

### Crisis and opportunity

The primary economic causes of the current crisis are generally ascribed to the US Federal Reserve Bank which, so as to boost the economy after the Internet bubble burst, allowed excess liquidity to be created after 2001, then the US financial system to be flooded by a global savings glut, which basically stemmed from the policy of the Chinese authorities. Seeking to avoid the yuan becoming stronger against the dollar, the Chinese authorities limited the entry of dollars into the Chinese economy from its very positive trade balance.

This excess liquidity led to:

→ low interest rates which incited lenders to look for ways to increase their yields from subprime borrowers - paying higher interest rates for access to credit – to whom the US banking system was willing to lend to buy homes whose value was hoped would continue to increase indefinitely; the securitization of these subprime loans allowed them to be “exported” and thus to contaminate the global economy;

→ inflation, but of a new kind since it affected assets (real estate and businesses) rather than consumer goods, for which there was only a slight increase in prices due to the effect of globalization.

When the value of the assets dropped, there was suddenly a liquidity crunch with lenders finding themselves in a situation where they might not be able to meet their liabilities: a generalized climate of uncertainty was reflected by strong asset volatility affecting the global economy, making it difficult for businesses to obtain financing.

Market players – which we are all, need to look for other ways for businesses to obtain financing and grow (crisis and opportunity often going hand in hand) and to react flexibly to market upheavals.

Dominique Doise

### TABLE OF CONTENTS

Crisis and opportunity	PAGE 1
Crisis and strategy	PAGE 2
Crisis and liability	PAGE 3
News and Events	PAGE 4

### OUR SERVICES

CORPORATE, MERGERS &  
ACQUISITIONS, PRIVATE EQUITY

REAL ESTATE, CONSTRUCTION,  
INSURANCE

TAX

LABOR & EMPLOYMENT

BANKING AND FINANCE

LITIGATION (AND DISPUTE RESOLUTION)

COMPETITION, DISTRIBUTION,  
CONTRACTS

PRODUCTS LIABILITY, INDUSTRIAL  
RISKS, INSURANCE

ASIAN DESK

### OUR PROFESSIONALS

Jacques Bouyssou	Karine Khau
Pierre-Olivier Brouard	Éric Khau
Dominique Doise	Christian Kim
Christophe Gerschel	Benjamin Krief
Joong-Ho Kim	Julien Lebel
Gérald Lagier	Virginie Le Bourbon
Patrick Lescop de Moÿ	Jérémie Mancel
Philippe Mathurin	Sibylle Mareau
Jacques Perotto	Sophie de Marne
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Hélène Altman	Stéphane Pautonnier
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Hélène Aziza	Delphine Ricard
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Sébastien Deboffe	Antoine Rousseau
Benoit Dehaene	Géraud Salabelle
Arnaud Duffour	Cécile de Smet
Nathalie Dupuy-Loup	Natalia Sklenarikova
Fahima Gasmî	Nadine Ghorayeb
Aude Hernu	Jérôme Werner

## CRISIS AND STRATEGY

Now that the growth euphoria has subsided, lenders have become (but for how long?) wary and at times themselves face the wariness of the lenders refinancing them. But, when the trust underpinning a credit-based economy is shaken, financing risks becoming a real ordeal for a business.



The period of uncertainty we are going through has called into question all sources of funding. Businesses and lenders will have to rethink their strategies and come up with new tools. While sources are drying up and the public authorities are hard pressed to re-inject money into the economy, market players must come up with innovating solutions, balancing imagination and common sense.

Alérion assists its clients, both borrowers and lenders, in identifying solutions in line with the new market situation and, more specifically, in putting in place:

- financing that is more adjusted to the economic situation, compatible with banks short-term refinancing requirements, while remaining satisfactory for borrowers, as renewable and sufficiently attractive for their auditors to give them the best possible presentation under IFRS/IAS standards;
- centralized cash-flow systems for the pooling of resources within groups;
- optimized use of financial instruments and tax tools so as to accompany their development.

The current crisis also requires a review of existing agreements: many are those who are looking to renegotiate commitments with internal or external partners, so as to have more flexibility and better adapt to market disruptions.

Beyond advice in structuring or renegotiating financing, this tense period requires careful litigation management: now more than ever, it is crucial to distinguish between strategy, i.e., the objective to be achieved, and tactics, i.e., the resources to be implemented so as to achieve it.

DOMINIQUE DOISE

### IN A NUTSHELL

- 1 Find financing compatible with banks' short-term refinancing requirements and IFRS/IAS standards.
- 2 Set up centralized cash-flow systems for the pooling of resources within groups.
- 3 Optimize tax tools and their taxation.

## CRISIS AND LIABILITY

In a society marked by a systematic search for someone to blame, it is probable that the financial crisis that is shaking up our economy will give rise to a wave of liability lawsuits by those, regardless of their position in the financing chain, sustaining significant losses.



