



# Europe, Middle East and Africa Restructuring Review

2025

**First lessons to be learned from the  
2021 French insolvency law reform**

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# First lessons to be learned from the 2021 French insolvency law reform

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## IN SUMMARY

The French restructuring framework has undergone a significant shift, moving from a debtor-centric approach to increased creditor involvement. Key reforms, including recently the 2021 Ordinance,<sup>[1]</sup> have empowered creditors in plan negotiations, limited shareholders' veto rights and promoted pre-packaged solutions. The focus now lies on early intervention, consensual agreements and economic viability, aligning the French system with international standards.

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## DISCUSSION POINTS

- French restructuring toolkit
  - Overview of restructuring pre-packaged plans after the 2021 French insolvency law reform
  - Impact of the reform on stakeholders' rights and especially shareholders
  - New trends: soft restructuring
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## REFERENCED IN THIS ARTICLE

- Sixth book of the French Commercial Code
- Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019
- Ordinance No. 2021-1193, dated 15 September 2021
- Decree No. 2021-1218, dated 23 September 2021

Historically, the French restructuring and insolvency framework has been perceived as a debtor-friendly framework due to limited creditor involvement and extensive protection granted to the debtor and its shareholders.

Over the past 20 years, however, changes to French legislation have favored the involvement of creditors in restructuring processes. Lately, insolvency courts have approved several lender-led restructurings, illustrating that these changes have effectively made their way into the French market.

The use of preventive proceedings has also significantly increased and is now a distinctive feature of the French system.

Most importantly, the French restructuring and insolvency framework has recently been amended to, among other things, transpose the EU Directive on Restructuring and Insolvency (the Directive) into French law.<sup>[2]</sup>

These amendments have been introduced by Ordinance No. 2021-1193, dated 15 September 2021 (the 2021 Ordinance), effective as of 1 October 2021 (subject to limited exceptions) in respect of preventive and insolvency proceedings initiated since 1 October 2021, and Decree No. 2021-1218, dated 23 September 2021 (the 2021 Decree), which implements the 2021 Ordinance.

As the French system already has a strong culture of encouraging preventive restructurings to address financial difficulties at an early stage, the procedural rules have remained largely unchanged and, as opposed to the German Stabilisation and Restructuring Framework for Businesses regime or the Dutch scheme of arrangement, no new proceedings have been created for the purpose of achieving the objectives set by the Directive.

However, the way restructuring plans are adopted within existing proceedings has undergone a significant change.

In particular, the 2021 Ordinance introduced: (1) a new concept of 'classes of affected parties', differing materially from the previous 'creditors/bondholders' committees'; and (2) the ability for an insolvency court to adopt a restructuring plan through a cross-class cramdown (while only a regular cramdown was possible under the former rules).

These changes tend to redefine the balance of the interests at stake, with the following trends observed:

- the 'passive' veto right of shareholders in respect of restructuring plans affecting their equity interests have been significantly lessened, as demonstrated by the recent restructuring operations implemented under this new framework, which often resulted in massive dilution of existing shareholders;
- 'in the money' creditors have benefited from greater involvement in the preparation of a restructuring solution, their support becoming decisive when it comes to working out a solution; and
- while debtors anticipating difficulties will retain significant control in safeguard and accelerated safeguard proceedings, creditors' 'step in' ability in reorganisation proceedings should now be more tangible (eg, affected parties will be able to submit alternative plans to be voted on by other affected parties).

Almost five years after the reform came into force, large-scale financial restructuring operations have taken place, and practitioners are beginning to get to grips with these tools.

Overall, it appears that this reform has facilitated financial restructuring by placing an economic and financial approach at the heart of the system, allowing a collective discipline based on the hierarchy of the parties to prevail. In this way, the reform has strengthened the effectiveness of the French financial restructuring framework and brought it closer to international standards.

The 2021 Ordinance has significantly limited the ability for French courts to impose the infamous 10-year term-out on dissenting creditors as part of safeguard proceedings, with the aim of ending the practice of 'hostile' safeguard proceedings that have enabled certain debtors to implement major debt restructurings on fairly aggressive terms.

The French framework's strong focus on preventive restructuring tools and ensuring consensus among affected parties has led to pre-packaged solutions being the natural outcome of many restructuring processes.

