

market intelligence

GETTING THE
DEAL THROUGH 

Restructuring & Insolvency

'Local impacts, global trends'

*Cassels Brock lead the global
interview panel*

2019

Legislative reform • Notable filings • Cross-border coordination • Asset purchase
North America • Asia-Pacific • Europe • Latin America

Publisher: Tom Barnes
tom.barnes@lbresearch.com

Senior business development manager:
Adam Sargent
adam.sargent@gettingthedealthrough.com

Business development manager: Dan Brennan
dan.brennan@gettingthedealthrough.com

Subscriptions: Claire Bagnall
subscriptions@gettingthedealthrough.com

Customer engagement manager: Amika Chaudry
amika.chaudry@gettingthedealthrough.com

Head of production: Adam Myers
Editorial coordinator: Gracie Ford
Subeditor: Hilary Scott
Designer/production editor: Harry Turner

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authorised copy contact Adam Sargent,
tel: +44 20 3780 4104

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market intelligence

Welcome to GTDT: *Market Intelligence*.

This is the 2019 edition of *Restructuring and Insolvency*.

Getting the Deal Through invites leading practitioners to reflect on evolving legal and regulatory landscapes. Through engaging and analytical interviews, featuring a uniform set of questions to aid in jurisdictional comparison, *Market Intelligence* offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

Market Intelligence is available in print and online at
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R&I IN FRANCE

White & Case's Paris team is one of the most complete and developed in the market, with an interdisciplinary expertise and experience that is second to none.

White & Case is one of the very few international firms to offer such a high level of expertise in handling the most delicate and complex restructuring briefs, and this is combined with the added value of the firm's corporate litigation expertise.

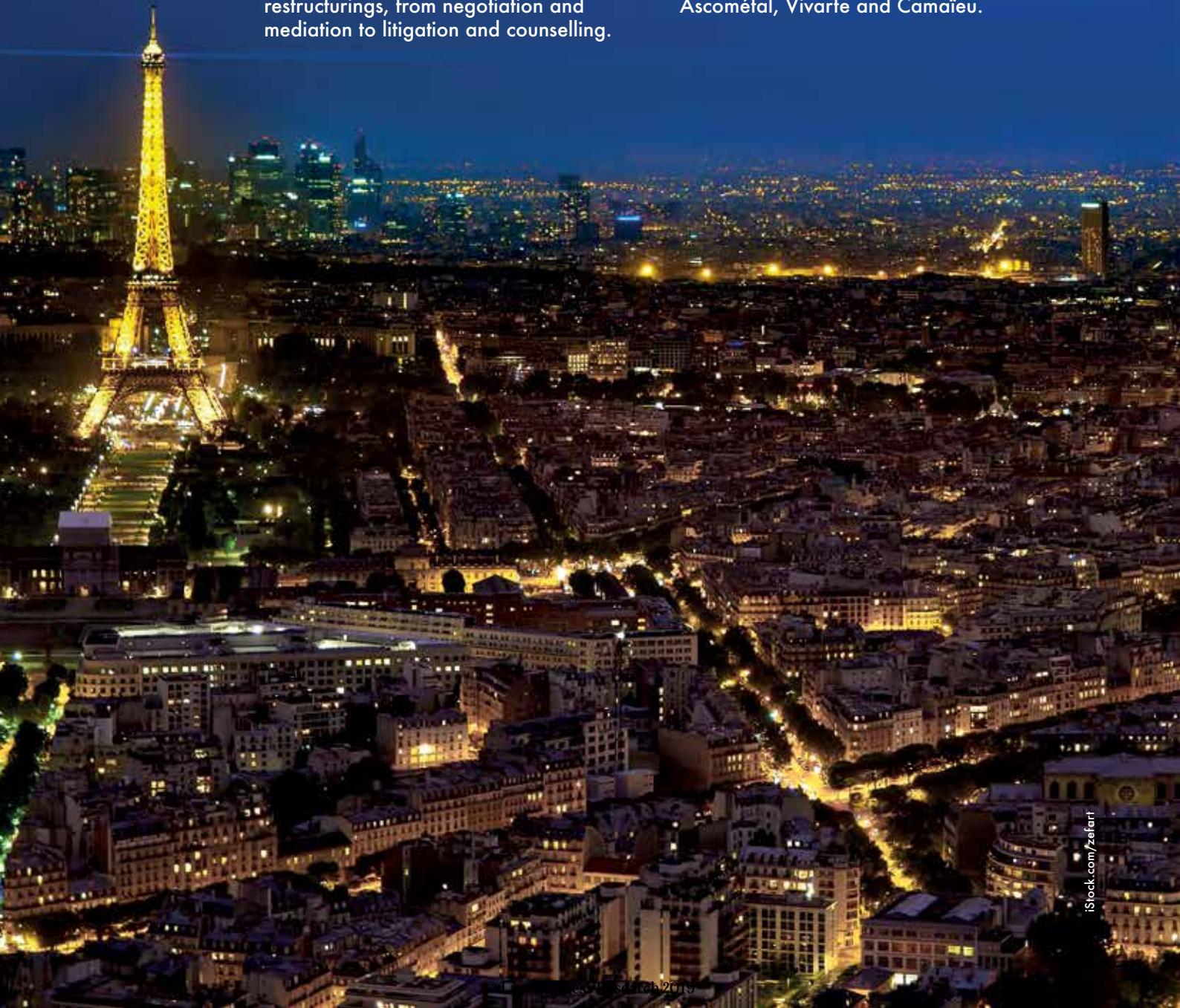
White & Case's Paris team closely follows and adapts efficiently to difficult environments and crisis situations, and is particularly known for its capacity to assist proactively to avoid foreseeable crises.