It can already be safely predicted that the series of improper and imprudent practices by financial institutions that were behind the crisis (Dominique Doise "Subprime, le prix des transgressions" *Revue de Droit des Affaires Internationales / International Business Law Journal* 2008 no. 4) will spawn a wave of litigation, not only on the other side of the Atlantic but also in France and Europe.

Bearing in mind that assets now qualified as toxic served to secure often complex financing arrangements, the litigation risk seems far from theoretical... The courts will have to determine whether the complexity of structuring arrangements and vehicles served to conceal inadequate collateral or payment guarantees and therefore whether such arrangements were fraudulent and as such subject to criminal prosecution; it being specified that for liability to be incurred in this field a showing must be made of effective knowledge of the fraudulent or misleading nature of a transaction.

Similarly, financial institutions and/or investment consultancy firms may be facing civil liability suits on the basis of breaches of their advisory and disclosure obligations.

In terms of security exchanges, it is clear that many transactions will come under close scrutiny.

The courts will have to screen out meritorious lawsuits from frivolous lawsuits, malicious prosecution or use of process.

Under such conditions, getting legal advice very early on is essential so as to limit risk exposure and be duly assisted in what can at times only be called mudslinging cases.

In a heated situation, it's best to keep a cool head!

SIBYLLE MAREAU

### IN A NUTSHELL

- 1 Structured finance arrangements may be fraudulent if it is shown that their complexity served to conceal the inadequacy of the collateral/guarantees given.
- 2 The liability of financial institutions could be asserted if it is shown that they breached their advisory obligations.
- 3 For criminal liability to be incurred, proof of knowledge of the fraudulent or misleading nature of a transaction is required.

## Fighting the crisis together:

To face the crisis, our clients are more than ever in need of reactive and adapted advice, and an overall study including several legal fields: Alerion has therefore organised a special crisis Task force grouping an experienced lawyer from each department of the firm. Each member has studied in his speciality the consequences of the crisis and the questions which could be brought up by companies. They often link their experiences in order to constantly provide a more competent service. To contact this team: [taskforce@alerionavocats.com](mailto:taskforce@alerionavocats.com)

### Our task force :

**Corporate law / private equity / mergers**

**acquisitions:** Antoine Rousseau

**Real estate / construction:** Fahima Gasmî

**Industrial risk Insurance:** Nathalie Dupuy-Loup

**Tax law:** Jérémie Mancel

**Banking and finance:** Jérôme Werner

**Bankruptcy, insolvency and receivership:**

Valérie Mayer

**Competition-distribution:** Edwige Mathieu

**Labor law:** Delphine Ricard

**Asian desk :** Christian Kim

**Litigation:** Sibylle Mareau

## WHAT'S NEW AT THE FIRM



**Alerion's breakfasts** were put into place beginning of 2008 with a presentation of finance law, followed by a presentation of the URSSAF issues and risks linked to the pension and contingency system, and have started again in September with two subjects: one organised by the competition distribution department dealing with the commercial negotiation between suppliers and distributors linked to the economy modernization law ("LME"), and the other alongside our Canadian partner, Lette, and the Embassy of Canada, presenting the settlement possibilities in Canada.

**Alerion sets a legal precedent:** after 10 years of litigation between shareholders of a group of companies, Sibylle Mareau and Jacques Bouyssou have obtained a favourable decision from the commercial division of the Final Court of Appeal on July 1st, 2008, a judgement discussed by specialised reports in corporate law.

## RANKING AND PRIZES:



In the last "Décideurs" ranking dated November 2008, Alerion has earned the 64th position of the French and international business law firms working on the French territory.

## EXTERIOR ENTERPRISES



Stanislas Vailhen and Jérémie Mancel belonging to the tax department have organised a training course on October 2nd, 2008 at the Institut Pasteur, on the "minimis" regulation: their audience was composed of researchers, managers and biotech service providers.

In Sciences Po Paris' programme of company training, Jacques Perotto, Delphine Ricard and Rémi Pellet have organised two breakfasts: the latest took place on November 26th, on the Fillon reform and the changes in the complementary pension and contingency systems.

Jacques Perotto is a member of the jury chaired by Nicole Notat (president of Vigéo) which is about to elect the most creative French firm in 2008 as regards CSR (Corporate Social Responsibility). This firm will then represent France during the European CSR Awards which will be nominated next year

## PUBLICATIONS



"Subprime: The price of infringements", Dominique Doise, in International Business Law Journal (RDAI), 01/10/2008 number 4, p.558-568.

## OUR ACTIVITIES OVERSEAS



As an extension of the development of our Singapore office, Pierre-Olivier Brouard and Joong-Ho Kim have attended several events of the French and Korean business community in Singapore from December 1st to 3rd, 2008.

Jacques Bouyssou has represented Alerion at the Annual IBA Congress (International Bar Association) in Buenos Aires from October 12th to October 17th.

## TO BE CONTINUED...



**A second "special Crisis" newsletter** will be published beginning 2009.

Subjects:

- Facing client risk: knowing your rights as a creditor
- How to learn one's lesson from the Asian crisis
- Secure contracts.