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Law and Practice

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White & Case has a team in Paris that is one of the most complete and developed in the market, with interdisciplinary expertise and experience that is second to none. White & Case is one of the very few international firms to offer such a high level of expertise in handling the most delicate and complex restructuring briefs. The team adapts efficiently to difficult environments and crisis situations, and is particularly known for its capacity to assist proactively and avoid foreseeable crises. The team works routinely on complex restructurings, from negotiation and mediation to litigation and counselling. White & Case represents debtors, creditors, committees, fiduciaries and lender groups in formal bankruptcy and insolvency proceedings in courts worldwide, as well as in intricate out-of-court financial restructurings, recapitalisations and rescue financings. It also represents buyers and sellers of distressed loans and claims, and in distressed M&A mandates.

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1. Overview of Legal and Regulatory System for Insolvency/Restructuring/ Liquidation

1.1 Legal Framework

The major laws applicable to French restructuring and insolvency that have been passed in the last ten years are as follows.

- Law No 2005-845 dated 26 July 2005, together with its enforcement Decree No 2005-1677 dated 28 December 2005, has deeply modernised restructuring and insolvency law by giving priority to the negotiation and prevention of financial difficulties. The safeguard proceeding was one of the major innovations introduced by this law.
- Ordinance No 2008-1345 dated 18 December 2008 had the main objective of making safeguard proceedings more accessible and attractive by relaxing the conditions for their initiation and improving a company's reorganisation conditions.
- Law No 2010-1249 dated 22 October 2010 introduced the accelerated financial proceeding.
- Ordinance No 2014-326 dated 12 March 2014, and complementary Order No 2014-1088 dated 26 September 2014, introduced significant changes to restructuring and insolvency proceedings (eg, prepack proceedings).
- Law No 2015-990 dated 6 August 2015 introduced the shareholder squeeze-out, intended to promote economic growth, activity and equal opportunity. This law has also created specialised commercial courts with exclusive jurisdiction for large companies.
- Law No 2016-1547 dated 18 November 2016 (*Loi pour la modernisation de la justice du 21ème siècle*) brought, among other things, modifications with respect to changes to the by-laws and the share capital of a debtor under a restructuring plan, and clarified certain existing doubts with respect to the reconstitution of equity and the rights of new money creditors.
- Law No 2021-1193 dated 9 December 2016 amended the regime governing directors' liability in insolvency scenarios in order to encourage the recovery of honest directors of failed businesses.
- Law No 2019-486 dated 22 May 2019 (*Loi Pacte*) introduced additional amendments and empowered the government to substantially amend the French insolvency law in order to transpose European Directive No 2019/1023 dated 20 June 2019, which aimed to harmonise European legislation regarding preventative restructuring proceedings and debtors' recovery.
- Ordinance No 2020-341 dated 27 March 2020, Ordinance No 2020-596 dated 20 May 2020 (in force from 22 May 2020), Ordinance No 2020-1443 dated 25 November 2020 (in force from 27 November 2020) and Law No 2020-1525 dated 7 December 2020 (in force from 9 December 2020) temporarily amended French restructuring and insolvency laws to deal with the COVID-19 health crisis. Some measures that were initially adopted by these ordinances were due to expire on 31 December 2020, but Article 124 of Law No 2020-1525 extended them until 31 December 2021.
- EU Directive No 2019/1023 of 20 June 2019 on preventative restructuring frameworks, discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive

on restructuring and insolvency) (the "EU Restructuring Directive").
- Ordinance No 2021-1193 dated 15 September 2021 (the "2021 Ordinance"), effective from 1 October 2021 in respect (with limited exceptions) of preventative and insolvency proceedings opened as of such date only, and Decree No 2021-1218 of 23 September 2021 for the implementation of the 2021 Ordinance (the "2021 Decree") transposing the EU Directive.

1.2 Types of Insolvency

Under French law, there are two categories of proceedings:

- amicable or out-of-court proceedings; and
- insolvency or court-administered proceedings.

The first category includes mandat ad hoc and conciliation proceedings. The second category includes safeguard, accelerated safeguard, judicial reorganisation and judicial liquidation proceedings, although the debtor under safeguard proceedings is not cash flow insolvent (*état de cessation des paiement* s).

French law distinguished the accelerated financial safeguard proceeding and the accelerating proceedings (the previous regime). Since the 2021 Ordinance, both proceedings have been merged into one single procedure: the accelerated safeguard procedure.

1.3 Statutory Officers

In out-of-court proceedings, the president of the court appoints a *mandataire ad hoc* or a conciliator, whose mission is laid down in the order.

In safeguard and judicial reorganisation proceedings, the court appoints a supervisory judge, a judicial administrator and a creditors' representative.

In liquidation proceedings, the court appoints a liquidator and a judicial administrator if the company continues to operate its business, in order to organise the sale of the business as a whole through an open bid process.

In out-of-court proceedings, the *mandataire ad hoc* or conciliator does not have any management responsibilities; their mission depends on the petition of the debtor and the order of the president of the court, and mainly consists of assisting the debtor in negotiating an agreement with all or part of its creditors and/or other stakeholders.

Under safeguard proceedings, the judicial administrator generally supervises the debtor, who stays in possession and prepares the safeguard plan (*mission de surveillance*). The court may decide that the judicial administrator assists the debtor to manage its business, which means that all the payments should be controlled by the judicial administrator (*mission d'assistance*). This latter is by experience not the base case and tends to be rare.

Under reorganisation proceedings, the judicial administrator generally assists the debtor (*mission d'assistance*). The court may decide in extreme situations that the judicial administrator should substitute the legal representative and administer the company (*mission de gestion*).

In any case, acts that are not considered to be within the ordinary course of business are subject to the prior authorisation of the supervisory judge.

In safeguard and judicial reorganisation proceedings, the creditors' representative is mandatorily appointed to represent the creditors and protect their collective interest, and also to receive and verify all the proofs of claims from creditors.

The liquidator is mandatorily appointed to carry out transactions regarding the disposal of the business of the debtor (as the management is usually divested of all its rights) and to distribute the proceeds among the creditors according to the ranking set forth by the Commercial Code.

Out-of-court proceedings are carried out by a *mandataire ad hoc* or conciliator, whose name may be suggested by the debtor itself, under the supervision of the president of the commercial court.

In court-administered proceedings, the court appoints the officers and fixes their mission within the judgment opening insolvency proceedings.

In safeguard and judicial reorganisation proceedings, the public prosecutor may submit to the court the name of a judicial administrator and the creditors' representatives to be appointed, upon which the court shall request the debtor's observations. The rejection of such proposals must be duly motivated. The debtor may also propose the name of a judicial administrator.

In liquidation proceedings, the public prosecutor can suggest the appointment of a particular liquidator.

The court can replace the officers on its own initiative, or at the request of the public prosecutor or the supervisory judge (at the request of the debtor or creditors). The officers can request their own replacement.

To be eligible, the officers must pass a national exam and be registered on a list.

2. Creditors

2.1 Types of Creditors

In the course of court-administered proceedings, creditors are subject to the same rules regardless of whether they are secured or unsecured, particularly the stay on payment and enforcement. As such, they need to file a petition in relation to pre-insolvency claims within a limited period of time starting from the judgment opening the procedure.

