



OVERVIEW OF RESTRUCTURING AND INSOLVENCY REGIMES

(United States, United Kingdom, Luxembourg, Germany and France)

The chart below is intended as an overview of the restructuring and insolvency regimes of five primary locations where debtors (other than financial institutions that are subject to specific legislation) may seek court protection to manage their debt obligations. Debtors and creditors alike may seek to develop a defensive strategy to manage the bankruptcy case where no single jurisdiction can provide a complete resolution for a multinational enterprise.

The following overview has been compiled for convenience only. It addresses general themes and is not intended to be a comprehensive review of any particular regime or of the risks or other considerations relating to restructuring and insolvency in the jurisdictions outlined. This overview is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. [IRS Circular 230 disclosure](#): To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed here in: [Click Here for More Information](#)

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TABLE OF CONTENTS

1. Key Points:
2. Debtor Friendly Features:
3. Creditor Friendly Features:
4. Who Can File in this Jurisdiction?
5. What Types of Proceeding can be Initiated?
6. When Must a Debtor File for Protection?
7. When May a Debtor File for Protection?
8. When May a Creditor File an Involuntary Proceeding Against a Debtor?
9. What is the Process for Exit?
10. Recognition of Foreign Proceedings:
11. Directors Duties and Liabilities:
12. Availability of “Pre-Pack”:
13. Contacts for more Information:

	UNITED STATES	UNITED KINGDOM	LUXEMBOURG	GERMANY	FRANCE
KEY POINTS:	<ul style="list-style-type: none"> • Well tested. • 3 Primary processes available to business enterprises: • <i>Chapter 7</i> Liquidation; • <i>Chapter 11</i> Reorganization; or • <i>Chapter 15</i> Ancillary Proceeding to a Foreign Main Proceeding • “Worldwide” protection • Non-US debtors with assets in the US may file for protection • Commencing proceedings is efficient – debtor files petition and “order for relief” automatically entered • Mature market for “debtor-in possession” financing • Process can be lengthy and costly • No mandatory filing deadlines 	<ul style="list-style-type: none"> • Well tested • 6 primary processes available to business enterprises: • <i>Administration</i>; • <i>Receivership (including Administrative Receivership)</i>; • <i>Liquidation</i>; • <i>Scheme of Arrangement</i>; • <i>Company Voluntary Arrangement (CVA) and:</i> • <i>Ancillary proceeding to foreign proceeding under Cross-Border Insolvency Regulation 2006</i> • <i>Administration</i> can be combined with a <i>Scheme of Arrangement</i> or <i>CVA</i> to achieve a restructuring • In an <i>Administration</i> the Administrator owes duties to both secured and unsecured creditors. • Secured creditors may not immediately realize all their security • No mandatory filing upon insolvency but directors may incur personal liability for wrongful trading in the period leading up to the debtor going into insolvent liquidation (as determined on a balance sheet basis) 	<ul style="list-style-type: none"> • Relatively untested in practice • 3 primary processes available to business enterprises: • Bankruptcy (<i>faillite</i>); • Controlled management (<i>gestion contrôlée</i>); • or Composition with creditors (<i>concordat préventif de faillite</i>) • Generous adoption of EU Financial Collateral Directive through the Financial Collateral Act 2005 (the “Collateral Act”), enabling qualifying financial collateral (e.g., financial instruments, receivables, cash) to be enforced outside the bankruptcy case • Mandatory filing within one month of suspension of payments (<i>cessation des paiements</i>) 	<ul style="list-style-type: none"> • <i>Liquidation</i> (involving the sale of the debtor’s business) well tested. • <i>Reorganization by Insolvency Plan</i> relatively untested • 2 primary processes available within a single insolvency procedure: • <i>Liquidation</i>; or • <i>Reorganization by Insolvency Plan</i> • Usually, the debtor is “restructured” in the course of the <i>Liquidation</i> procedure by way of a sale of the debtor’s business (or part of it) to a third party (i.e., by way of an asset deal, the “restructuring by transfer” – <i>übertragende Sanierung</i>). • “Insolvency Money” (<i>Insolvenzgeld</i>): payment by the Federal Employment office of wages and salaries of employees for a period of up to 3 months prior to the opening of formal insolvency proceedings, will improve the liquidity situation of the insolvent debtor, thereby helping to safeguard the continuation of the business • Mandatory filing within 3 weeks of insolvency; breach of filing obligations triggers civil and criminal law liability of directors 	<ul style="list-style-type: none"> • Relatively well tested since the safeguard law in 2005. • A recent reform implemented on February 15, 2009 improved rules for creditors’ committees • 5 primary processes available to business enterprises: • <i>Mandat ad hoc</i>; • <i>Conciliation</i>; • <i>Safeguard</i>; • <i>Reorganisation</i>; or • <i>Liquidation</i> • <i>Mandat ad hoc</i> and <i>Conciliation</i> are confidential (except if the parties decide to have the agreement approved by the court in the final stage of conciliation - <i>Homologation</i>) • Mandatory filing • (i) Within 45 days of insolvency (<i>cessation des paiements</i>) for <i>Reorganisation</i> or <i>Liquidation</i>, or • (ii) Before insolvency (<i>cessation des paiements</i>) for <i>Safeguard</i> proceedings

