



EuroResource--Deals and Debt | 2 March 2012

For the benefit of our clients and friends investing in European distressed opportunities, our European Network is sharing some current developments.

Recent Developments

Germany—On 15 February 2012, the German Federal Supreme Court (Bundesgerichtshof) ruled that a UK court-approved scheme of arrangement under the UK Companies Act, whereby life insurance company Equitable Life restructured its debt, is not recognised in Germany. The German court held that a scheme which reduced a creditor's claim does not prevent that creditor from demanding full payment of its claim from Equitable Life in Germany. According to the court, Equitable Life's scheme could not be recognised in Germany because the UK courts did not have jurisdiction over insurance matters under the provisions of Regulation (EC) No 44/2001 of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Schemes of arrangement have become a popular procedure for the rescue of companies not incorporated in the UK. Whether the judgment in the Equitable Life case will generally prevent the recognition of such schemes in Germany remains to be seen.

Germany—The Insolvency Law Reform came into force on 1 March 2012. The new law strengthens creditors' rights, promotes self-administration and will make insolvency proceedings more predictable for stakeholders and investors. Creditors now have significant influence on the appointment of the insolvency administrator. In larger insolvencies, the court will be required to establish a creditors' committee at an early stage. Furthermore, the bill makes it more predictable for the debtor that the court will order self-administration, leaving the debtor's management in charge of the business under the supervision of the court and a court-appointed insolvency trustee.

France—On 21 February 2012, the French Cour de Cassation confirmed the validity of the restructuring plan of Technicolor (formerly Thomson SA). On 30 November 2009, Thomson filed for safeguard proceedings (procédure de sauvegarde). Thomson prepared a restructuring plan that was subsequently approved by each of the creditors' committees and the assembly of bondholders by the qualified majority of two-thirds of the creditors who voted on the plan. The plan was approved by the Court of Nanterre on 17 February 2010. Dissenting subordinated bondholders subsequently challenged the plan and argued that they were deprived of a substantial portion of their voting rights by the legal administrator. On 18 November 2010, the Appeals Court of Versailles acknowledged that the voting rights of these subordinated bondholders were not properly calculated, but it nevertheless held that the mistake in the calculation had no impact on the outcome of the decision of the assembly of bondholders. Even

if the dissenting bondholders had not been disenfranchised, the two-thirds majority vote of accepting creditors at the assembly of bondholders would not have been impacted. On 21 February 2012, the Cour de Cassation confirmed the analysis of the Appeals Court of Versailles. This decision is important, as it provides more legal security to high-profile restructurings in France.

France—France limits the deductibility of interest expenses for holding companies. Having introduced thin-capitalization rules in 2007, France recently adopted new Art. 209 IX of the French tax code, which provides that interest expenses incurred by French corporate taxpayers owning French or foreign subsidiaries are tax-deductible (subject to the 2007 standard thin-capitalization rules) only if the taxpayer is able to provide evidence that decisions regarding the ownership of the subsidiaries' stock are made in France and that the management/control of those subsidiaries is actually performed from France, either by the taxpayer or by another related French corporate taxpayer. Absent satisfactory evidence of the foregoing, the interest expense of the French parent company will be denied in whole or in part for a period of nine years from the acquisition of each subsidiary. Certain exceptions apply, and the new rule may impact existing structures. The exact scope of the new measure remains largely uncertain, pending administrative comments and guidelines.
[more].

Newsworthy

Jones Day opened a new office in Düsseldorf—its third German office—in February 2012. The opening of an office in Düsseldorf, the city in Germany's industrial heartland that serves as the country's centre of corporate activity, recognises the critical role Germany will play in the global economy and its status as one of the most important and sophisticated legal markets in the world. The Düsseldorf Office will initially focus on corporate matters, M&A, private equity, antitrust and patent litigation as well as growing the Firm's client base in the region. [more]

United Kingdom—Restructuring lawyer Matthew French joins Jones Day London on 1 March 2012. Matthew is a leading lawyer in corporate restructurings and insolvency with a track record as Managing Director in Global M&A and EMEA Head of Restructuring at Nomura and UBS after being a partner at Lovells. [more]

Jones Day represented Platinum Equity, LLC ("Platinum Equity"), a US-based private equity firm, in connection with the divestiture of its fibreglass business in Belgium, Luxembourg, Norway and Tunisia (known as "3B – The Fibreglass Company") to Binani Industries, an Indian conglomerate that forms part of the Braj Binani Group. Headquartered in Belgium, 3B is a European leader in the production of fibreglass-composite materials and a preferred supplier to global leaders in the automotive and wind-energy industries, among many others. Platinum Equity had acquired 3B in 2008, also using Jones Day, from Owens Corning. The sale was structured as a transfer of shares in a series of Luxembourg holding companies. The transaction value is approximately €265 million/\$345 million, subject to post-closing adjustments. The transaction also entailed a major restructuring of 3B's existing debt and related financing facilities.

Jones Day is advising London-headquartered Eurasian Natural Resources Corporation PLC ("ENRC") in connection with the \$1.25 billion acquisition of the residual assets and settlement of all claims in relation to the operations of First Quantum Minerals Ltd. in the Democratic Republic of the Congo. ENRC is a leading diversified natural-resources group, performing integrated mining, processing, energy, logistics and marketing operations. ENRC's production assets are located largely in the Republic of Kazakhstan; other assets are located mainly in Africa, although ENRC also has iron ore assets in Brazil. ENRC and its affiliates currently sell the majority of their products to Russia, China, Japan, Western Europe and the US.