Global Restructuring and Insolvency Guide - France

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

Please select a topic from the menu.

*This content was last reviewed around November 2021.*

**Remark:** France is a member of the European Union. Please refer to the section "European Union" under Quick Links below to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The EU Restructuring Directive has been implemented in France in an order dated September 15, 2021, which applies effective October 1, 2021.

# Initial Considerations

## Can you take security over all types of assets, including accounts receivable?

**Conciliation**

Yes. Generally, creditors can take a security interest over all types of assets, including accounts receivable.

Taking security interest requires specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, nonpossessory pledge and possessory pledge.

**Safeguard Proceedings**

Creditors can take a security interest over all types of assets, including accounts receivable, up to the day preceding the opening of safeguard proceedings.

However, as of the opening of safeguard proceedings, security interests must be validated by the insolvency judge (*juge-commissaire*) or granted as part of the safeguard plan.

Taking security interest requires specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, nonpossessory pledge and possessory pledge.

**Rehabilitation proceedings**

Creditors can take a security interest over all types of assets, including accounts receivable, up to the day preceding the opening of rehabilitation proceedings.

However, security taken in the pre-rehabilitation hardening period may be subject to challenges. As of the opening of rehabilitation proceedings, security interests must be validated by the insolvency judge (*juge-commissaire*) or granted as part of the rehabilitation plan.

Taking security interest requires specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, nonpossessory pledge and possessory pledge.

**Liquidation**

Creditors can take a security interest over all types of assets, including accounts receivable, up to the day preceding the opening of liquidation proceedings.

However, security taken during the pre-liquidation hardening period may be challenging.

Taking security after the opening of liquidation proceedings is very unlikely.

## What is the nature of the insolvency process?

**Conciliation**

A confidential out-of-court insolvency or a pre-insolvency process intended to avoid the debtor entering into a formal insolvency process involving either:

The negotiation of an out-of-court payment plan with creditors

A prepacked asset sale

(3) A prepacked plan (accelerated safeguard)

**Safeguard Proceedings**

A court process to effect a financial and/or corporate restructuring ends with a court judgment approving the safeguard plan.

There are two types of safeguard proceedings:

Regular safeguard proceedings (proceedings commenced by the debtor to effect a restructuring where there is no requirement to have a prior failed conciliation)

Accelerated safeguard proceedings (proceedings used to cram down dissenting creditors following a conciliation, whether they are financial or nonfinancial creditors)

**Rehabilitation proceedings**

A court process to restructure cash-insolvent but viable companies leading to either:

A court ruling approving a rehabilitation plan (*plan de redressement par voie de continuation*)

The sale of the business as a going concern (*plan de cession*)

**Liquidation**

A court liquidation process (where there is no prospect of recovery) effected by either:

An individual asset sale

A sale of the business as a going concern (*plan de cession*)

A simplified liquidation proceeding can be opened toward companies that do not own any real estate assets, pursuant to specific turnover and employee criteria.

## What is the solvency requirement for a company to file a case in this jurisdiction?

**Conciliation**

Debtors must:

Not be cash-insolvent, or

Cash-insolvent for less than 45 days

**Safeguard Proceedings**

Debtors must be facing difficulties that they cannot overcome alone, but must not be cash-insolvent.

**Rehabilitation proceedings**

Debtors must be cash-insolvent (*cessation des paiements*) with the prospect of recovery.

**Liquidation**

Debtors must be cash-insolvent (*cessation des paiements*) with no prospect of recovery.

## Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?

**Conciliation**

No. Regulation (EU) 2015/848 on insolvency proceedings does not apply to conciliation proceedings.

**Safeguard Proceedings**

Yes

**Rehabilitation proceedings**

Yes

**Liquidation**

Yes

## Is restructuring of both secured and unsecured claims possible?

**Conciliation**

Yes

**Safeguard Proceedings**

Yes.

Note: The court (*tribunal de commerce*) is not able (on its own initiative) to order the write-down of any liability.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

No

## Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?