<p>DEBTOR FRIENDLY FEATURES:</p>	<ul style="list-style-type: none"> • Section 362 of the US bankruptcy code provides for an “automatic stay” which requires all creditors to cease collection attempts and purports to stay enforcement of all obligations against the debtor worldwide • In <i>Chapter 11</i>, ordinary course business remains with management • Debtor has exclusive right to file <i>Chapter 11</i> plan during first 120-days, and exclusive right to solicit votes in favor of a plan for first 180-days. These exclusivity periods can be extended by the court to 18 months to file a plan, and 20 months to solicit votes 	<ul style="list-style-type: none"> • During <i>Administration</i>, “moratorium” arises automatically and continues for duration of case. • During period of moratorium, unless leave of court obtained, security cannot be enforced and goods held under hire purchase, conditional sale, chattel leasing and retention of title agreements may not be repossessed. • Landlords cannot forfeit leases and all legal processes against the debtor are stayed • An optional moratorium is also available for small companies in a CVA • In <i>Liquidation</i>, the Liquidator can disclaim onerous contract 	<ul style="list-style-type: none"> • Not particularly debtor-friendly as frequently insolvency results in liquidation • (But results may be more favorable to debtors that are financial institutions subject to specific legislation) • Opening insolvency proceedings does not terminate non-personal (<i>intuitu personae</i>) contracts. • While contract termination clauses are generally considered valid, in <i>faillite</i> proceedings, the <i>curateur</i> also has the power to disclaim onerous executory contracts that could result in liability of the debtor (“cherry picking”). • One exception to these rules is that upon court decision pronouncing the <i>faillite</i>, employment contracts terminate by operation of law 	<ul style="list-style-type: none"> • After filing for insolvency, the court may order preservation measures that apply during the preliminary insolvency proceedings and usually include a stay of enforcement. • Upon opening of main insolvency proceedings, any enforcement by insolvency creditors is prohibited • Under certain conditions the court can order that the debtor may continue to manage the insolvency estate (“Self- Administration” – (<i>Eigenverwaltung</i>) subject to supervision of a custodian (<i>Sachwalter</i>)). • Generally, the court will order self- administration upon request made by a resolution of creditors at the creditors’ meeting • Debtor may submit an insolvency plan (i.e., a plan to restructure the business) to the court in conjunction with its initial petition for commencement of the insolvency proceedings 	<ul style="list-style-type: none"> • Ordinary course business • Debtor has exclusive right to file for the opening of <i>Safeguard</i> proceedings and may do so prior to actually being insolvent • In <i>Safeguard</i> proceedings, ordinary course business remains with management • Automatic stay • In <i>Safeguard</i>, <i>Reorganisation</i> and <i>Liquidation</i> proceedings, an automatic stay is imposed on payment of debts, all pre-filing legal actions for the payment of debt, enforcement of security interests and termination of contracts by reason of default thereunder • The automatic stay applies during (i) the observation period (maximum duration of 18 months) for <i>Safeguard</i> and <i>Reorganisation</i> proceedings, and (ii) the liquidation process in <i>Liquidation</i> proceedings • Safeguard and Reorganisation plans • Creditors are consulted on the proposed plan individually or through creditors’ committees • If creditors refuse the proposed plan, the Court can impose a rescheduling of payment of liabilities over a maximum period of 10 years • The decision of a 2/3 majority of the creditors committee will be imposed on the minority
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<p>CREDITOR FRIENDLY FEATURES:</p>	<ul style="list-style-type: none"> • Official creditors committee has statutory standing in the case to be heard and is typically involved in negotiating the plan • Professional fees of official committees are paid by the debtor • Court provides protection of value of collateral of secured creditors claims as of the filing date (e.g., “adequate protection”) • In <i>Chapter 7</i>, trustee takes over control of debtor from management 	<ul style="list-style-type: none"> • In <i>Administration</i>, the secured creditor can choose the Administrator who, on appointment, will take over the management of the debtor • A creditors’ committee may be formed to assist administrator with his functions and with which administrator may consult • Moratorium does not affect the substantive rights of the secured creditors except to delay right to enforce • Mandatory set-off will apply in <i>Liquidation</i> and also in <i>Administration</i> if the Administrator gives notice of intention to make a distribution. • Contractual right of set-off can still be used in <i>Administration</i> until such notice is given • Financial collateral obligations and the delivery of financial collateral (e.g., shares/cash) are enforceable in both <i>Liquidation</i> and <i>Administration</i> • During <i>Liquidation</i>, secured creditors may enforce security 	<ul style="list-style-type: none"> • Seller may enforce retention of title in the event of the purchaser’s bankruptcy (but