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Restructuring Across Borders

France:

Corporate restructuring and insolvency procedures | March 2020

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Contents

Introduction

The principal restructuring and insolvency regimes for companies under French Law are:

– safeguard proceedings (sauvegarde);

– accelerated safeguard proceedings (sauvegarde accélérée) (the AS) and accelerated financial safeguard proceedings (sauvegarde financière accélérée) (the SFA);

– reorganisation proceedings (redressement judiciaire);

– compulsory liquidation (liquidation judiciaire);

– special mediation (mandat ad hoc);

– conciliation proceedings (conciliation); and

– voluntary liquidation (liquidation amiable).

The insolvency law (the **2005 Law**) which came into force on 1 January 2006 introduced the "safeguard" proceedings (*sauvegarde*) into French law. Further reform to French insolvency and restructuring law occurred through Ordinance No. 2008-1345 dated 18 December 2008 (the **2008 Ordinance**) which came into force on 15 February 2009 and the law No.2010-1249 of 12 October 2010 on banking and financial regulation (the **2010 Law**) which amended French insolvency and restructuring law by introducing the "accelerated financial safeguard proceedings" (*sauvegarde financière accélérée*) (the **SFA**) and by making some changes to the pre-existing safeguard proceedings. Decree No. 2011-236 of 3 March 2011 (the **2011 Decree**) brought the SFA and the amendments to the pre-existing safeguard proceedings into force on 1 March 2011. A further reform of French insolvency law (Ordinance No. 2014-326 of 12 March 2014 (the **2014 Ordinance**)) and its enabling decree No. 2014-736 dated 30 June 2014 introduced the new accelerated safeguard proceedings (*sauvegarde accélérée*), which is not limited to restructuring the debts of financial creditors, and other provisions to favour the use of pre-insolvency proceedings, reform the regime for filing creditors' proof of claims and expand the ability to use pre-pack mechanisms within insolvency proceedings. The 2014 Ordinance applies to pre-insolvency and insolvency proceedings opened after 1 July 2014 (any such proceedings which are in progress on that date are not affected).

Lastly, the so-called "*Loi Macron*" No. 2015-990 dated 6 August 2015 provided some innovations relating to insolvency proceedings.

Safeguard proceedings (*sauvegarde*)

Safeguard proceedings allow those companies which are in difficulty, but not yet in a state of cessation of payments, to obtain a stay on payments and the suspension of judicial proceedings. The objective is to provide for negotiation with each of the company's creditors and to ensure that the company continues to operate and maintain employment. Safeguard proceedings were introduced by the 2005 Law and inspired by the U.S. Chapter 11 regime.

Safeguard proceedings can be initiated only by the debtor company and are commenced by a court decision. The procedure is available where a company, without being in a state of cessation of payments, can demonstrate difficulties it cannot overcome. Further to the 2014 Ordinance, there is no longer any requirement (as per the original safeguard legislation) for the debtor company to demonstrate that the difficulties which it is facing would lead to it becoming insolvent. If a court order is made to open safeguard proceedings, this will result in a freeze on the payment of debts and on the acceleration and enforcement of security in the same way it does for reorganisation proceedings. The court judgment will also lead to the appointment of an administrator and to an observation period for the purpose of preparing a report on economic and employment issues (*bilan économique et social*). The administrator, with the help of the debtor company and/or experts, is in charge of preparing this report.

