Broke but not bust

Nearly two years ago, the French government amended its insolvency law with the aim of providing greater protection to domestic companies. JEAN-PAUL POULAIN and JASON REEVE assess how the legislation has worked in conjunction with EU-wide regulations

Most French companies become involved in the wider European market through their business development strategies, but some can be dragged in to meet the needs of their business partners, clients or customers. Stepping into the European arena can be a great opportunity to expand and increase a business's turnover, but it can also spawn unforeseen problems.

When European businesses face financial difficulties they should be able to benefit from simplified procedures for restructuring. Until recently, insolvent companies that formed part of a group operating in several European countries had no choice but to launch insolvency proceedings in each of the jurisdictions where they were incorporated.

Operationally, running separate proceedings within the same group was unsatisfactory and counterproductive. Moreover, the diversity of procedures and regulations proved particularly constraining for companies at a time when their management should be focused on improving fortunes.

Since May 2002 a set of insolvency rules has applied to European companies, following the implementation of regulation CE 1346/2000. Its purpose is to allow all insolvent companies within a single group to be submitted to the same proceedings, in order to facilitate restructuring.

Pursuant to article 3 of the EU regulation: "The courts of the member state within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings." The choice of jurisdiction thus depends on objective criterion related to where the centre of a group's main interests is located.

In 2006, the French parliament amended the law on insolvency and established the 'procédure de sauvegarde'. This pre-insolvency measure has been compared to US chapter 11 proceedings (which refer to the section of a jurisdiction's bankruptcy code that allows for company reorganisation). The French measure is aimed at offering solutions to domestic companies that help avoid insolvency.

The procedure can only be applied to companies that are not in cessation of payments. After the procedure is opened, a company can withhold the payment of its debts and propose to its creditors either a discounted immediate repayment or a repayment schedule taking place over up to 10 years.

When the safeguard law was enacted, the French authorities notified each of the 23 member states that the procedure was to be included within the scope of the European regulation CE 1346/2000. For the French, the purpose of including it on the list of insolvency proceedings was to allow European groups to benefit from the EU regulation.

A new approach

The combination of the EU regulation and the French safeguard law dramatically modifies the approach to insolvency proceedings in Europe.

For example, in the Eurotunnel case the group requested a safeguard procedure applicable to both its French and UK companies. The French commercial court decided to apply the same rules to all the subsidiaries and the same debt repayment terms – a total of €9 billion – to all the creditors, irrespective of the location of the debtors.

Another interesting case involving Manzoni-Bouchot – the vehicle equipment manufacturer – implies a social restructuring plan. The French commercial court of an eastern district of Lons-le-Saunier applied the EU regulation in 2006 by opening a safeguard procedure on the group's French and Spanish subsidiaries.

Applying the EU regulation to restructure a group of companies has several benefits: the companies' debts will be frozen on the opening of the procedure; the same terms and conditions of repayment will apply to all creditors; and the same judge will rule on a safeguard plan that applies to all companies falling within the scope of the procedure.

However, there are a few areas where, despite the application of a single procedure and set of regulations, local laws remain applicable. For instance, under French law the indemnities due to employees under a global dismissal scheme can be prepaid by French government organisations (AGS – Associations pour la Gestion du régime de garantie des créances des Salariés). However, the right to these prepayments only applies to people employed under a French legal contract.

This is likely to be the main drawback of the pan-European procedure, as the more quickly and simply a cross-border dismissal plan can be implemented, the greater chance a group has of succeeding in its revival.

Another difficulty lies in determining jurisdiction and therefore identifying the competent court. For instance, in 2006 the Italian and Irish courts both claimed competence over the procedure for Eurofood – the Irish subsidiary of the Italian group Parmalat.

Despite these issues, the restructuring of European groups under a single procedure applied by centre-of-main-interest criteria will become increasingly frequent, provided that managers acknowledge that global restructuring is in their group's best interest. ■