Dėmesio! Šiame puslapyje originalo kalba (fr) neseniai atlikta pakeitimų.
prancūzų
Puslapį jūsų pasirinkta kalba šiuo metu rengia mūsų vertėjai.
Swipe to change

Insolvency/bankruptcy

Prancūzija

Oficialaus vertimo rodoma kalba nėra.
Čia galite susipažinti su šio teksto vertimu, atliktu mašininio vertimo priemone. Turėkite omenyje, kad jis skirtas tik padėti suprasti tekstą. Šio puslapio savininkas neprisiima jokios atsakomybės dėl šio mašininio vertimo priemone išversto teksto kokybės.

-----anglų

1 Who may insolvency proceedings be brought against?

Any person exercising a commercial or craft activity, any farmer, any other natural person exercising a self-employed activity, including a liberal profession governed by a legislative or statutory instrument or with a protected title, and any private law entity may be the subject of safeguard (*procédure de sauvegarde*), judicial reorganisation (*procédure de redressement judiciaire*) or judicial liquidation (*procédure de liquidation judiciaire*) proceedings.
Insolvency proceedings may be opened for a sole trader (*auto-entrepreneur*).
Safeguard proceedings can only be opened for a person pursuing an economic activity. In the case of judicial reorganisation or judicial liquidation, the person may already have ceased activity at the time the proceedings are opened.
Private law entities for which insolvency proceedings can be opened include commercial companies, non-commercial companies, economic interest groups, associations, trade unions, professional or trade associations and works councils.
Insolvency proceedings cannot be opened for private law groupings without legal personality such as joint ventures or companies in the course of incorporation.
All legal persons governed by public law are also excluded.
Accelerated safeguard and accelerated financial safeguard proceedings
A debtor may have recourse to accelerated safeguard proceedings (*procédure de sauvegarde accélérée*) or to accelerated financial safeguard proceedings (*procédure de sauvegarde financière accélérée)* if his accounts have been certified by an auditor or were drawn up by an accountant and if he has a workforce of more than 20 employees or turnover excluding taxes of more than EUR 3 million or a total balance sheet of more than EUR 1.5 million.
Accelerated safeguard and accelerated financial safeguard proceedings are also open to debtors who have drawn up consolidated accounts.

2 What are the conditions for opening insolvency proceedings?

Safeguard proceedings are opened if the debtor is experiencing insurmountable difficulties but has not yet reached the stage of cessation of payments.
Judicial reorganisation proceedings are opened if the debtor is unable to meet his current liabilities with his available funds and has reached the stage of cessation of payments.
Judicial reorganisation aims to maintain business activity and jobs and to clear liabilities. The business manager must request this procedure within 45 days of cessation of payments.
Judicial liquidation proceedings are opened when the business has reached the stage of cessation of payments and when judicial reorganisation is clearly impossible.
Only the debtor can request the opening of safeguard proceedings.
In contrast, the opening of judicial reorganisation or judicial liquidation proceedings can be requested not only by the debtor, but also by a creditor or by the public prosecutor, on condition that conciliation proceedings (*procédure de conciliation* – pre-insolvency proceedings) are not in progress.
The judgment opening insolvency proceedings takes effect from the judgment date, i.e. at zero hours on its date of issue.
The debtor is notified of the opening judgment within eight days of its date and is communicated to the insolvency practitioners and to the public prosecutor's office, including in the other Member States where the debtor has an establishment.
The judgment takes effect immediately in relation to all.
Within fifteen days of its date of issue, the opening judgment is entered in the commercial and company register, the trade register or in a special register kept at the registry of the regional court.
An extract from the judgment is inserted in the Bodacc (official bulletin of civil and commercial announcements) and in a register of legal notices of the place of the debtor's registered office or business address.
Accelerated safeguard and accelerated financial safeguard proceedings
Accelerated safeguard and accelerated financial safeguard proceedings also exist.
Accelerated safeguard proceedings can be opened at the request of a debtor who has entered into conciliation proceedings and who provides evidence of having drawn up a draft plan to ensure the continued existence of the business.
The fact that the debtor has ceased payments does not constitute an obstacle to opening accelerated safeguard proceedings, provided that this situation does not predate the request to open conciliation proceedings by more than 45 days.
Accelerated financial safeguard proceedings can be opened under the same conditions as those of accelerated safeguard proceedings and where the debtor' s accounts show that his debt allows the adoption of a plan solely by the creditors who are members of the credit institutions committee.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

The insolvency proceedings cover all the debtor's assets.
In the case of a legal person, only that person's assets are involved.
If the debtor is an individual entrepreneur, his personal assets are also involved.