Certain creditors benefit, however, from some privileges, an efficient security package or rights that enable them to prime other creditors notwithstanding the general rules set out in the foregoing:

- certain creditors benefit from a privilege, such as employees (who are not subordinated to the general effect of the court-administered proceedings) and public creditors;
- "meritorious" creditors are better treated in safeguard and judicial reorganisation proceedings as they prime other creditors, as an incentive for granting new credit and pursuing business operations with the debtor;
- security interests granting only a preferential right over the value of the asset (absent any retention right) are usually inefficient in case of restructuring and insolvency proceedings (eg, mortgage, pledge);
- creditors benefitting from efficient retention rights have an exclusive right over the value of the retained assets and may require full repayment to release the retention, whatever their ranking (eg, pledge over the securities account); and
- property-based security interests such as a French security trust arrangement (*fiducie*) or Dailly assignment benefit from an exclusive right over the value of the assets up to the value of their claims.

2.2 Priority Claims in Restructuring and Insolvency Proceedings

Employment claims, procedural costs and new money claims (including conciliation and safeguard/reorganisation privilege) have a very favourable ranking in the legal waterfall of liquidation proceedings under French insolvency law. The priority of payment among these creditors is as follows:

- any allowances granted by the supervisory judge by way of remuneration to managers or individual debtors;
- claims benefitting from the wage super-privilege;
- legal costs arising after the opening judgment;
- claims benefitting from the privilege of sums due to agricultural producers;
- claims benefitting from the "new money privilege" or "conciliation privilege";
- claims secured by real estate security interests, classified in accordance with the ranking provided for in the Civil Code;
- claims benefitting from the privilege of wages (where not paid by the Association for the Management of the Employees' Debt Guarantee Scheme (AGS));
- claims benefitting from the "post-money privilege";
- "meritorious" claims resulting from the performance of ongoing contracts and for which the contracting party has agreed to receive deferred payment;
- claims benefiting from the privilege of wages (where paid by the AGS);
- other post claims and prior claims for which payment is authorised;
- claims benefitting from the Treasury's lien (except for indirect taxes);

- claims secured by movable securities or the lessor's lien;
- tax and social security claims (indirect taxes); and
- unsecured claims, pro rata to their amount.

Note that this order of priority is not relevant to all creditors – for example, creditors benefitting from a retention right over assets with respect to their claim related to such asset will be treated separately.

2.3 Secured Creditors

The two most common types of security taken over real estate property by creditors are the mortgage (*hypothèque*) and the lender's lien (*privilège du prêteur de deniers*). Both require a notarial deed, which entails the payment of fees to the notaries involved (which is proportional to the principal amount secured but negotiable above a certain level), and must be registered in order to take rank. Both a mortgage and a lender's lien give the secured party the same rights over the property, but a mortgage only takes rank upon the date of its registration while a lender's lien takes rank from the date of the acquisition, provided that it is registered within two months (if not, it takes rank upon registration, like a mortgage). However, this difference ceased to exist on 1 January 2022 in respect of liens granted after that date, as such liens will be regarded as statutory mortgages (*hypothèque légale*).

In either case, enforcement may be carried out by means of a court-supervised public auction or a court-ordered attribution of the property to the secured creditor(s) (subject to the creditor(s) paying the amount, if any, by which the value of the property as appraised independently exceeds the secured amount). In the case of a contractual mortgage only, enforcement may also – if agreed in the mortgage deed (or at the time of enforcement) – result from the direct appropriation of the secured property by the secured creditor (subject to the payment of any excess, as in the case of court-ordered attribution). Direct appropriation is seldom agreed by borrowers in normal financing circumstances but may be more likely to be imposed in a restructuring context.

A *fiducie* may also be considered for security purposes in relation to real estate assets but leads to certain disadvantages in terms of costs, which will be higher than for a mortgage as the notarial fees and the registration fee and duty are based on the value of the property rather than the amount secured.

Security Over Equity Shares

The most usual types of security over shares are the pledge over shares (*nantissement de parts*) and the pledge over a company's securities accounts (*nantissement de comptes titres*), depending on the corporate form of the company. As such, pledgors will fictitiously retain the shares/financial securities until they are fully paid up by the debtor. In addition, a *fiducie* over the shares of a company is usually considered in distressed or pre-distressed situations.

Security Over Movable and Intangible Properties

One of the main types of security over movable property is the pledge, known as gage in respect of tangible assets and *nantissement* in respect of intangible assets. If the secured obligation is not performed, the pledged assets may be sold and the price paid to the secured creditor who has a priority right on that price (although not a first-rank priority right). Contractual appropriation is also possible if it is provided for in the security documents. The existence of a pledge is subject to a written instrument (which may be in electronic format), and its efficiency against third parties is subject either to a recording in a special register or to the transfer of possession of the movable asset into the hands of the creditor.

In respect of receivables, an assignment by way of security (transferring title in the collateral) may be used. When the secured assets are professional receivables and certain other conditions are met, parties can use the special regime (known as Dailly security assignments) provided for by the Monetary Financial Code. As of 1 January 2022, it is also possible to use the general assignment regime provided for by the Civil Code, which enables the transfer by way of security of all types of receivables between all types of parties.

Security Over Intellectual Property Rights

In relation to intellectual property rights, a pledge over trade marks, patents or software requires registration in the national register held at *Institut National de la Propriété Intellectuelle*.

Security Over Cash

Under a cash collateral, title to cash collateral is transferred to the creditor. If the debtor defaults, the creditor should be able to set off all sums owed by the debtor against the creditor's obligation to return the charged cash to the debtor.

2.4 Unsecured Creditors

Unsecured creditors benefit from several remedies outside of a restructuring or insolvency context, as follows.

Formal Notices

Upon non-performance of the debtor's obligations, creditors can issue a formal notice requesting performance.

Formal notices entitle the creditor to claim interests on arrears at the legal rate without needing to demonstrate actual damages.

Pre-Judgment Attachment

Creditors may seek a court order for pre-judgment attachment to secure the debtor's property, preventing asset disposal before a final judgment. This action requires the creditor to show both a likelihood of success based on the merits of the case and a risk that the debtor may dissipate or conceal assets.

However, pre-judgment attachment is not a permanent remedy, as the creditor must still obtain an enforceable title (*titre exécutoire*) to enforce its rights over the debtor's assets.

Retention of Title

Also known as a "reservation of title" clause (*clause de reserve de propriét* é), this allows the creditor to retain ownership of goods supplied to the debtor until the debtor fully pays for them.

This clause, which must be explicitly included in the contract, enables the creditor to repossess the goods if the debtor defaults, provided the goods are still in the debtor's estate and have not been transferred to a bona fide transferee.

If the goods under a retention of title clause are sold by the debtor to a third party who is unaware of the clause and acts in good faith, the creditor loses the right to repossess. However, if the third-party buyer has not yet paid the debtor, the creditor can seek payment directly from them.

Set-Offs

Creditors may offset mutual obligations with the debtor, enabling them to deduct amounts owed by the debtor from any debts they themselves owe to the debtor. Set-off rights may be contractual or statutory, generally taking three forms.

- Legal set-off: applies when debts are certain, due and payable (*créances certaines, liquides et exigibles*), occurring as soon as these conditions are met and the set-off right is claimed by one of the parties.
- Related debt set-off (*dettes connexes*): for debts arising from the same contract, account or framework agreement. Unlike legal set-off, this only requires the certainty of the reciprocal debts and does not depend on them being due or payable.
- Contractual set-off: this can extinguish current or future obligations between parties, taking effect either on the agreement date or when obligations coexist.

