SAVE EUROTUNNEL !!!

RESCUE PLAN
(I.I.I, 12 June 2007)

What is a Plan de Sauvegarde (Rescue Plan)?

Brief summary

Plan de Sauvegarde is a new reorganisation proceeding. Directly inspired from the US Chapter 11, it is an important feature of the new French insolvency law which came into force on 1st of January 2006. This new law places emphasis on preventive proceedings, aimed at reorganizing a company before it is too late.
The Sauvegarde proceeding was added in 2006 into Appendix A of the 1346/2000 Regulation, although such addition does not exactly conform to the criteria for such introduction. Indeed article 1 of the Regulation states that it applies to proceedings based on the insolvency of the debtor, which entails its dispossession and the appointment of a receiver.

Brief explanation of steps taken
The representatives of a company, that is still solvent, file a petition for the opening of the Sauvegarde proceeding. Debtor is requested to provide the court with reliable, certified accounts in which are described the nature of the difficulties, and the reason for the company not being able to overcome them on its own.
lf accepted by the court, a six month observation period (renewable up to 18 months) is opened, during which the company will renegotiate with its creditors a rescheduling or waiver of debts existing prior to the commencement of the proceeding. The court will often appoint an administrator to assist in the negotiations. Debtor also enjoys a stay of payments of debts which arose prior to the commencement of the proceeding. For companies with more than 150 employees and an annual turnover of more than € 20 million, the administrator organizes two creditor committees: one of credit institutions and one of the main suppliers. The two committees must vote on the plan, which may provide for, inter alia, waiver of debts, sales of assets or a uniform rescheduling of debt for up to 10 years. Creditors who are not members of the committees are consulted on the plan, but they may be subject to a uniform rescheduling of debts.
Once the court, composed of 3 or 5 judges, has issued the order, most of the follow up work is left to a single judge, named judge commissioner. He closely supervises the tasks of the practitioner, such as acceptance of creditor claims and the sales of assets which require his approval.
But if the plan's commitments are not upheld, the case will come back to the court for cancellation.

Quick history and description of the project

On 20.01.86, Margaret Thatcher and Francois Mitterrand announced the choice of a tunnel project, selected out of 4 projects, among which a bridge and a mixed construction (a tunnel bridge). A concession act was signed on 14.03.86 and construction was awarded to a consortium of ten companies: 5 British, 5 French.
Construction began in December 1987, inauguration took place on 6 Mai 1994.

Description

The tunnel lies 50 meters deep below sea level. Its length is 50.4 km of which 37.9 km are under the sea. There are two tunnels, one for each direction of traffic. The speed of the trains reaches 160 km/h.

Shuttles load trucks and passenger cars. The mole plow (excavator) was built especially for Eurotunnel and was the biggest of its kind ever built.

Cost of construction (root problem of current situation), financing, initial difficulties

Initial budget cost: 51 Billion Francs (7.8 billion €).
Actual cost, at time of delivery: 16 Billion €.
Net loss for first year of operation: 150 Million €.

Financing:
Purely private: n° 1 condition of the project, laid down by Margaret Thatcher: "not a public penny"
Equity: 3.8 billion €, public, thank to several raisings of capital.
600 000 shareholders (of which 140 000 British).
Further, shareholders holding less than 200 shares each, account for 16% of total equity.
Bank loans by 200 lenders: 5 billion €.

Main difficulties were:
- Operation started one year behind schedule
- Difficult start up due to technical difficulties
- Fire stopped operation for 9 months
- Revenue from traffic lower than expected due to price war with low cost airlines and sea traffic.

Structure of the Eurotunnel group

The Eurotunnel group consists of 17 companies, registered in Britain, France, the Netherlands, Germany and Spain. Two of them: France Manche and the Channel Tunnnel Group are the concessionary companies.
SA Eurotunnel and Eurotunnel PLC are the two holding companies of the group. Their shares are twinned.
All the companies of the group are jointly responsible for the debt according to a contract named "Owning group guarantee agreement".
The present debt amounts to 9 billion €:
- Senior debt: 0.5 billion €
- Loan "tier 1A": 1.1 billion €
- Junior debt: 4.7 billion €
- Bonds: 2.7 billion €.