not necessarily in controlled management proceedings (<i>gestion contrôlée</i>)) • In general, bankruptcy proceedings do not preclude the security holder guarantees (but corporate benefit issues may arise for upstream guarantees) • Bankruptcy proceedings or hardening periods do not preclude enforcement of security over financial collateral (e.g., financial instruments, cash) • Set-off possible, if permitted by law applicable to debtor's claim • Bonds become due upon insolvency of the issuer by operation of law 	<ul style="list-style-type: none"> • Secured creditors may be entitled to “separation” if title was transferred by way of “true sale” or may have a preferred right to satisfaction in the case of security rights such as pledges • Creditors can have significant influence over the course of proceedings. • At the first creditors’ meeting, creditors may elect a different insolvency administrator or revise the court decision whether the debtor’s business should be operated by the insolvency administrator or by the debtor • Creditors may initiate the preparation of an insolvency plan by an Administrator that provides for reorganization of the debtor 	<ul style="list-style-type: none"> • Creditors may be appointed as controllers to assist the creditors’ representative in his mission and to act under certain circumstances • The Court cannot impose any debt cram down or any debt to equity swap on the creditors. • All provisions for such restructuring of liabilities (except for rescheduling of payments) must be agreed by creditors individually or through creditors’ committees • In the framework of creditors’ committees, the restructuring plan may allow creditors to be treated differently if such differentiated treatment is justified by their differing situations • The Court must take into account the implications of the opening of a proceeding on Creditors’ interests • E.g. the Court of Appeal of Paris, by judgment dated February 25th, 2010, cancelled the “Coeur Défense” <i>Safeguard</i> opening judgment of the debtor because it determined that the difficulties were not serious enough in comparison to the sacrifice imposed on the creditors
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<p>WHO CAN FILE IN THIS JURISDICTION</p> <p><i>(General note: courts will be wary of taking jurisdiction over foreign debtors for matters involving debts owed to foreign creditors)</i></p>	<ul style="list-style-type: none"> • Companies organized in US • Companies with assets located in US (e.g., can file to protect a non-US company if the non-US company has assets located in US) 	<ul style="list-style-type: none"> • Companies with their registered office in the UK • Companies organized in other jurisdictions, if it can be established either that the company’s center of main interests (“COMI”) is in the UK or that it has sufficient connection with the UK such that its operations should be wound up in the UK • Companies incorporated in an EEA State other than the UK can be placed in Administration irrespective of whether their COMI is located in the UK • If COMI of debtor is located in another EU member state other than Denmark, secondary (winding up) proceedings can be commenced in the UK under the EC Insolvency Regulation 2000 if the debtor has an establishment and assets in the UK 	<ul style="list-style-type: none"> • Companies with registered offices in Luxembourg • Companies organized in other jurisdictions, if the company can establish that its COMI is in Luxembourg • If COMI of debtor is located in another EU member state other than Denmark, secondary proceedings can be commenced in Luxembourg under the EC Insolvency Regulation 2000 if the debtor has an establishment and assets in Luxembourg 	<ul style="list-style-type: none"> • Companies with registered office/seat in Germany unless their COMI is abroad • Companies organized in other jurisdictions, if the company can establish that its COMI is in Germany • If COMI of debtor is abroad, a secondary proceeding can be commenced in Germany • (i) If the COMI is in a member state of the EU other than Denmark and the debtor has a branch within Germany or • (ii) If the COMI is elsewhere and the debtor has a branch or assets within Germany 	<ul style="list-style-type: none"> • Companies organized in France • Companies organized in other EU jurisdictions, if the company can establish that its COMI is in France • If COMI of debtor is abroad, a secondary proceeding can be commenced in France if the debtor has a branch within France
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<p>WHAT TYPES OF PROCEEDING CAN BE INITIATED?</p>	<ul style="list-style-type: none"> • Chapter 11 (Reorganization) – restructuring procedure during which management operates the debtor’s business (unless a third- party trustee is appointed for cause) • Objective of <i>Chapter 11</i> is approval of a reorganization plan which may provide for, among other things, a deleveraging of the company and the continuation of the business as a going concern or the sale of all or substantially all of the company’s assets • Subject to certain exceptions, the plan must be approved by the vote of two-thirds in dollar amount and a majority in number of those voting in each class of impaired creditors • Chapter 7 (Liquidation) – terminal procedure for the winding up of the debtor’s business. • The court appoints a trustee to liquidate the debtor’s assets in satisfaction of creditors claims • Chapter 15 (Ancillary proceeding to foreign main proceeding) – proceeding