Use of Contractual Remedies

In continuing performance contracts (eg, leases, recurring services or goods supply agreements), creditors can suspend their obligations under the contract if the debtor's non-performance is sufficiently serious. Typically, creditors are advised to issue a formal notice to the debtor indicating that their obligations will be suspended if the debtor does not fulfil their own obligations.

Creditors may also suspend performance if it becomes evident the debtor will not perform when due, provided that the non-performance is likely to have serious consequences. In such cases, notice of suspension should be issued promptly.

Seizures

A means usually used by creditors while demonstrating a due and payable claim against a debtor is to seize, through a bailiff's notification, (i) any cash amount in the debtor's bank account within the limit

of the sums dues under the claims, (ii) any intragroup claims or (iii) any shares or securities of a company.

3. Out-of-Court Restructuring

3.1 Out-of-Court Restructuring Process

Under French law, two out-of-court proceedings are available for a debtor in trouble:

- mandat ad hoc proceedings, which are without time limit; and
- conciliation proceedings, which last up to five months.

Neither of these procedures triggers an automatic stay of payment and enforcement actions. Creditors are therefore not barred from taking legal action against the debtor to recover their claims, but those that have agreed to take part in such proceedings usually also agree to abstain from such action while they are ongoing.

In any event, the debtor retains the right to petition the relevant judge for a grace period under Article 1343-5 of the French Civil Code. More particularly, and pursuant to Article L. 611-7 of the French Commercial Code, the debtor retains this right to petition the judge if a creditor has formally put the debtor on notice to pay, is suing for payment or does not accept a request to stay payment of its claim by the deadline set by the conciliator. In the latter case, the judge may order the postponement or rescheduling of claims of the creditor that have not yet fallen due for the duration of the conciliation proceedings.

Before the 2021 Ordinance, there was limited connection between out-of-court and in-court proceedings. This ordinance tends to create bridges between out-of-court amicable proceedings and insolvency proceedings, with the idea that restructuring solutions could be negotiated during the amicable phase and implemented in the context of subsequent insolvency proceedings. These evolutions concern both the implementation of traditional restructuring plans and the sale of business.

While out-of-court proceedings have the advantage of confidentiality, a positive outcome requires the debtor's creditors called up to participate in the negotiations to agree to make the necessary efforts to ensure the continuation of business. Neither the court-appointed conciliator nor the debtor has the power to impose those efforts on dissenting creditors in the context of consensual proceedings (save some time-limited moratoria).

One path to overcome the opposition of dissenting creditors preventing the adoption of a restructuring agreement negotiated during the amicable proceedings is to use accelerated safeguard proceedings to benefit from the cram-down system and force the adoption of the safeguard plan. In this two-step model, a prepack restructuring plan is negotiated during an out-of-court procedure (conciliation) seeking the support of a great number of creditors, with such plan being implemented in the framework of a collective proceeding (accelerated safeguard).

Ad hoc creditor groups or steering committees may be formed during out-of-court proceedings but there are no mandatory rules or obligations related to creditor steering committees. The agent for lenders under a secured credit facility may form a steering committee of lenders to help organise the negotiations amongst the pool of lenders. Noteholders may also organise themselves through ad hoc groups to represent them during restructuring negotiations. A single creditor, or a consortium of two or three creditors, may purchase a large portion of outstanding debt and then negotiate directly with the company or play an outsized role in an ad hoc group or steering committee.

When structuring a financing, lenders are strongly encouraged to agree in advance on a set of rules that would be applicable in subsequent restructuring proceedings, usually through intercreditor agreements. In this way, creditor groups may further negotiate and reach agreements and may arrange their competing rights to receive payments of cash or other property from a company, as well as determining timelines and details with respect to such creditor groups' respective abilities to exercise remedies. Such agreements will have particular importance in the opening of subsequent court-administered proceedings.

Lastly, a conciliation may also be opened to organise the partial or total sale of the business (ie, a pre-pack sale plan), which could be implemented, where appropriate, in the context of a subsequent safeguard (for partial sale only), judicial reorganisation or liquidation proceedings. As in the pre-packaged safeguard plan, the main interests in using the pre-pack sale framework lie in the confidentiality attached to the court-assisted amicable proceedings during the preparation phase and the reduction in the duration of the subsequent court-administered proceedings.

3.2 Legal Status

Out-of-court restructuring agreements are purely contractual and solely apply to the parties who participate and agree to the restructuring plan. Such restructuring agreements cannot be imposed on creditors who did not participate in the conciliation process or who refused to agree to the terms.

When the conciliation agreement is formally approved (*homologué*) by the court, the judge assesses the fairness between the creditors involved in the agreement, and more particularly ensures that the agreement does not impair the rights of the non-signatory creditors.

4. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

4.1 Opening of Statutory Restructuring, Rehabilitation and Reorganisation

Accelerated Safeguard

The French accelerated safeguard is a restructuring procedure suited for companies that need to reach a swift agreement with creditors while minimising the disruption to their business operations. To be eligible to access accelerated safeguard proceedings, the debtor must meet the following conditions:

- its financial statements must have been certified by an auditor (*commissaire aux comptes*) or drawn up by a chartered certified accountant (*expert-comptable*);
- it must be subject to ongoing conciliation proceedings;
- it must have prepared a draft safeguard plan ensuring the continuation of its business as a going concern that is likely to be supported by enough parties that will be impaired by such plan to render its adoption plausible within an initial two-month period, which may be extended to up to four months upon the request of the debtor and the court-appointed administrator; and
- it must not have been insolvent for more than 45 days when it initially applied for the opening of conciliation proceedings.

If the debtor does not meet the conditions that require creditors' classes to be formed, the court must order such constitution in the decision opening the proceedings. The regime applicable to standard safeguard proceedings is broadly applicable to accelerated safeguard proceedings.

Safeguard

The French safeguard procedure is a preventive restructuring process designed to help companies in financial distress but not yet insolvent. Only the debtor can initiate this process, and it must demonstrate serious financial challenges without having reached a state of cash flow insolvency. The procedure is available to a wide range of businesses, including corporate entities and individual entrepreneurs, and is aimed at helping businesses reorganise their debts and operations while under court protection.

Judicial Reorganisation

When the debtor is insolvent, defined under French law as the inability to pay its debts as they fall due with its immediately available assets, and rescue does not appear to be impossible, the management of the distressed company must request the opening of judicial reorganisation proceedings no later than 45 days after the date on which the company becomes insolvent (provided that conciliation proceedings are not pending).

Any unpaid creditor or the public prosecutor may request the court to open judicial reorganisation proceedings should the legal requirements to do so be met. The effects of an involuntary judicial reorganisation are similar to those of voluntary judicial reorganisation proceedings.

The goals of judicial reorganisation proceedings are the sustainability of the business, the preservation of employment and the payment of creditors, in that order.

As it is a court-administered proceeding, the insolvency judge opens a six-month "observation period", renewable for up to 18 months (against a maximum of 12 months under safeguard proceedings), during which the debtor will negotiate a waiver of debt or rescheduling with its creditors. Unlike out-of-court proceedings, a judicial reorganisation is public, and pre-filing claims are automatically stayed against the company.

At the end of the observation period, the judge will make an order for:

- the continuation of the business through a reorganisation plan;
- the sale of all or part of the debtor's assets through a sale plan; or
- if the latter fails, conversion into liquidation proceedings.