The above ranking is contractual between Eurotunnel and the lenders. It means that, for instance, Junior debt can be reimbursed only if senior debt and Loan Tier A have been reimbursed.
Debt to suppliers amounts to no more than 0.2% of total liabilities.

Throughout the years, the initial Anglo-French parity has evolved, and the gravity centre of the group has moved towards the French side. The shareholders, most of whom are French, have forced a change of management. If almost all companies have their own management structures, the strategic and operational group administration is currently centralised and carried out by a common board of directors, all present members of which are French.

Start of the restructuring history

Being deprived from the possibility of public help, Eurotunnel had no other choice than to seek agreements with its creditors, which it has done twice since 2003 with the help of justice, by using the "mandat ad hoc"proceeding. This confidential proceeding entrusts an administrator with the role of negotiating a rescheduling of the debt with the creditors. However, given the size and notoriety of Eurotunnel, the proceeding was made public

Faced with a total debt of 9 billion €, Eurotunnel knew as soon as early 2006 it was unable to meet the payment due for early 2007, so it decided to use the Rescue proceeding.

On August 2, 2006, the commercial court of Paris opened a Rescue proceeding for each one of the 17 companies that make up the Eurotunnel group. The companies are registered in France, the UK, Spain, Germany and the Netherlands, with head offices located in their respective countries.

The court orders were opposed by a few funds, and three proceedings arose:
- Opposition before the court on the court orders authorizing the administrators to summon the bond creditors (note holders) to a meeting
- Same request was made before the judge commissioner.
- Summons before the court to seek annulment of the meeting.

For each company the court appointed:
- administrators (Mes LE GUERNEVE and HESS) with a supervision assignment
- mandataires judiciaires (Mes Leloup-THOMAS and PIERREL), with the main task of checking creditors claims.

Definition of COMI

The court approach to the definition of the COMI was to consider all the companies individually and separately and then to identify their centre of main interest by using a set of objective criteria, still keeping in mind the two rulings of the ECJ, namely Eurofood and Staubitz Schreiber.
The court first determined the centres of main interests at the time of the opening of the proceedings, not the date at which the credits were put in place.
One of the criteria was the concept of headquarters functions, which refers to operational and strategic functions. This concept is widely used by British case law.
Another factor taken into consideration was that most, if not all, of the operations, of the employees, and of the assets, were located in France.
Another criterion was the fact that all the negotiations to reschedule the debt had taken place in Paris, under the presidency of M. Gounon, chairman of most of the different entities. It meant that for creditors, the COMI was definitely in France.
It was also pointed out that the financial management was mostly located in France (56 employees out of 63), and that it was keeping the books of all companies.
A final, important consideration, was that the 17 companies were indissociable parts of a whole, that all of them were confronted with the same financial problem, being jointly responsible for the whole debt, that it was hard to imagine that they would individually be able to find their own solution, and that the most reasonable prospect was to seek and find a global solution for all these companies, in the name of efficiency, of the good administration of justice, and of the interests of most parties.

The safeguard plan approved by the Court on 15 January 2007

The purpose of the plan is to reschedule the debt, while reducing its amount significantly, thus allowing for the continuation of the operation, the development and the integrity of the company, while preserving employment.

The plan provides for a preliminary reorganization of the group, which includes:

- The creation of new legal entities, among which Groupe Eurotunnel SA (GET SA), which will contract a long term loan (40 years) with credit institutions. The long term loan will be used to refinance the most senior levels of the debt.
- Issuance by a subsidiary company of GET SA, Eurotunnel Group UK, or by GET SA, of bonds reimbursable in shares (the ORA), the biggest part of which will be distributed to creditors that would not be paid through the long term loan

- A public offer of exchange for the Eurotunnel shareholders, allowing them, if they so desire, to become shareholders of GET SA, on the basis of 1 Eurotunnel share for one GET share
- + 1 stock warrant. Acceptance by shareholders must be over 60% (the threshold was has since been lowered to 50%.). The essence of the deal for them is: loose a bit more than what they have already lost, or loose everything and forever, because if the offering fails, Eurotunnel might go into liquidation.