in which US insolvency court looks to procedure of a foreign “main” jurisdiction with respect to power over assets, control of debtor and role of creditors 	<ul style="list-style-type: none"> • Administration – Out-of-court or court-based procedure with the primary objective of rescuing the debtor as going concern, or of otherwise achieving a better result than <i>Liquidation</i> or realizing property in order to make a distribution to secured or preferential creditors • Receivership – out-of-court enforcement procedure allowing secured creditors to place assets subject to security with an appointed receiver, to be disposed of in accordance with security documents. In the context of restructuring, may be seen where enforcing share security • Voluntary or Compulsory Liquidation – terminal procedures for the winding up of the debtor’s business • Scheme of Arrangement – procedure enabling debtor to agree to a compromise or arrangement with creditors or shareholders. May form part of a corporate reorganization or rescheduling of debt. • Requires an initial court order for a meeting of creditors to be convened and, once scheme approved in creditors’ meetings, requires a further court order to sanction it • Company Voluntary Arrangement (CVA) <i>Similar to Scheme</i> but no court involvement. Optional moratorium available for small companies. Binds all creditors entitled to vote but cannot affect the rights of secured creditors without consent • Cross-Border Insolvency Regulations 2006 - UK equivalent to Chapter 15. UK courts provide relief and assistance to foreign representatives of main and non-main proceedings opened in other jurisdictions 	<ul style="list-style-type: none"> • Bankruptcy (<i>faillite</i>) – Terminal procedure for winding up of debtor’s business. • Debtor that (a) is unable to obtain credit (<i>ébranlement du crédit</i>) and (b) has ceased payments and is unable to meet its commitments (<i>cessation des paiements</i>) may be placed into bankruptcy proceedings either by management, a creditor, or by motion made directly by the court. • Once the court has accepted evidence of bankruptcy, a receiver (<i>curateur</i>) and a judge (<i>juge-commissaire</i>) will be appointed to supervise the proceedings. The <i>curateur</i> will be charged with realizing the assets of the debtor to the largest extent possible • Generally, secured creditors (pledgees or mortgagees) with some form of ‘dispossession’ retain ability to enforce their rights while the debtor is in bankruptcy (<i>faillite</i>), and under the Collateral Act, secured creditors holding qualifying collateral may enforce their security interests without court approval. • Claims of unsecured creditors or of secured creditors without some form of ‘dispossession’, however, are stayed during the bankruptcy (<i>faillite</i>) proceeding. The <i>curateur</i> may terminate enforcement proceedings commenced for certain types of security with court approval. • Such assets can then be sold and proceeds applied to satisfy the claims of those creditors benefiting from the security in priority of the common pledge of creditors (<i>masse des créanciers</i>) under Luxembourg statutory rules 	<ul style="list-style-type: none"> • Insolvency proceedings – Two options are available to business enterprises, determined by way of a single proceeding: <ul style="list-style-type: none"> • <i>Liquidation</i>; or • <i>Reorganization by Insolvency Plan</i>. Insolvency Plans have rarely been used • Upon filing an insolvency petition, the court opens a preliminary insolvency proceeding in which the court appoints a preliminary administrator to produce an expert assessment of the insolvent business. • Typically, the debtor’s representatives remain in control during preliminary proceedings, however, subject to the control of a “weak Preliminary Administrator” (with consent rights regarding the sale/disposal of the debtor’s assets). • Rarely, the court appoints a “strong Preliminary Administrator” which replaces the debtor and controls the business during the preliminary proceeding • There is no mandatory duration of the preliminary insolvency proceedings. • However, in practice, preliminary insolvency period usually lasts three months because the Federal Employment Office will pay wages and salaries of employees for up to three months before the opening of formal insolvency proceedings (“<i>Insolvenzgeld</i>”) 	<ul style="list-style-type: none"> • Out-of-court restructuring (pre-insolvency) – confidential out-of-court restructuring procedure to facilitate negotiation between debtor and participating creditors. • Debtor requests appointment of an ad hoc receiver to help management carry out a defined goal (“<i>mandataire ad hoc</i>”) or to negotiate a solution with creditors (“<i>conciliateur</i>”). • Receiver’s decisions have no legal or administrative force to bind the parties unless parties agree to be contractually bound; there is no ability to “cram-down” non-participating or non-consenting creditors. • Receiver may stay proceedings and payments, waive debts, and restructure the debtor. <i>Conciliateur’s</i> term is five months • Safeguard proceedings – <i>Safeguard</i> proceedings are dedicated first to protect the business, second to protect employees’ jobs and lastly to preserve creditors’ interests. • Court-supervised procedure with the objective of restructuring debtor’s affairs. Management of a solvent debtor may commence proceedings for an initial six months observation period (renewable up to 18 months).
