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COMMENTARY

Macron Law Modifies French Insolvency Law

On August 6, 2015, France adopted legislation named after the French Minister of Economy, Emmanuel Macron ("Macron Law"), that is designed to promote economic growth, activity, and equal opportunity. What follows is a brief summary of the principal reforms to French insolvency law introduced by the Macron Law. As discussed in more detail below, these measures include the creation of specialized insolvency courts for large cases and the introduction of rules and procedures that permit "cramdown" of shareholder interests in French reorganization proceedings. The French insolvency regime creates a level playing field on which creditors will play an increasingly greater role in insolvency proceedings.

Specialized Insolvency Courts for Large Cases

France currently has 134 commercial courts. A commercial court has jurisdiction over an insolvency case if the debtor's corporate headquarters or its center of main interests ("COMI") is located in the court's geographical zone. This regime has been criticized, principally for two reasons. First, a small commercial court may not have the financial or human resources to handle large insolvency cases. Second, an affiliated group of companies may be subject to the jurisdiction of different commercial courts.

Under the Macron Law, France will create a limited number—perhaps 12—of specialized insolvency courts. The precise number will be determined pursuant to a future implementing decree. The specialized insolvency courts will have jurisdiction over large cases (as defined below). Only a single specialized insolvency court will have jurisdiction over the insolvency proceedings of the members of an affiliated group of companies. This new regime should avoid inconsistencies or conflicts in court rulings and will increase predictability in large restructuring cases.

A specialized insolvency court will have jurisdiction over the debtor in safeguard, reorganization, and liquidation proceedings where:

- the debtor has 250 or more employees and turnover of at least €20 million; or
- the debtor has turnover of at least €40 million; or
- the debtor is a holding company that, together with its operating subsidiaries, has more than 250 employees and turnover exceeding €20 million; or
- the debtor is a holding company that, together with its operating subsidiaries, has turnover exceeding €40 million.

A specialized insolvency court may also have jurisdiction in a conciliation proceeding under certain circumstances when the debtor meets the foregoing criteria. Finally, a specialized insolvency court will have jurisdiction over the debtor when the insolvency proceeding is commenced under EU insolvency law and the debtor's COMI is located in the court's geographical zone.

The provisions of the Macron Law governing specialized insolvency courts will come into force after March 1, 2016.

Cramdown of Shareholders in French Reorganization Proceedings

The Macron Law gives French courts the power to dilute or compel divestiture of shareholder interests in French reorganization proceedings by means of "cramdown." These rules are complicated and contain stringent conditions, some of which have not yet been interpreted and applied by the courts.

Pursuant to new Article L. 631-19-2 of the French Commercial Code, if a majority shareholder or a shareholder holding a blocking minority position refuses to support or collaborate on a proposed restructuring plan in a reorganization proceeding, the shareholder's interest may be diluted or the shareholder may be forced to sell its shares.

The new shareholder dilution/divestiture process applies only in cases where:

- the debtor has more than 150 employees (or the debtor controls one or more companies having more than 150 employees in aggregate); and
- serious disruption to the national or regional economy and regional employment would be caused if the debtor ceased operating; and
- after considering the feasibility of selling all or part of the debtor's assets, the court concludes that dilution or divestiture of shareholder interests is the only solution to avoid such disruption and enable the debtor to continue operating.

The new shareholder dilution/divestiture process has two components:

- **Forced dilution of opposing shareholder's interest**. An opposing shareholder's interest can be diluted following a capital increase (by means of an infusion of new capital or a debt-for-equity swap) approved at a shareholders meeting called by a court-appointed insolvency administrator, who will exercise the voting rights of the opposing shareholder.
- **Forced sale of shares**. An opposing shareholder can be compelled to sell its shares to a new shareholder who undertakes to comply with the proposed restructuring plan. Nondissenting shareholders will have the right, but not the obligation, to sell their shares to the new shareholder.

In the case of a forced sale of shares, whether or not accompanied by a voluntary sale of nondissenting shareholder interests, if the selling shareholders and the entity acquiring the shares disagree as to the value of the shares, an expert will be appointed by the court, upon the request of the judicial administrator or the public prosecutor, to provide a valuation.

This new insolvency regime, which is now in force except as otherwise noted, should be of interest to creditors wishing to implement a loan-to-own strategy in French reorganization cases.

Lawyer Contact

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