****

**Inside Story – December 2017**

**Navigating Extensive and Complex Restructuring Processes in France:   
The CGG SA Case**

*Hélène Bourbouloux,   
Administrateur Judiciaire,**FHB, Paris, France  
helene.bourbouloux@fhbx.eu*

*Introduction*

CGG SA is the holding company of the CGG Group, one of the leaders in the geophysical and geological services industry in the world. The CGG Group provides a wide range of services for the acquisition, the processing and the interpretation of seismic data. Its clients are mainly oil and gas companies using seismic imaging as a support for exploring and developing their reserves, to whom the group provides the means for a comprehensive understanding of subsurface targets and their geological settings. The CGG Group delivers its unique expertise in geoscience technology and project management through its three complementary business divisions: Equipment, Acquisition and GGR (Geology, Geophysics and Reservoir). The group has more than 50 sites worldwide spread across 5 continents with two main decision centres in France and the United States. CGG SA, its holding company, is listed on both the NYSE and EURONEXT PARIS exchanges.

The CGG Group has experienced problems in the past few years, leading to its consolidated turnover dropping from USD 3.766 billion (2013) to USD 1.196 billion (2016). Accumulated consolidated losses over the past three years totalled USD 3.170 billion. The inevitable need for a restructuring process also led to one of the most important cases seen in France in recent years for the financial, economic and social issues it contained. Proceedings took place in two phases across 2017 together lasting nearly a year. The first of these was a *mandat ad hoc* (ad hoc mandate) that began on 27 February and continued to 13 June. The second, following positive discussions with creditors and shareholders, consisted of *sauvegarde* (safeguard) proceedings that were opened on 14 June and which ended with confirmation of a restructuring plan on 1 December. Implementation of the restructuring plan is scheduled to be completed by the end of February 2018.

The distinctiveness of this process resulted notably from two things: the amount of debt that has been converted into equity (around EUR 1.7 billion) and the geographical location of the assets (most of them pledged for the benefit of the creditors), which also required the company to request the opening of 14 separate Chapter 11 proceedings in order to benefit from the protection of the US bankruptcy law and to have the plan implemented for the US portion of the debt.

This note will present the two stages of the process from the French perspective. During the initial phase, the main stakeholders tried to find an agreement supported by a large group of different classes as part of amicable *mandat ad hoc* proceedings, while, in the second phase, the purpose of the *sauvegarde* proceedings was to have the agreed restructuring plan submitted to all groups of creditors and shareholders to be voted by a sufficient majority of each group.

**A. Complexity of the Negotiations during *Mandat ad hoc* Proceedings**

* **The Difficulty of Maintaining the Confidentiality of the Process**

The opening of amicable proceedings under French law is supposed to be confidential and does not require any authorization from creditors or shareholders. Furthermore, Article L. 611-16 of the French Commercial Code provides that any contractual provision purporting to prevent a debtor company from requesting the opening of amicable proceedings is void. However, the financial documentation entered into by CGG SA and its foreign subsidiaries contained provisions which stipulated that the appointment of a *mandataire ad hoc* without the prior consent of the lenders (at the majorities required) would trigger cross-default provisions that could lead to compulsory early repayment of the related debts. Thus, despite the French law position, CGG felt it necessary to request its lenders to waive the cross-default provisions, which they duly granted towards the end of February 2017 after some months of negotiations.

* **The Risk of the Disclosure of Inside Information**

After the opening of the *mandat ad hoc* proceedings, the organization of the discussions and negotiations were challenged and slowed down by the risk of the disclosure of inside information, given that CGG SA was listed on both the NYSE and EURONEXT PARIS exchanges. Indeed, in order to participate in the discussions, lenders had to commit not to disclose inside information and had to give prior written acknowledgement of restrictions on consent. This would also mean they had to freeze any trading operation on shares in CGG SA shares or debt instruments issued by CGG SA or any group subsidiary.

At first, only the advisers to the lenders agreed to sign non-disclosure agreements and were mandated by their clients to negotiate on their behalf. Indeed, the lenders and the company did not agree on the length of the necessary non-disclosure agreements since the timing of disclosure of inside information needed to comply with the company’s market communication requirements. In the end, CGG committed to cleanse information on a regular basis. As such, the lenders accepted to participate directly in the negotiations for a short period of time. However, since the company had to issue all information given to the lenders, information had to be selected and lenders could not have access to all information, especially critical financial figures not otherwise shared with the market.

* **The Balance of Power between Creditors and Shareholders related to the High Level of Indebtedness**

Above all, what also made the CGG case distinctive was the balance of powers between lenders and between lenders and shareholders that resulted directly from (i) the high and unsustainable level of debt CGG had to face compared to the accumulated losses of the group over the past three years (over USD 3 billion), which required an important debt-equity conversion and (ii) the securities and guarantees granted by CGG SA and its subsidiaries to some of their lenders.

Indeed, at the beginning of the proceedings, the group indebtedness represented more than USD 2.7 billion (excluding Nordic debt of USD 200 million that had already been restructured), of which USD 1.5 billion was in the form of high-yield bonds. Moreover, senior debt (French and US RCF and Term Loan B for a total amount of USD 700 million) benefitted from security over several assets belonging to CGG SA and its subsidiaries, while high-yield bondholders had been given guarantees by US subsidiaries. Convertible bondholders did not, however, benefit from any pledge over CGG SA’s assets. Finally, another tranche of senior debt (USD 500 million) was directly held by another US subsidiary of CGG SA.