4.2 Statutory Restructuring, Rehabilitation and Reorganisation Procedure

Automatic Stay

In court-administered proceedings, the automatic stay on claims prevents creditors from enforcing security (except for security interests relying on title transfer, such as a security trust or a Dailly security assignment).

Adoption of a Restructuring Plan

In court-administered proceedings, creditors (and, if applicable, equity holders) must be consulted regarding the manner in which the debtor's liabilities will be settled under the safeguard or reorganisation plan (debt write-offs, payment terms or debt-for-equity swaps) prior to the plan being approved by the court. The rules governing consultation will vary depending on the size of the business.

If a class-based consultation is mandatory in accelerated safeguard proceedings, the creation of such classes will only be compulsory if the debtor is above certain thresholds in safeguard or judicial reorganisation proceedings (as described in the following).

This applies to companies that meet or exceed either of the following thresholds on the date of the petition for the commencement of proceedings:

- 250 employees and EUR20 million in net turnover; or
- EUR40 million in net turnover (on a standalone basis or together with other entities that they hold or control, within the meaning of Articles L. 233-1 and L. 233-3 of the French Commercial Code).

Classes can also be created upon the debtor's request – and with the authorisation of the supervisory judge – if the debtor in possession does not meet such thresholds. Even if the debtor in accelerated proceedings does not meet the thresholds that require affected creditors' classes to be formed (as mandated), the court must order such formation in the decision opening the proceedings.

The judicial administrator is responsible for drawing up the classes and informing each affected party that it is a member of a class. On the basis of objective verifiable criteria, they must also allocate the affected parties in classes representing a sufficient commonality of economic interest (*communauté d'intérêt économique suffisante*) in compliance with the following conditions:

- creditors whose claims are secured by security interests in rem (*sûretés réelle*s) and other creditors (such as unsecured) shall belong to different classes;
- the class formation shall comply with subordination agreements entered into before the commencement of proceedings, which must have been brought to the attention of the judicial administrator within ten days of their notification to each affected party of its membership in a class;
- equity holders shall be allocated to one or more classes; and
- in respect of creditors secured by a security trust (*fiducie*) granted by the debtor, only the amount of their claims that are not secured by such security trust is taken into account.

The judicial administrator shall notify each affected party of the criteria for class formation and the determination of the voting rights corresponding to the affected claims or rights allowing them to cast a vote.

The consultation involves the submission of a draft plan prepared by the debtor with the assistance of the judicial administrator for consideration by the affected parties (except in judicial reorganisation proceedings, where any affected party may submit an alternative plan to the vote of the class(es)).

The decision shall be taken by each class by a two-thirds majority of the votes held by the members casting a vote.

Treatment of Dissenting Creditors

To cram-down dissenting minority creditors and enable the court to adopt a plan despite the negative vote of one or several classes, the following general conditions must be met.

- The plan complies with these conditions for its adoption by the court:
  - (a) the classes have been duly formed in accordance with the rules;
  - (b) affected parties that share a sufficient commonality of interest within the same class are treated equally and in proportion to their claim or right;
  - (c) the plan has been duly notified to all the affected parties;
  - (d) if there are dissenting affected parties, the plan meets the "best interests of creditors" test – ie, no dissenting party is worse off as a result of the plan than it would be if the order of priority of payments in a judicial liquidation were applied (whether in the event of a piecemeal sale or a court-ordered disposal plan – *plan de cession*) or in the event of a better alternative solution if the plan was not approved;
  - (e) where applicable, any new financing is necessary to implement the plan and does not excessively impair the interests of the affected parties; and
  - (f) the interests of all affected parties are sufficiently protected;
- approval of the plan by a majority of classes (necessarily including a class of secured claims or a class having a higher rank than the class of unsecured creditors) or by a class "in the money" other than capital holders;
- compliance with the absolute priority rule – ie, the claims held by a dissenting class of affected parties are fully paid (by identical or equivalent means) if a lower-ranking class is entitled to be paid or retains an interest within the plan; and
- compliance with the rule according to which the plan shall not permit a class to receive or retain more than the total amount of its receivables or interests.

Where one or more classes of equity holders have been constituted and have not approved the plan, the plan can be imposed on such dissenting equity holders in the following circumstances:

- if the threshold criteria are met (see the foregoing) – if there is no economic interest left, it is reasonable to assume that the shareholders will be "out of the money" in the event of a liquidation/disposal plan;
- in respect of the preferential subscription rights of the shareholders; and
- if the plan does not provide for the transfer of all or part of the rights of the dissenting class or classes of equity holders.

Judicial reorganisation proceedings broadly take place in a manner that is similar to safeguard proceedings, subject to certain specifics. The main differences are as follows:

- if the debtor does not meet the required threshold(s), the authorisation to form classes of affected parties may also be requested from the supervisory judge by the judicial administrator on its own, without the debtor's approval (in addition to being requested by the debtor);
- any affected party may submit a draft plan to the vote of the classes;
- if the plan has not been approved by all classes of affected parties, the court can decide to apply the cross-class cram-down mechanism at the request of any affected party (in addition to the debtor or the administrator, with the debtor's consent); and

- if the plan is not approved through the class-based consultation procedure (whether by regular approval by the classes of affected parties or by a cross-class cram-down), the approval of the plan may occur through the individual consultation rules.

Treatment of New Money Claims

New money and post-money privileges are granted to creditors who provide new financing to a company undergoing certain restructuring or insolvency procedures, such as safeguard or conciliation proceedings. A debt claim benefitting from a new money privilege may be given different treatment from old money in any subsequent court-administered proceedings. The new investors will enjoy a priority of payment over all pre-commencement and post-commencement claims (subject to certain exceptions, including with respect to certain post-commencement employment claims and procedural costs) in the event of subsequent court-administered proceedings. Such claims benefitting from this new money privilege may also not be rescheduled or written off by a safeguard or reorganisation plan without their holders' consent, even through a cram-down or a cross-class cram-down (in the event that classes of affected parties are formed).

Arbitral Court and Bankruptcy Court Jurisdiction

According to consistent case law, the bankruptcy court has exclusive jurisdiction over all disputes arising from statutory restructuring, rehabilitation and reorganisation proceedings (such as the opening of the proceedings, the annulment of transactions entered into during the hardening period (*nullités de la période suspecte*) or sanctions imposed on managers).

However, disputes not directly connected to the statutory restructuring, rehabilitation and reorganisation proceedings may still be referred to arbitration, provided that an arbitration clause exists or that the parties mutually agree to submit the matter to arbitration. Ordinary jurisdiction applies when the dispute arises from facts or contracts predating the proceedings and would have occurred in the same manner irrespective of them.

This is particularly the case for disputes concerning the amount of a claim declared in a proof of claim (*déclaration de créance*), where the underlying obligation arises from a contract containing an arbitration clause. In such circumstances, the insolvency judge must declare a lack of jurisdiction, and the dispute shall be referred to the competent arbitral tribunal.

In practice, however, the use of arbitration in the context of statutory restructuring, rehabilitation and reorganisation proceedings remains exceedingly rare.

4.3 The End of the Restructuring, Rehabilitation and Reorganisation Procedure

In safeguard and judicial reorganisation proceedings, after the draft plan has been adopted by the class(es), the court must ensure that certain conditions are met, and notably that the interests of all parties affected are sufficiently protected. In any case, the court may refuse to adopt the plan if it does not provide a sufficient perspective to avoid the debtor's insolvency or to ensure the viability of the business.

The judgment adopting the plan makes its provisions enforceable against all parties.