The team routinely works on complex restructurings, from negotiation and mediation to litigation and counselling.

White & Case represents debtors, creditors, committees, fiduciaries and lender groups in formal bankruptcy and insolvency proceedings in courts worldwide, as well as in intricate out-of-court financial restructurings, recapitalisations and rescue financings.

The firm also represents buyers and sellers of distressed loans and claims, and in distressed merger and acquisition mandates.

Recently, the Paris team intervened in the restructuring of CGG, SoLocal Group, Areva, Toys "R" Us, Jaccar, Frans Bonhomme, Agripole (William Saurin), Antalis, Ludendo, BCBG Max Azria, Ascométal, Vivarte and Camaïeu.



GTDT: In the last year, have you seen any developments or trends in the nature and volume of insolvency filings?

Saam Golshani, Alexis Hojabr, Céline Domenget-Morin and Marie Gicquel: The past year confirmed the 2017 market's uptrend, that is, 2018 saw a tangible improvement in the global framework and resulted in a decrease in insolvency cases. According to data from the Consular Observatory of the Distressed Companies, the opening of bankruptcy proceedings slightly dropped at a national level by 2 per cent compared with 2017 but have started a modest upturn in the Paris area (+4 per cent), which might intensify over the next few months. The agriculture (-7.7 per cent), industries (-5.6 per cent) and retail (-4.7 per cent) sectors were impacted the most by this improvement of the market. That said, in other sectors, the opposite trend was observed, such as transportation and storage (+8.3 per cent) and corporate services sector (+3.7 per cent).

GTDT: Describe the one or two most notable insolvency filings in your jurisdiction in the past year.

SG, AH, CDM & MG: From our point view the two most notable filings were the following.

CGG

CGG, a major listed oil services company, filed for bankruptcy protection in June 2017 in the United States and France after reaching a restructuring deal with lenders and bondholders that aimed to eliminate around US\$2 billion in debt from the company's books. This was one of the largest financial restructuring workouts in France since Eurotunnel.

The deal was highly complex given the number of stakeholders and the diversity of debt and hybrid instruments (debt and equity linked) issued by CGG. The complexity was further increased by the social and political background of the restructuring, noticeably with regard to the number of employee jobs at stake in France and overseas.

Despite the many challenges, the restructuring of this major industrial actor was successfully completed with the support of CGG's biggest financial shareholder, DNCA, who pushed strongly for the adoption of CGG's recovery and turnover plan. In addition, DNCA backstopped the terms of the financial restructuring and backed CGG in defending the safeguard plan challenged by the minority creditors before the court.

William Saurin

William Saurin was the most profitable company of the Agri-pole group, a leader in the sterilised cooked meals market. However, the company suffered greatly from serious illegal behaviour and

the major misconduct of its principal historical shareholder and, combined with insufficient cash flow and an increase in the price of raw materials, this led to the erosion of the companies' profit margins.

Within the context of an organised global restructuring, the group initiated the search for a new solid investing shareholder while selling its assets in order to generate enough cash and finance the business.

In a bid to maintain the trust of the company's suppliers and protect the working capital of the business during this process, the French state agreed to support the global deal and the group by granting a €12.5 million financing line, alongside a new €50 million loan granted by state financial institutions.

Unfortunately, the search for a new investor failed and, facing insolvency, the various companies of the group filed for judicial reorganisation in order to implement the asset sale plan. In these circumstances, William Saurin was finally sold to Financière Cofigeo and Arterris.

GTDT: Have there been any recent legislative reforms? Is there a perceived need for reform?