Pre-packaged solutions initially emerged from the practice of insolvency professionals. Procedural rules were then introduced to facilitate the implementation of these solutions while ensuring that the legitimate interests of the various stakeholders are sufficiently accounted for.

The idea underpinning French pre-packaged plans is that preventive proceedings should be 'continued' before an insolvency court for implementation purposes if a restructuring solution has found sufficient support among stakeholders but cannot be implemented as part of a consensual deal.

Following a brief overview of the restructuring proceedings available under French law, this chapter focuses on pre-packaging tools concerning the implementation of restructuring plans.

### **BRIEF OVERVIEW OF KEY RESTRUCTURING TOOLS**

Under French law, there are two main categories of proceedings: amicable out-of-court proceedings and formal court-administered proceedings.

The first category includes mandat ad hoc and conciliation proceedings.

Mandat ad hoc proceedings are confidential out-of-court proceedings,<sup>[3]</sup> pursuant to which the court appoints a restructuring practitioner to assist a debtor in confidential negotiation with all or some of its stakeholders, under the supervision of the president of the court.

Conciliation proceedings are confidential out-of-court proceedings,<sup>[4]</sup> pursuant to which the court appoints a restructuring practitioner to assist a debtor that is solvent or has been insolvent for no more than 45 days during confidential negotiation with all or some of its stakeholders, under the supervision of the president of the court.

The second category includes safeguard,<sup>[5]</sup> reorganisation<sup>[6]</sup> and liquidation proceedings.<sup>[7]</sup>

Safeguard proceedings are formal court-administered proceedings. These are only available to debtors that are not cash flow insolvent.

Reorganisation and liquidation proceedings must be commenced if the debtor is cash flow insolvent according to the French insolvency test, defined as the debtor's inability to pay its debts as they fall due with its immediately available assets (taking into account available credit lines and moratoria). If the debtor is not facing cash flow insolvency, it has the option to request consensual proceedings or safeguard proceedings. However, a distressed debtor is required to file a petition for reorganisation or liquidation proceedings within 45 days of the date of insolvency, unless it has requested the court to appoint a conciliator. In that case, the debtor is exempted from the obligation to request the opening of a reorganisation or liquidation proceeding until the end of the conciliation proceeding. Reorganisation and liquidation proceedings can also be initiated at the request of the public prosecutor or any creditor (unless conciliation proceedings are ongoing).

If a debtor facing hardship is not cash flow insolvent, it has the option to request the initiation of either consensual proceedings or regular safeguard proceedings.

Hybrid proceedings, known as accelerated safeguard proceedings, are also available to debtors under certain conditions that are discussed below.

#### **Out-of-court Proceedings**

As a matter of principle, market practice promotes out-of-court proceedings over court-administered insolvency proceedings, which are often associated with litigation and business disruption.

Mandat ad hoc and conciliation are preventive, amicable and confidential proceedings with limited court involvement, conducted under the aegis of a court-appointed officer (mandataire ad hoc or conciliator depending on the chosen proceeding) supervised only by the president of the court who determines the duties of the mandataire ad hoc or the conciliator within its order.

These consensual proceedings are generally opened with a view to reaching a consensual outcome.

The mandataire ad hoc or conciliator is usually appointed to facilitate negotiations with the debtor's stakeholders, but they cannot force them to accept any proposal: the restructuring agreement will consequently be negotiated on a purely consensual and voluntary basis.

Mandat ad hoc proceedings do not trigger an automatic stay of payment and enforcement actions. Creditors are not barred from taking legal action against the debtor to recover their claims, but those that have accepted to take part in proceedings usually agree to abstain from this type of action while proceedings are ongoing.

Under conciliation proceedings, no automatic stay applies, but the president of the court may: (1) stay enforcement actions and reschedule due claims for a maximum of two years with respect to creditors that have attempted to enforce their claims or that have not granted a standstill if so requested by the conciliator; or (2) reschedule claims that are not yet due and payable, for the duration of the proceedings (ie, a maximum of five months) for creditors that have not granted a standstill if so requested by the conciliator.