**Conciliation**

N/A

**Safeguard Proceedings**

Creditors may be classed in classes of affected parties (*classes de parties affectées*) for voting purposes.

In both accelerated safeguard proceedings and regular safeguard proceedings, the claims of creditors and shareholders are put into separate classes for purposes of voting and treatment under the continuation plan.

The constitution of classes is made under the responsibility of the court-appointed administrator (*administrateur judiciaire*) who must gather creditors sharing a sufficient community of interests within the same class based on verifiable criteria they must benefit from equal treatment.

The approval decision of the continuation plan of each class is taken by a two-thirds majority of the votes held by the members of such class casting a vote.

Note: Any agreement between creditors to subordinate their claims must be taken into account under the terms of the plan.

Accelerated safeguard proceedings

The constitution of classes of affected parties is mandatory and automatic in the frame of accelerated safeguard proceedings.

Regular safeguard proceedings

The constitution of classes of affected parties is mandatory only if certain thresholds are reached:

The debtor has more than 250 employees and an annual turnover of more than EUR 20 million

The debtor has more than EUR 40 million in annual turnovers

Also, the constitution of classes of affected parties is mandatory for the holding company if the thresholds mentioned above are reached by the companies it controls.

Below such thresholds, the constitution of classes of affected parties remains optional at the debtor's request and is subject to the insolvency judge's approval.

**Rehabilitation proceedings**

Same as in safeguard proceedings, except that below the mentioned thresholds, the constitution of classes of affected parties can also be asked by the court-appointed administrator (*administrateur judiciaire*).

**Liquidation**

N/A

## Is there an ability to bind minority dissenting creditors (i.e., cramdown)?

**Conciliation**

N/A

**Safeguard Proceedings**

Yes, as part of the classes of affected parties.

In order to implement the cross-class cramdown mechanism, the court must verify that one of the following two criteria are met:

A majority of the classes of affected creditors has voted in favor of the plan, provided that at least one of those classes is a secured creditors' class or is senior to the unsecured creditors' class.

Alternatively, at least one of the classes of affected creditors has voted in favor of the plan, i.e., a class other than an equity holders' class or any other class that is not "in the money" (i.e., which, after determining the value of the debtor as a going concern, could reasonably be expected not to be entitled to any payment or retain any interest while applying for the distribution priority order in the context of a judicial liquidation or an asset sale plan).

The court shall verify, in accordance with the "best interests test," that any affected creditors that voted against the plan is not in a less favorable situation than it would have been in the event of judicial liquidation, an asset sale plan or a better alternative solution.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

N/A

# Commencing the Process

## Who can commence?

**Conciliation**

Debtor

**Safeguard Proceedings**

Debtor

**Rehabilitation proceedings**

Debtor

Any creditor(s); or

The public prosecutor

**Liquidation**

Debtor

Any creditor(s); or

The public prosecutor

## Is shareholder's consent required to commence proceeding?

**Conciliation**

No, however, if the bylaws provide otherwise, it may be recommended to the directors to obtain the board authorization.

**Safeguard Proceedings**

No, however, if the bylaws provide otherwise, it may be recommended to the directors to obtain the board authorization.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

Same as in safeguard proceedings.

## Is there an ability to consolidate group estates?

**Conciliation**

N/A

**Safeguard Proceedings**

No. Practically, it is possible to coordinate group insolvencies by appointing the same court-appointed administrator(s).

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

N/A

## Is there any court involvement?

**Conciliation**

There is limited court involvement.

The conciliator is appointed by the president of the court. The conciliator assists the parties during the proceedings.

The agreement may be acknowledged by the president of the court (confidential) or by the court (the decision may be made public then but not the terms of the agreement).

During the procedure, the debtor can request payment delays to the insolvency court in case the debtor is served with a notice of default or sued by a creditor during the negotiations.

Moreover, if a creditor called to the conciliation does not accept (within the time limit set by the conciliator) the request made by the conciliator to suspend the payment of the creditor's claim for the duration of the procedure, the debtor may request the court to defer or reschedule payment of the amounts due, within the time limit of the conciliation.