4.4 The Position of the Debtor in Restructuring, Rehabilitation and Reorganisation

From the date of the judgment opening court-administered proceedings, the debtor is prohibited from paying debts incurred prior to the opening of the proceedings subject to specified exceptions, which essentially cover:

- the set-off of reciprocal receivables arising prior to the opening judgment, provided that debts were certain, due and payable (*créances certaines, liquides et exigibles*) before the opening judgment;
- the set-off of related (*connexes*) debts (ie, when they arise from the same account, from the same contract or from different agreements that all belong to a global contractual framework);
- payments authorised by the supervisory judge (*juge commissaire*) to recover assets, whether they are pledged or retained by a creditor based on a retention right, or constitute collateral in a security trust estate (*patrimoine fiduciaire*) required for the continued operation of the business; and

- paying a carrier requesting payment directly from the debtor.

In safeguard proceedings, the debtor remains in possession and is allowed to carry out day-to-day transactions. However, any transaction that would entail the sale of an important asset of the business would be subject to the supervisory judge's authorisation. The judge may indeed authorise the sale of certain assets on a piecemeal basis if the situation so requires.

The sale of the business as a whole is not possible (in contrast to judicial reorganisation proceedings).

However, the court may authorise the sale of certain assets, either on a piecemeal basis or as a going concern if such assets form an autonomous branch, provided that the debtor can continue to run its business as a going concern without affecting its ability to present a safeguard plan. It can also be a term of a restructuring plan that disposals are executed on a pre-agreed basis and that certain creditors voting on the plan can acquire those assets. The plan needs to be approved by the requisite majorities, and the price needs to be legitimate and set at a fair value to avoid claims of unfair prejudice and material irregularity.

In judicial reorganisation proceedings, the court appoints a judicial administrator to be in charge of assisting the management of the debtor's business. The management of the debtor will continue the daily management of the business, while the judicial administrator supervises and sometimes authorises in advance any exceptional decisions to be taken about the debtor's assets.

4.5 The Position of Office Holders in Restructuring, Rehabilitation and Reorganisation

During the observation period of judicial reorganisation proceedings, the court appoints a judicial administrator to be in charge of assisting the management in the debtor's business. The management of the debtor will continue to operate the daily management of the business, while the judicial administrator supervises – and sometimes authorises in advance – any exceptional decisions to be taken about the debtor's assets. During liquidation proceedings, however, a liquidator is appointed by the court, and the management of the debtor is usually (but not necessarily) divested of all rights pertaining to the business of the debtor and the disposal of assets. Given the severity of the financial difficulties encountered by the distressed debtor, the business of the company will usually be managed entirely by the liquidator.

In judicial reorganisation proceedings, the judicial administrator has the exclusive power to continue or terminate the debtor's executory contracts. The judicial administrator may request the termination of an executory contract if such termination is deemed necessary to protect the interests of the debtor in possession and does not excessively prejudice the other party's rights. If contracts are continued, the debtor and the creditor remain in the same situation as existed prior to the opening of the proceeding. The creditor shall continue to honour its commitments and obligations despite the default of payment by the debtor prior to the proceedings. If the contract is rejected, the effect may also be favourable to the debtor since the burden will be reduced. The creditor will have to file its claim resulting from the rejection of the contract. The same provisions apply in liquidation proceedings that open with an observation period.

4.6 The Position of Shareholders and Creditors in Restructuring, Rehabilitation and Reorganisation

Outside of insolvency proceedings, existing equity owners may be entitled to receive dividends if legal requirements for such distribution are met (which implies that there is a distributable profit).

In safeguard or judicial reorganisation proceedings, equity owners will be regrouped into class(es) of equity holders if the legal requirements for class-based consultation are met or if the supervisory judge order such consultation. In this case, they shall vote on the drafting plan under the rules governing votes at shareholders/equity holders' general meetings, except the decision is taken at the same two-thirds majority. Similar to dissenting creditors, a plan may be imposed on equity holders if specific legal conditions are met (for more information, see **4.2 Statutory Restructuring, Rehabilitation and Reorganisation Procedure**).

5. Statutory Insolvency and Liquidation Procedures

5.1 The Different Types of Liquidation Procedure

Judicial liquidation proceedings apply to a debtor that is insolvent and whose recovery is manifestly unfeasible. The liquidation proceeding may be initiated by an insolvent debtor, a creditor or the public prosecutor.

The purpose of such a proceeding is to liquidate a company by selling it as a whole or by selling each branch of activities or asset one by one.

To request the court to open an immediate liquidation proceeding, the debtor must show evidence that its recovery is hopeless and obviously impossible. The court may order the immediate liquidation of the debtor's assets and will appoint a liquidator to replace the debtor in its management and proceed with the sale of the assets (private sale or auction).

However, when it seems possible that all or part of the business has the chance to be sold to a third party, then the operation of the company will continue temporarily for up to six months.

A simplified variant of such proceedings does exist, if the debtor meets three criteria: (i) it does not own any real estate property; (ii) its number of employees in the six-month period preceding the opening judgment is five at most; and (iii) its net turnover is below EUR750,000.

Under simplified judicial liquidation proceedings, claims do not have to be verified, the judicial liquidator is not required to ask the bankruptcy judge to sell the debtor's assets and the proceeding should last in principle no more than six months, or one year if the debtor employs at least one employee and has a net turnover in excess of EUR300,000; in both cases, the court may extend the proceeding duration for an additional three-month period. It should be noted that there is no sanction attached to failing to comply with the time limit, and the proceeding is not automatically terminated on expiry of the time limit.

5.2 Course of the Liquidation Procedure

Creditors must file a petition for their claims within two months from the publication of the opening judgment in the BODACC (*Bulletin officiel des annonces civiles et commerciales* Official Gazette for Civil and Commercial Announcements). Creditors residing outside of France can avail themselves of an extension period of up to four months for declaring their claims. Failure to file a claim within this time limit will render the creditors unable to take part in the subsequent distribution of funds as part of the plan. All claims are required to be declared, whether contingent or unquestionable.

The proceedings may be officially commenced from the judgment ruling, the beginning of the judicial reorganisation or the opening of liquidation proceedings.

During liquidation proceedings, a liquidator is appointed by the court, and the management of the debtor is usually (but not necessarily) divested of all rights pertaining to the business of the debtor and the disposal of assets. Given the severity of the financial difficulties encountered by the distressed debtor, the debtor's estate will usually be managed entirely by the liquidator.

As for statutory restructuring, rehabilitation and reorganisation proceedings, the bankruptcy court has exclusive jurisdiction over all disputes arising from the liquidation procedure, but any dispute not directly related to the procedure and arising from facts or contracts predating the procedure, and that would have occurred in the same manner irrespective thereof, can be brought before arbitration courts. In practice, however, the use of arbitration in the context of a liquidation procedure remains exceedingly rare.

5.3 The End of the Liquidation Procedure(s)

The court will end the judicial liquidation proceedings when either of the following occurs:

- no due liabilities remain, or the liquidator has sufficient funds to pay off the creditors; or
- continuation of the liquidation operations becomes impossible due to insufficient assets.

5.4 The Position of Shareholders and Creditors in Liquidation

Pursuant to French law, pre-insolvency attachments by the debtor may be frustrated if they result from preventive attachments that have not been converted to definitive attachments prior to the opening judgment.

