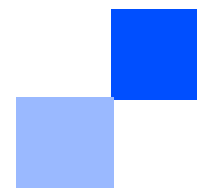


France

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SECURITY AND PRIORITIES

1. What are the most common forms of security taken in relation to immovable and movable property? Are any specific formalities required for the creation of security by companies?

Immovable property

The most common types of security for immovable property are:

- **Mortgage (*hypothèque*).** A mortgage is created by deed, operation of law or a judicial decision. It gives the creditor a right to:
 - recover the debt from the sale proceeds of the secured property if the debtor defaults; and
 - pursue a forced sale (*droit de suite*) if the secured property is sold to a third party without the creditor being notified and the third party cannot settle the claim.
- **Seller's privilege (*privilege de vendeur d'immeuble*).** A seller's privilege is created by operation of law. A buyer of immovable property grants a privilege for the seller's benefit to secure the portion of the price that cannot be paid in cash. This security interest confers the same rights as a mortgage (*see above*).
- **Lender's privilege (*privilege de prêteur de deniers*).** A lender's privilege is created by deed. A buyer of immovable property grants a privilege for the benefit of the lender funding the purchase. A lender's privilege can only secure the sum lent to the buyer for funding the purchase and it confers the same rights as a mortgage (*see above*).

Movable property

The most common types of security for movable property are:

- **Pledge without transfer of possession (*gage sans droit de rétention*).** This is a security interest over a tangible or intangible asset created by contract or a judicial decision. It can be used to secure the payment of any type of debt. The pledged asset remains in the debtor's possession. If the debtor defaults, the creditor usually has a right to:
 - apply for a court order transferring ownership of the pledged asset to it; or
 - be paid in cash from the proceeds of auctioning the asset.
- **Pledge with transfer of possession (*gage avec droit de rétention*).** This works in the same way as a pledge without transfer of possession (*see above*), except that the pledged asset is transferred to, and retained by, the creditor until the debt has been paid in full. An increasingly common type of pledge is one taken over the securities account opened at a bank to record the securities' book entry (*nantissement de compte d'instruments financiers*). The creditor has a right to retain the securities (*droit de rétention*) until it has been paid in full, even if the debtor becomes insolvent and the trustee tries to claim the securities so that they can be included in a transfer plan (*plan de cession*) (*see Question 5, Rehabilitation proceedings: Effect*).
- **Daily assignment of receivables (*cession Dailly* or *cession de créances professionnelles à titre de garantie*).** A debtor can transfer present or future debts owed to it by third parties to the creditor together with all security interests attached to them (*Article L. 313-23, French Monetary and Financial Code*). A *Dailly* assignment of receivables can only be used if:
 - the creditor is a credit institution licensed in France or carrying out its activities in France;
 - the claims are assigned to secure facilities granted in connection with business activities; and
 - the assigned claims arose during business or professional activities.
- **Assignment of claims against third parties (*délégation*).** A debtor transfers claims against its own debtor to the creditor under an agreement between the three parties. This type of assignment is used when the conditions for the more simple *Dailly* assignment of receivables (*see above*) are not met.
- **Cash collateral charge (*gage-espèces*).** Title to cash collateral is transferred to the creditor. If the debtor defaults, the creditor can set off all sums owed by the debtor against the creditor's obligation to return the charged cash to the debtor.

Formalities

The following formalities apply:

- **Mortgage.** A mortgage must be created by a deed drafted, stamped and executed before a notary or under an agreement deposited with a notary. As a debtor can grant more than one mortgage as well as privileges over the same immovable property, the deed must be registered with the Mortgage Registry (*Conservations des Hypothèques*) so that the rank of creditors can be established.
- **Seller's privilege and lender's privilege.** These must be created by a deed drafted, stamped and executed before a notary.

A lender's privilege is documented in the same deed as the purchase of immovable property. This is because the property deed must incorporate the main terms and conditions of the secured loan.

The deed in which a privilege is created must be registered at the Mortgage Registry (*see above, Mortgage*).

- **Pledge.** Generally, there are no specific formalities to create a pledge. However, to ensure that third parties do not dispute their existence or date of creation, they are usually created by an agreement registered with the Ministry of Finance (*bureau de l'enregistrement*) or by a deed executed before a notary. These formalities are not necessary for commercial pledges as their existence can be proved by any means of evidence.