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<p>WHAT TYPES OF PROCEEDING CAN BE INITIATED?</p>			<ul style="list-style-type: none"> • Controlled Management (<i>gestion contrôlée</i>) – objective is to agree on a rehabilitation of the debtor with participating creditors, introduced by court order by petition of the debtor only. • Debtor must show that it is no longer creditworthy or is having difficulties meeting its commitments. Creditors may appeal the court decision to put the company in <i>gestion contrôlée</i> • A court-appointed administrator (<i>commissaire</i>) will supervise the management of the debtor and draft a reorganization plan or plan for distribution of assets (which must be approved by a majority in number and in sum of the participating creditors, and be approved by the court) following which the debtor regains control over its affairs. • Creditors that do not participate in the proceedings remain subject to the agreed reorganization plan and may not pursue their claims individually. • Claims of general secured and unsecured creditors are stayed during the proceeding. • Under the Collateral Act, secured creditors holding qualifying collateral may enforce their security during <i>gestion contrôlée</i> without court approval 	<ul style="list-style-type: none"> • Based on the Preliminary Administrator’s findings, the creditors’ meeting(s) whether the debtor’s business will be closed down or (temporarily) continued and whether the company will go into <i>Liquidation</i> or <i>Reorganization by Insolvency Plan</i> • Once formal proceedings are opened an insolvency administrator will take possession of, and administer all assets that constitute, the insolvency estate, unless the court has ordered self-administration, which takes place very rarely • An insolvency plan must divide creditors into groups: secured creditors (if the plan will affect their rights), general unsecured creditors, subordinated creditors (if their claims will not be deemed waived), and employees. • Other groups are optional. Generally, the plan must be approved by a majority of the groups of creditors, each voting as a class. The insolvency court may “cram-down” creditor groups under certain conditions 	<ul style="list-style-type: none"> • During this observation period, a court-appointed Administrator will supervise the debtor’s affairs and will seek to negotiate a plan that could include the rescheduling or waiver of debts with creditors and suppliers, via three separate committees (<i>i.e.</i>, financial lenders, suppliers and bondholders). • The plan must be approved in each creditor committee by the vote of two-thirds of the amount of claims held by the creditors who voted • Reorganisation proceedings – upon mandatory insolvency filing the court commences a six-month observation period (renewable up to 18 months) to determine whether the debtor will continue as a going concern. • During this observation period, a court-appointed Administrator will review the debtor’s affairs and make recommendations for the Reorganisation of the business. • At conclusion of the observation period, the court will order the continuation or sale of the debtor’s business, or its liquidation, as appropriate
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WHAT TYPES OF PROCEEDING CAN BE INITIATED?			<ul style="list-style-type: none">• Composition with creditors (<i>concordat préventif de faillite</i>)- a rarely-used court-supervised procedure enabling orderly negotiation between debtor and its creditors on petition of debtor, provided that debtor is acting in good faith and has not suspended payments.• A judge appointed by the court examines the status of the <i>composition</i> proceedings every three months.• Claims of general secured and unsecured creditors are stayed during the procedure.• Under the Collateral Act, secured creditors holding qualifying collateral may enforce their security during the <i>composition</i> procedure without court approval.• Secured creditors are not required to participate, and often do not because they would be required to abandon their security. Unlike in <i>gestion contrôlée</i>, creditors that do not participate in the <i>composition</i> proceedings are not subject to the agreed reorganization plan and may pursue their claims individually		
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WHEN <u>MUST</u> A DEBTOR FILE FOR PROTECTION?	<ul style="list-style-type: none"> No statutory requirements 	<ul style="list-style-type: none"> No statutory obligation to file but directors at risk of being found personally liable for debtor's debts if the debtor continues to trade when no reasonable prospect of debtor avoiding insolvent <i>Liquidation</i> 	<ul style="list-style-type: none"> The directors of a debtor are obliged to file for bankruptcy (<i>faillite</i>) within <u>one month</u> from the date the debtor is unable to pay its debts as they fall due (<i>cessation des paiements</i>) 	<ul style="list-style-type: none"> A debtor is obliged to file without undue delay, but in any event within <u>21 days</u> from the date of "illiquidity" or "over-indebtedness" <p>(Under German law, <i>illiquidity</i> arises when the debtor has a continuing inability to pay its debts when they fall due. <i>Over-indebtedness</i> arises if the value of the debtor's assets is less than the aggregate amount of its liabilities. The definition of over-indebtedness was amended in October 2008 (with effect until 1 January 2011) such that a company is not considered over-indebted if it has a "positive continuation prognosis." After 31 December 2010 a positive continuation prognosis merely will permit the over-indebtedness balance sheet to be calculated using going-concern values instead of liquidation values.)</p>	<ul style="list-style-type: none"> A debtor is obliged to file an application to commence <i>Reorganisation</i> or <i>Liquidation</i> proceedings within <u>45 days</u> from the date it is unable to satisfy its due obligations from liquid assets (<i>cessation des paiements</i>)