Regarding attachment of title, creditors who benefit from a valid retention of title clause may be able to exercise their repossession right if the good subject to the clause remains unpaid and is part of the debtor's estate on the date of the opening judgment. However, subtleties do exist when it comes to enforcing such right to repossess; for instance, if the contract containing the retention of title clause has not been published on a public registry, the creditor will have to file a proof of property ownership within three months of the publication of the opening judgment, in addition to his or her proof of claim. Failing this, his or her right of property will become unenforceable against the liquidation estate.

With regard to set-offs, French law provides that the opening of insolvency proceedings entails an automatic suspension, which prohibits any payment of claims predating the opening of proceedings, including by way of set-off; exceptionally, set-offs may be made between related claims (*compensation de créances connexes*). Under French law, claims are considered to be related if they are of the same nature (contractual or tortious) and arise from the same contract or set of contracts, or from the same event. Even if the creditor holds claims that can be qualified as related, he or she is still obliged to file a proof of claim, failing which his or her claims will be unenforceable such that it will be impossible to set off such claims.

Creditors, secured and unsecured, are not entitled to disrupt the liquidation proceedings – they could ask the bankruptcy judge to be appointed as a proceeding supervisor (*contrôleur*), but such appointment does not vest the appointed creditor with significant rights regarding the implementation of the liquidation proceeding.

In addition, creditors, secured and unsecured, will remain subject to an automatic stay. By way of exception, creditors benefitting from pledges are entitled to ask for the judicial assignment of their pledges, which would result in an exclusive right in the proceeds of the sale of the pledge asset.

Regarding rights, remedies and liens against third parties, they are not subject to any automatic stay, but the automatic acceleration resulting from the opening judgment will not be binding on guarantors who are natural persons.

6. Cross-Border Issues in Insolvency

6.1 Sources of International Insolvency Law

The principal legislation that applies to cross-border restructuring and insolvency cases involving France and other EU member states is European Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), as amended, in particular by Regulation (EU) 2018/946 of the European Parliament and of the Council of 4 July 2018 (the EU Insolvency Regulation).

When the other country is an EU member state (excluding Denmark), the European texts applicable in this matter – particularly the European Regulation – are based on the principle of the immediate and automatic recognition of decisions relating to the opening, running and closing of insolvency proceedings in all other EU member states, without any special procedure or declaration of enforceability being required. There are few defences available that could prevent enforcement (eg, public policy incompatibility).

6.2 Jurisdiction

The main rules under French insolvency law determining which jurisdiction's decisions, rulings or laws are paramount are those provided by the EU Insolvency Regulation, with the main test being the centre of main interests (COMI).

The COMI is the place where the debtor conducts the administration of its interests on a regular basis, and which is ascertainable by third parties. The presumption that the COMI is placed at the registered office will not apply if the registered office has changed in the preceding months.

6.3 Applicable Law

The EU Insolvency Regulation applies within the EU (except in Denmark) to public insolvency proceedings, as defined therein and listed in its Annex A (including safeguard, accelerated safeguard, judicial reorganisation and judicial liquidation proceedings). It provides that the courts of the member state in which a debtor's COMI is situated have jurisdiction to commence the main insolvency proceedings relating to such debtor. The determination of a debtor's COMI is a question of fact on which the courts of the different member states may have differing, and even conflicting, views.

6.4 Recognition and Enforceability

In countries where the EU Insolvency Regulation does not apply and insolvency judgments are made in a jurisdiction that does not have a treaty with France, recognition will no longer be automatic and will instead be subject to a court declaration of enforceability (*exequatur*).

6.5 Co-Ordination in Cross-Border Cases

France has not adopted the UNCITRAL Model Law on Cross-Border Insolvency (1997) (Model Law) (in contrast to the UK). However, the EU Insolvency Regulation has introduced some provisions to facilitate the co-ordination of insolvency proceedings opened against companies that are part of the same group.

6.6 Foreign Creditors

Foreign creditors benefit from the following specific provisions:

- an additional delay of two months to file their claims from the date of publication of the opening judgment in BODACC (four months for French creditors); and
- in accordance with the EU Insolvency Regulation, the opening of insolvency proceedings in France will not affect the rights in rem of creditors or third parties in respect of tangible or intangible – or movable or immovable – assets, nor specific assets and collections of indefinite assets as a whole that change from time to time, belong to the debtor and are situated within the territory of another member state at the time of the opening of proceedings.

7. Duties and Liability of Directors and Officers

7.1 Duties of Directors

There is no list of directors' management duties. Courts apply a standard of reasonable and due care (formerly known as *gestion en bon père de famille*). The directors need to act as ordinarily prudent directors with typical professional care, diligence and effectiveness, placed in the same situation and in similar circumstances, and should take into account material facts that are specific to a case in order to make their decisions.

Directors should always act in the best interest of the company and do not owe any other duties towards the shareholders and third parties, such as creditors (no "shift" in directors' duties occurs under French law when a company is on the verge of insolvency).

Despite there being no shift of directors' duties under French law, company directors are still required by law to file for appropriate in- or out-of-court proceedings within 45 days of the date of cash flow insolvency.

7.2 Personal Liability of Directors

Directors, managers and officers of French commercial companies (whether listed or unlisted) should always act in the company's corporate interest to avoid the risk of civil or potentially criminal liability. When a company becomes financially distressed, and especially when it approaches the state of cash flow insolvency (*cessation des paiements*), the need to carefully consider any source of liability (and related possible cash contributions) may become particularly acute. Accordingly, directors, managers and officers of these companies should follow certain relevant guidelines and practical steps in order to mitigate the risk of liability.

In the context of judicial liquidation proceedings (*liquidation judiciaire*), courts may decide that all or part of the liabilities of the company shall be borne by all or part of the directors, provided that the following three conditions are met.

- There is a shortfall of assets (ie, the assets of a company are insufficient to meet its current and outstanding liabilities).
- The relevant director has committed mismanagement prior to the opening of the liquidation proceedings (any mismanagement may be grounds for an action for damages, except for simple negligence of the director). For example, failure to file or delayed filing of insolvency proceedings, or inadequate investment decisions in view of the financing situation of the company, may be regarded as mismanagement if such behaviour has resulted in the incurrence of additional liabilities.
- The director's mismanagement contributed to the shortfall of assets.

De jure and de facto directors may be held liable even though the mismanagement has indirectly contributed to, or is only one amongst several causes for, the shortfall of assets, and the courts have full discretion to hold a director liable – as well to determine the amount of each director's contribution – and may therefore decide that a director shall contribute to the whole shortfall of assets.

This action may be initiated by the liquidator, the public prosecutor or, subject to certain conditions, the proceeding supervisors (*contrôleurs*) within three years following the opening judgment of the liquidation proceedings.

Directors' board members of joint-stock companies (*sociétés anonymes*) qualify as de jure directors, and are in principle jointly and severally liable. By way of exception, board members who have voted against the detrimental decision may avoid such liability.

7.3 Duties and Personal Liability of Officers

Under French Law, supervisory board members (if they are only vested with monitoring and supervisory powers) do not qualify as de jure directors; therefore, unless they have acted as de facto directors (ie, interfered with the management of the business without having been formally appointed as director, either by taking management decisions directly or instructing the directors on their management decisions), they do not in principle incur any specific liability relating to bankruptcy proceedings.

However, supervisory board members are still liable for personal misconduct in the performance of their duties. By way of exception, they may be held civilly liable for offences committed by members of the management board if, having become aware of them, they did not disclose them to the general meeting of shareholders.