Consequently, the subordination of the lenders and shareholders was built on those prerequisites and on the fact that high-yield bondholders would probably have to significantly reduce their claims in order for the company to maintain a sustainable level of debt. This explains the arbitration carried out during the negotiations leading to a lock-up agreement signed in June and to the restructuring plan that reflects this term loan.

However, it should be underlined that, according to the enterprise value concept, the position of shareholders has been significantly improved compared to what their treatment would have been on a liquidation basis. Indeed, in such a scenario, considering the indebtedness ratio and the securities and guarantees granted to some lenders and bondholders, the shareholders would not have been repaid at all. This can be contrasted with the position under the restructuring plan, which anticipates a better fortune provision for those shareholders participating in a capital increase through warrants and initial residual rights as strong incentives for a positive vote.

This incidentally avoided the problem under French law which makes it difficult to require shareholders to give up their rights except in circumstances that are in practice very hard to meet and would have obliged the company to extend the duration of the process considerably. This would have been detrimental for business prospects.

**B.** ***Sauvegarde* proceedings: Some Notable Points**

* **The Concomitant Opening of 14 Chapter 11 Proceedings**

The Paris Commercial Court opened *sauvegarde* proceedings on 14 June 2017 in respect of CGG SA. As stated above, CGG SA and some of its subsidiaries had granted security and given guarantees to senior lenders (RCF and Term Loan B lenders) and to high-yield bondholders. In order to protect the assets of the whole group, 14 subsidiaries of CGG SA petitioned Bankruptcy Court of the Southern District of New York for the opening of Chapter 11 proceedings. This included CGG HOLDING US Inc., which was also a direct debtor under two senior secured loans (US RCF and Term Loan B). As a consequence, a global judicial and coordinated protection of the entire group was required because of the geographical location of the debtors and of the assets secured as well as due to the risk of a cross-default event arising that was included in the financial documentation.

The petition was also prompted by the choice of law clause in the high-yield bonds stipulating they are regulated under New York law, which gives jurisdiction to the state’s courts in the event of any dispute or litigation related to the documentation. Nonetheless, to ensure coordination between proceedings overall, a Chapter 15 application was also made in respect of the French *sauvegarde* proceedings opened over CGG SA so that the New York courts would be able to recognize the existence of and give effect to the French proceedings.

The need to coordinate proceedings globally also had an incidental impact on the choice of procedures in France. The intricacy of the French and US proceedings as well as the timetable that had to be fulfilled under New York law would not have allowed CGG SA to request the opening of *sauvegarde financière accélérée* (accelerated financial safeguard) proceedings in France, even if it had been eligible, since the relevant restructuring plan provisions did not impair creditors other than financial ones. Moreover, Chapter 11 proceedings cannot last for less than two months unless all creditors agreed on the plan before the opening of proceedings (prearranged plan). As such, the detail of the procedures in both jurisdictions had to be taken into account before the opening of the proceedings to establish a workable timetable.

* **The Consultation of High-Yield Bondholders**

One of the main differences that still exists between French and US law is how creditors are consulted: by classes (in the US) or by claim type (in France). This meant that, in France, where bondholders are all gathered in one committee, both high-yield bondholders and convertible bondholders were consulted on 28 July 2017 with equal voting rights for all creditors based on the nominal value of debt. The difficulty in the French *sauvegarde* proceedings was that, even if CGG SA were the issuer of the high-yield bonds, New York law governed the financial documentation of those bonds, which also benefited from guarantees given by US companies.

During the *sauvegarde* procedure, it was considered that the qualification of lenders with the legal right to participate in the general bondholders meeting should be determined by the law governing the indenture contract i.e. New York law. The problem was that the documentation was very complex and included several layers of participants:

* Clearing systems interacting with Direct Participants;
* Direct Participants interacting with Beneficial Owners who express the orientation of the vote;
* Beneficial Owners interacting with Participants holding the voting right.

In order to tabulate the results of the vote, a tabulation agent was designated by the judicial administrator and benefited, upon special power of attorney being given, from the right to tabulate the vote and express one global vote in the names of the bondholders. Nevertheless, the right for bondholders to vote in person was kept even if all were aware that this could be challenged.

* **The Absence of Shareholder Cram-Down in *Sauvegarde* Proceedings**

Once the safeguard plan was adopted by all lenders, a shareholders’ meeting was convened by the company for the shareholders to accept the capital modifications consequent on the restructuring plan. Indeed, another difference still existing between French and US law is the fact that, even if the required consent of the creditors is obtained to a restructuring plan, French shareholders cannot be crammed down by the vote of the creditors, at least in *sauvegarde* proceedings. However, if the shareholders had rejected the restructuring plan, the option existed of petitioning for the opening of *redressement judiciaire* (judicial rescue)proceedings with a request for the appointment of a judicial agent being made so as to enable the agent to vote in the place of dissenting shareholders. This option was made clear to shareholders (some of whom were potentially dissenting) to underline the fact that their position and treatment in the restructuring plan was better than otherwise would be the case were *redressement judiciaire* proceedings to be opened.

*Conclusion*

The CGG restructuring proceedings have been an extensive process lasting nearly 10 months (excluding the closing phase) with strong phases of negotiations resulting directly from the different interests of various stakeholders. This process incidentally illustrates the remaining differences between French and US bankruptcy laws and the difficulties for creditors of a debtor company to prevail over shareholders despite the remaining economic value of such an indebted company. It also shows the complexity of treatment of high-yield debt governed by foreign law and the difficulty of organising the consultation of bondholders without the possibility in French law of considering a vote by class of creditors. This position may yet change, given the proposal for a European Directive on preventive restructuring currently under discussion, which will undoubtedly have an impact on French law procedures of this type.