However, the principal residence of an individual entrepreneur exercising a commercial, industrial, craft or agricultural activity or liberal profession is exempt from attachment by professional creditors by law.
Other land and buildings not used for business purposes may be the subject of a declaration of exemption from attachment. This declaration, which must be notarised and published, has effect only in relation to professional creditors whose claims arise after publication.
Exemption from attachment of the debtor's principal residence by professional creditors serves to protect the debtor and his family.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Disinvestment of the debtor

Safeguard and judicial reorganisation

Where safeguard or judicial reorganisation proceedings are opened, the debtor is not disinvested and continues to manage his business.
Under safeguard proceedings, the court may appoint an administrator to supervise or assist the debtor in his business management, according to the mandate defined by the court in the judgment. In certain cases (businesses with at least 20 employees and turnover excluding taxes of at least EUR 3 million) that appointment is compulsory.
Under judicial reorganisation proceedings, the court may also appoint an administrator (*administrateur judiciaire*) who will assist the debtor in his management or manage the business himself, in whole or in part, in place of the debtor. That appointment is compulsory in the same cases as in safeguard proceedings.

Judicial liquidation

In the case of judicial liquidation proceedings, the debtor is divested of the administration and disposal of his assets. The liquidator (*liquidateur*) exercises his rights and performs actions in relation to his business assets. The liquidator therefore undertakes the administration of his assets.

Insolvency practitioners

Insolvency practitioners are court-appointed representatives placed under the supervision of the public prosecutor's office and are members of regulated professions.
These specialised professionals must be entered on national lists and meet strict conditions as to suitability and good character.
Persons not entered on these lists, but with particular experience or qualifications in the light of the case, may also be designated.
Insolvency practitioners are appointed by the court when proceedings are opened.
Insolvency practitioners could incur civil and criminal liability under ordinary law.
The practitioners' fees are determined by scales fixed by decree; their remuneration under these scales is charged by the court to the debtor.

The powers of the insolvency practitioners and the debtor

Court-appointed administrator

In principle, the court opening safeguard or judicial reorganisation proceedings appoints an administrator, who may be proposed by the debtor under the safeguard proceedings or by the public prosecutor's office.
It is not compulsory to appoint an administrator if the debtor has a workforce of fewer than 20 employees and if his turnover excluding taxes is less than EUR 3 million.
In the case of accelerated safeguard and accelerated financial safeguard proceedings, the appointment of an administrator is always compulsory.
Under safeguard proceedings, the debtor is not disinvested and continues to dispose of and manage his assets, unless the court decides otherwise.
The court-appointed administrator, if one is appointed, supervises or assists the debtor in his business management, according to the mandate defined by the court.
Under judicial reorganisation proceedings, the court-appointed administrator assists the debtor in his management or manages the business himself, in whole or in part, in place of the debtor.
The court-appointed administrator must take, or have the debtor take, the necessary measures to preserve the rights of the business against its debtors and the necessary measures to maintain its production capacity.
The court-appointed administrator is vested with specific powers, such as operating under his signature the bank accounts of a debtor who has been prohibited from issuing cheques, requiring the continuation of current contracts and implementing the necessary redundancies.

Court-appointed receiver

It is compulsory for the court to appoint a receiver (*mandataire judiciaire*) in any collective proceedings.
His task is to represent the creditors and their collective interests.
He draws up the list of declared claims, including wage claims, with his proposals for admission, rejection or referral to the competent court, and forwards the list to the bankruptcy judge.

Liquidator

The court appoints a liquidator in the judicial liquidation order.
The liquidator must verify the claims and realise the debtor's assets in order to pay off creditors.
He implements redundancies and may opt for the continuation of current contracts.
He represents the disinvested debtor and thus exercises most of his rights and performs most of the actions relating to these assets during judicial liquidation proceedings. On the other hand, he may not exercise the debtor's non-pecuniary rights.

