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The Administration of Insolvent Companies in France (Part II)

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The Administration of Insolvent Companies in France (Part II)

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The Business Plan

Legal Scrutiny of the Plan

The court will consider the interests of all parties represented before it in a hearing held to receive the administrator's report before ordering either the *liquidation judiciaire* of the business or that the report be adopted as the foundations of a business plan.¹ The business plan will set out the organisation for continuing the business or selling a part or all of the business.² The sale of the business may include an arrangement for the lease of the business followed by an opportunity for the lessee to acquire the business.³

The order setting out the plan will nominate the persons whose task will be to carry out the terms of the plan and will mention the conditions they have agreed to and which will bind them in the execution of the plan.⁴ These conditions affect the survival of the business, the methods by which the activity of the business will be assured, plans for the settlement of business debts acquired before the redressement of the business as well as any guaranteed to which these persons will subscribe.⁵

The choice between a business plan and *liquidation judiciaire* rests firmly on there being a serious chance that the business will survive, whether it is to be continued or sold.⁶ The presence or absence of proof indicating this possibility is part of the necessary process of appreciating the chances of the business surviving.⁷ Where the plan indicates the necessity for redundancies to be made, the court is bound to hear representations from the works council or workers' representatives.⁸ Those redundancies to be made within a month of judgment being obtained must be noted. The administrator may advise these redundancies to the workforce by simple letter, subject to any statutory or contractual notice period.⁹

¹L Art 61 *al* 1.

²L Art 61 *al* 2.

³L Art 61 *al* 3. In French law, "location-gérance" or the lease-management of business is an acceptable method of farming out the management of the business to an entrepreneur in return for a regular income.

⁴L Art 62 *al* 1.

⁵L Art 62 *al* 2.

⁶CA Paris, 10 July 1987 and 19 April 1988 Bulletins 33, p9041 and 43, p8916.

⁷Cassation commerciale, 13 June 1989 Bull. Civ. IV No. 185.

⁸L Art 63 *al* 1.

⁹L Art 63 *al* 2.

The plan binds all parties involved in the process of *redressement judiciaire*, whether they choose to appeal or not against one or more of its provisions. Only co-guarantors and third parties providing securities are not affected, creditors being able to proceed directly against them.¹⁰ The maximum period for any plan, applying to a business in the ordinary way, is ten years.¹¹ This is an important advance made by the reforms in 1994 as previously the duration of the plan was entirely within the discretion of the court.

An administrator is appointed and given the necessary powers to implement the plan.¹² The creditors' representative is also involved in the plan inasmuch as during the initial phase, the establishment and declaration of creditors' debts will be made.¹³ A *commissaire* is also appointed by the court, whose function will be to oversee the implementation of the plan. The appointment of either the administrator or the creditors' representative to this position creates no conflict of duties.¹⁴

Part of the functions of the *commissaire* will be to take over and direct those suits instituted for the recovery of debts due to the business or establishing the rights of the business towards third parties, which were commenced by either the administrator or creditors' representative.¹⁵ In this context, he has access to all necessary information and business documents.¹⁶ Any modification to the plan may only be decided by the competent court,¹⁷ which will hear all interested parties as well as any evidence of a party failing to act for the benefit of the plan.¹⁸ Creditors affected by the proposed modifications must be given notice of the hearing.¹⁹ The only element of the plan not susceptible to change is the selling price for all or part of the business, a reform introduced by the Law of 1994, prior to which a variation in price was at the discretion of the court.²⁰

Continuing the Business

A court must be satisfied that a serious possibility exists for the re-establishment of the business and the settlement of debts if it is to agree a plan for the continuation of the business, based on the administrator's report.²¹

The court may, in its judgment confirming the plan, stipulate that certain assets of the business, deemed necessary for its continued functioning, be inalienable and that, during a certain period, the management may not

¹⁰L Art 64.

¹¹L Art 65 (inserted by the Law of 1994).

¹²L Art 66 *al* 1.

¹³L Art 66 *al* 2.

¹⁴L Art 67 *al* 1.

¹⁵L Art 67 *al* 2.

¹⁶L Art 67 *al* 3.

¹⁷L Art 68 *al* 1- *al* 2.

¹⁸D Art 94.

¹⁹D Art 95.

²⁰L Art 68 *al* 3.

