

The status of Judicial Administrators in France

Isabelle Didier explains the roles and responsibilities of a French judicial administrator



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JUDICIAL AND INTERIM ADMINISTRATION, WHETHER FOR PRIVATE OR COMMERCIAL ORGANISATIONS, ARE COMPLEMENTARY PREVENTIVE MEASURES



It is not an easy feat for a trained lawyer to sift through the different roles and responsibilities that a French judicial administrator is empowered to address. Even more so when the person seeking information has no legal training whatsoever.

I will therefore take this opportunity to thoroughly explain, once and for all, and in layman's terms, the roles of the two very distinct insolvency professions operating under judicial authority in France.

The two types of insolvency practitioners that I refer to are the Judicial Administrator and the Receiver-Liquidator.

The reason for the existence of the two separate professions is to avoid any appearance of or potential for conflict of interest; the Administrator oversees the

interests of the debtor and/or distressed business while the Receiver looks after the interests of creditors and employees.

Both professionals act as officers of the Court that appoints them. If the Receiver intervenes almost exclusively in insolvency proceedings, the **Administrator's role is much larger in scope and can go beyond the classic role of debtor's representative and counsel for distressed business.** For example, the Administrator is sometimes appointed by the Courts to administer companies or estates confronted with an internal conflict which risks jeopardising the continued operation and/or financial solvency of the entity. Such an administrator therefore acts while the entity is solvent and is called **temporary or interim**

administrator.

These legal and financial professionals are appointed by the French courts (both civil and commercial) to treat all distressed entities, whether commercial enterprises or private estates. Thus, the **judicial administrator** is a professional who belongs to a regulated profession and whose title is protected by licence, **while being an interim administrator is one of many roles performed by the judicial administrator.** The table opposite describes the various notions, roles and responsibilities ascribed to the Officers appointed by the Court: receivers, judicial administrators and interim Administrator.

The Judicial Administrator and the Interim Administrator are therefore one and the same, whether a private practice or incorporated firm. The first term



THE GUIDING PRINCIPLE IN FRENCH LAW IS THAT JUDICIAL ADMINISTRATORS ALSO ENJOY A MONOPOLY OVER INTERIM ADMINISTRATION MISSIONS



<p>Job category: Officer of the Court</p> <hr/> <p>Profession: Insolvency Practitioner</p>	
<p>Judicial Administrator</p>	<p>Receiver-Liquidator</p>
<p>Professional appointed to assist or replace the management body of a company in order to preserve its interests.</p>	<p>Represents the interests of creditors and employees and performs the role of liquidator.</p>
<p>Missions</p>	
<p>Judicial Administrator during insolvency proceedings</p> <p>The French law provides judicial administrators with a monopoly over the treatment of distressed businesses, when the suspension of payments has occurred.</p> <p>They assist the director during the reorganisation phase and draw up proposals and/or establish plans for wiping-out the debt, and if this is not feasible they take the necessary actions to have the company sold as a going concern.</p>	<p>Interim Administrator for civil or commercial entities</p> <p>This is a secure management option which the Courts have at their disposal when faced with a conflictual management situation within a business or estate which may potentially jeopardise the continued existence of the entity.</p> <p>The scope of the mission given to the interim administrator is determined and set by a judge. The Interim Administration concerns provisional measures which the judge can widen in order to include such steps as transfers meant to secure the assets. The administrator looks after all the day-to-day management functions for a time and during this period all corporate bodies and employee organisations are to step down from their prerogatives.</p> <p>The company is not in payment default but the loss of its decisional bodies or a persistent and ongoing dispute is a real cause of concern regarding the company's survival.</p>
	<p>Missions</p> <p>The Receiver-Liquidator intervenes almost exclusively in insolvency proceedings as the creditors' representative.</p>

denotes the profession as well as the mandate of assistance to distressed business, while the second term refers to the Judicial Administrator when he carries out a mission of interim administration.

The guiding principle in French Law is that judicial administrators, in addition to their monopoly over insolvency proceedings, also enjoy a monopoly over interim administration missions pursuant to Article L811-1 of the Commercial Code: “*The Judicial Administrators are the agents, whether natural person or legal entity, mandated by decision of*

justice to administer the property of others or to perform an advisory or supervisory role as regards the administration of these assets”.

Judicial and interim administration, whether for private or commercial organisations, are complementary preventive measures in the treatment of distressed entities; they are not to be mistaken for the same mandate.

The criterion for distinction between the two mandates, which are both performed by the Judicial Administrator, is the condition of payment default. Moreover, the French Law recognises the judicial administration of distressed

business on the one hand and the interim administration of **solvent** estates, condominiums (shared properties), non-trading companies, as well as trading, associations ... on the other hand). These two procedures are limited by a precise time marker which is payment default. So it is possible that one procedure follows the other depending on whether payment default has transpired or not... which raises the question as to the possibility of having the same administrator in both procedures. To conclude, we will see how the French law deals with this question.