Specific rules apply to pledges granted over certain types of assets. For example, a pledge of goodwill must be registered with the clerk of the commercial court. If a pledge is granted over shares, a bailiff must notify the company that issued the shares.

- **Daily assignment of receivables.** Claims must be assigned using a special transfer form (*bordereau*). The assignment comes into effect from the date specified on the form.

2. Where do creditors and shareholders rank on the insolvency of a company?

Where creditors rank on insolvency is complex and any attempt to provide a simple list could be misleading. However, the following basic principles apply:

- On insolvency, there is a stay of proceedings. As a result, creditors cannot enforce their rights relating to debts that arose before insolvency proceedings. There are a few exceptions to this rule, such as claims protected by a pledge with transfer of possession (*see Question 1, Movable property*) and a retention of title clause (*see Question 3*).
- A portion of employees' pre-petition claims benefit from a preferential status (*superprivilege des salariés*). This essen-

tially protects the last 60 days of wages in arrears before the judgment opening insolvency proceedings. If the bankruptcy estate cannot pay these claims from its available cash, they are paid as advances by a national wage insurance body (*Association pour la Gestion du régime de garantie des créances de Salariés*), which then replaces the employees' ranking as a creditor.

- A statute adopted on 26 July 2005 (*Law No. 2005-845*) (the new statute, *see Question 5*) created a new category of preferential creditors. Lenders that extended credit to a company as part of a workout agreement during conciliation proceedings (*see Question 5*) rank ahead of all pre-petition and post-petition claims (except for arrears of wages and legal costs) should the restructuring prove insufficient to prevent insolvency.
- In rehabilitation proceedings (*see Question 5*), post-petition creditors must be paid when their debts fall due. If not paid when they fall due, post-petition debts rank above both secured and unsecured pre-petition debts provided that:
 - they arise for the purpose of funding the observation period; or
 - they 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 during the observation period.
- In liquidation proceedings (*see Question 5*), the creditors' ranking is the same as in rehabilitation proceedings, except that the following pre-petition claims rank above post-petition claims:
 - claims secured by a mortgage;
 - claims secured by a pledge with transfer of possession;
 - claims secured by a specific registered lien over property, plant or equipment.

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).

3. Are there any mechanisms used by trade creditors to secure unpaid debts?

Retention of title clause (*clause de réserve de propriété*)

This is a guarantee that a buyer grants to a seller when purchasing a movable asset and payment is deferred. The seller benefiting from this guarantee retains the legal title to the asset until the purchase price has been paid in full. If the buyer defaults, the seller can repossess the asset.

There are no specific formalities to create a retention of title clause, but it must appear in writing, and be made clear and visible on invoices before delivery.

Seizure of the debtor's property

Provided that a creditor has an immediately enforceable debt instrument (*titre exécutoire*), which must be created by a deed executed before a notary or a court decision, it can seize any asset belonging to the defaulting debtor. If the debtor persists in not paying, the creditor can auction the asset and be paid out of the proceeds.

The main types of seizure are:

- **Seizure of tangible property (*saisie-vente*).** This applies to all tangible assets belonging to the debtor.
- **Seizure of intangible property (*saisie-attribution*).** The creditor seizes a sum of money belonging to the debtor and held by a third party (usually a bank). Since 1997, there is an accelerated procedure lasting eight days, which allows a creditor to seize listed securities that have been deposited in a securities account.
- **Seizure of immovable property (*saisie-immobilière*).** Mortgaged property is transferred to the creditor or a third party bidder through the civil court.

Protective measures

If a creditor does not have an enforceable debt instrument, protective measures over the debtor's assets (*mesures conservatoires*) can still be granted by court order provided that:

- There is a sound basis for the creditor's claim (the claim need not be certain, liquid or immediately enforceable).
- There is a risk that the creditor will not recover the claim.

Once a court order granting protective measures is obtained, the creditor must begin an action within a month, otherwise the order becomes invalid.

Protective measures can be granted as either:

- **Attachments (*saisies conservatoires*).** These allow a creditor to freeze any asset (tangible or intangible) belonging to the debtor. The asset then cannot be transferred until the creditor obtains an enforceable debt instrument. Specific rules apply to certain types of attachments (such as attachments of wages).
- **Orders authorising the taking of security (*sûretés judiciaires*).** These authorise a creditor to take security over:
 - the debtor's immovable property (*hypothèque judiciaire provisoire*);
 - the debtor's goodwill (*nantissement judiciaire provisoire de fonds de commerce*);
 - shares or securities belonging to the debtor (*nantissement judiciaire provisoire d'actions, de parts sociales ou de valeurs mobilières*).