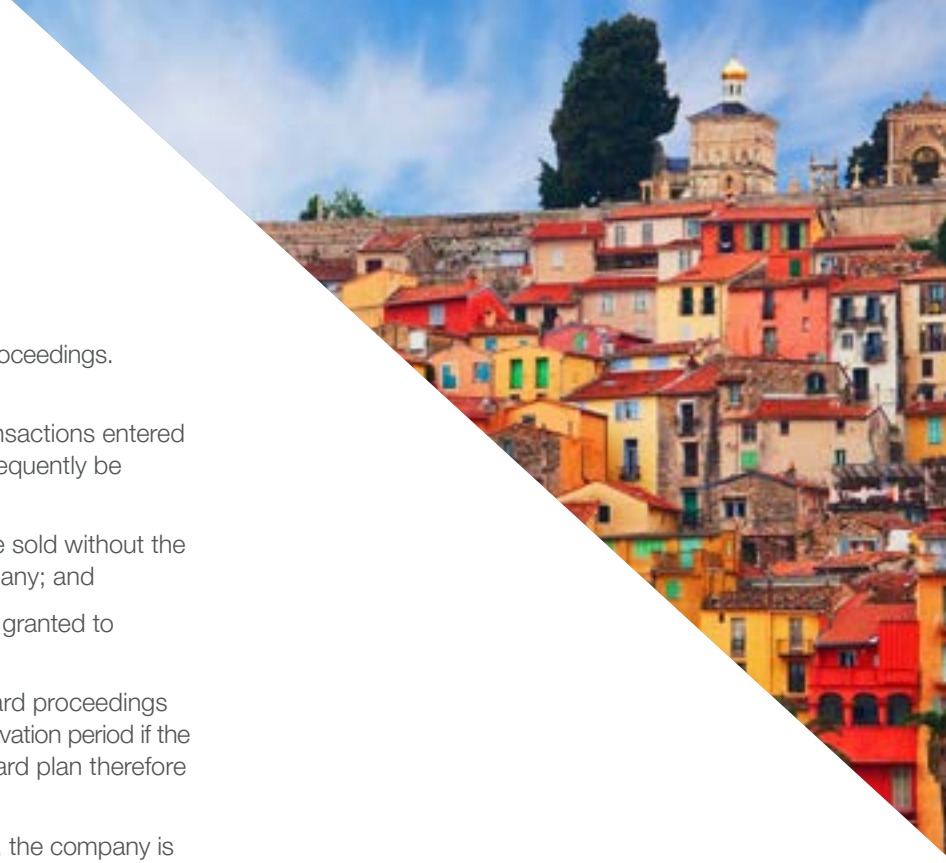
The company will continue to manage its business (although it may sometimes be assisted by the administrator). During this period, the debtor company and its creditors will seek to come to an arrangement for the setting up of a "safeguard scheme" (*plan de sauvegarde*). The scheme is proposed by the debtor or, further to the 2014 Ordinance, by any member of a creditors' committee who will be able to submit a draft safeguard plan. The administrator will then submit plans received from the debtor and any creditors to the vote of the creditors' committees. Generally speaking, the committee and the bondholder assembly must vote on the plan within six months of the opening of proceedings but the court may, at the request of the administrator, extend this time period twice.

For companies whose accounts have been certified by an auditor or established by a public accountant and that employ 150 salaried employees or whose turnover is in excess of EUR 20 million, French law provides for the formation of two committees of creditors. The first committee comprises of financial institutions (*établissement de crédits*) or any similar institutions and the second committee comprises of trade suppliers. A creditor can request that it become a member of the relevant committee and the administrators are likely to invite all financial institutions and trade suppliers to become members of the relevant committee. Bondholders are not represented on the financial institutions' committee but will be requested to vote on the plan in a separate bondholders' general assembly (which is a single assembly for all types/tranches of bonds), however, because they are not part of the committee, they will not be able to submit their own plan.

Further to the 2014 Ordinance, each member of a creditors' committee and each bondholder must, if applicable, inform the administrator of the existence of any agreement which makes the exercise of its vote subject to the control of a third party or whose purpose is the partial or total payment by a third party of its claim as well as of any subordination arrangement. Any such arrangement may have an impact on the weighting of such a creditor's vote when voting on the plan.

The scheme proposed must be approved, where applicable, by the requisite quorum of the two creditors' committees and the bondholders' general meeting. This quorum is a two-thirds majority of debt claims held by members of that committee who have voted on the debtor's proposal. The court must also review the administrator's report and the plan to ensure that there is a serious possibility of the company continuing its business. The plan can involve new money, debt or capital conversion.

Where the plan is approved by the relevant committees, this will bind all members of that committee if the plan is approved by the court.



In addition to considering whether there is a serious possibility of the company continuing its business, the court must take into account whether the interests of other creditors are sufficiently protected in deciding whether or not to approve the proposed plan. The court-approved plan will not be binding on creditors who are not members of the committees, unless they have agreed to its terms, but the court can impose grace periods on such creditors of up to ten years.

In the absence of creditors' committees, or in the absence of approval of the plan by the committees, all the creditors will be consulted individually on whether to accept the moratorium, reduction of debts or conversion into capital.

The French public authorities may grant debt forgiveness (but not for indirect taxes other than penalties and late interest). Three enabling decrees (No. 2007-153, dated 5 February 2007, No. 2007-568, dated 17 April 2007 and No. 2007-867 dated 14 May 2007) have been implemented in relation to the debt forgiveness which public authorities may grant. These decrees make sure that competition is not distorted by such debt forgiveness and that the European Commission does not consider such debt forgiveness as state aid. Public authority debt forgiveness must be carried out in the same manner as the private sector would have agreed in relation to the reduction of debt in the ordinary course of the market. Such public debt forgiveness will be subject to a ceiling and only debts which have fallen due at the date of the request can be the subject of forgiveness. Generally, the public authorities prefer to extend the time period in which the debtor will have to pay the relevant public debts, rather than write off debt.

