

# Making France a More Attractive Forum for Restructuring in Europe: Part II

## Written by:

Anker Sorensen  
Reed Smith; Paris  
asorensen@reedsmith.com

Andrew Tetley  
Reed Smith; Paris  
atetley@reedsmith.com

**Editor's Note:** *Part I* appeared in the September 2009 issue.

In 2006, €67 billion of leveraged buyout (LBO) debt was granted in France with nearly €20 billion more added in 2008. According to certain sources, approximately a third of this debt was in default in 2008.<sup>1</sup> This two-part article examines the latest developments in France in the area of pre-packaged restructuring plans—a new, attractive and innovative technique for companies in difficulty that looks set to be increasingly trialed and tested over the coming months to deal with the potential fallout from such default.



Anker Sorensen

In Part I, we examined the novelty of the pre-pack for French practitioners, outlined its main features in the context of French safeguard proceedings and made some comparisons with the pre-pack approach in the context of U.S. chapter 11 proceedings. In Part II, we comment on a recent significant example of the pre-pack à la française in action.

## Pre-pack a la Française: The Autodis Example

The first significant, practical application of the pre-pack possibilities offered by the 2005 safeguard proceedings, as amended by the 2008 order, is illustrated by the case known as *Autodis*, a holding company in significant financial difficulties, controlled by a private equity investor.<sup>2</sup> The result was a positive one for Autodis.

<sup>1</sup> See Les Echos, April 24, 2009, p. 26.

<sup>2</sup> While the case is referred to as *Autodis*, it also concerned Parts Holdings (France) and Autodis operational companies, including Autodistribution, employing in excess of 6,000 employees. Together, they form the Autodistribution Group of companies—a group specializing in the supply of car parts. Over the last 10 years, the Autodistribution Group has been through various restructurings involving a number of well-known private-equity interests. It is perhaps not surprising that it should be the first notable entity to test the 2008 reforms.

## About the Authors

Anker Sorensen heads the Paris restructuring team of Reed Smith and specializes in the sale and acquisition of underperforming companies, prebankruptcy strategy, restructuring companies and related litigation. Andrew Tetley is counsel with Reed Smith in Paris and has expertise in cross-border restructuring and insolvency issues.



Andrew Tetley

Through the safeguard and related procedures, the Autodis Group managed to reduce its debt by almost €600 million with lenders being given the option of equity or taking up bond arrangements

tandem with the safeguard proceedings, Autodistribution undertook negotiations with its principal stakeholders under the umbrella of the confidential preventive procedures contained in the 2005 law.<sup>4</sup> On April 6, 2009, the court approved the restructuring plan proposed by management in the safeguard proceedings, as well as the agreement reached in the conciliation proceedings.

The safeguard proceedings were necessary to allow the company to impose the restructuring plan on a minority of Autodis' banking partners who would not agree to it.<sup>5</sup> Using the safeguard proceedings, Autodis was able to "cram down" uncooperative creditors. A qualified majority vote in the creditors' committees was sufficient to carry through the debtor's proposals.<sup>6</sup>

The parallel conciliation process undertaken alongside the safeguard proceedings allowed the stakeholders to have time, on a confidential basis, to explore

## The International Scene

within the group. Autodis was able to shed 70 percent of its priority debt, 100 percent of secondary debt and 100 percent of its repayment obligations under bonds. Under the restructuring plan, suppliers and other creditors were required to be paid in full within two months of adopting the plan.

A new investor joined the majority shareholder, and together they injected almost €110 million in new capital and cash via convertible bonds into the group, with the new investor obtaining a controlling interest. New finance in the order of €34 million was obtained from two other lenders and secured through the conciliation process.<sup>3</sup> Last, under the restructuring plans presented by Autodis and Parts Holdings (France), no redundancies were forecast, this being a significant element to the plans in a country known for social unrest when it comes to layoffs.

Immediately after the coming into force of the 2008 reform, applications for safeguard proceedings were filed in respect of Autodis and Parts Holdings. On Feb. 18, 2009, the court ordered commencement of safeguard proceedings with respect to both companies. In

the options in relation to Autodistribution.<sup>7</sup> Court approval of the agreement reached at the end of the conciliation process was essential to ensure that the "new money" loaned to Autodistribution by the financial institutions would enjoy the special priority accorded under the new law.<sup>8</sup> As a result, once agreement was reached with the necessary number of creditors, it took less than two months to achieve court approval of the overall restructuring plan.<sup>9</sup>

<sup>4</sup> Principally conciliation proceedings. The court appointed a conciliator on Feb. 9, 2009.

<sup>5</sup> Of the members of the suppliers' committee who voted, all voted in favour of the restructuring plan, as did the bondholders. However, the banks were not unanimous: Only 78.5 percent of the votes expressed by the banks were in favor of the plan.

