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## French Insolvency law: What does 'Sauvegarde' mean?

The Safeguard procedure is aimed at companies which are not insolvent, i.e. which are not compelled to file for insolvency but have significant liabilities with which they are unable to deal without assistance. The purpose of the Safeguard procedure is to elaborate a reorganisation plan, for its continuance which may be coupled with a partial sale of the business. The opening of such a procedure is a strong message showing the company's creditors the need to agree on a restructuring of the company's liabilities and that there is a significant risk of the company becoming insolvent in the near future.

The opening of a Safeguard measure prohibits the payment of passed debts, as well as any legal action in relation to such debts. The process therefore immediately gives the company some leeway. Furthermore, Safeguard may enable the company to re-finance its operations since payment of loans made to the company after the opening of the Safeguard benefit from a priority against other debts created beforehand.

The judgement opening the Safeguard procedure appoints, inter alia, an *administrateur judiciaire* (i.e. a Receiver) whose role consists in drafting a report regarding the current situation of the company and to assist the company's management with the reorganisation. The company may suggest the name of a Receiver to be appointed, but the court is not bound to follow this proposal.

Although the principle is that the legal representative of the company retains the entirety of the management powers of the company, the judge may extend the scope of the mission of the Receiver from one of "monitoring" to one of "assistance" for all or part of the transactions carried out on behalf of the company.

The filing for Safeguard leads to a 6 month observation period (renewable once) during which:

- No debt existing prior to the date of opening of the insolvency proceedings may in principle be paid;

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- No claim for payment of a debt existing prior to the date of opening of the proceedings may be initiated or continued;
- All interest due with regard to debt existing prior to the date of opening of the insolvency proceedings is stopped.

During the observation period, the company continues to operate its business. Provided that the company complies with its undertakings and notwithstanding any provision to the contrary, no contract in progress may be terminated by a third party without the prior consent of the Court-appointed Receiver.

If, during the observation period, it appears that the company has in fact become insolvent, the Safeguard may be converted into Receivership or the company's Liquidation.

Creditors must submit their claims against the company in order to clearly establish the amount and nature of the company's liabilities. The filing of creditors' claims is called '*Declaration de Creance*' - a formal step which this firm can carry out on owners' behalf. Creditors will be represented by two committees (banks, other creditors) in order to discuss the possible terms of the restructuring of their debts, which may include a rescheduling of the debt, a reduction of its amount or a conversion of all or part of the debt into equity. Each committee will deliberate over the proposals made by the Receiver, with a majority rule equal to two-thirds of the amount of the debts represented at the relevant committee.

If the committees approve the proposals, the Court will ratify them after having checked that the interests of the creditors are appropriately protected and such proposals will subsequently become enforceable against all the members of such committees. If the proposals are rejected, the Court remains entitled to consult with each creditor individually and impose on all creditors a rescheduling of their debts (with a first payment no later than one year after the judgement and no annual payment equal to less than 5 % of the debt) as well as offering each of them an accelerated payment in return for a reduction of the amount of their debt.

If it appears that there are solutions to enable the company to solve its current difficulties, the Receiver will draw up a recovery plan that will be submitted to the court for approval. The duration of the plan may not exceed ten years. If the company becomes insolvent while the recovery plan is being carried out, the plan is abandoned following notice from the public prosecutor, and liquidation proceedings are commenced.

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