Generally, banks and credit funds tend to take a supportive and proactive approach in conciliation proceedings to the extent that debtors agree to provide a proper independent business review and that shareholders are open for discussions in relation to additional support or dilution.

Under amicable proceedings, the agreement of every relevant stakeholder is required to implement the restructuring solution (unless specific voting rules and majorities exist, for example, under the terms of debt documents – but these often provide for unanimous or supermajority consent in relation to important decisions such as debt deferral or write-offs).

Conciliation proceedings may be opened for a period of up to four months and can be extended by another month. Mandat ad hoc proceedings are not limited in time. In practice, debtors often combine the use of mandat ad hoc and conciliation proceedings to extend the duration of negotiation beyond the five months limitation.

Mandat ad hoc proceedings are usually commenced first, as they are not subject to any time constraint. If the debtor feels that some creditors may take enforcement action or that an agreement with its creditors is about to be found, it may apply to convert mandat ad hoc into conciliation. Agreements reached in conciliation can be either acknowledged by the president of the court or approved by the court.

Where investors would be willing to provide new money, goods or services to ensure the continuation of the debtor's business, it could be necessary to convert mandat ad hoc into conciliation to enable new money providers to benefit from the 'new money' privilege granting the corresponding claims a preferential ranking in the liquidation waterfall and protection from term-out or cramdown in subsequent proceedings – the new money privilege can only be granted by the court as part of a court-approved agreement.

## Formal Court-administered Proceedings

### Safeguard Proceedings

Safeguard proceedings are public court-administered proceedings commenced at the request of a debtor experiencing difficulties that it cannot overcome on its own if it is not already insolvent. These proceedings aim to facilitate the continuation of the business, the protection of employment and the repayment of creditors.

In that respect, the debtor will prepare, with the assistance of the judicial administrator, a draft safeguard plan to be negotiated with and submitted to its stakeholders, either through an individual consultation with each creditor or through a class-based consultation (see below).

During these proceedings, the debtor benefits from an automatic stay on payments and enforcement for debts incurred before the opening of the procedure, which prevents creditors from suing the debtor for payment and enforcing security interests.<sup>[8]</sup>

Because these are court-administered proceedings, specific rules will apply in relation to, among other things, the management of the debtor's business (in particular, actions falling outside the ordinary course of business will have to be judicially authorised), the payment of certain creditors, the continuation of ongoing contracts and the determination of creditors' claims.

### Reorganisation Proceedings

Reorganisation proceedings are commenced upon the request of an insolvent debtor, a creditor or the public prosecutor. One administrator (or several administrators beyond certain thresholds) will be appointed by the court to assist the debtor with management decisions or take over the full management of the debtor.

The administrator will prepare the reorganisation of the debtor and will produce a restructuring plan, with the assistance of the debtor (rules governing the adoption of the restructuring plan in safeguard are applicable (subject to certain exceptions, detailed below)). If a restructuring plan is not possible, the administrator may receive instruction from the court to organise the comprehensive disposal of the business through an open bid process. Although the court can sanction either process, it is required to favour a restructuring plan over comprehensive disposal, where possible.

### Liquidation Proceedings

Liquidation proceedings may be initiated by an insolvent debtor, a creditor or the public prosecutor if the debtor's recovery is manifestly impossible. A liquidator is appointed by the court and vested with the power to represent the debtor and to perform the liquidation operations that mainly consist of the disposal of the assets and the allocation of disposal proceeds to creditors whose claims have been admitted.

In that respect, the liquidator may organise a comprehensive disposal plan (in which case, certain rules relating to the continuation of the business will apply, notwithstanding the ongoing liquidation) or disposal of the individual assets.

### Adoption Rules For Restructuring Plans Under French Law

Setting aside liquidation proceedings, as part of court-administered proceedings, creditors (and, if applicable, equity holders) must be consulted on the treatment that their respective



debt or equity interests would receive under the proposed restructuring plan (eg, debt write-offs, deferrals or debt-for-equity swaps) prior to the plan being approved by the court.

The rules governing consultation will vary depending on the size of the business.