SG, AH, CDM & MG: A proposed directive is being discussed within the European Union and one reform has been voted by the French National Assembly and will be discussed by the French Senate on January 2019.

- European draft Directive No. 2016/0359 was voted by the EU Parliament on June 2018 and has been submitted to the Council. The directive is expected to be finalised by April 2019. It provides for a common framework for bankruptcy law of all member states. Among other things, it encourages the introduction of out-of-court proceedings, cross-class cramdown and new money privilege.
- The French draft law 'PACTE' provides for the capacity of transposition of the European Directive, especially the introduction of cross-class cramdown, the respect of subordination agreements and the diminution of duration of proceedings. It also provides for the capacity for the government to amend security law by way of order.

Over the past 15 years, French insolvency law has been greatly reformed and faster than it was during the past century. Fundamental changes have taken place in the context of a global financial crisis, giving rise to a new and more appropriate set of legal tools. The nature and extent of the reforms have necessitated careful consideration from both financial actors and practitioners. Some entirely new procedures have been introduced into law, effectively preventing difficulties from arising. The reforms have also enabled the reorganisation of difficult cases, impacting cases and major actors



Saam Golshani



Alexis Hojabr

beyond the sole area of insolvency law (including public and listed groups).

That said, France is still perceived as a debtor-friendly jurisdiction in this matter. This is a real incentive for creditors, especially financial institutions, to opt for other jurisdictions or to create alternative credit protection through sophisticated (and often expensive) collateral structures (such as the 'Double LuxCo'). The next round of reform must take this factor into account; for example, by the law and the courts effectively and clearly recognising the arrangements between lenders and their creditors, but also those between higher- and lower-ranking creditors.

In France, there is no special social law related to bankruptcy situations. Its creation is more and more discussed among practitioners.

GTDT: *In the international insolvency field, have there been any legislative or case law developments in terms of coordination of cross-border cases? What jurisdictions are you most likely to have contact with?*

SG, AH, CDM & MG: The new EU Insolvency Regulation (Regulation), which replaced the previous EU Regulation on Insolvency Proceedings from 2000, entered into force on 26 June 2017. The updated Regulation aims, in particular, to make cross-border insolvency proceedings more efficient and to establish a common framework for the benefit of all stakeholders.

The main features of the Regulation are:

- the extension of its application to pre-insolvency proceedings that promote the rescue of economically viable but struggling companies and give entrepreneurs a second chance;
- the creation of a pan-European online insolvency registers;
- the possibility of avoiding the opening of multiple proceedings and preventing forum shopping;

- updating the rules on secondary insolvency proceedings to, inter alia, extend to 'pre-insolvency' or 'hybrid' proceedings;
- amending the rules on information regarding creditors and the lodging of claims; and
- the introduction of new procedures to facilitate cross-border coordination and cooperation between multiple insolvency proceedings in different member states relating to members of the same corporate group.

On 2 November 2017, a decree was published in France to specify the terms of the Regulation and provides its implementation.

Regarding other jurisdictions that we have the most contact with, before Brexit, a flourishing restructuring business was developing in the United Kingdom as the English courts approved pleas of arrangement for companies incorporated outside of England. We were therefore most likely to have contact with UK jurisdictions.

However, even though the impact of Brexit on the availability of the UK arrangement system as a restructuring tool for foreign companies remains uncertain, EU companies are nowadays probably more reluctant to petition UK courts. As such, we might be less likely to have contact with UK courts and in turn increase our contacts with other European jurisdictions.

GTDT: *In your country, is there a particular court or jurisdiction that sees a higher concentration of insolvency filings? What is the attraction of that forum?*

SG, AH, CDM & MG: In France, the courts that see the highest concentration of insolvency filings are the specialised insolvency courts created by Law No. 2015-990 of 6 August 2015 (for example, Bobigny, Bordeaux, Dijon, Évry, Grenoble, Lyon, Marseille, Montpellier, Nanterre, Nantes, Nice, Orléans, Paris, Poitiers, Rennes, Rouen, Toulouse and Tourcoing).

The specialised insolvency courts have jurisdiction over companies that reach certain thresholds in terms of number of employees or



Céline Domenget-Morin



Marie Cricquel

turnover, and which are subject to safeguard, reorganisation or liquidation proceedings. With respect to conciliation proceedings, specialised insolvency courts have jurisdiction provided that it has been requested by the public prosecutor or that the president of the court has given his or her consent.

Specialised insolvency courts also have jurisdiction with respect to insolvency proceedings falling within the scope of European Insolvency Regulation 2015/848 when the debtor's COMI is located in France or where the debtor is located outside the territorial scope of the European Insolvency Regulation but has an establishment in France.