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4. **Are there any procedures (other than the formal rescue or insolvency procedures described in Question 5) that can be invoked by creditors to recover their debt?**
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Creditors can obtain an emergency order granting them a provisional payment (*provision*) provided that there are no clear grounds for challenging the basis of their claims. An application must be made to the president of the court and is usually dealt with in eight days (or 24 hours if a real emergency can be shown). While the order only lasts until a final decision is made on the merits of the case, it is immediately enforceable. Creditors must begin a full action against the debtor to recover the balance of their claims.

To secure their claims, creditors can ask the court to grant protective measures over the debtor's assets until a final decision is made (see Question 3).

RESCUE AND BANKRUPTCY PROCEDURES

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5. **Please briefly describe resolve and insolvency procedures that are available in your jurisdiction. In each case, please state:**

- The objective of the procedure and, where relevant, prospects for recovery.
 - Companies to which it can potentially apply.
 - How it is initiated, when and by whom.
 - Substantive tests that apply (where relevant).
 - How long it takes.
 - The consents and approvals that are required.
 - The effect on the company, shareholders and creditors.
 - How the procedure is formally concluded.
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A bill aimed at modernising insolvency laws was approved on 26 July 2005 by both the Congress and Senate, and came into effect on 1 January 2006. One of the main aims of the reform is to encourage company reorganisation at a stage when insolvency could be prevented. The new statute prompts creditors to take a more active role in proceedings and protects those that are willing to make new credit facilities available.

As a result of the reform, the following procedures are now available to a company in financial difficulty.

Ad hoc proceedings (*mandat ad hoc*)

- **Objective.** These are flexible and confidential proceedings in which the president of the court appoints an agent to carry out specific tasks that are deemed appropriate. In practice, the proceedings are used to organise an informal negotiation between a company and its major creditors.

- **Companies.** The proceedings apply to all private (as opposed to government) legal entities.
- **How, when and by whom.** The company's management can file a petition to the president of the court provided that the company is solvent (*see below, Substantive tests*).
- **Substantive tests.** The company must be solvent under a pure cash flow insolvency test (as opposed to a balance sheet test). A company is insolvent (*en état de cessation des paiements*) when it is unable to meet its current debts out of its current assets (those in the form of cash or those which can be quickly turned into cash).
- **How long.** It usually takes a few days to obtain a court order to appoint an agent. There is no statutory time limit in which the agent must complete his tasks, but the process usually lasts from one month to a year. In extreme cases, the process can last for up to two years.
- **Consents and approvals.** The board of directors does not need to approve the proceedings unless the company's articles of association state otherwise.
- **Effect.** The management must co-operate with the appointed agent and the major creditors to negotiate a solution to the company's difficulties. The most important creditors are invited to consider debt rescheduling and cancellation. In addition, the main shareholders can be invited to negotiate and, potentially, re-capitalise the company.

The process is confidential and voluntary. A debt-rescheduling plan accepted by some creditors cannot be imposed on other dissenting creditors. However, the management can apply to the court for a moratorium (lasting no more than two years).

- **Conclusion.** If an agreement is reached between a company and its creditors, this remains of a purely contractual nature and the agent's duties end. However, if no solution can be found to the company's financial difficulties and it later becomes insolvent, the only option is to initiate insolvency proceedings.

Conciliation proceedings (*conciliation*)

- **Objective.** These are voluntary proceedings that aim to reach a workout agreement (*protocole de conciliation*) between a company and its creditors under the supervision of an agent appointed by the court (*conciliateur*).

A workout agreement sets out any loans extended by creditors or shareholders, and any consents by creditors to grant waivers, rescheduling or cancellation of existing debts.

- **Companies.** See above, *Ad hoc proceedings (mandat ad hoc)*.
- **How, when and by whom.** A company can file a petition for conciliation proceedings with the president of the court.

- **Substantive tests.** The company must face legal or financial difficulties (whether actual or foreseeable), but must not have been insolvent for 45 days or more.
- **How long.** It takes a few days to obtain an order appointing an agent. The court appoints the agent for a maximum of four months, but this period can be extended by up to a month at the agent's request.
- **Consents and approvals.** Unless otherwise specified in the company's articles of association, no specific consent or approval is required to begin conciliation proceedings.

