
**EUROPE**

# Q&A: Arnaud Joubert of Rothschild and Lionel Spizzichino of Willkie Discuss the French Restructuring Market

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***Q: How would you describe the French restructuring market over the past 10 years?***

**Arnaud Joubert (AJ):** Since significant French insolvency law reforms were introduced in 2005, the restructuring market has become more efficient. Indeed, before 2005, the legal framework for restructurings in France was very unpredictable: neither debtors nor creditors were willing to face the French judicial system. Most restructuring matters were dealt with on an out-of-court basis.

Since 2005 (and subsequent French insolvency law reforms in 2008, 2010, 2014 and 2015), participants in the restructuring market have enjoyed a legal framework that is now very efficient.

All of these reforms were designed to give effect to the reality of common market practice (both Lionel and

I implemented "pre-packs" before a specific law was enacted and legalized such practice).

From now on, all practitioners are willing to reach an agreement on debt restructuring as a common goal. The legal arsenal provides for a specific framework in which such negotiations have to take place on a consensual basis.

This is mainly due to the fact that debtors and shareholders have a higher degree of acceptance of distressed situations. The debtor is no longer ashamed of being subject to a restructuring situation, and this enables better anticipation of, and an earlier resolution to, the restructuring arrangement.

More broadly, the restructuring legal framework on a European level has become more standardized over the past decade as a result of the EU Insolvency Regulation no. 1346-2000. A new, recast EU Insolvency Regulation is expected to come into force on June 26, 2017, and I know that Lionel has been working on it to provide French recommendations to the European Commission.

Even though differences in insolvency laws still exist between European countries (especially Spain, Portugal, Germany and Eastern Europe), the EU Insolvency Regulation has made dealing with a distressed group more predictable.

**Lionel Spizzichino (LS):** I totally agree with Arnaud. Not only has French restructuring practice started to regulate itself after the first safeguard proceedings *(procédure de sauvegarde)*, but the most recent reforms also contributed to the establishment of a more effective monitoring system for the use of these new restructuring mechanisms. For example, since a 2014 ordinance (*"Ordonnance du 12 mars 2014"*) was enacted, it is now possible for any creditor that is a member of a committee (except a bondholder at this stage) to present an alternative draft safeguard plan to the one presented by the debtor itself.

Even though this option has not yet been used by a creditor, it provides creditors with strong bargaining power during negotiations.

What is essential is that whatever side (debtor vs. creditors) we advise, the idea for legal and financial advisers to work urgently and closely together is clearly understood by all practitioners, and especially by Willkie and Rothschild.

***Q: Would you say that the French legal system is now efficient?***

**LS:** The French legal system is certainly efficient, and I would underline as evidence of this, that the UK scheme of arrangement (which is very popular with UK, as well as non-UK registered companies), has, as far as I am aware, never been implemented to the benefit of a French insolvent company, even for big companies with a large and international pool of lenders. This shows the efficiency of French proceedings even though some foreign creditors remain skeptical of their efficacy.

On the contrary, many foreign debtors have chosen to use the UK scheme of arrangement to reach an agreement with their creditors because no sufficient mechanism is provided by their local laws.

By contrast, French proceedings are arguably successful without the need to resort to the scheme of arrangement.

By way of illustration, agreements were reached within a very short time frame with the creditors in proceedings such as *Vivarte* in 2014 and *Latecoère* in 2015.

**AJ:** I agree, and I would also add my opinion that the expedited financial safeguard procedure in France (to a greater extent than the "common" safeguard procedure) is actually the major legal innovation of the recent French insolvency law reforms. Such proceedings are more powerful than the scheme of arrangement because an agreement can often be reached faster. In addition, the costs of the safeguard procedure can be less significant than those of a UK scheme of arrangement.

However, the scheme of arrangement is still more popular than the expedited financial safeguard procedure perhaps due to the close relationship between the U.S. and

the UK and the fact that most of the creditors in major restructurings are based in those two jurisdictions.

***Q: What about drawbacks?***

**AJ:** I would say that what prevents the expedited financial safeguard procedure from being successful and popular abroad is the narrow-minded opinion of French commercial courts about COMI (Center of Main Interest) shifts. A COMI shift is one mechanism by which non-UK incorporated companies can benefit from the UK scheme of arrangement.

**LS:** This may change with the recent creation in France of specialized insolvency courts by the so-called Macron Law of 2015 (a new law named after the French Minister of Economy, Emmanuel Macron). According to the new law, a specialized French insolvency court may have jurisdiction to deal with the insolvency proceedings of not only the French holding company but also of its affiliates.