²¹L Art 69 *al* 1.

dispose of these assets without prior leave of the court.²² The publication of the order of the court is deemed sufficient notice to third parties,²³ mention being made on the business registers.²⁴ If any disposition is made, it may be voidable at the instance of any interested party who acts within three years of the disposition being made.²⁵

Alteration to Company Statutes

The plan will include details of proposed modification to the statutes or articles of the business concerned.²⁶ The administrator is given the necessary powers to convene the appropriate decision making bodies in order to ratify the alterations to shares, capital and other rights in the business,²⁷ subject to the proper procedures being followed for the convening of these bodies.²⁸ Partners or shareholders in the business will be required to subscribe to any new capital issue within the time limits set by the order. If, concurrently, they are creditors of the company, they may apply a set-off against the debt owed them, subject to any instalment plan or delay in payment which has been agreed.²⁹

The Settlement of Debts

The court establishes the delays and reductions in liability agreed by the creditors and sets a target payment schedule. The schedule may include terms as to payment in excess of or less than agreed between debtor and creditor.³⁰ The total repayment period may exceed the duration of the plan, but the first payments may not be made more than a year after the beginning of the plan.³¹ This ensures that creditors do not lose interest in the plan and ensures the debtor is kept to the agreed payment schedule. In cases of leases taken out by the business with option to purchase, once payment is made of the agreed sum, the option to purchase may be exercised.³²

Creditors may opt for a shorter repayment period provided that the total sum payable includes a discount for early receipt. In this event, the payment schedule may not exceed the duration of the plan. The debt is only cleared after the payment of the last instalment is made. It is understood that if the debtor defaults, the creditor may seek repayment of the whole sum due.³³

Certain debts, however, may not be the subject of discounts or delays in payment. These include debts owed to persons by virtue of a contract of

²²L Art 70 *al* 1.

²³L Art 70 *al* 2.

²⁴D Art 87-1 (inserted by the Law of 1994).

²⁵L Art 70 *al* 3.

²⁶L Art 71.

²⁷L Art 72.

²⁸D Art 99.

²⁹L Art 73.

³⁰L Art 74 *al* 1.

³¹L Art 74 *al* 2 (amended by the Law of 1994).

³²L Art 74 *al* 3.

³³L Art 75.

employment.³⁴ Small debts of less than a thousand French Francs must also be settled without delay.³⁵

The fact that a debt appears on the list attached to the plan and has been the subject of negotiation with view to establishing a schedule of payments does not preclude any issue as to its validity.³⁶ Judgment debts in particular do not take effect until a formal decision is taken including these among the debts of the business.³⁷ A court may include judgment debts on a provisional basis.³⁸

The Sale of Particular Assets

In the event of the sale of an asset, on which a mortgage, lien or other legal charge exists, the creditor holding this security is paid out of the proceeds after any debts owed by reason of provisions of employment legislation.³⁹ Creditors of similar rank are paid in order of the establishment of their debts.⁴⁰ The proceeds of sale of part of an asset are placed at the disposal of the business, subject to any right enjoyed by a secured creditor.⁴¹

The Consequence of Failure

In the event that the debtor fails to honour the terms of the plan, the court may order that the plan be dissolved and that the business be placed in *liquidation judiciaire*.⁴² Formerly, it was open to the court, if it chose to dissolve the plan, to order a second *redressement judiciaire*, which operates as a stay of action in the event of creditors resuming litigation against the business.⁴³

The Sale of the Business

The competent court may, on the basis of the administrator's report, order the sale of the entire business,⁴⁴ with the consequence that the business will be dissolved and, if a company, struck off the register of companies. Alternatively, the sale may be of a part of the assets only.⁴⁵ In the event that the continuation of the business is not envisaged, any assets not included in the sale of the viable part of the business will be sold by the *commissaire* appointed to oversee the plan.⁴⁶ A sale of part of a business may not take

³⁴ L Art 76.

³⁵ D Art 101.

³⁶ L Art 77 *al* 1.

³⁷ L Art 77 *al* 2.

³⁸ L Art 77 *al* 3.

³⁹ L Art 78 *al* 1.

⁴⁰ L Art 78 *al* 2.

⁴¹ L Art 79.

⁴² L Art 80 (amended by the Law of 1994).

⁴³ Dictionnaire Permanent Difficultés des Entreprises, p101.

⁴⁴ L Art 81 *al* 1.

⁴⁵ L Art 81 *al* 2.

⁴⁶ L Art 81 *al* 3.

place unless the court is of the opinion that the assets constitute a viable business entity.⁴⁷

Conditions of Sale

An offer for the purchase of all or part of a business must be communicated to the administrator within the time limit he has set and which has been informed to the *contrôleurs* and the creditors' representative. Unless all parties, including the debtor and the employees' representative, agree, a minimum period of two weeks must elapse between receipt of the offer and its consideration by the competent court.

The offer must include an outline of the intended continuation of the business together with an indication of the number of workers necessary for its continuation, a timetable for the sale as well as guarantees that finance will be available for the sale price mentioned in the offer.⁴⁸ The reforms of 1994 added a further condition, requiring the offeror to indicate whether any disposal of assets was intended to take place in the two years following the sale.