WHEN <u>MAY</u> A DEBTOR FILE FOR PROTECTION?	<ul style="list-style-type: none"> No statutory limitations, a debtor may file at any time if there is a need for reorganization 	<ul style="list-style-type: none"> A debtor may make an application to appoint an Administrator if the debtor is or is likely to become cash flow or balance sheet insolvent. It can seek to place itself in voluntary or compulsory <i>Liquidation</i> where it is or is likely to become cash flow or balance sheet insolvent or is deemed to be unable to pay its debts 	<ul style="list-style-type: none"> The directors of a debtor may file for bankruptcy (<i>faillite</i>); controlled management (<i>gestion contrôlée</i>); Or composition with creditors (<i>concordat préventif de faillite</i>) when the debtor is no longer creditworthy or is having difficulties meeting its commitments 	<ul style="list-style-type: none"> A debtor may file if it is likely that it will become unable to meet its payment obligations as they fall due ("<i>imminent illiquidity</i>") 	<ul style="list-style-type: none"> A debtor may file to commence a <i>Safeguard</i> proceeding, or seek appointment of a <i>mandataire ad hoc</i> or <i>conciliateur</i> if it is in legal, economic or financial difficulty but is not yet insolvent under the <i>cessation des paiements</i> test
WHEN <u>MAY</u> A CREDITOR FILE AN INVOLUNTARY PROCEEDING AGAINST A DEBTOR?	<ul style="list-style-type: none"> If the company has more than 12 creditors, 3 or more creditors acting together (if the company has less than 12 creditors, 1 creditor) may initiate an involuntary <i>Chapter 11</i> or <i>Chapter 7</i> case if: <ul style="list-style-type: none"> (i) Each creditor holds a claim not contingent as to liability or subject to a bona fide dispute, and (ii) Such claims aggregate to at least USD 13,475 more than the value of any lien on property securing such claims 	<ul style="list-style-type: none"> Any creditor may initiate involuntary proceedings by <ul style="list-style-type: none"> (i) Seeking appointment of an Administrator through court process or out-of-court process if the debtor is or is likely to become unable to pay its debts and the purpose of the administration is likely to be achieved; or (ii) Petitioning the court to wind up the debtor if the debtor is unable to pay its debts 	<ul style="list-style-type: none"> Any unpaid creditor may request initiation of involuntary bankruptcy (<i>faillite</i>) proceedings by <ul style="list-style-type: none"> (i) Summoning the debtor before the commercial court, (ii) Providing proof that the debtor <ul style="list-style-type: none"> (a) Is unable to obtain credit (<i>ébranlement du crédit</i>) and (b) Has ceased payments and is unable to meet its commitments (<i>cessation des paiements</i>) Creditors cannot initiate an involuntary reorganization (controlled management) of the debtor 	<ul style="list-style-type: none"> Any creditor may initiate involuntary insolvency proceedings by request filed with the court upon producing <i>prima facie</i> evidence of either <ul style="list-style-type: none"> (i) The debtor's "<i>illiquidity</i>", or (ii) The debtor's "<i>over-indebtedness</i>" (see footnote 1). The court will then hear the debtor prior to opening insolvency proceedings but may order preservation measures and appoint a preliminary insolvency administrator before hearing the debtor 	<ul style="list-style-type: none"> Any unpaid creditor may file a petition for <i>Reorganisation</i> or <i>Liquidation</i> if it can show that: <ul style="list-style-type: none"> (i) It has already attempted to obtain payment of its overdue debt, (ii) Debtor is insolvent under the <i>cessation des paiements</i> test, and (iii) Either the debtor has ceased business or recovery is impossible No creditor may request <i>Out-of-court restructuring</i>, or the commencement of <i>Safeguard</i> proceedings

