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Practice Group:
**Bankruptcy and
Restructuring**

The French Petroplus Law

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The Decree No. 2012-1190 of October 25, 2012 has recently clarified the Law No. 2012-346 of March 12, 2012 on protective measures (*mesures conservatoires*) applicable to French safeguard, recovery and liquidation proceedings, named as the Petroplus Law.

The Petroplus Law was mainly designed, and adopted, in the context of a highly publicized insolvency proceeding of Petroplus Raffinage Petit-Couronne SAS, a French oil refining company.

The French government, and public opinion, were shocked to learn that this French company, which was profitable, had been forced to file a motion for bankruptcy essentially due to the behavior of its foreign parent's companies: its bank accounts were fully emptied by the parent's banks shortly before filing for insolvency (171 million euros were withdrawn by one of the parent's banks) and its oil inventory (notably crude stock estimated up to 200 million euros) was legally owned by its parent, leaving the French company with no assets and in default to senior notes and convertible bonds.

As a consequence, the French legislator has adopted, in record time, a law allowing any administrator, liquidator or judicial receivers appointed in the course of an insolvency proceeding to be granted by judges the power to take certain protective measures in relation to the assets owned by related entities pending the extension of the bankruptcy proceeding against them. These measures tend to prevent a claim by any third party for the recovery of its own assets held by the bankrupted company pending the extension of the bankruptcy procedure against the third party.

The key provisions of the Petroplus Law are the following:

- Protective measures may be taken in relation to assets owned by a natural or legal entity when an extension of a safeguard, recovery or liquidation proceeding based on the ground of co-mingling of assets (*confusion de patrimoine*)¹ is requested against such natural or legal entity. Those measures undermine the principle of the corporate veil as an administrator may now be authorized to pierce the corporate veil of the insolvent company by requesting protective measures in relation to the assets of a third party as long as the administrator has requested an extension of proceeding on the ground of co-mingling of assets. The effectiveness of such measure shall however be limited in practice to assets located in France, due to the legal constraints of judgment enforcement in foreign jurisdictions;
- Protective measures may also be taken in relation to assets owned by *de jure* or *de facto* managers of the insolvent company on the basis of an action grounded on mismanagement having caused the cessation of payments²; and
- The administrator may be authorized to dispose of perishable assets and/or assets that are costly to preserve, subject to prices and terms decided by the bankruptcy judge, and to use the proceeds in certain cases of cash shortfall³.

¹ Article L.621-2 of the French Commercial Code. Please note that French law authorized, before the Petroplus law, any administrator to take protective measures in case of extension of a safeguard, recovery or liquidation proceeding decided only on the ground of fictitious companies

² Article L.631-10-1 of the French Commercial Code

³ Article L.663-1-1 of the French Commercial Code

The French Petroplus Law

The new protective measures, clearly derived from the Petroplus bankruptcy case, may be difficult to implement in other proceedings due to the specificities of the Petroplus bankruptcy.

These measures have been criticized by authors and academics as being questionable from a legal point of view (as well as burdensome to implement) and dangerous from a practical point of view (for example, since the owner of assets could be deprived from the use of its legally owned assets and therefore could be forced into bankruptcy).

However, even though the implementation of such protective measures could be uncertain, the mere fact that an administrator benefits from new powers may strengthen his position vis-à-vis third parties and notably parent companies.

The Petroplus Law has entered into force and applies with immediate effect to insolvency proceedings which were ongoing on March 13, 2012 or commenced on any later date.

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