There are other advantages to safeguard proceedings. These include notably that:

– there are no "hardening periods" and transactions entered into during the proceedings cannot subsequently be challenged;

– neither part nor all of the business can be sold without the consent of the management of the company; and

– better protection and greater powers are granted to company directors.

Unlike reorganisation proceedings, safeguard proceedings may terminate at any time during the observation period if the company's difficulties disappear (the safeguard plan therefore becoming unnecessary).

If at any time during the observation period, the company is in a state of cessation of payments or it is clear that the success of the scheme is impossible, safeguard proceedings will be converted into reorganisation proceedings (*redressement judiciaire*) or liquidation proceedings (*liquidation judiciaire*). Since the Ordinance of 26 September 2014 No. 2014-1088, the court is no longer entitled, of its own motion, to convert safeguard proceedings into a reorganisation proceeding (*redressement judiciaire*), if it appears after the opening of the safeguard proceedings, that the debtor was insolvent at the date of the judgment opening safeguard proceedings was handed down.

Accelerated (financial) safeguard proceedings (*sauvegarde (financière) accélérée*) (the SFA procedure)

The SFA procedure (to restructure the debts of a company's financial creditors) was introduced by the 2010 Law and brought into force by the 2011 Decree. This legislation legislates for the "pre-pack plan" practice which had previously been implemented in both the *Auto distribution* and *Thomson* restructurings. The 2014 Ordinance introduced a further accelerated safeguard procedure, the accelerated safeguard (*sauvegarde accélérée*) (the **AS**), which encompasses all creditors of the company (not just the financial creditors and bondholders (if any), as for the SFA (see below)).

The aim of the new proceedings is to combine the confidential pre-insolvency proceedings of conciliation (see below) with the fast-track safeguard proceedings. As conciliation proceedings are purely contractual pre insolvency proceedings, the company or the conciliator has no power to out-vote minority creditors and to compel the minority or non-participating creditors to agree to a plan negotiated by the majority of the creditors that reduces its debts. With the advent of the new SFA procedure, plans which were negotiated during conciliation proceedings, but would not receive the consent of all creditors can be implemented through the SFA procedure. This allows for the cram-down of dissenting creditors and a fast-track restructuring process.

Like standard safeguard proceedings, accelerated safeguard proceedings may only be initiated by the debtor (or, where it is a corporate body, by its legal representative). However, the opening conditions are quite different. The debtor company must:

– already be subject to ongoing conciliation proceedings;

– have accounts certified by auditors or established by a public accountant or have established consolidated accounts;

– have drafted a restructuring plan to ensure the sustainability of its business;

– have more than 20 employees or a turnover greater than EUR3m (excluding tax) or have a total balance sheet (*total de bilan*) greater than EUR1.5m; and

– have obtained, from the creditors affected by the plan, sufficiently wide support for the proposed restructuring so as to make the adoption of the plan likely within a maximum period of three months (for an AS) or one month (for an SFA).

Importantly, there is no requirement for a company to be solvent if it requests the opening of AS (or SFA) provided it is in conciliation and was not insolvent for more than 45 days when it initially requested the opening of accelerated safeguard proceedings.

AS proceedings will cover all the creditors of the company (not just the financial creditors) whose debt arose prior to the opening of these proceedings, together with any person with whom the debtor has an ongoing contract or lease. However, if the nature of the debtor's indebtedness (as set out in its accounts) makes it likely that only financial creditors (and bondholders, if any) will adopt the plan, the debtor may request the court to open an SFA which will be limited to these creditors.

The opening of accelerated safeguard proceedings will result in the formation of the relevant committees.

The debtor company will establish a list of claims of each creditor who has taken part in the conciliation and submit the list to the court register. The submission of the list amounts to the filing of a proof of debt in the AS (or SFA).

The conciliator may be appointed as an administrator or the creditors' representative during the AS or SFA. Trade suppliers are expressly excluded from the SFA and therefore they can continue to be paid within the time periods contractually agreed. The plan must be approved by the court within three months from the opening of the AS proceedings. In an SFA, this period is reduced to one month (with a possible extension of one month).

The voting requirements for approving the draft plan are the same as for the regular safeguard proceedings. The decision is taken by a two-thirds majority of debt claims held by members of that committee who have voted on the proposals. In certain circumstances, the draft plan must also be approved by a two-thirds majority of the aggregate amount of bond claims held by bondholders. If the financial institutions' committee and, where applicable, the bondholders' general meeting do not approve the plan within the above deadlines, the court will terminate the proceedings.