5 Under which conditions may set-offs be invoked?

Set-off is a way of extinguishing mutual obligations to the limit of the lower amount.
It can be applied only between two persons with symmetrical mutual claims and debts.
It thus results in a shorter two-way payment between mutual claims.
In principle, it is prohibited for the debtor to pay any claim arising prior to the judgment opening the safeguard or judicial reorganisation proceedings.
However, the prohibition on payment of previous claims is lifted for the payment of related claims by set-off. Reciprocal claims of the same nature arising or deriving from the performance or non-performance of the same contract or group of contracts are considered to be related.
If a claim related to the earlier claim arises after the judgment opening the proceedings, it is possible for it to be paid by set-off against the previous claim, provided that the latter has been declared.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Procedure to continue current contracts

The opening of insolvency proceedings does not call into question the existence of the contracts between the debtor and his contracting partners (suppliers, customers) on the day on which proceedings are opened.
A current contract is a contract which exists and is ongoing when the proceedings are opened, a contract of successive performance which has not expired on that date or a contract of instantaneous performance which has not yet been performed but has already been concluded.

The specific provisions relating to current contracts do not apply to employment contracts.

Safeguard and judicial reorganisation

In principle, contracts are continued automatically..

Hence the contracting partner must fulfil his obligations despite the failure of the debtor to perform commitments prior to the opening judgment.

He will be paid on the due date for services provided after the opening judgment.

Only the court-appointed administrator has an option based on public policy which enables him to require continuation of the contract subject to payment for the services to be supplied to him.

In the absence of a court-appointed administrator, the debtor may require performance of the current contracts, with the consent of the court-appointed receiver.

The court-appointed administrator also has the option of terminating the contract to be performed or payment by instalments where he establishes that he does not have sufficient funds to fulfil the debtor's obligations.

The contracting partner may give the court-appointed administrator (or the debtor, in the absence of an administrator) formal notice to decide on the future of the contract.

A current contract is terminated automatically if the court-appointed administrator (or debtor) has not replied to the formal notice after one month.

The same applies in the event of non-payment and in the absence of agreement by the contracting partner to continue contractual relations.

The court-appointed administrator (or the debtor, in the absence of an administrator) may also apply to the bankruptcy judge to pronounce the current contract terminated if termination is necessary to safeguard or rehabilitate the debtor, and on condition that it does not excessively harm the interests of the contracting partner.

Judicial liquidation

As in safeguard and judicial reorganisation proceedings, all current contracts are in principle maintained. Hence the contracting partner must fulfil his obligations despite the failure by the debtor to perform commitments prior to the judgment opening the proceedings.

Services provided after the opening judgment will be paid on the due date.

Only the liquidator can require performance of the current contracts by supplying the service promised to the debtor.

The contracting partner may give the liquidator formal notice to decide on the future of the contract.

The contract is terminated automatically if the liquidator has not replied to the formal notice after one month.

The same applies where performance by the debtor relates to the payment of a sum of money, on the day when the contracting partner is informed of the decision by the liquidator not to continue the contract, as well as in the event of payment default when the contracting partner does not agree to continue contractual relations.

Where anything other than the payment of a sum of money is involved, the liquidator may also ask the bankruptcy judge to pronounce the contract terminated if it is necessary for the liquidation operations and does not excessively harm the interests of the contracting partner.

Assignment of current contracts

In the case of safeguard, judicial reorganisation or judicial liquidation proceedings, if full or partial assignment of the undertaking is ordered, the court may determine the contracts for leasing, rental or provision of goods and services necessary for continuation of the business that are to be assigned.

A contracting partner whose contract was not thus assigned may apply to the bankruptcy judge to declare the contract terminated if its further performance is not required by the administrator, the debtor in the absence of an administrator or the liquidator.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

In the case of insolvency proceedings, creditors are obliged to enforce their rights against the debtor exclusively under the insolvency proceedings and cannot take individual action for payment against the debtor.

The judgment closing the judicial liquidation proceedings by reason of insufficiency of the assets does not lead to creditors recovering the right to bring individual proceedings against the debtor.

There are exceptions to this rule:

- for actions relating to goods acquired by way of an inheritance arising during the judicial liquidation proceedings;
- where the claim originates in an offence for which the debtor's guilt has been established or where it relates to personal rights of the creditor;
- where the claim originates in fraudulent practices committed to the detriment of social protection agencies. The fraudulent origin of the claim is established either by court decision or by a penalty declared by a social security authority.

