WHITE & CASE

**Insight:** Financial Restructuring & Insolvency/Bank Finance

March 2014

# Reform of French Insolvency Law

# Overview of The Executive Order of 12 March 2014

Executive Order n° 2014-326 of 12 March 2014 reforming French insolvency proceedings was published in the Official Journal of the French Republic (*Journal officiel de la République Française*) on 14 March 2014.

Considered a priority by the Government, the objectives of this reform include, notably, favoring preventative measures and increasing the powers of creditors.[1] Below are the principal provisions which will enter into force on 1 July 2014:

## Amicable proceedings: *mandat ad hoc,* conciliation proceeding

- Any clause in a contract which, as a result of the designation of a *mandataire ad hoc* or the opening of a conciliation proceeding, restricts a debtor's rights or increases its obligations shall be deemed void.
- The order clarifies that new financing made available at any time during a conciliation proceeding will benefit from a "new money" superpriority or priming lien if the conciliation agreement is later approved by a court.
- So long as the conciliation agreement is in effect, interest produced by the affected claims can no longer be capitalized.
- At the request of the debtor and at any time so long as the conciliation agreement is in effect, the court may postpone the payments (Article 1244-1 of the French Civil Code) of creditors who have not signed the conciliation agreement up to a maximum of 24 months.
- Third party fees will be restricted. Any clause requiring the debtor, upon the designation of a *mandataire ad hoc* or the opening of a conciliation proceeding, to pay the costs of the creditors' advisors over and above a threshold to be set by an order of the minister of justice shall be deemed void. Similarly, the remuneration of the *mandataire ad hoc* and/or of the conciliator may not be determined based on the amount of debt to be written-off.

## The accelerated safeguard proceeding

The accelerated financial safeguard proceeding, which was previously limited solely to financial creditors, remains but is now a sub-category of a new accelerated safeguard proceeding (*procédure de sauvegarde accélérée*) that includes all creditors.

The criteria for commencing an accelerated safeguard proceeding or accelerated financial safeguard proceeding have been relaxed. The debtor may be in a state of suspension of payments (*en état de cessation des paiements*) so long as such state of suspension of payments has not been continuing for more than 45 days prior to the request for the commencement of the conciliation proceeding which preceded the accelerated safeguard proceeding.

1 Ministerial Response n° 07344 JO Sénat 9 January 2014

**Céline Domenget Morin**
**Partner, Paris**
+ 33 1 55 04 58 85
cdomengetmorin@whitecase.com

**Raphaël Richard**
**Partner, Paris**
+ 33 1 55 04 15 38
rrichard@whitecase.com

**Denise Diallo**
**Partner, Paris**
+ 33 1 55 04 15 18
ddiallo@whitecase.com

White & Case LLP
19, Place Vendôme
Paris, 75001
France
Tel: + 33 1 55 04 15 15
Fax: + 33 1 55 04 15 16

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

The minimum criteria (number of employees, turnover, balance sheet) which shall apply (unless the debtor produces consolidated financials (*comptes consolidés*)), will be fixed by decree *Conseil d'Etat*.

The deadline by which the court must settle the safeguard plan does not change for an accelerated financial safeguard (*i.e.,* 1 month following the judgment opening accelerated financial safeguard proceeding. This deadline is extended to 3 months in the case of all other accelerated safeguard proceedings.

## Insolvency and pre-insolvency court-controlled proceedings: safeguard proceedings (*procédure de sauvegarde*), reorganization proceedings (*procédure de redressement judiciaire*)

### The safeguard proceeding (*procédure de sauvegarde*)

- The opening judgment renders due and payable all unpaid capital of the debtor and the creditors' representative (*mandataire judiciaire*) demand that a shareholder to pay its portion of the unpaid capital.
- The filing of a proof of claim interrupts prescription or the statute of limitations until the close of the proceeding.
- Commencing with the opening judgment, all interest resulting from loan contracts having a duration of one year or more, or contracts having a deferred payment of one year or more, can no longer be capitalized.
- All members of the creditors' committees (for the avoidance of doubt, this excludes the bondholders' assembly) will have the possibility to propose an alternative plan. The committees will be required to vote on the different plans which will each be the subject of a report of the judicial administrator.
- If the court gives a mandate to the administrator to convene any shareholder meeting to adopt any modifications required by the safeguard plan, the court can order that upon the first convening, the decisions will be adopted by a majority of the shareholders present or represented at the meeting as long as such shareholders own at least half of the shares with voting rights.
- Each member of the creditors' committees must inform the administrator of the existence of any subordination agreement, any agreement restricting or conditioning their vote and any agreement allowing for third party payment of the relevant debt.
- The court cannot postpone the payment of claims benefiting from a "new money" privilege.
- The ability to request the conversion of a safeguard proceeding into a reorganization proceeding is extended to the administrator (*administrateur judiciaire*), the creditors' representative (*mandataire judiciaire*) and the public prosecutor (*ministère public*) in the event that the safeguard plan is not adopted by the creditors' committees and, where appropriate, the general meeting of bondholders, within 6 months following the judgment opening the safeguard proceeding or within such other period fixed by the court provided that such period does not exceed the duration of the observation period.

### The reorganization proceeding (*procédure de redressement judiciaire*)

- The payment in cash for services rendered pursuant to an executory contract (*contrat en cours*) after the commencement of an insolvency or pre-insolvency court-controlled proceeding will no longer be possible except in the context of a reorganization proceeding.
- If the draft restructuring plan includes a modification to the capital of the company, and in the absence of the restoration of the level of shareholder's equity, the judicial administrator may request the designation of a judicial representative (*mandataire en justice*) charged with the task of convening a shareholders' meeting and voting on the restoration of shareholder's equity in lieu of any opposing shareholders.
- In the absence of a restructuring plan or a credible plan proposal, the court, upon the request of the administrator, can order the total or partial transfer of the business.

## Introduction of a "pre-pack" asset sale plan

The order introduces two new measures, one relating to conciliation proceedings and the other relating to asset sale plans in the context of reorganization or liquidation proceedings, in order to enable asset sales during a reorganization proceeding or judicial liquidation to a buyer identified in the context of an amicable procedure:

- The conciliator may, at the request of the debtor and after hearing the opinion of the participating creditors, be entrusted with the mission of organizing a partial or total sale of the business of the company.
- Any offers received in this context by the *mandataire ad hoc* or the conciliator may be directly submitted to the court in the context of reorganization or liquidation proceedings subject to the supervision of the public minister (*ministère public*) whose opinion shall be requested.

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.
LON0314052