

Casino and the future of complex restructurings in France



Restructuring markets have an eye on distressed situations in France. Altice France and Altice International (with reported debts of 23 billion euro and 9 billion, euro respectively), and Atos (with reported debts of 4.6 billion euro), dominate headlines.

The Casino Group recently closed its restructuring. The Group is the latest to implement a complex transaction using the French restructuring toolkit, providing our market with further insight into the art of the possible in France.

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The Casino Group, its restructuring and outcomes

Casino Guichard-Perrachon is a leading listed French-headquartered international food retailer. In light of the wider retail environment, an 11 billion euro debt burden and liquidity issues, the prospect of the Group's holistic restructuring was one of the most talked about European situations in the past two years.

Settling on a solution was a challenge, with the Group needing to find common ground among a diverse stakeholder group. Financial creditors across the capital structure included holders of RCF and TLB debt, senior secured notes, unsecured bonds, perpetual hybrid instruments, and lease liabilities.

Other major players included the Group's existing shareholders, with its majority shareholder (Rallye) itself implementing a safeguard plan in separate proceedings.

Despite this complexity, the Group delivered a transaction under the aegis of the Comité Interministériel de Restructuration Industrielle (CIRI, the French government's body that supervises all large restructurings) within a year using the French restructuring toolkit. The transaction sees a dramatic reduction in leverage, with a debt-for-equity swap of 3.5 billion euro of debt and an equity injection of 1.2 billion euro of new money.

The backdrop: restructuring tools in France

The recent growth of restructuring regimes in Europe has caught the attention of commentators. France has had a toolkit for companies that face financial distress for many years. These range from consensual proceedings (*mandat ad hoc* and conciliation), to preventative restructuring proceedings (*safeguard* (*sauvegarde*) and accelerated *safeguard* (*sauvegarde accélérée*)) and full-blown insolvency proceedings (*redressement* and *liquidation judiciaire*).

Historically, the French restructuring market was perceived as too debtor-friendly. The well-known threat that, in certain proceedings, a French court could impose a 10 year term-out on dissenting creditors made international stakeholders wary of any French restructuring process.

However, recent reforms have seen the introduction of concepts that are more familiar to participants from restructuring markets outside of



France. With the introduction of classes of creditors for voting, and the ability to bind dissenting classes (commonly known as cross-class cramdown) and force controlling shareholders out, France has suddenly moved towards a more balanced system.

The French restructuring tools used by the Casino Group

The Paris Commercial Court opened conciliation proceedings on 26 May 2023. The Group's significant financial creditors agreed to a (contractual) standstill. This process lasted 5 months while a solution was negotiated. Two possible options emerged. One option was a deleveraging transaction led by the billionaire Daniel Kretínský and other existing shareholders (the Consortium). Another option was a proposed merger with Teract (a French retailer).

By the end of the five-month period, key stakeholders had contractually locked-up to implement the Consortium's deleveraging transaction.

On 25 October 2023, Casino pivoted to an accelerated safeguard procedure to implement the locked-up deal via a safeguard plan. The safeguard plan was voted on by affected creditors and shareholders, and subsequently approved (with a cramdown of one dissenting creditor class) by the Paris Commercial Court on 26 February 2024.

Interestingly, despite not having any assets in the US, the Group obtained Chapter 15 recognition of the accelerated safeguard in the US Bankruptcy Court for the Southern District of New York shortly before closing to ensure that no US-based creditors would attempt to challenge the safeguard plan as approved in Paris.



In focus: a snapshot of conciliation and accelerated safeguard proceedings

Conciliation

- Pre-insolvency proceeding
- Debtor-led
- President of the Commercial Court appoints an insolvency specialist (conciliateur) to assist debtor's negotiation with creditors
- Ban on ipso facto provisions
- No automatic stay, key creditors asked to standstill
- Court can impose standstill for duration of conciliation (up to 5 months) and a stay on enforcement (up to 2 years)
- A restructuring may be implemented through a conciliation agreement with unanimous consent of stakeholders

Accelerated safeguard

- Available to debtors in conciliation proceedings
- Debtor-led
- Ban on ipso facto provisions
- Automatic stay
- Safeguard plan can implement maturity extensions, debt haircuts and debt-for-equity swaps
- Affected creditors and shareholders split into classes to vote on the proposed plan
- Each class approves the plan if two-thirds by value vote in favour
- Cross-class cramdown for dissenting classes available (subject to conditions)
- Court has discretion to approve the plan, including a "best interest of creditors" test

Is the Casino Group's restructuring, alongside other recent transactions, a roadmap for future complex restructurings in France?

The Group's restructuring has a number of features familiar to the international restructuring community. A debt-for-equity swap to substantially de-lever the Group's balance sheet, a significant equity

cheque to inject liquidity, and implementation via a court-supervised restructuring plan with a cross-class cramdown of a dissenting class.

This transaction, alongside other recent large French distressed situations, is evidence that a combination of conciliation and accelerated safeguard can be used to deliver complex solutions that have broad cross-stakeholder support.

The combination is likely to be a preferred route for large-scale distressed situations in France in the future. But, will the process balance all stakeholder interests, and deliver restructuring outcomes, in a way anticipated by stakeholders that are new to the French restructuring market?

Despite recent reforms that help to address the balance of power between debtors and creditors, nuances remain.

Those new to French restructuring procedures need to ensure that they properly account for the specific dynamics in this market, which may significantly impact likely outcomes in a distressed situation.

Striking a balance between debtors and creditors in French restructurings

Pro-debtor elements remain, for example:

- In conciliation and safeguard proceedings, the debtor remains in control
- Creditors cannot present alternative restructuring plans
- A court-appointed administrator constitutes the classes of affected parties for voting
- A plan can be imposed on dissenting classes, and the court may depart from the absolute priority rule if necessary

Checks and balances for creditors

- Before opening accelerated safeguard proceedings, the debtor must show that its proposed plan has sufficient support from creditors such that approval of the plan is likely within 4 months (i.e. key creditors should be involved in the company's design of the plan)
- The court may only apply cross-class cramdown if certain conditions are met
- Creditors who are in the money and whose position in the capital structure protects them from being crammed into a plan are in a strong position at the negotiating table