Reorganisation proceedings (*redressement judiciaire*)

Reorganisation proceedings are court-based, collective insolvency proceedings which aim at achieving the survival of a company, preserving its activities and employment, and discharging its liabilities. The court will order the opening of reorganisation proceedings if it can be shown that the debtor is in a state of cessation of payments (*cessation des paiements*) and has not ceased its activities or is capable of continuing its business. Any debtor in a state of cessation of payments will have 45 days to apply to court to start reorganisation proceedings or to open conciliation proceedings. The 2008 Ordinance also clarified what constitutes a "state of cessation of payments": a debtor will not be in this state if it is shown that, because of credit reserves (*réserves de credit*) and the terms of payment granted by creditors, the debtor can satisfy its liabilities as they fall due from its available assets. If the debtor has ceased its activities or is incapable of being rehabilitated, the court may order the opening of compulsory liquidation proceedings.

Unlike safeguard proceedings, a creditor or the public prosecutor are also able to request the opening of reorganisation proceedings provided that there are no ongoing conciliation proceedings. It is no longer possible for the court, of its own motion, to open reorganisation proceedings where conciliation proceedings have failed and the debtor is insolvent. When opening a reorganisation procedure, the court will open an observation period for the purpose of assessing the company and either: (a) form a plan for the reconstruction of the company (*plan de redressement*) which may take the form of a continuation plan or a transfer plan; or (b) liquidate it under a compulsory liquidation procedure described below. The observation period may last up to 18 months from the date of the judgment opening the proceedings (*jugement d'ouverture*).

In its decision to open the proceedings, the court will appoint the following persons, each with different duties: an administrator (*administrateur judiciaire*) or, since the "*Loi Macron*" two co-administrators (if certain legal thresholds are reached); a representative of the creditors (*mandataire judiciaire*) or two co-representatives of the creditors (if certain legal thresholds are reached); and a bankruptcy judge (*juge commissaire*) to preside over the administration. The court will also invite the employees to appoint a representative (*représentant des salariés*).

The court can also appoint one to five controllers (*contrôleurs*) among the creditors who ask to be appointed as such. The controllers are entitled to be informed of the procedure and will be asked to give their opinions before any important decision is taken. Those controllers also have the power to take certain actions.

Important features of the reorganisation proceedings are as follows:

– during the observation period, the debtor usually remains in possession of and retains title to its property. The debtor remains in charge of the management of its business in respect of the part that has not been transferred to the administrator in accordance with French law;

– during the observation period, all creditors are barred from filing any actions against the company to obtain payment for claims which arose prior to the court order initiating the reorganisation proceedings;

– only the administrator can elect, under certain conditions, to continue existing contracts (*contrats en cours*) that are necessary for the continuation of the activities of the company, except for small companies (where the debtor can continue existing contracts);

– where the plan contains provisions for the modification of equity following which the company does not meet the minimum amount of share capital required by law and one or more shareholder refuses to reconstitute the company's share capital, the administrator can request the appointment of an authorised representative to convene the relevant meetings and vote on the reconstitution of the share capital in place of the opposing shareholders.

The 2005 Law limited the "posterior priority debts" (*passif postérieur privilégié*) (debts which are incurred by the debtor after the opening of the reorganisation proceedings) to be paid in priority by the debtor by proposing new conditions for the priority of claims owed to preferred creditors (*créanciers privilégiés*). According to Article L. 622-17 of the French Commercial Code (which also applies to safeguard proceedings), the preferred creditors will only be paid in priority if their posterior debts were incurred for the purposes of the reorganisation proceedings or in return for a service provided to the debtor during the observation period.

At any time during the observation period, the court will be able to order the transfer of all or part of the debtor's business or the start of liquidation proceedings if there is no plan or if the proposed plans are clearly not sufficient to lead to its reorganisation.

The *Loi Macron* has provided the court with new powers in reorganisation proceedings opened from 7 August 2015 in respect of certain companies. After a period of three months following the opening of rehabilitation proceedings, the court may order either:

(i) a forced increase of capital (*mécanisme de dilution forcée*); or

(ii) a forced sale of opposing shareholders' shares (*cession forcée*), at the administrator's or at the Public Prosecutor's request,

provided that:

– the company has at least 150 employees or is a dominant company (*entreprise dominante*) in the sense of the French Labour Code (*Code du travail*) over one or more companies employing at least 150 employees; and

– the cessation of business of the company is likely to cause serious harm (*trouble grave*) to the national or regional economy and to employment; and

– the change in the company's share capital appears to be the only viable option to avoid such harm and to allow the continuation of business after the options of total or partial sales have been examined; and

– the meetings (*assemblées mentionnées au I de l'article L.631-19 of du Code de Commerce*) refused to adopt the change to the company's share capital provided for in the proposed rehabilitation plan in favour of one or several persons committed to perform the plan.

