 under the terms and conditions of the senior loan.
- payment of €5,000,000 in one single installment on the eighth anniversary of the debt-equity swap.

For the Mezzanine Lenders:

- conversion of 100 percent of their claims into (i) approximately 5.4 percent of the outstanding share capital of HoldCo, or (ii) €2,700,000 in principal amount of EP notes issued by Parts Holdings.

For the Vendors' Notes Holders:[2]

- conversion of 100 percent of their claims into (i) approximately 2 percent of the outstanding share capital of HoldCo, or (ii) €1,000,000 in principal amount of EP notes issued by Parts Holdings.

For the Shareholders' Lender:

- conversion of 100 percent of their claims for HoldCo shares for an aggregate value of €100,000.

For the Other Creditors, including the Suppliers:

- payment of their claims in full before June 6, 2009.

In addition to the HoldCo entitlements received as a result of the debt-equity swap, the lenders received additional equity from Investcorp, which agreed to sell for a consideration of €1 the following shareholdings:

- for the Senior Lenders: 1.0 percent
- for the Second Lien Lenders: 0.3 percent
- for the Mezzanine Lenders: 0.2 percent
- for the Vendors' Notes Holders: 0 percent

## THE CONCILIATION PROCEDURE OF AUTODISTRIBUTION

Under French law, the Conciliation Procedure is an out-of-court proceeding available to solvent companies and insolvent companies for less than 45 days. This procedure is a brief four-month process (renewable for an additional one-month period) during which the court-appointed mediator supervises the negotiation of a voluntary arrangement between the debtors and the company's creditors. The procedure is confidential, unless the parties request that the conciliation agreement be homologated by the court. In that case, the new money brought by the creditors or third-party investors will benefit from a super-priority over all claims that result from a subsequent insolvency proceeding.

Autodistribution profited from the conciliation procedure in order to secure additional financing from the operating banks of the Autodistribution group, including bridge financing between the signing of the pre-pack agreement and the closing of the transaction with the new investment of Towerbrook. Only the conciliation procedure can offer the super-priority requested by the banks.

It is an open question as to whether the rescue financing can be put in place before the court order granting the super-priority is issued. In the present case, Investcorp agreed to make the super-senior loan available to Autodistribution on March 26, 2009, before the homologation of the loan agreement by the court on April 6, 2009, but after the vote of the restructuring plan by the creditors' committees.

## FIVE LESSONS FROM THE AUTODIS RESTRUCTURING

**Sacrifices can be imposed on dissenting lenders.** Since January 1, 2006, the creditors have a say in a French restructuring since the restructuring plan prepared by the debtor with the help of the *administrateur,* a court-appointed official, is subject to the vote of the lenders. The lenders are divided into four categories: (i) the credit institutions' committees, (ii) the suppliers, (iii) the bondholders, and (iv) the other creditors. A holder of bank debt, including a hedge fund, that acquired it from an original lender will be a member of the credit institutions' committee. The decisions of the credit institutions' committees are made at a majority of 66-2/3 percent of the loans owned by the members who participated at the vote. A French bankruptcy court is not obliged to sanction a restructuring plan approved by the committees.

2. The description above applies to the Vendors' Notes Holders that are credit institutions. Certain individuals who hold vendors' notes received a better treatment, including a payment in full for the individual claims that did not exceed €13,000.

**The French pre-pack agreement is an entity rescue instrument.** The French pre-pack agreement entered into among the debtor, the various classes of lenders, the existing shareholder, and the new investor will essentially include the steps necessary to restructure the liabilities of the debtor, who will continue to operate after the restructuring. The English pre-pack agreement is a business rescue instrument. The English pre-pack agreement will essentially include the sale of the assets of the debtor to a new investor with the consent of the debtor's main lenders.

**Thanks to the recent reform of the bankruptcy rules, a restructuring plan imposed by a French bankruptcy court can be highly sophisticated.** Traditionally, a restructuring plan comprised a cash-upfront option for the lenders willing to accept an immediate payment in consideration for a large write-off of their claims and a differed-payment option for the lenders that imposed the payment of their debts over a long period of times (10 years). The lenders had minimal protection because the original loan agreement was no longer in effect after the restructuring. The lenders had recourse to the courts only in the event that the debtor defaulted on its obligation to make the payments set forth in the insolvency plan. With the reform, a restructuring plan can include many options, including write-offs, notes issuances, or debt-equity swaps. The remaining debt can continue to benefit from the common protection of the lenders under a typical LBO documentation. The lenders have recourse to the courts in the event that the debtor defaults on its obligations set forth in the LBO documentation, and not only its payment obligations.

**Junior lenders must seek to obtain the cancellation of the clawback obligations contained in the original subordination agreement.** Typically, subordination agreements, including subordination agreements based on the standards of the Loan Market Association, include provisions obliging the junior lenders who receive payments from the debtor in violation of the priority rules contained therein to turn over these payments to the senior lenders. In a consensual restructuring, the junior lenders will receive certain forms of consideration whereas the senior lenders will not be fully paid. It is important for the junior lenders to structure the restructuring plan so that they can keep these forms of consideration.

**A restructuring plan can now be sanctioned in a very short time frame.** Prior to the recent reform, the bankruptcy code contained detailed and stringent rules regarding the creation of the creditors' committees, the provision of the restructuring plan by the administrator to the committees, and the vote on the restructuring plan by the committees. The recent reform has dramatically simplified the rules. The committees must vote on the restructuring plan within six months following the opening of the safeguard procedure. There must be between 20 and 30 days between the provision of the restructuring plan by the administrator to the committees and the vote on the restructuring plan by the committees, unless the *juge-commissaire* authorizes a shorter notice of 15 days. The members of the committees can file a motion challenging the vote by the committees only within 10 days after the last vote of the committees. The hearing approving or rejecting the restructuring plan can be set only five days after the expiration of the members of the committees' right to appeal. In the Autodis restructuring, fewer than 45 days had lapsed between the opening of the safeguard proceedings and the hearing approving the restructuring plan. The court acknowledged that the creditors who were not party to the restructuring agreement still had the right to file their proof of debt against Autodis and Autodistribution.

## LAWYER CONTACTS

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