Stephen Lerner's goals for his year at the helm of the ABI

Firms in the News: Page 3/4

Paris vs London: A Tale of two Cities

Analysis: Pages 5/6

Arxada convening hearing for English Scheme

News: Page 4

GLOBAL TURNAROUND

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Is the 'Offshore' world doomed?

For many decades, a network of law, accountancy and financial advisory firms have found lucrative work in offshore jurisdictions such as the BVI and Cayman, using variations of English law and various tax and confidentiality advantages; that party may now be coming to an end, if current trends in China and the US continue.

Ever since China started liberalising its economy in the 1980s, the country's rich and successful people have sought to move money and assets abroad. There has also been a huge outflow of investment in businesses abroad, and holding assets in companies incorporated in havens like Cayman, BVI and Bermuda.

That world is firmly now in the crosshairs of the Chinese authorities, who have passed a series of measures recently to clamp down on moving cash abroad and Chinese companies listing or incorporating outside China.

> This kind of pressure has existed for many years but has been ramped up by the trade wars with President Trump's America, particularly regarding tech.

On 1 July 2026 China enacted its Regulation on Outbound Direct Investment (the ODI Regulation), which includes sweeping new rules tightening control of overseas deals that involve Chinese investors, technology, data and national security.

The regulations, published by the State Council, or cabinet, seek to influence deals in markets beyond mainland China, including Taiwan, and give Beijing the power to punish foreign firms whose home countries restrict Chinese investment.

While the impetus for the ODI Regulation came from tech competition with the US, the offshore world stands to be collateral damage.

Importantly, China's new Regulation has teeth

For instance, if you fail to file the required investment information, submit falsified documents, or invest in prohibited sectors, you risk confiscation of illegal gains, tiered financial fines (0.1 per cent to 1 per cent of the investment amount), suspension of investment projects, multi-year bans on conducting new outbound investment, or mandatory disposal of overseas assets.

Key management personnel, including the legal representative, senior executives, or project leaders materially participating in offshore investment, face personal legal liability.

Chinese companies ditching Cayman for Hong Kong

Before the launch of the ODI Regulation, a separate trend was gathering pace.

By 2020, only 8 per cent of companies listed in Hong Kong were incorporated there. The typical issuer had assets on the mainland, capital raised in the city and a holding company incorporated in the Cayman Islands or Bermuda.

The arrangement suited issuers, bankers and policymakers. Offshore structures gave

continued on page 2

contents

Paris vs London A tale of two cities

By **Patrick Sayer**, President of the Commercial Court of Paris, and **Reinhard Dammann**, attorney at the Paris bar, Professor at Sciences Po Paris

In this article, the President of Paris's Commercial Court and one of France's leading insolvency lawyers team up to analyse London's continuing success as an international restructuring hub – and to explain how Paris can now offer an even more attractive venue

The success of the UK approach

London has an impressive track record of attracting and successfully handling high-profile cross-border restructuring cases thanks to its famous Scheme of Arrangement, a Companies Act procedure that dates back to the Nineteenth Century. In 2020, the UK Government introduced the Part 26A Restructuring Plan, allowing for US-style cross-class cramdown, thus further enhancing the attractiveness of the UK restructuring toolbox.

The European Union (EU) has long recognised London's success at luring companies from Europe and elsewhere to use its user-friendly laws to restructure. Seven years ago it reacted by launching the EU restructuring Directive 2019/2023 in an attempt to change the landscape of the European Restructuring market.

The German Government interpreted the Directive by introducing the StaRUG procedure as a competitive alternative to the Scheme of Arrangement, in order to halt the migration of high-profile restructuring cases to London. The WHOA presented itself as the Dutch challenger to the English Scheme. Then in September 2021, France followed by reforming its accelerated Safeguard proceedings, which now allow cross-class cramdowns, including against equity holders.

Five years later, despite Brexit, London has maintained its predominant position on the international restructuring market. In this respect, the recent multibillion-euro debt-restructuring of Deutsche Glasfaser, a German infrastructure group, is a topical example.

The restructuring will be implemented through a Scheme of Arrangement in London, rather than under StaRUG proceedings in Germany.

What are the lessons to be learned?

There are three main reasons for the attractiveness of the London restructuring market:

1) the highly respected English judiciary
2) the importance of English law as the governing law in international finance
3) the acceptance of forum shopping

English courts have ruled that the criterion of a 'sufficient connection' to open a Scheme of Arrangement or a Restructuring Plan is satisfied where the credit documentation is governed by English law. It is even possible to change the applicable law to English law shortly before the filing of the application to open proceedings.

> Even more, the Gibbs rule, established in 1890 and confirmed in Sberbank in 2018, creates an exorbitant jurisdictional privilege in favour of UK courts.
>
> Because of Gibbs, whenever a loan is governed by English law, such as in Deutsche Glasfaser, the debt restructuring must be implemented or at least approved in the framework of parallel proceedings by UK courts.

That said, the English system has some disadvantages. Following Brexit, the international recognition of the Part 26A Restructuring Plan under Brussels I bis is no longer available.