**Safeguard Proceedings**

The court is involved in the process.

The court opens proceedings and ultimately approves the plan.

Specialized courts have jurisdiction over large companies fulfilling certain conditions.

The insolvency judge supervises the court-appointed administrator and the court-appointed creditor's representative and grants certain authorizations (e.g., for settlement agreements, disposal of individual assets etc.).

The process is carried out by the court-appointed administrator and the court-appointed creditor's representative.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

The court is involved in the process.

The court opens the proceedings. The insolvency judge supervises the court-appointed liquidator and grants certain authorizations (e.g., sale of the assets).

## Who manages the debtor?

**Conciliation**

The debtor remains in possession.

The court appoints a conciliator that has a supervisory role and assists with third-party negotiations.

Note: The debtor may propose the "conciliator," but the court is free to appoint a different one.

**Safeguard Proceedings**

The debtor remains in possession and management is supervised by the court-appointed administrator.

All management decisions that go beyond ordinary actions must be approved by the insolvency judge beforehand.

The court appoints an insolvency judge, the court-appointed administrator(s), the court-appointed creditor's representative(s) and, upon their request, one to five advisers (from the creditors).

At least two court-appointed administrators and two court-appointed creditors' representatives must be appointed by the court if the net revenues of the debtor or of one of the companies mentioned below reach at least a threshold of EUR 20 million and the debtor either:

Owns at least three secondary establishments located in the jurisdiction of a commercial court other than the one the debtor is registered in

Owns or controls at least two companies against which safeguard, rehabilitation or liquidation proceedings have commenced

Is owned or controlled by a company against which safeguard, rehabilitation or liquidation proceedings have commenced and owns or controls another company against which safeguard, rehabilitation or liquidation proceedings have commenced

**Rehabilitation proceedings**

The debtor remains in possession and management is assisted by the court-appointed administrator. The court sometimes decides that the court-appointed administrator's mandate is to ensure the management of the company.

The insolvency judge must approve all management decisions that go beyond ordinary actions beforehand. The court-appointed administrator must approve all cash payments.

The court appoints an insolvency judge, the court-appointed administrator(s), the court-appointed creditor's representative and, upon their request, one to five advisers (from the creditors).

At least two court-appointed administrators and two court-appointed creditors' representatives must be appointed by the court if the net revenues of the debtor or of one of the companies mentioned below reach at least a threshold of EUR 20 million and the debtor either:

Owns at least three secondary establishments located in the jurisdiction of a commercial court other than the one the debtor is registered in

Owns or controls at least two companies against which safeguard, rehabilitation or liquidation proceedings have commenced

Is owned or controlled by a company against which safeguard, rehabilitation or liquidation proceedings have commenced, and owns or controls another company against which safeguard, rehabilitation or liquidation proceedings have commenced.

**Liquidation**

The debtor management does not remain in control. The court-appointed liquidator takes control of the debtor.

The court appoints an insolvency judge, a liquidator and one to five advisers (from the creditors).

## What is level of disclosure of process to voting creditors?

**Conciliation**

N/A

**Safeguard Proceedings**

There is no disclosure concept under French law regarding the proposed plan. However, the law provides for the minimum content of the plan to be disclosed (prospects of rehabilitation, terms of payment of the debt, employment level etc.).

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

N/A

## What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?

Credit institutions, investment funds and mutual insurances are excluded from Chapter 6 of the French Commercial Code. The Prudential Supervision and Resolution Authority (*Autorité de contrôle prudential et de résolution* (ACPR)) supervises their derogatory insolvency proceedings.

Notwithstanding being excluded from Chapter 6 of the French Commercial Code, credit institutions are governed by the following provisions of the French Monetary and Financial Code:

Article L. 613-24

Article L. 310-25 of the French Insurance Code

Article L. 212-15 of the French Mutual Code

## How long does it generally take for a creditor to commence the procedure?

**Conciliation**

N/A

**Safeguard Proceedings**

N/A

**Rehabilitation proceedings**

Creditors may sue to obtain the opening of a rehabilitation proceeding.

