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European Monitoring Centre on Change

France: Rescue procedures in insolvency

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France

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 22 March, 2023

Native name:

Sauvegarde des entreprises , Code Du Commerce

English name:

Companies' rescues law, Commercial Code

Article

LOI n° 2005-845 du 26 juillet 2005 de sauvegarde des entreprises: whole legislation; Code du commerce, article L. 611-3 (ad-hoc procedure); article L. 611-4 (procédure de conciliation); article L. 620-1 (procédure de sauvegarde); article L. 631-1 (redressement judiciaire)

Description

There are 4 possible paths that can be followed if a company is in financial difficulty: mandat ad-hoc, sauvegarde, conciliation and redressement judiciaire. The choice depends on the financial situation the company is facing.

Procedure de mandat ad-hoc (ad-hoc procedure): This is open to companies where there are some financial difficulties but still fully operational. The court appoints a legal representative who assists the company's CEO but does not take its place. The procedure can be stopped at any moment if the company thinks the procedure reached its goal.

Sauvegarde (safeguard): This is open to companies approaching a situation where they will have to stop payments. The safeguard procedure can be triggered by the CEO upon reaching the first serious set of difficulties. Unlike conciliation, it is a real judicial procedure that is publicised: the opening judgement is mentioned in the commercial register or in the trades directory and published in the Official Bulletin of Civil and Commercial Announcements (Bodacc) and in a legal notice journal. It lasts 6 months at the maximum. Once there is a plan in place, the tribunal can stop the safeguard procedure and ask the company to enact the plan. The plan might entail the closure or sale of certain activities. The duration of the plan cannot exceed a 10 years' timeline. Moreover, if the company has more than 150 workers and/or a total turnover of more than €20 million, creditors are represented by two committees: one which represents the credit institutes and one that represents the suppliers.

Conciliation: If a company is in a situation where payments have stopped for less than 45 days, the tribunal can start a conciliation procedure upon request of the CEO. The company has to present a full report on its credits and debts, its securities and obligations, its annual reports for the past 3 years, a presentation of the financial situation highlighting difficulties and financial support needs. The company must also present a document containing reflections and an initial assessment on the situation and a way forward to improve the situation. The conciliation procedure aims at reaching a friendly agreement between the company and its creditors. The tribunal can proceed with a 'simple order' to stamp the agreement and its details are kept confidential by the parties. Otherwise an 'approval' procedure can be enacted by the tribunal and in this case the case is made public (with the aim of offering more guaranties to the creditors).

Insolvency procedure (redressement judiciaire): this is the final step that can be taken to rescue a company. It includes cases where the criteria for the previous steps are not applicable and the company has stopped its payments for longer than 45 days. Under the law, the call for a 'redressement judiciaire' can be done by the company or by a creditor. In this case the tribunal announces the opening of reorganisation and liquidation. Then, the CEO is assisted by a legal representative whose mandate is to make sure that creditors' demands are satisfied. The court may also appoint a judicial administrator (required if the company has more than 20 employees and more than €3 million of revenues), whose mission is to assist the CEO for some or all acts of management. The procedure can last for a maximum of 18 months after which there are two possible solutions: repay the debts and implement a continuation of activities plan; or, if debt cannot be repaid, an external buyer can be sought or liquidation of assets can be implemented.

Comments

From July 2018 to June 2019, 970 safeguard procedures were opened.

Safeguard procedures opened per year (as of March 2019, latest AGS report):

Year	Procedures opened
2018	1,042
2017	1,192
2016	1,302
2015	1,553
2014	1,669
2013	1,678

Cost covered by

Employer

Involved actors other than national government

Other










Involvement others

Courts, creditors

Thresholds

No, applicable in all circumstances

Sources

-  Loi n° 2005-845 du 26 juillet 2005 de sauvegarde des entreprises
-  Code du commerce, procédure de mandat ad-hoc
-  Code du commerce, procédure de conciliation
-  Code du commerce, procédure de sauvegarde
-  Code du commerce, procédure de redressement judiciaire
-  Statistiques sauvegarde
-  AGS, rapport d'activité 2016
-  QUATRE-MESURES-POUR-SAUVER-VOTRE-ENTREPRISE
-  AGS (2019) Rapport Annuel 2018/2019

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