If a forced increase of capital is decided, the court may appoint a *mandataire*, whose mission is to convene a shareholders' meeting and to vote on the proposed increase up to the amount provided for in the rehabilitation plan, in place of the opposing shareholders; the capital increase must be carried out within a maximum period of 30 days after the vote. It may be released by the persons who committed themselves to perform the plan by set-off with the claims of the company which have been admitted and limited to their reduction within the plan.

If a forced sale of shares (*cession forcée*) is ordered, those shareholders who agreed to perform the proposed plan will be acquirer of all or part of the shares of the shareholders who refused the capital modification and who hold, directly or indirectly, shares giving them the majority of the voting rights or a blocking minority in the general meetings of the company or have controlling powers by application of an agreement concluded with other shareholders and which is not contrary to the social interest; any provision requiring formal approval (*clause d'agrément*) is deemed null and void. In this situation, any shareholder, other than those described above, is entitled to withdraw from the company and simultaneously request its shares to be redeemed by the transferees.

Where there is to be a forced sale of shares, if the interested parties cannot agree on the value of the shares at stake, such value will be determined by an expert appointed by the president of the court at the request of the most diligent party, of the administrator or of the Public Prosecutor.

Compulsory liquidation (*liquidation judiciaire*)

Compulsory liquidation (*liquidation judiciaire*) is one of the two dissolution procedures available to companies under French law. It only applies to private entities which have ceased their activities or are incapable of being rehabilitated. In that sense, it is similar to liquidation in the UK and to Chapter 7 proceedings in the U.S. The court can order the opening of immediate compulsory liquidation proceedings without opening reorganisation proceedings first or the company can go into compulsory liquidation following the opening of reorganisation proceedings. Pursuant to the 2014 Ordinance, it is no longer possible for the court, on its own motion, to open liquidation proceedings where conciliation proceedings have failed and the debtor is insolvent.

Compulsory liquidation proceedings will usually result in the immediate cessation of the company's business. However, the court may authorise a temporary pursuance of the company's business in preparation for the implementation of a transfer scheme, for a three-month period, renewable for three months upon request of the public prosecutor. The process involves the appointment of one or more liquidators to take control of the company, represent the creditors and to collect, realise and distribute the company's assets or the proceeds of its assets. The court decision ordering compulsory liquidation also leads to the immediate dissolution of the company. Unlike reorganisation proceedings, the debtor is immediately and automatically divested of the administration of its business and of its estate.

The liquidation proceedings aim at terminating the debtor's activities and selling its assets in order to discharge its debts. The 2005 Law creates a simplified liquidation proceeding (*liquidation simplifiée*) for small companies, which is quicker than the previous liquidation proceedings, and the 2014 Ordinance makes it even more simplified. This procedure is available to businesses with a small number of employees, few funds and no property assets. An innovative feature introduced by the 2005 Law is the integration of the transfer scheme into liquidation proceedings. The transfer scheme can be prepared during the reorganisation proceedings (and during the conciliation procedure, in a pre-pack scenario) but implemented during the liquidation proceedings. The workout of the transfer scheme has been improved by making the content of offers (*offres de reprise*) more detailed and increasing the transparency of transactions and the transfer.

Special mediation (*mandat ad hoc*)