A company has the option of requesting the court to approve formally the workout agreement that it has reached with its creditors. Formal court approval is intended to encourage creditors to extend credit to the company. Except where fraud has taken place, a workout agreement approved by the court is protected from the risk of future avoidance. However, the court's approval must be recorded in a full judgment accessible to the public and is therefore subject to challenge by a third party (*tierce opposition*) or appeal. There is a second option of only obtaining the president of the court's approval following a private, non-adversarial hearing with the company and agent alone being present. This option does not involve publicity, but implies that the creditors waive their right to priority of payment and to be protected against future avoidance of the workout agreement.

- **Effect.** The management must co-operate with the appointed agent and the major creditors to negotiate a solution to the company's difficulties. Trade creditors and major shareholders can also be invited to take part in the negotiations. Under the new statute, social and tax authorities can be asked to consent to a debt-rescheduling plan or a cancellation of debts.

Conciliation proceedings do not involve an automatic stay. However, the court can force creditors that attempt to enforce their rights while conciliation proceedings are taking place to accept a moratorium for up to two years.

- **Conclusion.** If the workout agreement is successful, the court agent's duties end. However, the court agent can be reappointed if a party to the workout agreement fails to comply with its obligations. If no solution can be found to the company's financial difficulties and the court agent reports that the company is insolvent, the court must begin insolvency proceedings on its own initiative.

Safeguard proceedings (*procédure de sauvegarde*)

- **Objective.** Safeguard proceedings are the main innovation of the reform and allow solvent companies to be restructured under the court's supervision.
- **Companies.** See above, *Ad hoc proceedings (mandat ad hoc)*.
- **How, when and by whom.** A company can file a petition for safeguard proceedings with the president of the court.

- **Substantive tests.** The company must be solvent, but face difficulties that it cannot overcome and that could lead to insolvency. If appropriate, the court can order the proceedings to be replaced by rehabilitation or liquidation proceedings (see below, *Rehabilitation proceedings (redressement judiciaire)* and *Liquidation proceedings (liquidation judiciaire)*) at any time.
- **How long.** Safeguard proceedings begin with an observation period of up to six months to assess the company's financial position. This period can be extended on one occasion for six months and, in exceptional circumstances, can be extended further at the Public Prosecutor's request for an additional six-month period.
- **Consents and approvals.** Unless otherwise specified in the company's articles of association, no specific consent or approval is required to file a petition for safeguard proceedings. Before filing a petition, the management must inform and consult with the employees' representatives. However, these representatives do not need to approve the commencement of proceedings.

If committees of creditors are appointed (see below, *Effect*), a safeguard plan is deemed approved if the required percentage votes in favour (a majority in number and two-thirds in value of the creditors in each committee). The court must then approve the safeguard plan.

If committees of creditors are not appointed, the plan must be negotiated on a one-to-one basis with each creditor.

- **Effect.** Once a petition has been filed, there is an automatic stay of all actions against the company, guarantors and joint debtors. All creditors (except employees) must file a proof of their claim within two months after the judgment opening safeguard proceedings has been published in the legal gazette (*Bulletin Officiel des Annonces Civiles et Commerciales*). The period is four months for foreign creditors.

The judgment opening safeguard proceedings appoints:

- an insolvency judge (*juge commissaire*) who is in charge of overseeing the whole procedure;
- a trustee (*administrateur*) who supervises and assists the management to prepare a safeguard plan (*plan de sauvegarde*);
- a court agent (*mandataire judiciaire*) who is in charge of representing the creditors' interests and assessing proofs of claim. This agent can be assisted by one to five advisers (supervising creditors (*créanciers contrôleurs*)) appointed by the court.

For companies of a certain size, the new statute has created two classes of creditors (credit institutions and major suppliers), which are organised through committees. In exceptional circumstances, classes of creditors can also be organised for small companies by court order. The committees are entitled to discuss and vote on the safeguard plan

proposed by the company. Bondholders, even though not members of the committee, must be consulted. In addition, social and tax authorities are invited to negotiate and are now authorised to grant a debt rescheduling or cancellation.

The safeguard plan can involve debt restructuring, a re-capitalisation of the company, sales of assets or a partial sale of the business. However, it cannot include a proposal to sell the business as a whole.