The creditors also recover their right to bring individual proceedings in cases where:

- the debtor has been declared personally bankrupt;
- the debtor has been found guilty of fraudulent bankruptcy;
- the debtor, in respect of any one of his assets, or a legal person which he directed, was subject to previous judicial liquidation proceedings closed by reason of insufficiency of the assets less than five years before the opening of the proceedings to which he is subject; the debtor has had debts written off in the five years preceding that date;
- the proceedings were opened as territorial proceedings within the meaning of Article 3(2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

In addition, in the event of fraud in relation to one or more creditors, the court authorises the resumption of individual proceedings by any creditor against the debtor. The court rules when the proceedings are closed after having heard or duly summoned the debtor, the liquidator and the supervisors. It may hand down a ruling subsequently at the request of any interested party, under the same conditions.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

The judgment opening insolvency proceedings interrupts or prohibits action brought against the debtor seeking to obtain payment of a sum of money or to cancel a contract on grounds of default of payment of sums of money.

Enforcement proceedings and preservation measures are also stayed.

Action brought by creditors prior to the opening of collective proceedings is interrupted or stayed.

All previous creditors are therefore concerned, whether or not they are secured.

The interruption and prohibition of proceedings apply to all insolvency proceedings.

Proceedings pending are interrupted until the prosecuting creditor has declared his claim.

They are then resumed automatically, but only to confirm the claim and fix its amount, to the exclusion of the judgment against the debtor.

Lawsuits and enforcement proceedings other than the aforementioned are continued while the debtor is under observation, after joinder of the court-appointed receiver and the court-appointed administrator where his duties are to assist or represent the debtor, or after resumption of proceedings on the initiative of the court-appointed receiver or the court-appointed administrator.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Safeguard and judicial reorganisation proceedings

With a view to adoption of the safeguard plan, the creditors are consulted on the payment periods or remission of debts.

Proposals are forwarded by the court-appointed administrator (or by the debtor in the absence of an administrator) to the court-appointed receiver representing the creditors.

The court-appointed receiver receives the agreement, individually or collectively, of each creditor having declared his claim.

The court-appointed receiver is not bound to consult creditors for whom the draft plan makes no change to the terms of payment or provides for payment in full in cash as soon as the plan has been adopted or the claims admitted.

Creditors' committees

Where the debtor has a workforce of more than 150 employees and turnover exceeding EUR 20 million, a creditors' committee is set up which will give its opinion on the draft plans to clear the liabilities. The court may also decide to apply these provisions below those thresholds.

The creditors' committees convene different categories of creditors at separate meetings in order to submit to them proposals which they will be able to discuss and on which they will decide collectively, i.e. minority creditors will have to abide by the decision of majority creditors.

There is a credit institutions committee composed of finance companies and credit or similar institutions, and a committee composed of the principal suppliers of goods or services. Where there are bondholders, a general meeting of all creditors holding bonds issued in France or abroad is convened in order to discuss the draft plan adopted by the creditors' committees.

Creditors' committees must be consulted by the court-appointed administrator on the draft plan and vote in favour of a plan before the court can take its decision.

Where creditors' committees exist, any creditor who is a member of a committee can propose alternatives to the draft plan presented by the debtor.

The draft plan might therefore originate with the debtor (possibly with the assistance of the court-appointed administrator), or, in the case of judicial reorganisation, with the administrator with the debtor's assistance, but might also be an initiative by creditors who are committee members. The plan adopted by the committees and, if it is separate, the plan supported by the debtor or the administrator, can then be submitted to the court concurrently.

Accelerated safeguard proceedings

Where accelerated safeguard proceedings are opened, it is compulsory to establish creditors' committees – a credit institutions committee and committee of suppliers of goods and services – and, where appropriate, the general meeting of bondholders.

Creditors who are not committee members are also consulted individually.

Accelerated financial safeguard proceedings

Where accelerated financial safeguard proceedings are opened, only the credit institutions committee, and, where applicable, the general meeting of bondholders need be established.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

The debtor's assets may be realised by total or partial assignment of the business or in individual assignments. These transactions are subject to different rules.