Another downside of the French restructuring framework for foreign creditors is the inability for them to understand why creditors' committees are set up according to the type of claim instead of the degree of seniority.

During pre-insolvency proceedings (*mandat ad hoc/ conciliation*), agreements that are ascertained by courts always take into account the degree of seniority of the debts. It must be the same for the safeguard procedure or insolvency proceedings.

French law now provides that the receiver should take into account intercreditor agreements, if any, to organize the voting rights of the members of creditor committees.

**LS:** What could also be improved are the criteria used by commercial courts to approve a sale of business plan. Even if the French Commercial Code provides for several criteria, the only one that is truly taken into account by French judges is the number of employees transferred to the purchaser, and thus even if the business plan itself is not feasible, it can still be waved through.

This is why it should be mandatory for the bidders to produce a revised IBR. It would not only help the court to analyze the feasibility of the plan, but it would also prevent certain deals from failing within a few months of completion. Obviously, it would have a cost, so thresholds should be forecasted.

***Q: What sectors are particularly affected by restructuring at the moment?***

**LS:** Construction industries, including all production workers from the subcontractor to the commissioner. Retail is also affected due to the economic crisis and climate change. The oil and gas sector is also touched by the crisis.

**AJ:** Retail is obviously concerned by the crisis, but the lack of adjustment by retailers to new consumption patterns is also a key factor. With respect to oil and gas, currently the barrel price is rising but not quite enough to ensure recovery. Steel and mining activities are also affected.

More generally, I think that any company that did not manage strategic challenges, or that loses market share, will ultimately face difficulties.

***Q: How are current deals different from past matters?***

**AJ:** Past deals were linked to unhealthy balance sheets related to past LBO structures, which generated long restructuring cycles. The last one of this kind was *Vivarte* in 2014.

Today, restructurings are more corporate and more often about listed companies, which is even more complicated. Usually, negotiations are conducted among three types of entities: the debtor company, creditors and shareholders. With listed companies, the shareholders' chair is often empty. Conducting negotiations without the shareholders becomes tricky and requires experience and professional ability.

I believe we have a unique practice over such matters. As far as I know, very few corporate and investment

banks have experience of this. Rothschild advised the first expedited financial safeguard procedure opened for the benefit of a listed company, *Solocal* (*Pages Jaunes*) in 2014.

**LS:** This is the same for Willkie with matters such as *Latécoère*.

I think we will soon face LBO restructurings again. Some of the last LBOs were structured with an oversized leverage and "covenant-lite" documentation.

Recently, we have faced new types of restructuring matters including uni-tranche loans. The advantage of dealing with a uni-tranche loan is that there is only one representative to negotiate with, but the main drawback is that this single creditor will be the only one to decide the entire content of the agreement.

***Q: What about Brexit?***

**AJ:** Brexit may trigger, in the long term, the end of the preeminence of UK law in financing contracts, as well as a slowdown in UK schemes of arrangement as a means of implementing a restructuring. Other alternatives in European countries now exist and may end up being preferred by European companies.

**LS:** The result of the UK's vote in favor of Brexit was unexpected and, unfortunately, something for which the market had not sufficiently prepared. From a pure restructuring market perspective, I agree with Arnaud's view that UK schemes of arrangement may become less attractive. Currently English judges often rely on the recognition provisions of the EU Judgments Regulation, which the UK is party to as a member of the EU. The UK may cease to be a party to this Regulation upon leaving the EU. To the extent this occurs and no equivalent recognition arrangements are agreed to by the UK and the EU, this may make the recognition of UK schemes of arrangement in EU Member State jurisdictions more complex and difficult. "COMI shifting," by which European corporations move their center of main interests to the UK in order to take advantage of UK insolvency regimes such as administration/company voluntary arrangements could also cease. And finally, the UK would cease to have any involvement on the progress and content of the upcoming European insolvency law reform.

***Q: Please tell us a bit about Rothschild's Restructuring Practice.***

**AJ:** The Rothschild restructuring practice was established 15-20 years ago in London and Paris.

Our first major deal in Paris, which really kicked off the franchise, was the restructuring of Vivendi in 2002. This deal was a triggering event in the development of our restructuring practice, as our ability to independently advise on financing issues the same clients that we advise on mergers and acquisitions became fully recognized.

Between 2001 and 2007, our restructuring clients were mainly corporations, generally large and listed.