Once approved by the court, the safeguard plan is enforceable against all members of the creditors' committees, including the dissenting minority. However, for creditors that are not members of a committee, the court can only impose new maturity dates (that is, postpone the dates on which dissenting creditors' claims become due). The court cannot allow debts to be written off. This is also the case if the committees fail to reach an agreement or reject the company's proposal, or if the court does not approve the negotiated safeguard plan.

- **Conclusion.** Once the court approves a safeguard plan, it appoints an agent to supervise the plan being implemented (*commissaire à l'exécution du plan*). If the company fails to meet its obligations and becomes insolvent, the court must order the plan to be cancelled and initiate liquidation proceedings (see below, *Liquidation proceedings (liquidation judiciaire)*).

Rehabilitation proceedings (*redressement judiciaire*)

- **Objective.** The aims of rehabilitation proceedings, in order of priority, are:
 - to safeguard a company's activities and prospects of recovery;
 - to save jobs;
 - to pay creditors.
- **Companies.** See above, *Ad hoc proceedings (mandat ad hoc)*.
- **How, when and by whom.** The company must file for rehabilitation no later than 45 days from the date on which it becomes insolvent (provided that conciliation proceedings did not precede the filing).

If the company fails to reach an agreement with its creditors during conciliation proceedings and the court agent reports that the company is insolvent, the court must initiate rehabilitation or liquidation proceedings. The court can also start rehabilitation proceedings on its own initiative if it becomes aware through an unofficial notice or information received from the employees' representatives that a company registered in France is insolvent. Rehabilitation proceedings can also begin at the request of the Public Prosecutor or any creditor, whether secured or unsecured (regardless of the amount of its claim).

- **Substantive tests.** Rehabilitation proceedings are appropriate if the company is insolvent, but has not ceased operating, and its rescue seems possible.

If it is clear that rehabilitation proceedings will not succeed, the court can order them to be converted into liquidation proceedings (see below, *Liquidation proceedings (liquidation judiciaire)*).

- **How long.** See above, *Safeguard proceedings (procédure de sauvegarde)*.
- **Consents and approvals.** The board of directors does not need to approve a decision to file for rehabilitation proceedings, unless the articles of association state otherwise. However, the company's legal representatives usually seek the board's approval as a precautionary measure. Before filing a petition, the management must inform and consult with the employees' representatives. However, these representatives do not need to approve the commencement of proceedings.

If committees of creditors are appointed, the rehabilitation plan must be approved by the same percentages as for safeguard proceedings (see above, *Safeguard proceedings (procédure de sauvegarde)*).

- **Effect.** Rehabilitation proceedings trigger an automatic stay of proceedings against the company. However, this does not usually extend to actions against guarantors. The judgment opening rehabilitation proceedings appoints:

- an insolvency judge to oversee proceedings;
- a trustee in charge of assisting the management or taking control of the company's management;
- a court agent to represent the creditors' interests and assess proofs of claim.

One to five advisers appointed by the court from among the creditors can assist the court agent.

All creditors other than employees must file a proof of their claim within two months of the judgment opening rehabilitation proceedings being published (or four months in the case of foreign creditors).

As for safeguard proceedings (see above, *Safeguard proceedings (procédure de sauvegarde)*), the new statute creates two classes of creditors (credit institutions and major suppliers), which are organised through committees. These committees are automatically appointed for companies of a certain size and with the court's approval for small companies.

The rehabilitation plan can involve debt restructuring, a re-capitalisation of the company, sales of certain assets or a partial sale of the business. A proposal to sell all assets or the business as a whole (transfer plan (*plan de ces-*

sion)) can only be approved if the court rules that the company cannot continue to operate. In these circumstances, the provisions under the transfer plan are carried out according to the rules applicable to liquidation proceedings (see below, *Liquidation proceedings (liquidation judiciaire)*).

The rehabilitation plan can postpone the date on which the claims of creditors that are not members of a committee must be paid by up to ten years (unless the parties themselves originally agreed a date further in the future). However, the court cannot waive the claims of these creditors.

- **Conclusion.** See above, *Safeguard proceedings (procédure de sauvegarde)*.

Liquidation proceedings (*liquidation judiciaire*)

- **Objective.** The aim of these proceedings is to liquidate a company by selling its business, either in whole or in part, as well as its assets.

- **Companies.** See above, *Ad hoc proceedings (mandat ad hoc)*.

- **How, when and by whom.** See above, *Rehabilitation proceedings (redressement judiciaire)*.