<sup>6</sup> Prior to the 2008 reform, voting in the creditors' committees required a double majority: a majority in terms of number of creditors (whether they had voted) representing at least two-thirds of all claims represented by the committee. Since Feb. 15, 2009, with respect to voting rights, the December 2008 order removed the requirement of voting by a show of hands, and decisions are taken in each committee by majority vote comprising two-thirds of the total amount of claims made represented by the voting members. Commercial Code L.626-30-2. This change has served to concentrate voting rights into fewer hands and counters the risk of manipulation of the vote by subdividing claims.

<sup>7</sup> The conciliator for Autodistribution was court-appointed on Feb. 9, 2009.

<sup>8</sup> Provided the agreement reached through the conciliation process is court-approved, the lenders' claims in any subsequent insolvency process will rank above all other claims, with the exception of limited wage claims enjoying "super priority" and certain court costs associated with the insolvency process. Commercial Code L.611-11. This aspect was an innovation of the 2005 law to encourage suppliers and banks to lend to and carry on business with companies in difficulty.

<sup>9</sup> In the proceedings, the creditors' representative noted that the time limit for lodging claims had not expired by the time the court approved the restructuring plan. This did not prevent the court from approving the plan, no doubt because the plan provided for payment in full of all suppliers within a relatively short time period.

## Conclusion

While the French system has undoubtedly shown itself to be more flexible than in the past, some notable barriers remain to a wholesale adoption of the pre-pack approach, not the least of which is the attitude of the various participants in the insolvency process, who are steeped in the previous practice of insolvency law and procedure. As previously noted herein, safeguard proceedings are only available where the debtor is not in a payment-failure situation—in other words, at the time of filing, a debtor must be capable of meeting its current liabilities out of its disposable assets.

Furthermore, it should be noted that as a percentage of total insolvency procedures, safeguard proceedings remain relatively insignificant. Safeguard proceedings are on the rise but still only account for something in the order of 2 percent of the total number of collective insolvency proceedings in France.<sup>10</sup> The number of safeguard proceedings involving a pre-pack arrangement will be smaller still, so that pre-packs are likely to affect mostly large companies and other significant companies subject to LBOs.

<sup>10</sup> The rise is nevertheless significant. Over the first nine months of 2009, 1,049 safeguard proceedings were commenced—up 137 percent on the same period in 2008 (source: Altares).

With that caveat, it is fair to say that *Autodis* has paved the way for future pre-pack arrangements *à la française*. While the French process may not be quite as flexible as U.S. chapter 11, the essential elements exist in French law to facilitate a speedy and effective turnaround arrangement. Undoubtedly, the law will gradually evolve to cater to practical issues that may arise as practitioners resort increasingly to the pre-pack process. Safeguard proceedings allow an embattled business to survive intact. Initially viewed by creditors with some suspicion as an escape route or unwelcome strategic tool for companies in difficulty, creditors and debtors alike are beginning to view matters differently and to seize the opportunities offered by the new process.

This is especially the case in light of the 2008 reforms. The arrival on the French scene of pre-pack arrangements is evidence of this changing attitude toward insolvency procedure. As well, there has been a notable change in the approach of French banks that now appear ready to take up equity for debt in the restructuring process. This is a previously unheralded development that presents new challenges for all stakeholders in distressed France-based companies.

French safeguard proceedings are also increasingly being used to benefit

foreign companies in a company group situation. Thus, in the context of EU Insolvency Regulation (1346/2000), where it can be shown that the centre of main interest is in France, foreign subsidiaries or holding companies are able to give effect to cross-border restructuring in a centralised and coordinated fashion.<sup>11</sup> As a result, France now presents an attractive venue to those in management for whom forum-shopping may be a relevant issue.

Given the amounts of money injected into LBOs over the last few years, the number of occasions to further test the 2008 reform, as well as bank attitudes, is likely to multiply over the coming months. The prospect of a spate of future restructurings looks increasingly likely.<sup>12</sup> Those adept practitioners with a firm grasp of the commercial issues at stake, and pragmatic knowledge of the new statutory framework, should be kept busy. ■

<sup>11</sup> Recent examples of this type of approach are offered by Société Heart of Défense SAS (French) and its holding company Dame Luxembourg SARL (Luxembourg), and Belvedere SA and its subsidiaries (six of which were Polish companies). Different countries have approached the critical notion of “centre of main interests” in different ways. The European Court of Justice (ECJ) has had occasion to rule on the matter in a battle for jurisdiction between the Irish and Italian courts in the Parmalat affair (Eurofood IFSC Ltd., ECJ Case, C-341/04, Judgment of the court (Grand Chamber), May 2, 2006). The notion of “centre of main interests” is at the heart of the ongoing challenges to the Eurotunnel proceedings.

<sup>12</sup> Apart from *Autodis*, other recent known examples of LBOs in difficulty, such as Desjonquères, Sia, Matéris, Monier and Terreal, may be only the tip of the iceberg.