There is no statutory period; it depends on the court's workload.

**Liquidation**

Creditors may sue to obtain the opening of a rehabilitation proceeding.

There is no statutory period; it depends on the court's workload.

# Effect of Process

## Does debtor remain in possession with continuation of incumbent management control?

**Conciliation**

Yes. Debtor management remains in possession (including powers of disposal).

**Safeguard Proceedings**

Yes. When a court-appointed administrator is appointed, the debtor management retains its powers, and the court-appointed administrator's powers are limited to overseeing debtor's decisions.

Where no court-appointed administrator (small companies) is appointed, the debtor's management retains all powers, including the power to write checks and conclude new contracts.

**Rehabilitation proceedings**

Yes. The debtor remains in possession and the court-appointed administrator assists the debtor in managing the business and assets, and only in exceptional circumstances (e.g., in the case of wrongful trading) does the court-appointed administrator replace debtor management (court to determine).

**Liquidation**

Yes. The debtor remains in possession and the court-appointed administrator assists the debtor in managing the business and assets, and only in exceptional circumstances (e.g., in the case of wrongful trading) does the court-appointed administrator replace debtor management (court to determine).

## What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?

**Conciliation**

N/A

**Safeguard Proceedings**

There is an automatic stay upon the opening of safeguard proceedings. The stay prevents the enforcement of judgments obtained prefiling: collection activities, foreclosures, contract terminations and repossessions of property, subject to certain limited statutory exceptions (e.g., setoff and/or payment for the return of goods subject to retention of title clause (*clause de reserve de propriété*)).

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

Same as in safeguard proceedings.

## Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?

**Conciliation**

Yes.

There is 100% superpriority for "new money" injected at the time of the court-confirmed conciliation agreement or during the process (if conciliation is ultimately confirmed).

**Safeguard Proceedings**

Yes.

There is priority for "post-money" injected during the observation period, with prior authorization from the insolvency judge, for the purposes of financing the business during the process. This priority also results in  cash contribution to the debtor for implementation or modification of the safeguard plan.

The priority for "post-money" is paid off after the priority for "new money" in the ranking of creditors' claims.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

N/A

## Can procedure be used to implement a debt-to-equity swap?

**Conciliation**

Yes, in accordance with the terms of the conciliation and subject to the vote of the shareholders.

**Safeguard Proceedings**

Yes, in accordance with the terms of the conciliation and subject to the vote of the shareholders.

**Rehabilitation proceedings**

Yes, shareholders can be diluted through the appointment of an ad hoc administrator who can exercise the voting rights of uncooperative shareholders to approve an increase in share capital for subscription by a third party if the debtor's equity value is lower than half its share capital.

Moreover, the court has the possibility to squeeze out shareholders under the following restrictive conditions:

The shareholders have refused to implement the plan

The debtor has a minimum of 150 employees

The disappearance of the company is likely to cause serious disturbance to the local economy and employment

The share capital reorganization is the only solution to allow business activities to continue (a partial or total sale of the company's assets must be contemplated before allowing such squeeze-out)

Such a squeeze-out could take the form of either:

A forced sale of all or part of the shares

An imposed dilution of their equity stake

**Liquidation**

No.

## Are third party releases available?

**Conciliation**

No.

**Safeguard Proceedings**

No.

**Rehabilitation proceedings**

No.

**Liquidation**

No.

## Are the proceedings recognised abroad?

**Conciliation**

N/A

**Safeguard Proceedings**

Yes, in accordance with European Insolvency Regulation (EIR) or other applicable conflicts of laws, principles and/or treaties in other countries.

In order for the proceedings to be recognized outside of France and outside the European Union, the opening judgment of the safeguard proceedings must be enforced in the country where the pursuing creditors are located by using the exequatur process. Judgments rendered in the member states may be enforced within the European Union without prior exequatur.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

Same as in safeguard proceedings.