Among those courts, Paris and Nanterre naturally remain most active for bigger deals and cases, given the number of global actors legally incorporated in both areas.

Forum shopping is very limited in France as the territorial jurisdiction depends on the localisation of registered office. In the case of change of the address of the registered office within six months before the opening of a proceeding, the relevant jurisdiction is the one related to the former registered office.

GTDT: Is it fair to describe your jurisdiction as either 'debtor-friendly' or 'creditor-friendly' in terms of how insolvency filings proceed?

SG, AH, CDM & MG: The founding law of the French bankruptcy regime of 1985 was quite debtor-friendly and the French restructuring system was for a very long time therefore perceived as a debtor-friendly system. However, a certain shift began in 2005 with, in particular, the introduction of the committees and the strengthening of controllers' power. The shift was further emphasised with Decree No. 2014-326 dated 12 March 2014, which, for example, granted creditors the right to propose a restructuring plan (when committees are constituted). More recently, the law dated 6 August 2015 introduced a shareholder squeeze-out system under which shareholders may be forced to sell their shares

if they do not consent to share capital increases required to redress the distressed business.

This shift in the French legislation has been followed by the French courts, which have favoured a number of lender-led restructurings carried out by lenders, allowing lenders or a group of lenders to take control of the debtor, outside the reach of its existing shareholders (mainly financial sponsors). Furthermore, a number of hedge funds have strengthened their focus on the French market and as such provided liquidity to French banks willing to sell their claims on the secondary market.

However, the recent introduction of cross-class cramdown may reinforce the debtor-friendly image of France.

GTDT: What opportunities exist for businesses wanting to purchase assets out of an insolvency, and how efficient is the process? What are the best ways to take advantage of opportunities in this area?

SG, AH, CDM & MG: Businesses wanting to purchase assets out of an insolvency can do so either under a classic sale plan or under a pre-pack sale.

Classic sale plan

A sale plan involves the transfer of assets, contracts and employment contracts of the debtor to a third-party purchaser without the consent of the transferred party. As the sale plan is constructed as an asset deal, debt and claims are therefore not transferred to the purchaser of the distressed business (except for security interest granted in favour of creditors who financed the acquisition of the secured assets).

Another advantage for companies wanting to purchase assets out of an insolvency is the sale price, which is typically very low, as the main criteria retained by French courts are the number of jobs preserved and the purchaser's ability to continue operating the business.

However, the sale plan process is interpreted as an open bidding process where there is no

THE INSIDE TRACK

What two things should a client consider when choosing counsel for a complex insolvency filing in this jurisdiction?

In the event of a complex deal restructuring transaction, counsel needs to be creative with all the possibilities offered by French insolvency law. Therefore, the client must ensure that counsel not only knows all the tools offered by the law and has extensive experience of domestic and cross-border insolvency matters, but also understands the business including numbers and economics that are key to a successful sophisticated restructuring.

Furthermore, lawyers in this matter need to know the courts and need to be familiar with all the other parties involved in the restructuring (judicial administrators, creditors' representatives and liquidators, financial experts, etc).

What are the most important factors for a client to consider and address to successfully implement a complex insolvency filing in your jurisdiction?

The most important factors to be considered and taken into account when conducting a successful and complex insolvency

filing in France are the choice of the appropriate legal counsel (and also financial advisers), and the appropriate strategy and global timeline (including the choice of the proceedings, jurisdiction, etc) sufficiently in advance and at the very early stages of financial distress or other difficulties.

What was the most noteworthy filing that you have worked on recently?

The most noteworthy filing we have worked on recently is CGG: as explained above, the company is listed, and the number of stakeholders and the diversity of debt and hybrid (debt and equity linked) instruments issued by CGG were significant. Also the plan was strongly (but unsuccessfully) challenged by certain creditors.

Saam Golshani, Alexis Hojabr, Céline Domenget-Morin and Marie Gicquel
White & Case
Paris
www.whitecase.com

exclusivity to the benefit of one bidder and the courts often base their decision (and election of the final bidder and transferee) mostly on employment-driven criteria.

Pre-pack sale plan

The decree dated 12 March 2014 introduced the concept of pre-pack sales to France, which consist of companies appointing a *mandataire* ad hoc or a conciliator in charge of supervising a partial or total sale of the company's assets, which will then

be adopted under in-court insolvency proceedings after obtaining the public prosecutor's consent and the formal (but not binding) opinion of the participating creditors. Pre-pack sales offer the option to avoid compulsory public advertising for submission of offers and can therefore provide the buyer chosen under the amicable proceeding with a certain form of exclusivity. Pre-pack sales are also faster than asset plans implemented under reorganisation proceedings.

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