When this operation is completed, the debt will be cut down to 4.16 billion €.
The annual interest charge will be cut down from 420 million € to 300 million € during the first three years and 220 million € from the fourth year.
Shareholders have had their part of suffering. When it was first quoted on the Paris Stock Exchange, the share reached 5.3 € and went up to 20 € within the next two years. On Friday 11, May 2007, it was worth 0.40 €. With this operation, their part of the equity will be further diluted to the benefit of the creditors.

Implementation schedule (simplified)

1- T (15.01.07)	Approval of plan by commercial court of Paris
2- T+60 days	Beginning of public offering for exchange of shares
3- T+120 days (15 May)	Shareholders meeting of GET SA
4- T+140 days	First quotation of GET SA shares
5- T+230 days	Court states that execution of plan is completed.

Situation to date
Step 1 completed
Step 2 completed
Step 3 postponed to 21 May instead of 15 May
Step 4: not completed

On May 25th, it was made public that 87% of the shareholders, bearers of 2.2 billion shares, had approved the plan and would exchange their shares against shares of GET SA. When one considers that for the shareholders bearing less than 200 shares, the value of their investment is now lower than 80 euros, so small that they could even have neglected to respond to the offering, such an outcome is really remarkable.

Some practical difficulties arose with this first large scale implementation of the "Loi de sauvegarde". For example, article L 621-9 of the law states that the judge commissioner's assignment is to ensure steady advancement of the proceeding and to protect the interests of all parties involved.
Under this very general definition, some initiatives had to be taken, for example:
- As the checking of creditor claims went on, it became apparent that the creditor committee set up at the beginning of the proceeding did not really reflect the real situation a few months later. Some adjustments had to be made by negotiation.
- The law does not provide precise voting methods for the creditor meetings. Again these had to be agreed upon.

Discussion: compliance of the Safeguard proceeding with Regulation 1346/2000

The way the Eurotunnel case has been handled raises at least two points for academic discussion:

The statement that the COMI of all 17 companies is in France.

There could hardly be any debate about the COMI of some of the companies, which are registered and have their operation in France. The question arises for the others, especially those registered outside France

Besides the ordinary criteria that have been used under such circumstances, such as location of management meetings, a common financial management and so on, it seems that in the Eurotunnel case, the last one put forth is the most important and the more convincing: namely that all these companies, each of which has a definite role within the group, are totally interdependent, not only financially, but functionally. No company has a reasonable prospect of operating on its own, no company could reasonably be sold separately. Building up such a sophisticated financial rescue package with so many creditors required a single negotiation team.

Should the Sauveguarde proceeding be in Appendix A of the Regulation?

Article 1 of the Regulation states that the Regulation applies to all proceedings that entail dispossession of the debtor and the assignment of a receiver.
Article 2 defines insolvency proceedings as those referred to in article A, and says that such proceedings are listed in Appendix A.
At the time the Regulation was written, most proceedings were liquidations and entailed dispossession of the debtor and the appointment of a liquidator. Since, the situation has changed, because many modern legislations, like the new French law, sought to develop preventive proceedings, aimed at providing rescue opportunities before the situation of the debtor became irremediably damaged. Besides, the debtor may not be entirely dispossessed of his company and can, under certain conditions, continue to manage, as is the case with the Sauvegarde proceeding.
The EC Commission refuses to control admission of new proceedings into Appendix A. And it is not realistic to consider that a national judge could question the admission of a new proceeding by another country. As a result, countries happen to decide which proceedings they admit, according to the principle of mutual trust. So far such flexibility has been rather beneficial because it has allowed countries to bring innovative proceedings.
In the Eurotunnel case, the Company Sauvegarde proceeding has proven to be a much better disposition in managing the situation than any other proceeding listed in the French section of Appendix A.