#### **Standard Consultation**

Under the standard consultation process, stakeholders receive individual proposals (subject to certain rules and exceptions) and must respond within a certain time frame.<sup>[9]</sup>

Depending on the nature of the contemplated impairment, the absence of response is regarded as either consent or refusal of the proposal.<sup>[10]</sup>

Dissenting creditors may face a 10-year term-out on their claims, which may be imposed by the court.<sup>[11]</sup>

#### **Class-based Consultation**

Mandatory class-based consultation applies to debtors that, on the date of the petition for commencement of the relevant proceedings, exceed either of the following thresholds: (1) 250 employees and €20 million in net turnover; or (2) €40 million in net turnover (at either the debtor level or together with subsidiaries controlled by the debtor).<sup>[12]</sup>

Alternatively, class-based consultation can be conducted on a voluntary basis at the debtor's request (or the judicial administrator in reorganisation proceedings) and with the authorisation of the supervisory judge if the thresholds are not met.

Only the affected parties are entitled to vote on the draft plan: the creditors whose rights are directly impaired by the proposed plan and equity holders (including shareholders and holders of securities giving future rights to the share capital) if their equity interests, the debtor's articles of association or by-laws or their rights would be modified by the proposed plan.<sup>[13]</sup>

The court-appointed administrator is responsible for establishing the different classes and informing each affected party that it is a member of a class.

The court-appointed administrator must, based on objective and verifiable criteria, allocate the affected parties in classes representing a sufficient commonality of economic interest in compliance with the following conditions:

- creditors whose claims are secured by security interests in rem – in respect of those claims – and other creditors must be allocated to different classes;
- subordination agreements entered into before the commencement of the proceedings shall be complied with if they have been brought to the attention of the court-appointed administrator;
- equity holders must be separated into one or several classes of their own; and
- claims arising from employment contracts, pension rights and maintenance claims cannot be affected by the plan. In respect of creditors secured by a security trust granted by the debtor, only the amount of their claims not secured by the trust is considered.

The formation of the classes can be challenged by the dissenting affected parties. Challenges and any subsequent appeals are to be filed and ruled on within a short period of time.

Each class votes on the restructuring plan with a two-thirds majority of the voting rights (determined by reference to the amount of the claims (or rights)) being required.

If applicable, the class or classes of equity holders will vote under the rules governing shareholders' or equity holders' general or special meetings.

If the plan is adopted by each of the classes, it will be submitted to the court, which shall verify that the following conditions are met:

- the classes have been duly formed in accordance with the applicable rules;
- affected parties, sharing a sufficient commonality of interest within the same class, are treated equally and in proportion to their claims or rights;
- the plan has been duly notified to all the affected parties;
- if there are dissenting affected parties, the plan meets the 'best interests of creditors' test, which would be met if no dissenting affected party is worse off under the plan than:
  - in distribution of liquidation proceeds: in liquidation proceedings or after a comprehensive disposal of the debtor's business in judicial proceedings; or
  - pursuant to a best-alternative scenario;
- where applicable, any new financing is necessary to implement the plan and does not excessively impair the interests of the affected parties; and
- the interests of all affected parties are sufficiently protected.

The court may refuse to adopt the plan if it does not offer a reasonable prospect of avoiding the debtor's insolvency or of ensuring the viability of the business.

The judgment sanctioning the plan renders the plan enforceable against all (*erga omnes*), including the affected parties that did not vote on, or voted against, the adoption of the plan.

Alternatively, the court may sanction a plan – with the prior approval of the debtor in safeguard proceedings – despite one or several classes voting against it, subject to the following additional conditions:

- The plan is approved by:
  - a (numerical) majority of classes (necessarily including a class of secured claims or a class with a higher ranking than unsecured creditors class); or
  - at least one class other than a class of equity holders or a class that would reasonably be expected to be 'out of the money' based on a determination of the debtor's going-concern value and if the rules governing the allocation of proceeds in judicial liquidation or as part of a comprehensive disposal plan were to be applied;
- the plan complies with the absolute priority rule (ie, the claims of dissenting classes shall be discharged 'in full' by 'same or equivalent means' where a junior class is entitled to receive any payment or to keep any interest under the plan (with possible

exceptions where necessary, at the court's discretion, and provided these exceptions do not unfairly prejudice affected parties)); and

