

# **Assisted Workouts — Lessons from Consensual Debt Restructurings in France**

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## **ABSTRACT**

When businesses face financial distress, stakeholders can often enhance their collective welfare by renegotiating their respective rights and entitlements. But these negotiations may stall, or fail to be initiated, because of well-known collective-action and agency problems. Modern bankruptcy regimes, such as the US Chapter 11, address this challenge primarily by enabling courts to bind stakeholders to restructuring measures that meet some standards of reasonableness towards dissenters. In theory, rational, self-interested parties should be motivated to settle ‘in the shadow’ of these regulations. Yet, complex and costly contentious reorganizations remain commonplace and are sometimes exploited strategically in socially wasteful ways. This prompts the question: Can state-supplied distress-resolution procedures further address residual barriers to cooperation, thereby expanding the scope of consensual (noncontentious) reorganizations?

This Article argues that consensual reorganizations can, in theory, be facilitated by involving competent and properly incentivized (court-appointed) bargaining intermediaries throughout the process. To substantiate this claim, the Article draws on an in-depth analysis of an innovative distress-resolution model that has evolved in France since the late 1970s through pragmatic innovations by judges and restructuring experts. The two-stage process (‘assisted restructuring’) begins with confidential negotiations supervised by repeat-player intermediaries who, much like US bankruptcy mediators, organize the bargaining process, control information flows, and mediate disagreements (‘assisted workouts’). If unanimous agreement isn’t reached, the process moves to a swift formal bankruptcy to bind dissenters to pre-negotiated transactions, akin to US prepackaged plans, with the same intermediaries supplying (presumably) reliable information to the courts on the bargaining process and its outcome.

Through a functional analysis of this process, supported by semi-structured interviews with leading practitioners, historical evidence, and hand-collected empirical data, this Article contends that there are good reasons to expect assisted workouts to effectively overcome some strategic, structural, and psychological barriers that impede consensual distress resolution, although their implementation in France still leaves ample room for improvement. A future companion article will explore whether close monitoring of pre-bankruptcy bargaining by court-appointed intermediaries could also enhance the courts' ability to police socially wasteful opportunistic strategies in non-consensual reorganizations.