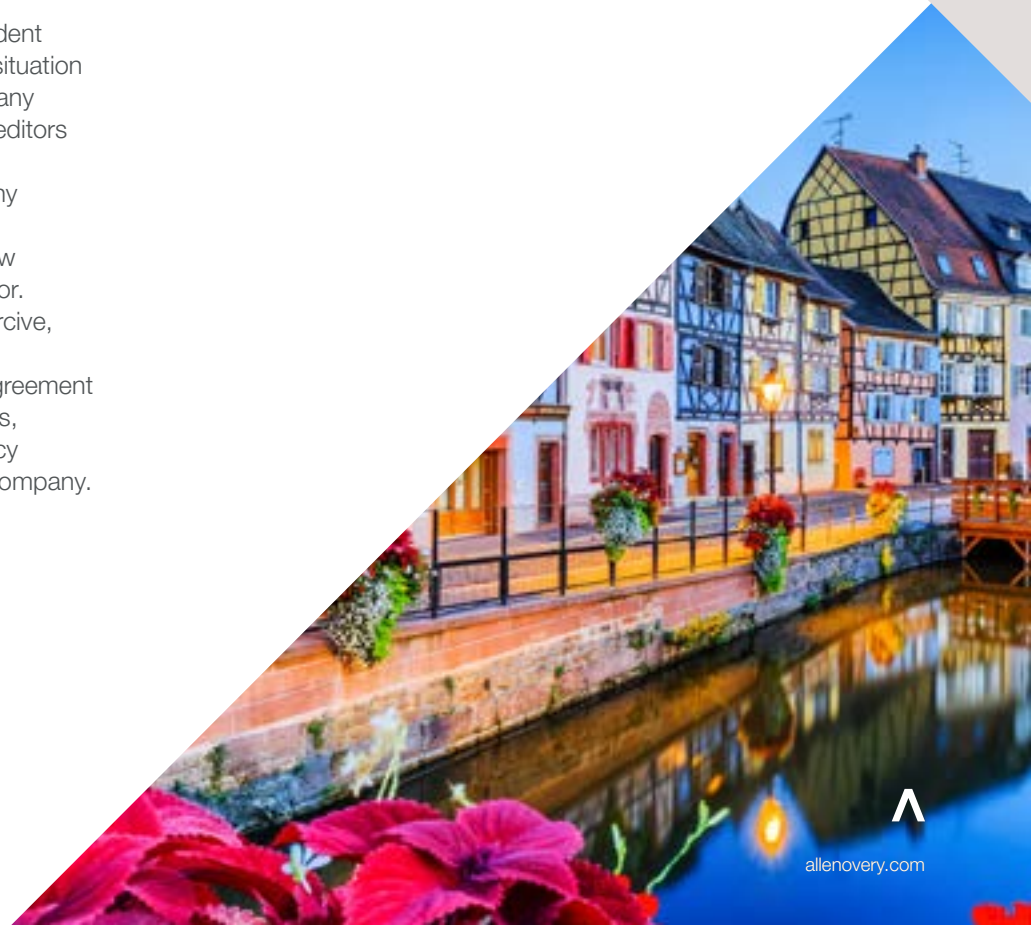
The special mediation procedure is the confidential, pre-insolvency procedure which is most often used when a company in France is experiencing difficulties. Instead of conciliation proceedings, or before conciliation proceedings are opened, the legal representative of the company (ie the board of directors or the president of the board) may formally request the president of the court to appoint an officeholder referred to as a special mediator (*mandataire ad hoc*). A request to appoint a special mediator may only be made if the company is solvent: a special mediator cannot be appointed if the company is in a state of cessation of payments, and the legal representatives of the company must certify that the company is solvent when filing for such appointment.

The debtor is entitled to propose the name of a special mediator to the president of the court.

In practice, the appointment of a special mediator can be used by companies in financial difficulties as a preliminary step to conciliation proceedings.

The period for which the special mediator can be appointed is not limited by law. It will usually be for three months and may be extended for further periods. Since 1 July 2014, the court decision appointing the special mediator must be communicated to the company's auditors.

The special mediator will report to the president of the court on the economic and financial situation of the company and seek to help the company to come to an arrangement with its main creditors with a view to preserving the company as a going concern. Management of the company remains in the hands of the chairman and the board; in practice, they are likely to follow the recommendations of the special mediator. The special mediation procedure is not coercive, but in the event that the special mediator's attempted negotiations do not lead to an agreement between the company and its main creditors, there is likely to be a real risk of an insolvency procedure being opened in respect of the company. The procedure is confidential.



Conciliation proceedings (*conciliation*)

Conciliation proceedings replaced voluntary reorganisation proceedings (*règlement amiable*). The aim of conciliation proceedings is notably to legally secure the terms of an arrangement agreed between a company and its main creditors (*principaux créanciers*) in order to put an end to the difficulties of the company.

Conciliation proceedings are available to any company that:

– encounters legal, economic or financial difficulties, actual or anticipated, and

– is not or has not been insolvent (ie in a state of cessation of payments (*cessation des paiements*)) for more than 45 days.

A company is in a state of cessation of payments (*cessation des paiements*) when it cannot pay its liabilities as they fall due having regard to its available assets to meet these liabilities.

Under conciliation proceedings, the company can notably, with the help of a conciliator appointed by the president of the court, renegotiate in a confidential manner, its debts with its main creditors and seek any solution to ensure its continuation.

Upon request of the debtor and after advice of the participating creditors, the conciliator may also be granted the mission to organise a partial or total sale of the company, which could be, if necessary, put in place in the framework of further insolvency proceedings (see below).