After 2009 and until 2012/2013, as the leveraged finance bubble burst, most of our clients were in the private equity space. From that period on, we also developed a unique franchise in restructuring high-yield bonds. (Rothschild has advised on almost all French bond restructurings since 2009.)

Our restructuring practice is an inherent part of our Financing Advisory team, which develops independent advice to our clients in relation to their financing liabilities. The scope of our practice ranges from acquisition finance advisory to debt advisory, rating advisory and restructuring, as well as equity advisory with IPO advisory and more generally capital markets (debt and equity) advisory.

Our team represents by far the largest restructuring team in EMEA with offices in London, Paris, Frankfurt, Milan and Madrid. The Paris office restructuring franchise is led by Vincent Danjoux and myself.

We are consistently ranked no. 1 by volume and value of transactions in EMEA by the only independent restructuring league tables, prepared by *Thomson Reuters*.

Rothschild's restructuring team in EMEA has closed approximately 30 restructuring transactions each year over the past years.

In 2016, Rothschild was nominated "Best Bank for Restructuring" in the "Leaders de la Finance" Awards for the fifth year in a row.

***Q: Please tell us a bit about Willkie's Restructuring Practice in Paris.***

**LS:** The Parisian restructuring practice of Willkie is one of the biggest teams in France, co-headed by Alexandra Bigot and myself, and includes a special European counsel, Vincent Pellier, and four associates.

Often ranked among the best restructuring teams in France, Willkie is highly renowned. Indeed, we are ranked "Band One" in *Chambers*. French Magazine *Décideurs* ranked Willkie's restructuring practice as *"incontournable"* (unrivalled). The leading French magazine *Option Droit & Affaires* ranked the team as five stars in the field of restructuring. *IFLR* and *Legal 500* recognized our restructuring practice as a Tier One Firm. *Legal 500* stated that our *"great practice is routinely involved in the market's most high-profile cases on behalf of sponsors and investors."*

Our practice is recognized worldwide. We often work with the firm's other offices located in the United States, the UK, Italy, Germany and Belgium in order to satisfy our clients' needs.

Our team is known for its ability to quickly assess the restructuring challenges and issues faced by distressed companies and their creditors.

We have extensive experience in business reorganization and restructuring, and advising debtors, shareholders, hedge funds and investors, whether in debt or equity (loan-to-own strategy, distressed M&A, asset deals). The team has worked on some of the most significant French loan-to-own cases such as: *SGD, SAUR, Frans Bonhomme, Vivarte, Latecoere,* (representing Oaktree, Attestor, Centrebridge, Angelo Gordon, Golden Tree, Apollo and Monarch) as well as significant insolvency proceedings including: *Kem One, Fly, Petroplus, Coeur Defense, SNCM, Gérard Darel* and *Cauval*).

As an alternative to initiating formal insolvency proceedings, we also assist large groups in transferring under-performing subsidiaries as well as advise bidders when they are acquiring assets or shares of companies facing difficulties, either under formal insolvency or out-of-court proceedings.

***Q: Why should restructuring clients choose to be advised by Rothschild and Willkie rather than by other firms?***

**LS:** Willkie is among the very few firms to offer a combination of (i) our many years of experience in the restructuring business, (ii) our close relationship with the various professionals involved in this field in France – which is key – and (iii) the interaction between the various practices of Willkie in France and abroad.

In addition, certain team members have a finance background, enabling them to assess more accurately the risks and challenges faced by distressed businesses, while others are seasoned litigators with a vast knowledge of judicial mechanisms.

**AJ:** This is quite similar to the kind of assistance that our team at Rothschild can provide. Our debt and restructuring specialists cover all global markets and are experienced in assisting every type of client. We advise on an unrivalled volume of transactions in our core markets, greater than any single financing counterparty. Our track record includes many of the world's most complex, demanding and transformational restructurings (for example (and these are just in France): *Theolia, Solocal, Novasep, Belvédère, Orco, Latécoère, Frans Bonhomme, Vivarte)*.

But above all, Rothschild's restructuring practice works closely with our highly active M&A advisers, facilitating the transactions they work on and leveraging their sector insight. This scale and expertise give us unique access to the performance and strategy of the full spectrum of capital providers.

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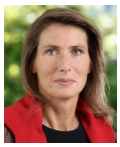

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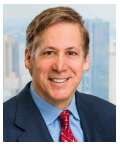

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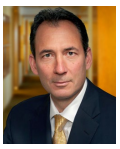

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