## Has the UNCITRAL Model Law been adopted?

**Conciliation**

No.

**Safeguard Proceedings**

No.

**Rehabilitation proceedings**

No.

**Liquidation**

No.

# Other Factors

## Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

**Conciliation**

No.

**Safeguard Proceedings**

No.

**Rehabilitation proceedings**

Yes. Wrongful and/or insolvent trading restrictions apply only if the debtor is unable to present a rehabilitation plan approved by the court.

Who can be liable

Managers, directors, de facto directors and, in exceptional cases, shareholders or supervisory board members can be liable.

Civil liability

The court may prohibit a director from managing, directing or controlling (directly or indirectly) any company for up to 15 years (*faillite personnelle* or *interdiction de gérer*).

Criminal liability

Misappropriation of funds or fraud results in imprisonment or fine (*banqueroute*).

**Liquidation**

Yes. Wrongful and/or insolvent trading restrictions apply.

Who can be liable

Management, directors and *de facto* directors can be liable.

Civil liability

There is liability for assets shortfall (*responsabilité pour insuffisance d'actif*).

The court may prohibit a director from managing, directing or controlling (directly or indirectly) any company for up to 15 years (*faillite personnelle* or *interdiction de gérer*).

Criminal liability

Misappropriation of funds or fraud results in imprisonment or fine (*banqueroute*).

## What is the order of priority of claims?

**Conciliation**

N/A

**Safeguard Proceedings**

The creditors' rank on insolvency is complex and is now detailed by the French Commercial Code. The following basic principles apply:

Since there is a stay on proceedings, creditors cannot enforce their rights relating to pre-insolvency debts.

A portion of an employee's prepetition claims benefit from a preferential status.

Providers of "new money" are part of a workout agreement during conciliation proceedings.

In safeguard and rehabilitation proceedings, post-petition claims benefit from a statutory privilege provided that they either:

Arise for the purposes of funding the observation period, such as "post-money" claims

Represent consideration due to a lender, or to a provider of goods or services, in a business transaction directly connected to the company's activities continued during the observation period.

Privileged post-petition claims must be paid when they fall due. If not, these claims are paid after the "post-money" according to the legal ranking of claims.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

The creditors' ranking is the same as in safeguard or rehabilitation proceedings, and shareholders do not receive any repayment of their capital investment unless a surplus remains after all the creditors have been paid in full (which is extremely rare).

## Do pension liabilities have any priority over other unsecured claims?

**Conciliation**

N/A

**Safeguard Proceedings**

Employers make pension contributions (on behalf of employees) to the relevant pension fund (e.g., determined according to employee status). The State Fund claims against the debtor as a secured creditor in respect of unpaid contributions.

**Rehabilitation proceedings**

Same as in safeguard proceedings.

**Liquidation**

Same as in safeguard proceedings.

## Is it possible to challenge prior transactions?

**Conciliation**

N/A

**Safeguard Proceedings**

N/A

**Rehabilitation proceedings**

Hardening period (*période suspecte*)

From the date of cash flow insolvency of the debtor and the opening ruling of the rehabilitation proceedings (can be up to 18 months)

Some transactions are automatically void; that is, the court must declare these transactions void on a petition by the court-appointed administrator, the liquidator or the public prosecutor if performed during the hardening period (in accordance with Article L. 632-1, I, of the French Commercial code). These transactions are listed in the French Commercial Code.

In addition, any payment made or any transaction entered into during the hardening period is also subject to optional voidance (that is, subject to the court's discretionary decision on the petition by the court-appointed administrator, the liquidator or the public prosecutor) if proper evidence is brought before the court that the contracting party knew the company's insolvency at the time of the payment or transaction. When dealing with intragroup transactions, this knowledge is presumed for companies belonging to the same corporate group (in accordance with Article L. 632-1, II and L. 632-2 of the French Commercial Code).

**Liquidation**

Same as in rehabilitation proceedings.

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