Assignment of a business is ordered by the court; it is not carried out by the insolvency practitioner.

Assignment of a business may only be partial in the case of safeguard proceedings. It is partial or total in the case of judicial reorganisation or judicial liquidation proceedings.

In such cases, the court hands down a decision setting the period within which takeover offers are to be sent to the court-appointed receiver, the liquidator or the administrator if any. Offers must be in writing and contain certain mandatory items of information.

Individual assignments of assets are subject to different rules.

During the safeguard and judicial reorganisation period, when the debtor is not disinvested, he may continue to dispose of his assets alone subject to the responsibilities of the administrator.

If disposal entailing realisation of the assets does not fall within the day-to-day management of the business, he must obtain prior authorisation from the bankruptcy judge.

During the safeguard or judicial reorganisation plan, the debtor regains full control of his assets.

In judicial liquidation proceedings, the liquidator must obtain the authorisation of the bankruptcy judge to assign assets.

Real estate is sold by court order. The bankruptcy judge sets the reserve price and the basic terms of the sale. He may also authorise a sale by auction at a reserve price that he decides. Finally, he may authorise a private sale at a price and on terms that he determines.

The liquidator then allocates the proceeds of the sales according to the creditor ranking.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

All claims arising before the judgment opening the proceedings must be declared, whatever their nature or character: commercial, civil, administrative (Treasury, social welfare and social security institutions) or penal (fine). It is immaterial whether the claim is unsecured or preferential, due or at term, certain or conditional. These provisions do not apply to employees.

Claims duly arising after the judgment opening the proceedings for the purposes of conducting the proceedings or in exchange for goods or services supplied to the debtor for his business activity are paid on their due date.

12 What are the rules governing the lodging, verification and admission of claims?

All creditors whose claim arises prior to the judgment opening the proceedings are required to declare their claims to the court-appointed receiver in the case of safeguard or judicial reorganisation proceedings or the liquidator in the case of liquidation.

The time limit for declaration is two months from the legal publication of the judgment opening the proceedings.

The debtor may also himself declare the claim of one of his creditors under the same conditions.

The declaration also concerns certain claims arising after the judgment opening the proceedings, those for which there is no preferential right to payment for claims benefiting the business or those related to the requirements of the proceedings.

The declared claim must indicate the amount of the sums due and falling due in future, the due dates, the nature of the preferential right or existing security and the rules for calculating interest.

No specific form is required for the declaration of a claim. The declaration must in itself unequivocally express the intention of the creditor to demand payment of his claim, to appear on the statement of claims and to participate in the proceedings.

After having received the debtor's observations, the court-appointed receiver draws up the list of declared claims, with his proposals for admission, rejection or referral to the competent court.

This list is forwarded to the bankruptcy judge and communicated to the court-appointed administrator.

Before admitting or rejecting a claim, the bankruptcy judge verifies its existence, amount and nature, according to the evidence provided by the author of the declaration and, where appropriate, evidence provided by those who are heard and by the court-appointed receiver.
Creditors who have not declared their claims within the time limits are foreclosed and therefore cannot participate in the distribution or claim dividends in the event of adoption of a plan or realisation of the debtor's assets unless the bankruptcy judge lifts foreclosure.
If foreclosure is lifted, they may participate in the distributions subsequent to their application.
Accelerated safeguard and accelerated financial safeguard proceedings
The debtor draws up the list of claims of each creditor having participated in the conciliation proceedings which must be declared. The list is certified by the debtor's auditor and lodged with the court registry.
The court-appointed receiver forwards to each creditor the extract from the list concerning his claim.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

A preferential creditor enjoys a guarantee ensuring priority of payment over the other ordinary, unsecured creditors of his debtor in the event that collective proceedings are opened against the debtor.
A creditor may thus have preferential status:
- because he is in possession of a guarantee granted by his debtor or obtained from a court decision, or
- because a preferential right is conferred on him by law due to his status.

Preferential creditors are not all equal. Where several preferential creditors compete, they are paid in an order fixed by law, but still before the unsecured creditors.
The unsecured creditors are paid from the debtor's remaining assets, after payment of the preferential creditors. The distribution is carried out on a *pro rata* basis.