7.4 Other Consequences for Directors and Officers

Professional (Civil) Sanctions

Personal disqualification or management prohibition is applicable to directors in a limited list of circumstances, such as abusively pursuing a loss-making activity for personal gain, refraining from co-operating with the judicial administrator or other judicial bodies, or paying a creditor regardless of the cash flow insolvency situation. The action can be brought by the liquidator, the creditor's representative or the public prosecutor.

Criminal Sanctions

Criminal bankruptcy (*banqueroute*) is applicable to directors in reorganisation or liquidation proceedings that have committed any of the offences listed in the French *Code de Commerce* (eg, having used ruinous means to obtain funds, having embezzled or concealed all or part of the debtor's assets or having fraudulently increased the debtor's liabilities) and is sanctioned by five years' imprisonment and a fine of EUR75,000. Directors may also be exposed to ancillary offences as a result of behaviours contrary to the public policy rules of insolvency proceedings (eg, breaching the prohibition on payments).

8. Setting Aside or Annulling a Transaction

8.1 Circumstances for Setting Aside a Transaction or Transfer

In judicial reorganisation or liquidation proceedings, when a debtor goes into insolvency, the insolvency court may declare void certain transactions that have been entered into during the hardening period (*nullités de la période suspecte*).

An exhaustive list of transactions that are set aside by the court when carried out during the hardening period is provided by the French Commercial Code, as follows:

- any deed entered into without consideration of transferring title to movable or immovable property;
- any bilateral contract in which the debtor's obligations significantly exceed those of the other party;
- any payment, by whatever means, made for debts that had not fallen due on the date when payment was made;
- all payments for outstanding debts, if not made by cash settlement or wire transfers, remittance of negotiable instruments or Dailly assignment of receivables;
- deposits or consignments of money made under Article 2350 of the Civil Code in the absence of a final judgment;
- any contractual security interest or contractual right of retention granted over the debtor's assets or rights for debts previously incurred, unless they replace a previous security interest of at least an equivalent nature and base and with the exception of the assignment of professional receivables (Dailly assignment) made in the execution of a framework agreement entered into prior to the date of insolvency;
- any legal mortgage attached to judgments of condemnation constituted over the debtor's assets for debts previously incurred;
- any protective measure, unless it gave rise to a recording or registration before the date of insolvency;
- any granting exercise or reselling of stock options;
- any transfers of movables or assignment of rights into a trust estate, unless this transfer or assignment occurred as security for a debt simultaneously incurred; and
- any amendment to a trust agreement affecting the rights and movables already assigned or transferred to a trust estate as security for debt incurred prior to such amendment.

In addition, any payment made or any transaction entered into during the hardening period is subject to optional voidance at the discretionary power of the insolvency court, subject to the fulfilment of two conditions:

- the payment or transaction took place during the hardening period; and
- at the time of the payment or transaction, the contracting party knew that the debtor was insolvent at the relevant time.

The hardening period starts from the date the debtor becomes insolvent and may be backdated by the insolvency court up to 18 months before the insolvency judgment. If a conciliation agreement has been reached and formally approved prior to the opening of the judicial reorganisation or liquidation proceeding, the insolvency date cannot be set at a date before the court order approving the conciliation agreement.

8.2 Claims to Set Aside or Annul a Transaction or a Transfer

A petition to annul a voidable payment or a transaction may be brought by the judicial administrator/liquidator, the creditors' representative, the *commissaire à l'exécution du plan* or the public prosecutor. Under French law, a petition relating to the hardening period may only be brought in an insolvency proceeding to the extent that the insolvency test is met.

Any views expressed in this publication are strictly those of the authors and should not be attributed in any way to White & Case LLP.

Trends and Developments

Contributed by:
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White & Case

White & Case has a team in Paris that is one of the most complete and developed in the market, with interdisciplinary expertise and experience that is second to none. White & Case is one of the very few international firms to offer such a high level of expertise in handling the most delicate and complex restructuring briefs. The team adapts efficiently to difficult environments and crisis situations, and is particularly known for its capacity to assist proactively and avoid foreseeable crises. The team works routinely on complex restructurings, from negotiation and mediation to litigation and counselling. White & Case represents debtors, creditors, committees, fiduciaries and lender groups in formal bankruptcy and insolvency proceedings in courts worldwide, as well as in intricate out-of-court financial restructurings, recapitalisations and rescue financings. It also represents buyers and sellers of distressed loans and claims, and in distressed M&A mandates.

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General Panorama and Market Overview

In 2025, France's restructuring and insolvency environment stands at a turning point. The surge in proceedings observed in 2023 and 2024 – driven largely by the withdrawal of COVID-era support measures and the gradual repayment of state-guaranteed loans (PGE) – has not yet fully eased. Instead, the market has stabilised at historically high levels, with more than 68,000 insolvency cases recorded on a 12-month rolling basis. This plateau illustrates a deeper structural fragility: although the pace of new insolvency proceedings has slowed, the underlying pressures on companies remain, and the profile of those entering into distress is shifting.

One of the most notable developments is that insolvency is now increasingly reaching larger companies, including mid-sized and in some cases large corporates.

At the same time, sectoral trends are evolving unevenly. While some consumer-facing industries, such as retail apparel and construction, are still facing a significant number of proceedings, they are beginning to show tentative signs of recovery after the shocks of the past three years, whereas other segments of the economy – including automotive suppliers, parts of the chemical industry, and healthcare and social services – continue to face substantial structural difficulties and remain under significant strain.

Data, Regional Trends and Sectoral Dynamics

First quarter of 2025

The first quarter of 2025 confirmed that France has entered a period of persistently high, though more stabilised, levels of insolvency.

A total of 17,845 proceedings were opened between January and March, a figure that remains historically elevated. However, the year-on-year increase of 4.4% marks a clear deceleration compared with the steep growth rates recorded in recent years, such as the 53% surge observed at the end of the first half of 2023. The distribution of proceedings shows a modest rise across all categories: 373 safeguard proceedings were initiated (+7% year on-year), 5,077 reorganisations were opened (+7%) and 12,395 direct liquidations were pronounced (+3.3%).

Regional disparities remain significant. Insolvency activity rose sharply in the Pays-de-la-Loire and Corsica regions, which recorded year-on-year increases of 22% and 28%, respectively. By contrast, Ile-de-France only registered a limited increase of 3%, while regions such as Grand Est, Bourgogne-Franche-Comté, Provence-Alpes-Côte d'Azur and Centre-Val-de-Loire demonstrated relative resilience, with slower growth in defaults.

From a sectoral standpoint, the pressures of early 2025 have not been uniform. Consumer-facing businesses showed mixed results. Apparel wholesalers, which had suffered heavily during the pandemic and the subsequent inflationary wave, showed signs of improvement, with defaults decreasing by 19% compared with the same period in 2024.

By contrast, the restaurant, IT consulting and agriculture sectors remain in deep difficulty. The automotive sector also remains under restructuring pressure: suppliers face intense global competition as carmakers pursue lower-cost sourcing strategies, and several high-profile cases entered reorganisation proceedings. The chemicals industry, historically energy-intensive, is likewise under strain, with companies restructuring in response to rising energy prices and heightened Chinese competition.

Finally, healthcare and social care providers, particularly nursing homes and childcare operators, suffered a sharp rise in insolvency cases: +56% for nursing homes and +75% for childcare operators. Heavy debt loads, high staffing costs and the lingering impact of COVID-era financing strategies have pushed several actors into distress.