AN INTERIM ADMINISTRATOR SHOULD NOT BE CONFUSED WITH THE JUDICIAL ADMINISTRATOR APPOINTED BY THE COURT



The cases of appointment of a Judicial Administrator in insolvency proceedings	
Insolvency Proceedings Missions confided to Judicial Administrators	
<p>Nature of the mandate</p> <p>Safeguard</p> <p>Accelerated Safeguard</p>	<p>Normal reason for appointment</p> <p>Concerns any person operating a commercial or crafts activity, a farmer, a natural person in a liberal profession, independent workers, as well as any legal entity under private law.</p> <p>Imposes the condition of absence of payment default and the existence of insurmountable difficulty that the company is not able to face alone.</p> <p>During conciliation, the administrator must justify having established a plan to ensure the continuity of the business.</p>
<p>Judicial Reorganisation</p> <p>Solutions:</p> <ol style="list-style-type: none"> 1 Reorganisation plan in view of continuing the business 2 Reorganisation plan in view of continuing the business through funds transfer or transfer of company shares <p>Possible via the Prepack business transfer</p>	<p>Impossibility of dealing with liabilities as they fall due, because of the lack of available assets; implies payment default.</p>

Appointment of judicial administrators

The table above shows the cases when a judicial administrator is appointed in an insolvency proceedings, whilst the table on page 19 shows the cases when a judicial administrator is appointed as interim administrator.

When a judge is solicited to pronounce an interim administration measure, the parties must demonstrate, and this most of the time through an urgent motion, that an abnormal functioning is likely to jeopardise the assets. This circumstance justifies the intrusion of the courts in the affairs of a solvent group or estate. This requirement is more significant when it concerns an association. In fact the intervention directly affecting the exercise of a right guaranteed by the constitution, the proof of the danger or of the trouble, must be reported. It is because of this interference by the courts that the supreme jurisdiction requires that an interim administration should respect three conditions: be exceptional,

be temporary and be for protective purposes! Other principles and considerations have presided over the development of rules governing judicial administration which in itself rarely results in management bodies being relieved of their duties, while this is the first consequence of an entity placed under interim administration.

The succession of interim and judicial administrations with the same administrator for the two missions

An interim administrator should not be confused with the judicial administrator appointed by the Court. Moreover, in the event of the opening of insolvency proceedings, it is difficult to know if an interim (judicial) administrator of an estate will be appointed as judicial administrator for the same estate.

Due to the lack of reference in the texts, the French jurisdictions have never really pronounced themselves in the matter, and have preferred to decide on a case by case basis.

To this end, the courts have gone either way.

Often the reasoning put forward by judges in their refusal to designate the Interim Administrator as Judicial Administrator was the potential for absence of legal representation of the company, the judicial administrator rarely acting as a legal representative of the company during receivership.

Summary

All in all, the scope of the mission of an interim administration is still unexplored and can be extended to assumptions, not yet supported by the litigants.

Thus the director of a French subsidiary of an Italian head office, both companies being subject to insolvency proceedings, exposed himself to legal action in France for misuse of corporate assets due to having favoured a redundancy plan benefiting the employees of the Italian head office to the detriment of the French subsidiary. No action could have been taken against this director if



The classic cases of appointment of the judicial administrator in interim administration

Circumstances triggering the recourse to an Interim Administrator	The different cases of abnormal functioning likely to cause an imminent danger
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Interim administration of an estate

As estate representative appointed by the courts to temporarily administer the estate.	Due to the inertia, the incapacity or the fault of one or several heirs to the estate, to their disagreement, to conflicting interests among them or due to the complexity of the estate situation. In the specific case of joint possession, when a joint tenant is not able to manifest his/her will, or in the event of a blocking of the decision-making process.
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Interim administration of a solvent condominium (co-ownership) group

Interim Administrator of the distressed condominium.	Financial stability compromised or the continued possession of the building not realistic
The Administrator is responsible for convening the Assembly of joint tenants in view of the designation of a co-ownership trustee.	In the absence of the convening of the General Assembly of joint tenants, in the cases where the condominium corporation does not have a management agent, or, In the event of incompetence or incapacity of the management agent and for lack of provisions in the condominium regulations.
Mandated with taking all necessary and useful measures to ensure the return to normal operations as regards the condominium corporation and its property complex.	If the financial stability of the condominium corporation is seriously compromised or if the corporation is not able to provide the amounts necessary for the preservation of the building.
Responsible for reporting the state of deficiency.	For lack of a meeting of the General Assembly or in the event of the rejection of the proposals in the Safeguard Plan and if the difficulties of the built property or the building complex compromise the preservation of the building.

Interim administration of civil and trading companies

<p>The Interim Administrator has all the power and authority in the management of the company along with the powers of a director.</p> <ul style="list-style-type: none"> ✓ With special authorisation possibility of selling off non-essential assets or at-risk assets. ✓ Negotiation in view of resolving disputes. ✓ Convening to and holding of General Assembly to appoint new director or to approve the accounts. 	<p>Exceptional circumstances:</p> <p>Deficiency whether absence, incompetence or incapacity in the management body with impossibility of legally appointing replacements: Dismissal, resignation, death, disappearance, criminal proceedings, absence due to a case of absolute necessity, disqualified from managing.</p> <p>Conflict between the constituent parts of the company making it impossible for them to function normally: disagreement, conflict between associates/management bodies, imminent danger for the company.</p>
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an interim administrator had replaced the director and made this decision in his place (which depended on the parties requesting the interim administration being able to justify the need for such an intervention). In fact, for the

serious acts of disposal, the interim administrator would always act under the authority of the judge, as opposed to other systems in Europe where the administrator acts under his own authority with prior authorisation from the Court. This can explain

why foreign professionals favour selling the business rather than pursuing the activity, like in France. ■



THE SCOPE OF THE MISSION OF AN INTERIM ADMINISTRATION IS STILL UNEXPLORED

