



# France opens its doors to investors in distressed companies



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**Is the famously pro-employee and pro-debtor restructuring regime in France finally improving for distressed investors?**

**The answer is a qualified 'yes' according to Anker Sorensen, a partner with independent full service French law firm De Gaulle Fleurance & Associés, who will be chairing the first panel of the conference, 'Helping foreign creditors and investors navigate French insolvency law and recent statutory changes'.**

It is nearly thirty years since Anker Sorensen started practising law in France, most of those in the area of M&A, corporate rescue and restructuring. For a lot of that time, he says, the French restructuring regime was very favourable to debtors, and much of it still is:

"Creditors do not appoint the administrator, nor control the sauvegarde or administration process, which are court-driven proceedings in which the administrators are key figures.

**"The main aim of these proceedings is not to pay creditors, but rather to find a solution for the debtor company."**

Recently, however, legal reforms in France have enabled debt for equity swaps, whether forced or voluntary, says Sorensen, as well as an element of cram-down. "Creditors have also been given the ability, provided they sit on a creditors' committee, to file their own restructuring plan of the debtor company".

"Over the last ten years, around twenty debt for equity swaps in mid-sized to large distressed companies have been reported by the French financial press," says Sorensen.

## French debt-equity swaps

### Ikks

In May this year bondholders holding 320 million euro of debt in Ikks took control of the French ready-to-wear group using an accelerated sauvegarde procedure from previous owners, New York-based global investor Silverfern Group, LBO France and founder Roger Zannier.

The new owners of the 500-store

group were led by Avenue Capital, Carval Investors and Marathon Asset Management, who had set up an ad hoc committee in 2018.

Under the debt-equity swap, 180 million euro out of the 320 million euro of the original bond debt was converted into capital. The new owners also put in 70 million euro of new money to refinance short-term loans and consolidate cash flow.

### Courtepaille

Courtepaille represents a network of 290 restaurants located mostly on French motorways, that employs more than 4,000 people.

In 2015 the UK-based mezzanine finance firm Capital Group (ICG) took control of Courtepaille from the previous owner Fondations Capital.

That in turn was five years after Courtepaille had been acquired by Fondations Capital in a 245 million euro secondary buyout. ICG had financed the deal with 190 million euro in financing, and when Courtepaille subsequently broke covenants, Fondations lost control.

### Cameieu

Cameieu operates one of France's largest chains of women's clothing stores with over 600 shops, and another 400 in 17 other countries. The company was launched in 1984 and now employs 6,000 people with revenues of over 700 million euro.

AXA Private Equity acquired the company from the founding family in 2005.

In January this year creditors Farallon, Carval and CVC took control in a debt-equity swap, having already financed a rescue of the company three years ago.

For all that, Sorensen added, "French banks are in the main still reluctant to pursue debt-equity swaps, even though the press has recently reported that this scenario has been considered in the arm-wrestling between Rallye, the holding of the French supermarkets chain Casino, and its financial creditors, as well as Bourbon, the offshore oil services provider."

In sauvegarde, the court can decide that the debtor's share capital or by-laws can be modified by the shareholders' meeting,

convened at first notice, and impose that the vote, to allow a change of ownership, be cast at the majority of the shareholders present or represented. This is a marked departure from France's established Company Law.

In administration, when the closing down of a company of a certain size is likely to cause serious disturbance to the national or regional economy and employment, and if the change of the company's share capital appears to be the only serious solution to allow the continuation of the company's activity, shareholders:

- can be deprived of their voting rights and replaced by a court-appointed agent to vote in favour of the share capital change, in lieu of the shareholders reluctant to vote the required change.
- may also be forced to sell their equity stakes to the investors and/or creditors who have committed to implement the restructuring plan, submitted to the court and supported by the latter, at a price to be decided by an expert.

This, says Sorensen, "obviously incentivises reluctant shareholders to cooperate or hand over the keys of companies in distress to its creditors or other investors".

During the third quarter of this year, the number of mid sized French companies employing more than 50 people filing for insolvency went up compared to the same period last year and exceeded one filing per working day (source: Altares-Dun & Bradstreet).

These filings threaten the jobs of around 2,350 employees more than last year at the same period. According to market rumours the number of filings of mid-sized and larger companies may increase in the next few months, thereby increasing the opportunities for their competitors and potential investors.

**"All in all," Sorensen concludes, "France is more open to funds investing in distressed business than it has ever been. Investors should not be afraid to use the new rules."**