- the plan does not permit a class to receive or retain more than the total amount of its receivables or interests.
- Where one or more classes of equity holders have been formed and have not approved the plan, the plan can be imposed on the dissenting equity holders if:
  - any of the thresholds triggering mandatory class-based consultation are met (ie, voluntary application of the class-based consultation will not allow a cramdown of equity holders' class or classes (see above));
  - the relevant equity holders would reasonably be expected to be 'out of the money' based on a determination of the debtor's going-concern value and if the rules governing the allocation of proceeds in judicial liquidation or as part of a comprehensive disposal plan were to be applied;
  - a preferential subscription right is given to existing shareholders in relation to any share capital increase in cash contemplated by the plan; and
  - the plan does not provide for the forced transfer of all or part of the rights of the dissenting class or classes of equity holders.

Adoption of a restructuring plan pursuant to the class-based consultation is broadly similar in safeguard or in reorganisation proceedings, subject to certain specificities for reorganisation proceedings where the affected parties' step-in ability is enhanced.<sup>[14]</sup>

Can a restructuring be implemented on a prepackaged basis? As highlighted above, the French system is generally a consensual system that offers efficient amicable out-of-court proceedings to debtors to enable them to remedy hardships well before they enter the zone of insolvency.

The opening of out-of-court consensual proceedings is never mandatory under French law and remains at the discretion of debtors. Nevertheless, these proceedings present numerous advantages for debtors (eg, mandated confidentiality, assistance of an experienced insolvency practitioner, reasonable costs, deterrent effect on creditors' enforcement actions, protection against ipso facto provisions and mitigation of directors' liability risk) with limited disadvantages, especially as court involvement is unobtrusive with respect to the debtor's business. As a result, debtors' first choice is often to request the opening of amicable proceedings, even if insolvent (in which case, only conciliation proceedings may be opened under strict conditions).

However, limited court involvement also implies that no solution can be implemented if the required consent is not obtained.

As such, out-of-court proceedings are often used as an initial step to initiate and prepare solutions that may need to be implemented as part of subsequent court-administered proceedings if no agreement can be found.

To overcome the opposition of dissenting creditors preventing the adoption of a restructuring agreement negotiated in the context of amicable proceedings, practitioners initially used safeguard and reorganisation proceedings to benefit from the cramdown ability and force the adoption of restructuring plans. However, recourse to full-fledged court-administered

insolvency proceedings – which are public and affect debtors’ business counterparts – can prove cumbersome and risky for the underlying business, in particular when implemented only to overcome the refusal of a few creditors or aggressive holdout strategies.

The rules applicable to pre-packaged restructuring plans are further described below. This set of rules rely on the ideal that the continuity between confidential amicable proceedings – allowing for a careful preparation phase – and fast-tracked court-administered proceedings, which are initiated to enable scrutiny over the proposed solution, offer an effective framework that considers the various interests involved.

## **Prepackaged Restructuring Plans**

### **The Premises Of The French Prepackaged Plan: Autodis Case**

Even before the introduction of specifically designed pre-packaged proceedings, practitioners found a way to use existing proceedings – with the combination of conciliation and safeguard proceedings – to carry out prepackaged plans. The restructuring of the Autodistribution group, which took place in 2009, was the first meaningful illustration of this.

In this case, the leveraged buyout documentation provided that significant restructuring steps were subject to the unanimous consent of Autodis’s lenders, which made it difficult for Autodis to implement a restructuring agreement in the context of amicable proceedings. As a unanimous vote was impossible to reach, given the plurality of creditors, the only solution was to try to obtain the agreement of a two-thirds majority of the members of (former) creditors’ committees in the context of safeguard proceedings.

In this context, safeguard proceedings were opened while the terms and conditions of the financial restructuring were decided by the debtor and its main creditors before the commencement order, pursuant to a memorandum of understanding concluded under the aegis of a mandataire ad hoc. In contrast to defensive safeguard proceedings – which were traditionally opened for the purpose of an automatic stay on payment and enforcement – the main advantage of safeguard proceedings in this case was the possibility of using the cramdown mechanism to impose the adoption of the plan on the dissenting creditors.