The debtor is entitled to propose the name of a conciliator to the president of the court.

The company will be required to provide details of its financial, economic and social situation, including its financing requirements. The conciliator's mission is to seek agreement between the company and its main creditors and the conciliator may be assisted by experts when reporting on the company's economic and financial situation. The conciliation procedure is for a maximum period of five months (comprising an initial four-month period and a possible one-month extension). A new conciliation proceeding cannot be opened within a three-month period after the end of a previous one. Management of the company remains in the hands of the chairman and the board.

There is no suspension of judicial or legal proceedings during the conciliation period. However, there is a possibility to seek, from the court which opened the conciliation proceedings, extensions of payment periods (*délais de paiement*) up to two years under Article 1343-5 of the French Civil Code (previous Article 1244-1 of the French Civil Code), where a creditor makes a demand for payment or seeks to take enforcement action during such proceedings, after having gathered the conciliators observations; the duration of such moratorium may be subject to the conclusion of an arrangement.

Similarly, further to the 2014 Ordinance, if a conciliation arrangement is reached (either recorded or approved – see below), during its enforcement period, there is a possibility for the debtor to seek similar extensions of payment periods (*délais de paiement*) under Article 1343-5 of the French Civil Code, if a creditor having participated to conciliation proceedings makes a demand for payment or seeks to take enforcement action with respect to a claim which is not treated in the conciliation arrangement.

The French social, tax and public administrations may grant write-offs of their debts as well as payment grace periods. The conciliation procedure is confidential.

The arrangement reached between the parties during the conciliation proceedings may be approved (*homologué*) at the request of the debtor company by the commercial court provided that:

– the company is not in a state of cessation of payments or the arrangement reached by the parties terminates such a situation;

– the terms and conditions of the arrangement are such as to ensure that the company's business will continue; and

– the arrangement does not affect creditors who are not parties to it.

The arrangement reached between the parties may also be recorded (*constaté*) by the president of the court. In such cases, the decision of the president and the arrangement between the parties will remain confidential.

Where the conciliation agreement is approved by a commercial court judgment, the court judgment is filed with the applicable commercial court as a measure of publicity, while the content of the agreement remains confidential. The court approval of the agreement reached during the conciliation proceedings will provide protection to creditors in respect of certain lender liability issues; the new legislation provides that, except in the case of fraud, the date on which a company can be deemed by the court to be in the state of cessation of payments cannot be a date prior to the date of the court judgment approving the agreement reached during the conciliation proceedings.

New money providers who make credit available within the framework of the conciliation procedure for the purposes of ensuring the continuation of the company's business during the conciliation period may request priority to claims of creditors (other than super-priority salary claims and court fees and expenses) which arose prior to the date of the opening of the conciliation proceedings if the company is subsequently placed into safeguard proceedings, reorganisation proceedings or judicial liquidation. Similar provisions also apply to suppliers of new services or assets for such purposes. These provisions do not apply to shareholders making contributions in respect of share capital increases. Further to the 2014 Ordinance, this new money privilege for contribution in cash or services is extended to include new money made available during the conciliation proceedings before the approval by the court (*homologation*) of the restructuring plan.

If safeguard, reorganisation or compulsory liquidation proceedings are opened, this will automatically end any ongoing conciliation proceedings and any conciliation arrangement recorded or approved, if any.

The main amendments introduced by the 2014 Ordinance with respect to conciliation proceedings (other than those described above) are as follows.

At the request of the debtor and after consultation (*avis*) with the creditors participating in conciliation proceedings, the conciliator may be empowered to prepare the sale of all or part of the debtor's business (a pre-pack sale) which could be implemented later in safeguard, reorganisation or liquidation proceedings.

Any contractual provision providing that the fees of any advisor to a creditor will be borne by the debtor solely as a result of the appointment of an ad hoc agent or a conciliator or the opening of *mandat ad hoc* or conciliation proceedings (over and above a percentage amount to be fixed by *arrêté*) are deemed to be null and void. The 2014 Ordinance also extended the scope of the nullity of any contractual provision that would accelerate the payment of the company's obligations: such nullity will also apply in the context of special mediation and conciliation proceedings.

Notwithstanding the provisions of Article 1343-2 of the French Civil Code (former Article 1154) which permits the capitalisation of interest due for one year, interest on interest is not permitted during the performance of a conciliation arrangement that has been approved or acknowledged by the court.

The conciliator may be appointed as a *mandataire à l'exécution de l'accord* to oversee the execution of the arrangement which has been approved or acknowledged by the court.