The ranking of preferences

Safeguard and judicial reorganisation proceedings

Realisation of the proceeds from the sale of real estate between creditors is undertaken in the following order:
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: costs relating to preservation, realisation of assets and distribution of proceeds among the creditors (inventory and advertising costs, remuneration of court-appointed representatives, etc.).
Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services with a view to ensuring the continuation and survival of the business.
Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Claims guaranteed by the general preference of employees: payment of the remuneration for six months of work prior to the judgment opening the proceedings.
Claims guaranteed by a special preference or by a mortgage.
Unsecured claims.
Realisation of the proceeds from the sale of movable property between creditors is undertaken in the following order:
Claims guaranteed by a special charge secured on movable property with lien.
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: costs relating to preservation, realisation of assets and distribution of proceeds among the creditors (inventory and advertising costs, remuneration of court-appointed representatives, etc.).
Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services, with a view to ensuring the continuation and survival of the business.
Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Preference of the Treasury.
Claims guaranteed by a special charge secured on movable property without lien.
Claims guaranteed by other general charges secured on movable property.
Unsecured claims.

Judicial liquidation

Realisation of the proceeds from the sale of real estate between creditors is undertaken in the following order:
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: inventory and advertising costs, remuneration of court-appointed representatives.
Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services, with a view to ensuring the continuation of the business and its survival.
Claims guaranteed by special charges secured on real estate.
Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Unsecured claims.
Realisation of the proceeds from the sale of movable property between creditors is undertaken in the following order:
Claims guaranteed by a special charge secured on movable property with lien.
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: inventory and advertising costs, remuneration of court-appointed representatives.
Claims guaranteed by the conciliation preference.

Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Claims guaranteed by a mortgage of goods or claims guaranteed by a pledge on machinery or equipment.
Preference of the Treasury.
Claims guaranteed by a special charge secured on movable property without lien.
Other general preferences on movable property (Article 2331 of the Civil Code (*Code civil*)) and general preference of wages.
Unsecured claims.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Safeguard and judicial reorganisation proceedings

Safeguard and judicial reorganisation proceedings were opened for the purpose of rescuing the business, maintaining business activity and jobs and clearing liabilities by means of a plan. A safeguard or judicial reorganisation plan can be adopted only if these conditions are satisfied.
The debtor, in the case of safeguard proceedings, or the administrator, in the case of judicial reorganisation proceedings, or a creditor if creditors' committees have been set up, draws up the draft plan if there is a realistic possibility for the business to be rescued. It consists of three parts:
- an economic and financial part which determines the prospects for turning the business around on the basis of the operational possibilities and methods, market conditions and financial resources available;
- a definition of the terms and conditions for settlement of liabilities and any guarantees that the business manager must provide to ensure its implementation;
- a social part, setting out and justifying the level of, and prospects for, employment and the social conditions envisaged for continuation of the business.

Where the draft provides for redundancies for economic reasons, it will review the steps which have already been taken and define the actions to be carried out to facilitate the re-employment and compensation of employees whose jobs are under threat.
The plan mentions all the commitments which have been entered into by the persons responsible for its implementation and which are necessary for the business turnaround.
The court then rules on the draft plan presented to it by the debtor or a creditor.
The adoption of a safeguard or judicial reorganisation plan or sale plan by the court is a judicial decision. The plan also has a contractual aspect if creditors' committees have been established.
The duration of the plan may not exceed 10 years, or 15 years for farmers.
The court appoints the administrator or receiver to supervise implementation of the plan throughout its duration.
Adoption of the plan ends the observation period. The debtor regains control of his assets and can once again manage his business, subject to the measures which the court has imposed on him in the plan.
The debtor must comply with all aspects of the provisions contained in the plan.
If he fails to do so, in the event of non-fulfilment of his commitments or of cessation of payments occurring during the implementation of the safeguard or judicial reorganisation plan, the debtor runs the risk of cancellation of the plan and resumption of proceedings.

Conversion into judicial liquidation

Judicial liquidation can be pronounced during or at the end of the observation period initiated by a safeguard or judicial reorganisation judgment.
The court must pronounce judicial liquidation as soon as the continuation of the business proves to be impossible or when no sale plan could be adopted under the judicial reorganisation proceedings.

End of the obligations of the natural-person debtor in judicialliquidation

The debtor is disinvested from the day on which judicial liquidation is pronounced until the closure of the liquidation. At that point the rights of the debtor are restored and he can again carry out measures.