<p>WHAT IS THE PROCESS FOR EXIT?</p>	<ul style="list-style-type: none"> • Chapter 11 proceeding is terminated upon confirmation (or approval) of the Chapter 11 reorganization plan • Debtor may request dismissal of proceedings at any time with no adverse consequences by motion to court on not less than 20 days advance notice to creditors 	<ul style="list-style-type: none"> • Administration – 1 year duration unless extended. Several exit procedures: Administrator can apply to court to end <i>Administration</i> if (<ul style="list-style-type: none"> • 1) In the Administrator’s opinion: <ul style="list-style-type: none"> • (a) The purpose has been sufficiently achieved; • (b) The purpose cannot be achieved; • (c) The debtor should not have entered <i>Administration</i>; or • (d) A Liquidator should be appointed; or • (2) If required to do so by creditors’ meeting • Liquidation – following final meeting of creditors, debtor is automatically dissolved 3 months later • Scheme of Arrangement- once implementation of <i>Scheme</i> is completed, debtor reverts to its former status • CVA – if terms of CVA successfully completed, debtor returns to its former status. If CVA fails, debtor may enter another process (e.g., <i>Liquidation</i>) 	<ul style="list-style-type: none"> • Debtor may apply for termination of bankruptcy (<i>faillite</i>); • Controlled management (<i>gestion contrôlée</i>); or • Composition with creditors (<i>concordat préventif de faillite</i>) proceedings when debtor can show that payments it was bound to make have been made. • Application for termination is filed with the court together with evidence of payments • The court will declare the bankruptcy (<i>faillite</i>) closed when all claims have been verified, assets been realized and distributions have been made, and the debtor will be ordered liquidated and dissolved 	<ul style="list-style-type: none"> • Debtor may request dismissal of the opened proceedings at any time upon demonstration to the satisfaction of the court that it is no longer insolvent • Debtor may also request dismissal of proceedings if it obtains the agreement of all creditors who filed claims in the proceeding • The court will terminate the insolvency proceeding as soon as the insolvency plan has become non-appealable 	<ul style="list-style-type: none"> • <i>Safeguard</i> proceedings are terminated upon: <ul style="list-style-type: none"> • (i) The adoption of the safeguard plan by the court or • (ii) The conversion of the <i>Safeguard</i> proceedings into <i>Reorganisation</i> or <i>Liquidation</i> proceedings • <i>Best case</i> – exit in 3-4 months • <i>Reorganisation</i> proceedings are terminated upon <ul style="list-style-type: none"> • (i) The adoption of the <i>Reorganisation</i> plan by the court or • (ii) The adoption of a sale of assets plan (<i>Plan de cession</i>) whereby assets are sold to a third party or • (iii) The conversion of the <i>Reorganisation</i> proceedings into <i>Liquidation</i> proceedings
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<p>RECOGNITION OF FOREIGN PROCEEDINGS (GENERALLY):</p> <p>These rules are in addition to applicable common law principles of comity and legal reciprocity, which may call for recognition of the validity and effect of executive, legislative, and judicial acts of foreign countries.</p>	<ul style="list-style-type: none"> • Debtor can make <i>Chapter 15</i> filing for recognition of a foreign “main” proceeding • Court will decide on case approx. 30 days from filing, and if accepted “automatic stay” protection begins from date of decision 	<ul style="list-style-type: none"> • English insolvency court would recognize foreign proceedings to the extent required under EC Insolvency Regulation 2000 or Cross-Border Insolvency Regulations 2006 (which implement the UNCITRAL Model Law) • There is automatic recognition without any formalities by all EU member states (other than Denmark) of proceedings opened by an EU member state under EC Insolvency Regulation 2000 • The effect of recognition under Cross-Border Insolvency Regulations 2006 would be that an English court would grant assistance and relief such as staying commencement / continuation of actions against the debtor in the UK, or entrusting disposition of debtor’s assets located in UK to the relevant foreign representative. • (In addition, S 426 Insolvency Act 1986 provides an alternative means of assistance and relief between the UK and designated jurisdictions (mainly Commonwealth countries)) 	<ul style="list-style-type: none"> • Luxembourg has not officially adopted any cross-border insolvency protocols, however, based on the principle of “universality” foreign proceedings are automatically recognized in Luxembourg without the need to file with a court for recognition through an <i>exequatur</i> judgment (unless enforcement measures are sought in Luxembourg, in which case a <i>exequatur</i> judgment would be required) • Within the EU, jurisdiction to open insolvency proceedings depends on the COMI of the debtor in accordance with the EU Insolvency Regulation, in force since 31 May 2002 	<ul style="list-style-type: none"> • Foreign proceedings opened by a court of an EU member state are automatically recognized in Germany to the extent required under the EC Regulation on Insolvency Proceedings • Proceedings opened in countries outside the EU are automatically recognized in Germany unless: <ul style="list-style-type: none"> • (1) The courts of the state where proceedings were initiated do not have jurisdiction in accordance with German law or • (2) Where recognition leads to a result which is manifestly incompatible with major principles of German law, in particular where incompatible with basic rights of creditors 	<ul style="list-style-type: none"> • French insolvency court would recognize foreign proceedings to the extent required under the EU Regulation on Insolvency Proceedings • Proceedings in countries outside of the EU have limited effect in France unless foreign proceeding is officially recognized through an <i>exequatur</i> judgment. • Upon an <i>exequatur</i> judgment, the foreign jurisdiction’s law and proceedings will be fully recognized and carried out in respect of assets located in France