- **How long.** Liquidation proceedings last until no more proceeds can be made from selling the company's business or assets. After two years from the judgment ordering liquidation, any creditor can request the court to terminate all proceedings.

The new statute creates a simplified form of liquidation proceedings available for small businesses. These simplified proceedings can last for a maximum of one year.

- **Consents and approvals.** See above, *Rehabilitation proceedings (redressement judiciaire)*.

- **Effect.** Liquidation proceedings trigger an automatic stay of proceedings against the company. However, this does not usually extend to actions against guarantors. The judgment opening liquidation proceedings appoints:

- an insolvency judge to oversee proceedings;
- a liquidator, who is responsible for collecting in all of the company's assets and paying the creditors to the extent that funds are available. The liquidator is also responsible for assessing proofs of claim and representing the creditors' interests. For this reason, one to five advisers appointed by the court from among the creditors assist the liquidator.

- **Conclusion.** Liquidation proceedings conclude when the business (either in whole or in part) and assets have been sold to pay the creditors.

LIABILITY AND TRANSACTIONS

6. Are there any circumstances in which a director, parent company (domestic or foreign) or other party could be held liable for the debts of an insolvent company?

Actions against the company's management

The new statute sets out two actions that can lead the management of an insolvent company being held liable to pay all or part of its debts. This liability can extend to formally appointed directors or managers, as well as to any individual or entity that in practice repeatedly carries out independent management activities. A parent company can also be held liable for an insolvent subsidiary's debts if it has been appointed as a manager or can be deemed a manager of that subsidiary. The liquidator, court agent or Public Ministry can bring the actions. In addition, the advisers appointed by the court can either summons the liquidator to bring an action or commence proceedings on their own initiative if the court agent does not do so.

The two actions that can be brought are:

- **Action based on mismanagement (*action en comblement de passif*).** Liability can arise where, as a result of management errors, a company's assets do not cover its debts. This action only applies in liquidation proceedings or where a safeguard or rehabilitation plan has been terminated.
- **Action based on a specific breach of duty.** During liquidation proceedings, managers can be held liable if they have contributed to the company's insolvency by:
 - using the company's assets or credit for their own benefit, or the benefit of another corporate entity in which they have a direct or indirect interest;
 - using the company to conduct and conceal business transactions for their own benefit;
 - carrying out business activities at a loss to further their own interests, knowing that this would lead to the company's insolvency;
 - fraudulently applying or concealing all or part of the company's assets; or
 - fraudulently increasing the company's debts.

In certain circumstances, directors found liable of the above breaches can be required to sell their equity interest and personally pay all the company's debts (*faillite personnelle*). In addition, they can be prohibited from managing any business for up to 15 years and holding any public office for up to five years.

Actions against a lender

The new statute creates an exemption from liability for all types of lender (not only credit institutions), except in the following circumstances:

- Fraud.
- Improper interference with the company's management.
- Where the lender has obtained a security interest that is disproportionate to the amount of the loan.

It is thought that the exemption applies not only to providers of new credit facilities, but also to providers of existing credit facilities (particularly if they agree to a rescheduling of the existing debt). However, future case law is needed to settle this point.

Consolidation of insolvency proceedings (*extension de la procédure*)

The new statute also confirms a provision established by case law. The court can order the debts of different companies to be paid from a larger consolidated pool of assets if:

- A "fictitious company" (one without an independent management body) has been created in an attempt to disperse assets so that they are placed beyond the creditors' reach.
- The estates of two or more companies are so closely connected that it is impossible to separate one company's activities from the other (*confusion de patrimoines*). This can be shown if, for example, the companies share the same assets, debts or bank accounts.

7. Can transactions that are effected by a company that subsequently becomes insolvent be set aside?

Transactions can be challenged by the trustee, court agent, liquidator or Public Prosecutor if they are entered into during the "suspect period" before an insolvency judgment (*période suspecte*). This runs from the date on which the company is deemed to be insolvent and can be backdated by the court by up to 18 months before the judgment but not before the court order approving a workout agreement (*see Question 5, Conciliation proceedings (conciliation)*).

