



February 2006

BRIEFING

# The new French insolvency law

An overview

## Summary

This briefing provides an overview of the key changes brought in by the new French insolvency law, which came into force on 1 January 2006.

The new French insolvency law took effect on 1 January 2006. The decision to overhaul the law came after figures published by the French ministry of justice showed that 89 per cent of the 44699 insolvency proceedings in 2003 ended up in liquidation (see [www.senat.fr/dossierleg/pjl04-235.html](http://www.senat.fr/dossierleg/pjl04-235.html)).

The key aims of the reform were to:

- promote voluntary arrangements between the debtor and the creditors;
- anticipate debtor difficulties by allowing it to ask the court to commence insolvency proceedings before the traditional insolvency test (*cessation des paiements* – basically a simple cash flow test, meaning the debtor company is no longer in a position to repay its debts with its available assets) is met;
- simplify proceedings; and
- reduce the length of proceedings (in 2003, the average length of French insolvency proceedings was about four years).

The Bill was passed by the French Parliament on 13 July 2005 and published in the Official Bulletin on 27 July 2005. It came into force on 1 January 2006. Regulatory application rules, which should be enacted by the government before the new law comes into force, are pending.

As of 1 January 2006, a debtor going through financial difficulties can:

- File a petition for the appointment of a *mandataire ad hoc* (ad hoc representative) provided it is not already insolvent according to the French insolvency

test of *cessation des paiements*. The task assigned to the receiver will be determined by the judge depending on the debtor's difficulties. The whole process is confidential.

- File a petition for *conciliation* proceedings (formerly voluntary arrangement), resulting in the appointment of a conciliator in charge of supervising and facilitating a rescheduling agreement. Creditors providing more capital to support the debtor's attempt to recover will be privileged in the event of subsequent insolvency or liquidation proceedings. The conciliation proceedings will be available to debtors having trouble or that have been insolvent for no longer than 45 days.
- Commence 'safeguard proceedings' (*procédure de sauvegarde*), provided the debtor does not meet the insolvency test. These proceedings, governed by the same rules as former reorganisation proceedings (including the suspension of any payment and actions against the debtor), will be triggered when a company experiences, among other things, financial difficulties but is still solvent.

In addition, two creditors' committees (one for main suppliers, one for credit institutions) will be set up for large companies (more than 150 employees or €20m in turnover) and should be consulted on the safeguard plan drafted by the debtor's management during the observation period, which may last up to a maximum of 12 months (except in rare cases where the attorney general may ask for another postponement).

- If the debtor is under *cessation des paiements*, it can commence reorganisation or liquidation proceedings depending on the likelihood of the company recovering. Also, liquidation proceedings for companies that do not own real estate property and do not exceed certain thresholds in terms of employees and turnover are expected to be finalised within one year of the judgment ordering the proceedings.

In addition, the reform of the French insolvency law amended some of the criminal sanctions applicable to directors and reduces the risk for a creditor to be considered as liable for wrongful support.

For further information please contact

Philippe Hameau  
T + 33 1 44 56 44 24  
E [philippe.hameau@freshfields.com](mailto:philippe.hameau@freshfields.com)

Sandy Shandro  
T + 44 20 7832 7156  
E [sandy.shandro@freshfields.com](mailto:sandy.shandro@freshfields.com)