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<p>DIRECTORS DUTIES AND LIABILITIES as debtor nears the point where it cannot pay its debts as they come due:</p> <p>(The so-called “zone of insolvency”)</p>	<ul style="list-style-type: none"> • Duty of directors shifts to include creditors in “zone of insolvency” • Failure to act in the interests of creditors would be a breach of duty, giving rise to civil claims against the directors individually • Debtor or Trustee in bankruptcy can bring claim on behalf of creditors 	<ul style="list-style-type: none"> • Duty of directors shifts to creditors in “zone of insolvency” • Failure to act in the interests of creditors would be a breach of duty, giving rise to civil claims against the directors individually • If found liable, directors can be disqualified from acting as directors or being involved in the promotion etc. of a business for a period of between 2 and 15 years • Administrator or Liquidator can bring claim on behalf of creditors • Directors also subject to potential criminal sanctions if they engage in particular activities, such as fraudulent trading 	<ul style="list-style-type: none"> • No shift of duties in “zone of insolvency” • As a general principle under Luxembourg law, a company is run with the sole perspective of its corporate interest (i.e., <i>objet social</i>). • Luxembourg law does not impose any fiduciary obligation on directors to consider creditors’ interests and the insolvency law is based on the principle of equal treatment of all constituencies of creditors (meaning no preferential consideration is given to the interests of any particular class of creditors (e.g., interests of bondholders are not preferred over shareholders)) • If directors fail to file for insolvency within one month of the suspension of payments, they could be held criminally and civilly liable 	<ul style="list-style-type: none"> • Generally, no shift of duties in “zone of insolvency” • Failure of the managing directors to file within three weeks of insolvency is punishable by imprisonment, and directors can be personally liable: • (1) For damages of the creditors resulting from a late filing, • (2) For all payments made by the company after it becomes insolvent (unless those have been made with the due care of a businessman taking into consideration the insolvency of the company), and • (3) For all payments to the company’s shareholders to the extent such payments caused the illiquidity of the company. • A managing director can be personally liable under civil and criminal law for withholding social security payments, wage tax and other taxes 	<ul style="list-style-type: none"> • No shift of duties in “zone of insolvency” • As a general principle under French law, a company is run with the sole perspective of its corporate interest (i.e., <i>objet social</i>). • French bankruptcy law does not impose any fiduciary obligation on directors to consider creditors’ interests
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<p>AVAILABILITY OF "PRE-PACK" <i>(I.e., sale of assets or going-concern planned before commencement of proceedings and sold shortly after filing):</i></p>	<ul style="list-style-type: none"> • Yes, well established history of debtor's seeking approval of "pre-pack" solutions. Court approval process generally takes 45-90 days 	<ul style="list-style-type: none"> • Yes, but Administrator or Receiver must be satisfied that proper value is being obtained • In an out-of court <i>Administration</i>, an Administrator can exercise his power to dispose of the business by way of a pre-pack sale without court approval 	<ul style="list-style-type: none"> • No official concept, though in theory a debtor could present a "pre-pack" for approval as part of controlled management (<i>gestion contrôlée</i>) or a composition (<i>concordat préventif de faillite</i>) filing. • If a debtor is nearing insolvency without the directors being required to declare bankruptcy under the <i>cessation des paiements</i> test, the parties (including the creditors) are free to restructure the debt 	<ul style="list-style-type: none"> • No official concept. An insolvency plan, which may provide for a reorganization of the debtor or the sale of the whole (or parts of) the business, can be proposed by the debtor upon filing for insolvency (or during the preliminary proceedings, or any time throughout the formal insolvency proceedings). • The sale of the debtor's business by way of an asset deal is often prepared in the course of the preliminary insolvency proceeding but will be executed and consummated after the opening of the formal insolvency proceeding only 	<ul style="list-style-type: none"> • No official concept but in <i>Safeguard</i>, a "pre-pack" has been recently implemented by a French commercial court. • Court approval process took 45 days
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