The following transactions are automatically void if performed during the suspect period:

- Transfers of movable or immovable assets without consideration (*à titre gratuit*).
- Agreements in which the company's obligations substantially exceed those of the other party.
- Payments, in any form, made on account of debts that have not fallen due.
- Payments on account of debts that have fallen due made by any means other than:
 - cash;
 - bank transfer;

- negotiable instrument;
- assignment of receivables;
- any other method of payment commonly used in business transactions.
- Any deposits or consignments of money made under Article 2075-1 of the Civil Code (governing pledges over certain intangible assets, including claims) in the absence of a final judgment.
- Any mortgages or pledges over the company's assets on account of pre-existing debts.
- Any protective measures (*see Question 3*), unless the security is registered or the attachment occurred before the suspect period.
- Any granting, exercise or reselling of stock options made under Article L. 225-177 *et seq.* of the Commercial Code.

The court can also set aside transfers of movable or immovable assets made without consideration, if they were entered into six months before the date of insolvency.

Any payment of debts that have fallen due or any transaction for consideration (*acte à titre onéreux*) during the suspect period is voidable if, at the time of the payment or transaction, the other party knew, or was in a position to know, of the company's insolvency. In addition, any seizure of property (whether tangible or intangible) is voidable if carried out during the suspect period by a creditor that knew the company was insolvent.

8. Please set out any conditions under which a company can continue to carry on business during insolvency or rescue proceedings? In particular:

- **Who has the authority to supervise or carry on the company's business?**
 - **What restrictions apply?**
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- **Ad hoc proceedings and conciliation proceedings.** The court agent does not have any management responsibilities in these types of proceedings. There are no restrictions on the company's business activities.
 - **Safeguard proceedings.** The company can continue to operate the business and prepare a safeguard plan. The trustee is in charge of assisting the company, but cannot deprive the management of its responsibilities.
 - **Rehabilitation proceedings.** The scope of the trustee's responsibilities is determined by court order. The trustee may simply assist the management to make decisions or he may be appointed to take control of the company's management, either in whole or in part.

- **Liquidation proceedings.** The liquidator has sole authority to bind the company and assumes all management responsibilities. As he is given considerable freedom to carry out these responsibilities, it is common for creditors to negotiate a settlement of their individual claims with the liquidator.

INTERNATIONAL CASES

9. Please state whether:

- **Courts in your jurisdiction recognise insolvency and rescue procedures in other jurisdictions.**
 - **Courts co-operate where there are concurrent proceedings in other jurisdictions.**
 - **There are any international treaties relating to insolvency to which your jurisdiction is a signatory.**
 - **There are any special procedures that apply to foreign creditors.**
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- **Recognition.** If insolvency judgments are made in a jurisdiction that is party to a treaty with France, they are recognised and enforceable in France. In addition, Regulation (EC) No. 1346/2000 on insolvency proceedings (Insolvency Regulation) allows insolvency procedures in different member states to be automatically recognised.

If a company's centre of main interests (COMI) is in France, the main proceedings can be commenced under the Insolvency Regulation. A company's COMI is presumed to be the place of its registered office unless proved otherwise. Secondary proceedings can subsequently be commenced to liquidate assets of an establishment located in another member state. Secondary proceedings under the Insolvency Regulation are also appropriate if a company has an establishment in France, but its COMI is in another member state. The application of the Insolvency Regulation can be seen in a case where both the French and UK courts asserted jurisdiction (*In re: Daisytek, Court of Appeals of Versailles, 4 September 2003*).

If the Insolvency Regulation does not apply and insolvency judgements are made in a jurisdiction that is not party to a treaty with France, they are not automatically recognised. Foreign judgements can only be enforced if they have been subject to a review procedure (*exequatur*), which is intended to verify that the foreign court had proper jurisdiction, international public policy has been complied with and no fraud has taken place.

- **Concurrent proceedings.** The French court tends to consider an insolvency estate as a whole (*universalité de patrimoine*). This means that the court that has jurisdiction to open insolvency proceedings also has jurisdiction over all the company's assets, whether they are located in France or abroad. There may be some exceptions to this rule for assets located in EU member states. These exceptions apply when second-