15 What are the creditors' rights after the closure of insolvency proceedings?

Completion of implementation of the safeguard or judicial reorganisation plan does not allow creditors who had not declared their claim to take action against the debtor.
The exceptional resumption of individual proceedings is only expressly provided for when the judicial liquidation is closed by reason of insufficiency of the assets.

Time when the insolvency proceedings are considered to be closed

The observation period is the period from the date of the judgment opening the proceedings to the date of the judgment adopting the safeguard or judicial reorganisation plan, or pronouncing judicial liquidation.
Under the safeguard and judicial reorganisation proceedings, business activity continues during the observation period and the debtor continues in principle to manage his business, with certain restrictions.
Where there is a realistic possibility of turnaround of the business, the observation period will end with a safeguard or judicial reorganisation plan.
The adoption of a safeguard or judicial reorganisation plan enables the debtor to recover control of his business, although it does not end proceedings.
Proceedings are closed when the end-of-mission report of the administrator and the court-appointed receiver has been approved by the bankruptcy judge.
The president of the court then issues an order terminating proceedings. This is a judicial administration measure which is not open to appeal.
In judicial terms, the proceedings are therefore closed when the order terminating them is issued.
However, the effects of the proceedings do not end with the order terminating proceedings, since the safeguard or judicial reorganisation plan is still in progress.
The debtor must comply with all aspects of the provisions contained in the plan.
If he fails to do so, in the event of non-fulfilment of his commitments or of cessation of payments occurring during the implementation of the safeguard or judicial reorganisation plan, the debtor runs the risk of cancellation of the plan and resumption of proceedings.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

Costs and expenses incurred in the proceedings are payable by the business which is the subject of the insolvency proceedings.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Where the court opens judicial reorganisation or judicial liquidation proceedings, the date of cessation of payments by the debtor is in principle considered to occur on the date of the judgment opening the proceedings.
However, the court may decide that cessation of payments has occurred on a date up to 18 months before the date of opening the insolvency proceedings.
The period from the date of cessation of payments to the date of opening judicial reorganisation or judicial liquidation proceedings is in that case referred to as the 'suspect period'.
Certain acts carried out by the debtor during the suspect period which appear to be fraudulent are annulled.

An action for annulment of the acts carried out during the suspect period comes under the exclusive jurisdiction of the court competent for the proceedings.
The action may be brought only by the court-appointed administrator, the court-appointed receiver, the liquidator and the public prosecutor’s office.
Creditors may bring an action for annulment of legal acts by the debtor individually, or collectively via the court-appointed receiver.
The act is void in relation to all and cancelled retroactively.
There are twelve cases of compulsory nullity concerning irregular acts:
all acts transferring ownership of movable property or real estate free of charge;
any commutative contract in which the debtor’s obligations far exceed those of the other party;
any payment, by whatever method, for debts which are not due on the date of payment;
any payment of debts due, other than in cash, bills of exchange, bank transfers, transfer deeds or any other form of payment commonly accepted in business dealings;
any deposit or any consignment of sums made following the pledge of property, in the absence of a final court judgment;
any contractual mortgage, any legal mortgage, as well as a legal mortgage of spouses, and any right of lien or pledge created on the debtor’s assets for debts previously contracted;
any preservation measure, unless the registration or writ of attachment predates the cessation of payment;
any authorisation and exercising of options by the employees of the business;
any transfer of goods or rights to a fiduciary estate, unless this transfer occurred as a guarantee for a debt contracted simultaneously;
any amendment to a trust agreement affecting rights or assets already transferred to a fiduciary estate to guarantee debts contracted prior to this amendment;
where the debtor is an individual entrepreneur with limited liability, any assignment or change to the assignment of an asset, subject to the payment of income not assigned to the business activity, resulting in depletion of the assets covered by the proceedings in favour of another asset of this entrepreneur;
the notarial declaration of exemption from attachment made by the debtor.
These acts must be annulled by the court, whether the parties were acting in good or bad faith.
The court may also annul the acts transferring ownership of movable property or real estate free of charge and the declaration of exemption from attachment undertaken in the six months preceding the date of cessation of payment. These cases are subject to optional annulment.
Last update: 05/07/2019
The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.