Voluntary liquidation (*liquidation amiable*)

In addition to compulsory liquidation, voluntary liquidation is the other dissolution procedure for companies under French law. The voluntary procedure can only be opened upon an extraordinary shareholders' resolution deciding on the dissolution (or winding-up) of the company and appointing a private liquidator. The company will be dissolved as a result of the shareholders' decision. The liquidator can be a shareholder or a third party. Unlike the liquidator in compulsory liquidation proceedings, the liquidator in a voluntary liquidation does not need to be registered on the official list of liquidators.

The liquidator in the voluntary liquidation will represent and take control of the company, realise and distribute its assets or the proceeds of its assets to the creditors, and will distribute the surplus by way of liquidation dividends to the company's shareholders.

If, during the course of voluntary liquidation proceedings, it appears that the assets or the proceeds of the assets of the company are insufficient to pay the creditors, the liquidator is required to initiate compulsory liquidation proceedings by filing a petition before the court.

Specialized Insolvency Courts *(tribunaux de commerce specialisés)*

The "*Loi Macron*" created specialized insolvency courts to have jurisdiction over the debtor in safeguard rehabilitation and liquidation proceedings where:

– the debtor has 250 or more employees and net revenues of at least EUR20m; or

– the debtor has net revenues of at least EUR40m; or

– the debtor is a holding company that, together with its operating subsidiaries, has more than 250 employees and net revenues exceeding EUR250m; or

– the debtor is a holding company that, together with its operating subsidiaries, has net revenues exceeding EUR40m.

They may also have jurisdiction when the insolvency proceeding is commenced under European Insolvency Regulation and the debtor's centre of main interests (**COMI**) is located within the court's jurisdiction.

They may also have jurisdiction over conciliation proceedings, provided that the above conditions are met by the company and that the specialized insolvency courts are applied to by the debtor, or at the Public Prosecutor's request, or by decision of the president of the Commercial Court.

One unique specialized insolvency court will have jurisdiction over the insolvency proceedings if the debtors are a group of companies.

Those specialized insolvency courts are listed in Decree n°2016-217 of 26 February 2016.

European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**) continues to apply to all proceedings opened before 26 June 2017. One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency "rescue" proceedings and these are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/territorial proceedings but secondary proceedings are no longer restricted to a separate list of winding-up proceedings – secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, safeguard proceedings (*procédure de sauvegarde*), reorganisation proceedings (*redressement judiciaire*), and compulsory liquidation (*liquidation judiciaire*) were available as main proceedings under the Original Regulation.

Compulsory liquidation (*liquidation judiciaire*) was also available as a secondary proceeding under the Original Regulation.

The above procedures continue to be listed in Annex A of the Recast Regulation, which also lists the AS and the SFA in Annex A.

Special mediation and conciliation proceedings were not listed as either main or secondary proceedings under the Original Regulation and have not been listed under the Recast Regulation.

EU Restructuring Directive

On 26 June 2019, the official text of Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (**EU Restructuring Directive**) was published in the Official Journal of the European Union. The EU Restructuring Directive aims to prevent the insolvency of viable enterprises and entrepreneurs across the European Union by: (a) introducing a minimum standard among EU Member States for preventive restructuring frameworks available to debtors in financial difficulty; and (b) providing measures to increase the efficiency of restructuring procedures. EU Member States have two years to implement the directive (ie until July 2021), subject to a one year extension.

Key elements of the procedure envisaged by the EU Restructuring Directive include: (a) debtors remaining in possession of their assets and day-to-day operation of their business; (b) a stay of individual enforcement of actions; (c) the ability to propose a restructuring plan that includes a cross-class cram-down mechanism whereby the plan is imposed on dissenting creditors in a class (holding no less than 25% of claims in that class) and across classes (subject to certain protections); and (d) protection for new financing and other restructuring-related transactions.

It is worth noting that the proceedings called for by the EU Restructuring Directive very much resemble existing French proceedings (except for the EU Restructuring Directive's *cross-class cram-down*, which will be an important conceptual evolution under French law).

Within the so-called *Loi Pacte*, which came into force on 24 May 2019, French legislators empowered the government to:

– transpose the Directive into French law; and

– reform French law on security interests,

by way of ordinance following ongoing public consultations.

Key contacts

If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.

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* Allen & Overy LLP and Santoni et Associés have a strategic arrangement to work together on an exclusive basis for restructuring and insolvency related work in France. The arrangement covers all types of debt restructurings and workouts, corporates and fund buy-outs, pre- and post-insolvency related procedures and distressed debt trades in France.

Further information

Developed by Allen & Overy's market-leading Restructuring group, "Restructuring Across Borders" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please click **here**.

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