Insofar as the restructuring plan had been prepared before the opening of the proceedings, the implementation of the plan took no longer than six weeks, with a vote in committee organised less than a month after the commencement order and a judgment approving the plan 15 days later. The efficiency of the process mitigated the value-eroding effect traditionally induced by public court-administered proceedings.

Despite the lack of dedicated proceedings available at the time, the wide range of tools offered by French law had permitted the implementation of a pre-packaged plan and brought to light its numerous advantages.

### **Introduction Of Specifically Designed Pre-packaged Proceedings: Accelerated Safeguard Proceedings**

Following the above case, French legislation has enshrined the practice by introducing two new proceedings: accelerated financial safeguard proceedings<sup>[15]</sup> and accelerated safeguard proceedings.<sup>[16]</sup>

The 2021 Ordinance has merged accelerated financial safeguard proceedings with accelerated safeguard proceedings – for simplification purposes – but they may still be limited to financial creditors, as the safeguard plan may affect a limited number of creditors.

### Opening Conditions

Accelerated safeguard proceedings are specific court-administered proceedings that can only be opened at the request of a debtor in conciliation proceedings that can demonstrate that it has prepared a safeguard plan aimed at ensuring the continuity of its business and that is likely to receive sufficiently broad support from the affected parties to allow its adoption within a short period of time, as the procedure in principle lasts two months, and cannot be extended beyond four months.<sup>[17]</sup>

Therefore, debtors may enter accelerated safeguard proceedings on an insolvent basis if less than 45 days have passed between insolvency and the request for the opening of the preliminary conciliation proceedings.

The simple threat of accelerated safeguard proceedings is sometimes sufficient to implement the contemplated restructuring outcome during conciliation proceedings. The mere possibility of implementing a cramdown of dissenting creditors is generally regarded as facilitating a reasonable consensus to emerge among creditors and incentivising the debtor to submit sensible proposals to its main creditors to obtain their support.

In regular safeguard proceedings (assuming thresholds for class-based consultation are met (see above)), the court can no longer impose a term-out on dissenting creditors if the plan is not approved (ie, there is no fall-back option). This important change introduced by the 2021 Ordinance is expected to considerably lessen the appeal of regular safeguard proceedings for debtors.

As an additional condition, these proceedings are only available to debtors whose financial statements have been certified by an auditor or drawn up by a chartered accountant.

### Procedural Rules And Main Advantages

The regime applicable to regular safeguard proceedings is broadly applicable to accelerated safeguard proceedings, subject to certain exceptions.

Three main differences – which are also the main advantages – should, however, be noted.

First, these proceedings only take effect in respect of parties affected by the draft plan prepared in conciliation proceedings, thus limiting disruption to trade or business counterparties of the debtor if they are not affected by the draft plan.

Second, the legal duration of accelerated safeguard proceedings is two months, which may be extended to a maximum duration of four months. This mitigates the uncertainty and value-eroding effects of court-administered proceedings.

Third, the draft plan is submitted to affected parties through a class-based consultation, regardless of any applicability threshold, thus enabling cramdown and cross-class cramdown of dissenting creditors as per the rules set out above.

### Illustrative Cases

The restructuring of manufacturing company Vallourec, in 2021, may be the first significant illustration of a pre-packaged plan. In the context of mandat ad hoc proceedings, Vallourec had secured a lock-up agreement with its main creditors on the basis that they would support the contemplated restructuring plan. This restructuring plan was then implemented in the context of subsequent safeguard proceedings after the vote of the former creditors' committees.

Since then, the use of pre-packaged plans, negotiated in amicable proceedings and implemented in the context of accelerated safeguards as provided for by the 2021 Ordinance, has become much more widespread and has found fertile ground in major financial restructurings of large-scaled companies. In the past two years, three major cases have established this practice (*Orpea* (now *Emeis*), *Casino* and *Atos*).

The *Emeis* case is certainly the most striking example as it has given rise to numerous disputes that have significantly contributed to the practice and has facilitated the understanding of many new legal concepts of the 2021 reform in financial restructurings that followed. This case was the first use after the reform of the cross-class cramdown over several classes of affected parties (including the equity holders) by a listed company. More generally, these cases also illustrate new trends in the market and especially the weakening of the de facto right of veto enjoyed by shareholders when equity injection or debt-to-equity swap are contemplated. Previously, most of the financial effort was carried by creditors and shareholders escaped the consequences of the restructuring as the reorganisation plan cannot be imposed to them, French law being very protective of the ownership right.