The changing profile of insolvency is also evident in the size of the companies affected. While very small businesses continue to represent the bulk of proceedings (firms with fewer than three employees accounted for more than 70% of the cases in the first quarter of 2025), the failures of larger companies are becoming more frequent and more visible. In the first quarter alone, 64 companies employing more than 100 people entered insolvency, a 28% increase compared with the previous year. The resulting concentration of job losses in a limited number of proceedings explains the sharp increase in the employment impact of insolvency statistics.

Second quarter of 2025

The second quarter of 2025 confirmed that France remains at a historically high level of insolvency cases, but it also brought the first tangible signs of stabilisation. In total, 16,586 insolvency proceedings were opened between April and June, representing a very modest increase of 1.3% compared with the same quarter of 2024. Although the level remains heavy in absolute terms – well above the pre-COVID benchmark of 2019 – the relative stability of new filings is significant. On a rolling 12-month basis, the cumulative number of insolvencies remained above 68,000 cases, but the trajectory of the past three months suggests that the upward curve is flattening.

The quarterly pattern itself reveals an interesting dynamic. April was still marked by a strong increase (+8% year on year), yet the following months tempered that trend: May neutralised the rise, and June even showed a decline in defaults (-2% compared with June 2024). This sequential evolution prompts cautious optimism that the second half of 2025 could see a more marked slowdown in insolvency activity.

The profile of affected companies continues to evolve. During the second quarter of 2025, 58 firms employing more than 100 people entered insolvency, representing a 29% increase year on year. By contrast, small and mid-sized enterprises employing between 20 and 99 people showed relative improvement, with fewer failures reported in this category.

Geographic trends were also uneven. While many regions recorded a slower pace of new cases, areas such as Pays-de-Loire, Centre-Val-de-Loire, Nouvelle-Aquitaine and Occitanie continued to see rising defaults. By contrast, Île-de-France showed the first signs of improvement, with a year-on-year decline of around 2% in insolvency cases.

Sectoral developments in the second quarter highlighted contrasting fortunes. The restaurant industry suffered another difficult period, with traditional establishments recording a 21% increase in failures compared with the previous year. This was largely the result of weak household demand, high energy bills and increased labour costs. Transportation, insurance and financial activities, and the IT consulting and agricultural sectors, were the most severely hit, with a marked increase in insolvency cases.

The automotive and manufacturing sectors continued to weigh heavily on insolvency statistics. Suppliers entered reorganisation, facing both domestic pressures and global price competition, while manufacturers struggled with soaring energy prices and aggressive Chinese competition that is reshaping the European landscape.

However, statistics from the second quarter of 2025 confirm that both the construction and retail sectors are getting better, with decreases of 5% and 2%, respectively, compared with the same period last

year. In this context, 69,000 insolvencies are forecast for 2025, representing a 3% increase compared with 2024.

At the same time, corporate fundamentals are showing signs of strain. At the end of the first half of 2025, non-financial companies recorded a financing need for the first time in two years, driven by margin erosion and rising interest costs. Furthermore, demand continues to be subdued, influenced by the complex and uncertain political climate.

Yet, despite this pressure, France's business demography remains highly dynamic, with nearly 5.9 million companies in 2024 and an average annual growth of close to 5% over the past five years. This rapid expansion – driven mainly by microenterprises – goes hand in hand with a high level of churn, as more than 1.1 million firms were created in 2024 while almost 0.9 million closed down.

Overall, the second quarter of 2025 confirmed the persistence of a high plateau of insolvency proceedings, but the pace of new filings has clearly slowed compared with the rapid growth observed in 2023 and 2024. The stabilisation of defaults among mid-sized companies, early signs of recovery in parts of retail construction, and sequential improvement month by month during the quarter all suggest that the French market may finally be moving past the phase of "catch-up" insolvency proceedings that followed the withdrawal of pandemic-era support.

Key Takeaways

The growing wave of insolvency has accentuated the transformation of the role of creditors. Traditional banks, constrained by regulatory and prudential requirements, have often been reluctant to provide fresh financing to distressed borrowers. As a result, private debt funds are increasingly being drawn into control situations through debt-to-equity conversions. In many instances, they have had to assume roles as shareholders and even appoint operational managers – not by design but as a direct consequence of the restructuring process. This evolution highlights both the severity of the current distress and the narrow range of viable solutions available to restructure corporate debt.

The stabilisation of insolvency levels in France in 2025 can only be described as a historically elevated plateau, which raises a fundamental question: why have defaults not yet returned to pre-crisis levels? The answer lies in a convergence of structural financial pressures, persistent macroeconomic fragilities and sector-specific disruptions.

The first and most obvious factor is the continuing impact of state-guaranteed loans (p *rêt garanti par l'État* PGE). During the pandemic, more than 800,000 of these loans were issued, overwhelmingly to SMEs. At the time, they provided critical liquidity and offered an exceptionally low interest rate of around 1%. In 2025, however, the repayment schedule has become a heavy burden, particularly as refinancing is now only available at rates between 3% and 4%. For many businesses, this shift has transformed what was once a lifeline into a long-term liability that compresses margins and restricts investment capacity. This mechanism explains why so many insolvencies today concern companies that otherwise might appear viable in operational terms.

A second decisive factor is the abrupt tightening of financial conditions. After more than a decade of monetary stability, the rapid rise in interest rates since 2022 has presented businesses with a funding environment they have never experienced before. Companies that had grown accustomed to abundant and inexpensive credit suddenly faced refinancing at punitive levels. Although the European Central Bank began to lower rates as inflation receded, the reprieve has been limited, and for many overleveraged borrowers, the damage was already done.

This leads directly to the third factor: the fragility of leveraged buyouts (LBOs) completed during the pandemic years. Transactions structured in 2020 and 2021 often relied on business plans drafted in uncertain conditions, with overly optimistic forecasts for growth and cash generation. Subsequent shocks – first inflation, then the energy crisis and now a context of geopolitical and commercial instability – have undermined those assumptions. In addition to the sharp rise in interest rates, many portfolio companies have also delivered disappointing operational performance, falling short of the ambitious projections on

which their acquisition structures were based. The result is a cohort of private equity-backed companies now struggling under excessive debt. Fitch Ratings has warned of a looming "debt wall", estimating that between EUR30 and EUR35 billion of poorly rated French corporate debt will mature in 2028, compared with only EUR5 billion in 2026. The refinancing needs of these businesses will surface well before maturity, placing additional strain on the market. As for the outlook, this suggests that the peak of refinancing risk might intensify in the coming years, requiring early and complex restructuring strategies to be designed well ahead of 2028.

The broader macroeconomic context worsens these difficulties. French growth remains weak due to subdued household consumption, deteriorating external trade balances and an uncertain political environment. Confidence among both consumers and businesses is fragile, and while there are positive indicators, such as modest GDP growth in the first quarter of 2025, slight increases in business investment and a gradual decline in inflation, these are insufficient to offset structural weaknesses. Sectoral crises in construction, real estate, traditional retail, chemicals and parts of healthcare have reinforced the sense of instability.

The key takeaway from the first half of 2025 is therefore twofold. On the one hand, the surge in insolvencies appears to be slowing, offering hope that the market is beginning to stabilise. On the other hand, the nature of the cases entering insolvency suggests that restructuring activity will remain intense and strategically important. Larger employers, heavily indebted private equity backed groups and energy-intensive industries are all likely to feature prominently in the months and years ahead.

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