Also, in its judgment of 22 August, 2025 on the Aggregate Group, the Frankfurt court denied the recognition of a UK Restructuring Plan. The decision has been criticised by various German commentators and academics, but there is a great deal of uncertainty for the recognition of a Part 26A Restructuring Plan by German courts each time English courts have retained their jurisdiction under the Gibbs rule to restructure the debts of a German company.

Schemes of Arrangement are also quite expensive. The cost-effectiveness of the restructuring proceedings has become a main concern. As reported in the June 2026 edition of Global Turnaround, the US is contemplating the introduction of a cheaper and simpler alternative to Chapter 11, a new Chapter 16 proceeding modelled on the UK Scheme of Arrangement.

The French alternative

What are the key factors for a successful cross-border restructuring regime? They are:

1) Independent and highly qualified courts
2) a flexible procedural framework in which to organise negotiations among the main financial creditors, leaving trade creditors and employees untouched
3) transparency and predictability of the outcome
4) legal security for the implementation of the restructuring plan

The French system ticks all the boxes!

continued on page 6

continued from page 5

Thirty years ago, French courts were in at the birth of creating consensual and confidential pre-insolvency proceedings, well before the UK's Scheme became popular.

In 2006, the Commercial Court of Paris supervised the incredibly successful safeguard proceeding of Eurotunnel. In a landmark judgment of August 2, 2006, the Court ruled that the COMI of Eurotunnel was located in France, where the restructuring negotiations had taken place, under the aegis of the Commercial Court of Paris, before the opening of the Safeguard.

Then in 2008, the Commercial Court of Nanterre created semi-collective accelerated Safeguard proceedings. The French legislator transposed this jurisprudence into the Commercial Code, thus creating a very successful two-stage restructuring system.

Patrick Sayer

Reinhard Dammann

How does it work?

In the first phase of Conciliation, the President of the Commercial Court appoints an independent conciliator to monitor the negotiation of a debt Restructuring Plan with the main creditors, organised as a sort of steering committee.

The incredible 70 per cent success rate demonstrates the effectiveness of the process. In the absence of unanimity, especially in the case of bond issuances where the number of creditors does not allow unanimous consent, the draft restructuring plan is signed by the major creditors in the lock-up agreement.

Accelerated Safeguard proceedings are opened to cramdown minority creditors or classes of affected parties, including equity holders. The Court supervises the class creation and guarantees the fairness of the restructuring plan.

'Yes, you can speak English'

In a break with the past which may come as quite a surprise to an Anglo-Saxon audience, the use of the English language has been imported into the heart of the French commercial legal process.

To increase the international attractiveness of the Parisian courts, the Commercial Court and the Court of Appeal of Paris have created international chambers, where the production of English documents and witness statements in English is accepted.

The procedural rules have been adopted to mirror best international standards, in particular avoiding conflicts of interest. Commercial Judges have long professional experience. For example, the author, President of the Commercial Court in Paris was, in a former role, President of the Board of Eurazeo. Hence, the experience and professionalism of French commercial Judges are comparable to their UK and US peers.

> The second lesson to be learned from the UK is the need to establish rules of international jurisdiction and recognition of foreign decisions.

Contrary to the UK, within the EU, France benefits from the automatic recognition of its judgments opening insolvency proceedings, including accelerated safeguard, as well as ancillary proceedings like judgments confirming the Restructuring Plan. This is an important advantage providing legal certainty.

Conciliation does not fall within the scope of the European Insolvency Regulation. Hence, French courts may open conciliation where the debtor only has assets in France.

In this respect, the UK concept of 'sufficient connection' appears quite interesting and could be referred to by French courts to justify the opening of proceedings for all companies of an enterprise group.

Moreover, in accordance with the Eurotunnel jurisprudence, accelerated Safeguard proceedings could be opened as a follow-up Safeguard procedure to implement (cross-class) cramdown against minority creditors and equity holders.

> The third lesson to be learned from the UK approach is the necessity to establish a level playing field with respect to the recognition of foreign judgments rendered by courts outside the EU, in particular in the UK and in the US.

France is developing plans for the reform of its rules of jurisdiction. Under these plans, the Commercial Court could be put in charge of executing foreign judgments, opening restructuring proceedings and confirming the Restructuring Plan.

In that regard, it is vital to verify that the foreign court has jurisdiction in accordance with French jurisdictional principles, which exclude the Gibbs rule.

Altice France shows the way

Awaiting this reform, as shown in the high-profile 24 billion euro restructuring of Altice France (see Global Turnaround of June 2025), the opening of safeguard proceedings can be combined with Chapter 15 recognition in the US. Under the jurisprudence of French courts, it should also be possible to justify the opening of (accelerated) Safeguard proceedings for companies having their COMI outside the EU, provided that there is a 'sufficient connection' with France.

> Finally, the French restructuring proceedings are rather cost-efficient, compared to the US Chapter 11 or the English Scheme of Arrangement.

The road is now clear for the Commercial Court of Paris to follow the ICC in Paris, which has won a reputation as the venue of choice for arbitration for international arbitration; the Court has all the tools available to efficiently restructure the debts of an international enterprise group, having a 'sufficient connection' with France.

We may not have won the World Cup. But we are well set to become Europe's undisputed top international restructuring venue.

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