

Directors' liabilities - France

1. Obligation to file ?

- i) Yes
- ii) 15 days from the company is insolvent. The company is insolvent when it is unable to pay its debts as they fall due with its realisable assets.

2. Who can be held liable ?

- Director in law
- Director shadow / de facto : any person who, even if he is not formally appointed as director, has an effective power of direction. It is an individual or business entity who interferes in the management of a company, not as an adviser to the real directors, but as a shadow director

3. Sanctions ?

Possible sanctions/restrictions :

Civil sanctions

- ♦ Wrongful trading proceeding and extension of the proceedings. Directors and officers (whether officially appointed directors or de facto directors) of an insolvent company will be personally liable for the debts of the company if they are found guilty of misconduct in the management of the company's business (*'faute de gestion'*) or if they use the company's credit in their own interests. In such cases, the directors may be obliged to pay all or part of the company's debt, either as a result of separate proceedings against them (*'action en comblement de passif'*), or by way of an extension of the insolvency proceedings to their personal assets in the proceedings against the debtor.

The sanction is optional, even if all the conditions exist.

- ♦ Prohibition on management (*'faillite personnelle' / 'interdiction de gérer'*). The sanction carries with it a prohibition on managing, administrating and controlling a commercial enterprise or any form of company which conducts economic activity.

The sanctions are not imposed automatically. The court which decides to convict the director has discretion over the duration of the sanction, although the minimum period in any case is five years.

Criminal sanctions

- ♦ Penal Bankruptcy (*'banqueroute'*). It is a criminal offence punished by imprisonment, fine and other punishments (prohibition on management, etc.).

Like any criminal offence, Court has a large discretion to instigate the proceeding and to decide the nature of the sanction.

4. Proceeding against directors ?

i) Who can bring the proceedings against the directors ?

- Wrongful trading proceeding and extension of the proceedings: the Court itself, the Court-appointed administrator, the Court-appointed creditors' representative/liquidator or the prosecutor.
- Prohibition on management ('*faillite personnelle*' / '*interdiction de gérer*'): the Court itself, the Court-appointed administrator, the Court-appointed creditors' representative/liquidator or the prosecutor.
- Penal Bankruptcy ('*banqueroute*'): the prosecutor, the Court-appointed administrator, the Court-appointed creditors' representative/liquidator, or the employees' representative.

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