That being said, the reform contributed to remove certain gridlocks that prevented restructurings operations to the detriment of the company interest, by giving the court broader powers to impose the reorganisation plan to dissenting parties, even when they are shareholders.

#### **Next Trends: Soft Restructurings**

The post-pandemic period saw an increased level of available liquidity in a low interest rate environment and significant competition between investors, as a result of what valuations observed on French M&A and private equity (PE) deals significantly increased, like the debt leverage of the portfolio companies. The current climate of economic uncertainty is now driving down valuations in many sectors; those companies are overleveraged and unable to refinance their acquisition debt. We anticipate seeing more and more of those restructurings during the next 24 months.

Portfolio companies held by PE funds approaching their maturity will obviously suffer from the market environment and require financial restructurings. Certain sectors are more exposed than others, including automotive suppliers in a context of decreasing demand of the consumers, construction sector in a context of high rates and lab companies in a context where state regulations are less and less favourable to them financially. Energy-driven industries should also suffer as a result of energy prices, which remain quite high in comparison to other zones such as China or the United States.

We have recently seen a shift in France away from the tools traditionally used, with the emergence of liability management exercises and facility exchanges that enable borrowers to implement amicable solutions. Liability management transactions can range from simple discounted debt repurchases and amendments designed to obtain covenant relief to more complex transactions such as amend and extends, 'up-tiering' exchanges or 'priority' exchanged or 'drop-down' financings. Large-scale asset sales and dropdown transactions were, for example, central in Altice's strategy and allowed it to reclassify subsidiaries and redirect sale proceeds.

In this context, we've seen lenders organise themselves under cooperation agreement to oppose any borrower's proposal unless supported by a certain majority of lenders (eg, in AccorInvest). These methods of organising negotiations are likely to become increasingly

common in France where liability management becomes more and more usual, in a context where the recent reform of insolvency law may sometimes encourage certain borrowers to implement a 'divide and conquer' strategy when composing the classes of parties affected in insolvency proceedings.

Liability management operations are of great interest to all stakeholders: they enable companies to gain breathing space in the hope of a market turnaround, while not having to record losses immediately for the lenders. They also have the advantage of avoiding public restructurings, the impact of which is likely to have a negative impact on the value of the business, such as the customer and supplier base. All these factors suggest that these operations have a bright future in France. Those cooperation agreements will need to remain simple and flexible agreements to allow the easy reaching of agreements with borrowers.

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## Endnotes

- 1 Ordinance No. 2021-1193, dated 15 September 2021. [^ Back to section](#)
- 2 Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132. [^ Back to section](#)
- 3 Articles L. 611-3 and L. 611-15 of the French Commercial Code. [^ Back to section](#)
- 4 Articles L. 611-4 to L. 611-6, and L. 611-15 of the French Commercial Code. [^ Back to section](#)
- 5 Articles L. 620-1 and following of the French Commercial Code. [^ Back to section](#)
- 6 Articles L. 631-1 and following of the French Commercial Code. [^ Back to section](#)
- 7 Articles L. 640-1 and following of the French Commercial Code. [^ Back to section](#)
- 8 Articles L. 622-7 and L. 622-22 of the French Commercial Code. [^ Back to section](#)
- 9 Article L. 626-5 of the French Commercial Code. [^ Back to section](#)
- 10 Article L. 626-5 of the French Commercial Code. [^ Back to section](#)
- 11 Article L. 626-18 of the French Commercial Code. [^ Back to section](#)
- 12 Articles L. 626-29 and R. 626-52 of the French Commercial Code. [^ Back to section](#)
- 13 Article L. 626-30 of the French Commercial Code. [^ Back to section](#)
- 14 Article L. 631-19 of the French Commercial Code. [^ Back to section](#)

- 15 Law dated 22 October 2010. ^ [Back to section](#)
- 16 Order dated 26 September 2014. ^ [Back to section](#)
- 17 Articles L. 628-1 and L. 628-8 of the French Commercial Code. ^ [Back to section](#)

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