

## INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—France

21/04/2020

**Restructuring & Insolvency analysis:** The emergency law n<sup>o</sup> 2020-290 of 23 March 2020 empowers the French government to take inter alia, by ordinance, any measure modifying the insolvency law contained in Part VI of the Commercial Code if required to deal with the economic and financial impact of the coronavirus (COVID-19) epidemic for companies. The French Government adopted the ordinance n<sup>o</sup> 2020-341 of 27 March 2020 which provides provisional amendments to the insolvency law in order to mainly promote the access to preventive proceedings and extend statutory time limits of insolvency proceedings. Written by Jean Baron, member of INSOL Europe, Sébastien Normand of CBFASSOCIES and Emmanuelle Inacio of Université du Littoral Côte d'Opale, member of INSOL Europe.

### Change of the insolvency test

French insolvency law provides for an insolvency test (cessation of payment) which is a cash flow test. If a company is not insolvent, it can request the opening of one of the two preventive, confidential and amicable procedures (mandat *ad hoc* or conciliation) or the preventive, collective and public safeguard procedure (see Practice Note: [France—restructuring and insolvency guide](#)).

If a company is (cashflow) insolvent for less than 45 days, it may either request the opening of a conciliation procedure or file for a re-organisation or liquidation procedure. If the company is (cashflow) insolvent for more than 45 days, the opening of a conciliation procedure is no longer possible.

If the business can be saved, even through a sale of the business as a whole, the court will open a re-organisation procedure. Otherwise, the court directly opens liquidation proceedings.

The [ordinance n<sup>o</sup> 2020-341 of 27 March 2020](#) provides that the insolvency test which would ordinarily be performed for a company as at 12 March 2020 will now be extended for three months after the state of health emergency ends on 24 May 2020.

Thus, a company which is solvent on 12 March 2020, but would be insolvent in a later period up to and including 24 August 2020 if the ordinary insolvency test was applied will not in fact be considered legally insolvent and will not be requested to file for a re-organisation or a liquidation procedure until 24 August 2020.

A company which is solvent on 12 March 2020 and would not be insolvent after this date according to the ordinary insolvency test, still has the option of filing for a re-organisation or a liquidation procedure. This legislative change of the insolvency test in favour of the debtor will not apply to permit fraud on creditors' rights (see: Commercial Code, Article L.631-8).

### Extension of time limits in pre-insolvency proceedings

The conciliation procedure is ordinarily open for a maximum of five months (see: Commercial Code, Article L.611-6). If an agreement is not reached during this period of time, a new conciliation procedure will be opened after a waiting period of three months.

The ordinance n<sup>o</sup> 2020-341 of 27 March 2020 provides that the conciliation procedure is automatically extended until 24 August 2020. This text also removes the three-month waiting period between two conciliation procedures during this period of time.

## **Extension of time limits in insolvency proceedings**

The ordinance of 27 March 2020 provides that the observation period, the simplified liquidation procedure and the payment of employees' claims by the AGS (Employees' Claims Payment Guarantee Institution) are automatically extended to 24 June 2020.

Further, insolvency practitioners acting as the representative of the debtor (administrateur judiciaire), representative of the creditors (mandataire judiciaire), liquidator (liquidateur judiciaire) or as officer of the implementation of the plan (commissaire à l'exécution du plan) may request before the president of the court the extension of all statutory time limits imposed on them in [Part VI of the Commercial Code](#) until 24 August 2020.

## **Extension of safeguard or reorganisation plans**

The ordinance n° 2020-341 of 27 March 2020 provides that safeguard or re-organisation plans are automatically extended until 24 June 2020.

The insolvency practitioner acting as the officer of the implementation of the plan may also submit a request to the President of the court for the extension of the plan until 24 August 2020.

After 24 August 2020, and for a time limit of six months (up to 24 February 2021), the insolvency practitioner acting as the officer of the implementation of the plan or the Public Prosecutor may request the court for the extension of the plan for a time limit of one year.

## **Reduced time limits in the payment of employees' claims guaranteed by the AGS**

Employees' claims which are due on the day of the opening of the insolvency proceedings will be paid by the AGS subject to the limits provided by the law.

The ordinance n° 2020-341 of 27 March 2020 provides that the insolvency practitioner appointed as the representative of the creditors will provide the AGS with the statement of the employee's claims without delay.

## **Special communication between the courts and the insolvency practitioners**

The hearing ordinarily planned two months after the opening of a re-organisation procedure and ruling on the continuation of the observation period has now been removed up to one month after the cessation of the state of health emergency ie 24 June 2020.

Further, the acts allowing the referral to the court by the debtor shall be provided to the court administration service by any appropriate means up to one month after the cessation of the state of health emergency, ie 24 June 2020.

Communication between the court administration service, the insolvency practitioners (administrateur judiciaire and mandataire judiciaire), the supervisory judges, the Public Prosecutor, the controllers and the employees' representative shall be done by any appropriate means up to one month after the cessation of the state of health emergency, ie 24 June 2020.

## **Special communication between insolvency practitioners and companies**

Since 23 March 2020, French insolvency practitioners launched a freephone number 0800 94 25 64 available to directors affected by the COVID-19 related economic crisis. From Monday to Friday, from 10.00 to 17.00 CET, the 450 French insolvency practitioners together with their 5200 associates will address their questions and provide assistance to the directors to help them with the government policy responses and legislative measures further to the COVID-19-related economic crisis

## **Measures introduced by the courts to deal with increased insolvency cases**

The [ordinance n° 2020-304 of 25 March 2020](#) was adopted to assist the functioning of courts by allowing the parties to provide information and the organisation of contradictory procedures by any appropriate means. The provisions of the ordinance apply from 12 March to 24 June 2020.

The ordinance provides for digital hearings using audiovisual telecommunication means in order to ensure the identity of the parties, the quality of transmission and the confidential communication between the parties and their lawyers.

Proceedings without hearings are allowed where the representation is mandatory or where the parties are assisted or represented by a lawyer .

### **Other pending reforms**

At the time of writing, the French legislator is working on the transposition of the [EU Directive on restructuring and insolvency](#) (see Practice Note: [Harmonising insolvencies and restructurings across Europe](#)).

Even if the French insolvency system already provides a pre-insolvency framework and promotes a rescue culture, strengthened by the recent measures, some of the features of the EU Directive could help prevent insolvency due to the current COVID-19 outbreak.

For example, the pending implementation of the Directive will be an occasion to facilitate the vote of classes of creditors and the process of cramdown on dissenting minority creditors.