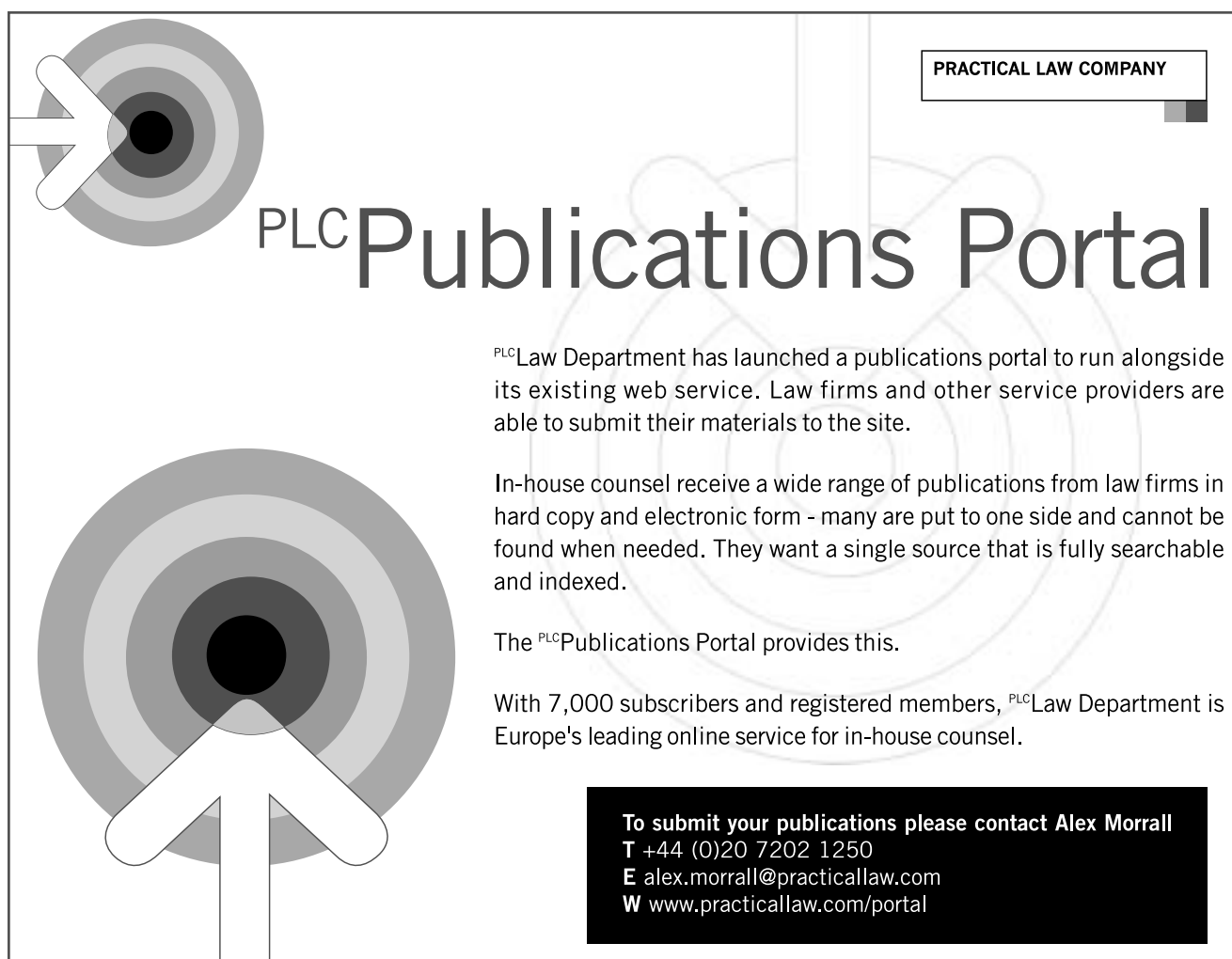
ary proceedings (which can only be liquidation proceedings) are opened to liquidate the assets of a company's branches operating in another member state.

- **International treaties.** France has not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency 1997. However, France is party to bilateral conventions, including the convention between France and Monaco on insolvency proceedings dated 13 September 1950 (*Convention Franco-Monégasque relative à la faillite et à la liquidation judiciaire*)
- **Special procedures for foreign creditors.** No special procedures apply to foreign creditors.

PROPOSED REFORMS

10. Are there any proposals for reform to insolvency law in your jurisdiction?

Insolvency law has been widely reformed by the new statute that came into effect on 1 January 2006. There are no further proposals for reform.



The advertisement features a large graphic on the left consisting of two concentric circles with a central black dot, resembling a target or a stylized eye. A white arrow points from the left towards the center of the circles. The text 'PLC Publications Portal' is prominently displayed in the center. To the right, there is a box containing contact information for Alex Morrall. The background is white with a faint watermark of a globe.

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