The administrator is required to present to the court any information within his grasp which would permit the court to form a view of the seriousness of the offer and of the offeror.⁴⁹ The court is required by law to approve the offer which best meets the conditions and best assures the continuation of the business, employment of its workers and payment of the creditors.⁵⁰ The administrator enjoys all powers necessary to complete the sale and may transfer the management of the business to the purchaser as he sees fit.⁵¹ The role of the *commissaire* ends once the sale price has been paid.⁵²

The Duties of the Purchaser

The purchaser may not sell or alienate any of the assets of the business he is purchasing unless he has settled the purchase price in full.⁵³ The court may, however, authorise a departure from this rule after consulting the *commissaire* and representatives of the workforce, provided it is satisfied that the purchaser has in place the appropriate guarantees.⁵⁴

The reforms of 1994 introduced the requirement that the purchaser keep the *commissaire* informed of his intention to dispose of any assets. If the purchaser fails to honour any of his commitments, the court may order that the plan be dissolved.⁵⁵ The court may also make it a condition of sale that

⁴⁷L Art 82 *al* 1.

⁴⁸L Art 83.

⁴⁹L Art 84.

⁵⁰L Art 85.

⁵¹L Art 87.

⁵²L Art 88.

⁵³L Art 89 *al* 1.

⁵⁴L Art 89 *al* 2.

⁵⁵L Art 89 *al* 4 (inserted by the Law of 1994).

some assets may not be disposed of for a certain period.⁵⁶ Both these provisions serve to protect the interests of creditors in the event of the failure of the plan. If for any reason, the purchaser fails to make full payment of the purchase price, the court will nominate an *ad hoc* administrator and determine the role he will play in protecting the interests of the business.⁵⁷

The Effect on Creditors

The judgment of the court ending the plan results in the creditors being able to demand payment of debts not already due under the plan.⁵⁸ If the whole of the business is sold, a court will pronounce the termination of the procedure once payment of the price has been made, the formalities attendant on the sale have been completed and all other assets disposed of.⁵⁹

Assets the subject of a special charge are sold, a portion of the proceeds being retained for the benefit of the holder of the charge. Once the purchaser has paid the whole of the purchase price, the rights of the creditors are overreached and transferred to the proceeds.⁶⁰ Proceeds of the sale in general are divided among creditors according to their ranking.⁶¹ Notwithstanding the discharge of the debt, creditors may still enjoy a right of action against the debtor in relation to sureties and in cases of fraud.⁶²

Lease-Management

The court may provide that the plan be fulfilled by a lease of the business to a third party followed in due course by a sale of the business to that party, any clause in other documents, including the lease of the business premises notwithstanding. A court must be satisfied that a lease of the business in this way is the best means to assure the continuity of the business and the settlement of debts.⁶³

The *commissaire* in charge of the plan is able to obtain from the offeror all documents and information which will permit him to report to the court the success of the lease-management.⁶⁴ If the terms of the lease are breached, a court may order the dissolution of the lease.⁶⁵ In this instance, proceedings may be taken against the lessee for breach and the lessee risks being placed in *redressement judiciaire*.⁶⁶ The sale of the business to the lessee must occur within two years of the order commencing the plan.⁶⁷ Failure by the lessee to fulfil any of the conditions pertaining to the sale may also result in

⁵⁶L Art 89-1 (inserted by the Law of 1994).

⁵⁷L Art 90.

⁵⁸L Art 91.

⁵⁹L Art 92 *al* 1.

⁶⁰L Art 93.

⁶¹L Art 92 *al* 2.

⁶²L Art 92 *al* 3 (applying the provisions of L Art 169).

⁶³L Art 94.

⁶⁴L Art 95 *al* 1.

⁶⁵L Art 95 *al* 2.

⁶⁶L Art 95 *al* 3.

⁶⁷L Art 97.

his being placed in *redressement judiciaire*.⁶⁸ Nevertheless, a court may order, on the application of a lessee, where the breach is excusable or is not imputable to the lessee, modification of the terms of the lease so as to enable him to complete the sale. The one item that may not be modified is the purchase price.⁶⁹

Assets and Creditors

Ascertaining Business Debts

The creditors' representative is required, after having heard the debtor on the matter, to establish a list of all debts owed by the business and submit this to the court together with his views on whether particular debts should be accepted or rejected. In case of dispute, evidence relating to a particular debt will be presented to the competent court.⁷⁰

Where, however, the business is to be sold or is already in *liquidation judiciaire*, if it appears that the proceeds of all the business assets to be sold or realised will be sufficient only to pay the secured creditors and court costs, the court may dispense with the need to ascertain the amounts due to the unsecured creditors, unless proceedings against the managers of the business for fraud or negligence are contemplated, in which case these debts may be charged to the fraudulent or negligent director or manager.⁷¹

Any dispute as to amounts owed under provisions of tax legislation or employment law will be decided after the creditors' representative has had the opportunity to hear the creditor concerned.⁷² In any event, the creditors' representative has six months within which to establish his list, which period takes into account the possibility that debts may be declared late or may take time to be proved, especially in the case of foreign debts.⁷³

The *juge-commissaire* is required to pronounce on the definitive admission of debts to the list. He may choose to reject the evidence provided to establish a debt as well as provide for temporary listing in the case of a debt which is the subject of court proceedings or decline jurisdiction in the event that the nature of the debt is outside his jurisdiction.⁷⁴ The *juge-commissaire* is required, before deciding on the admission of debts to the list, to hear representation from the debtor, individual creditors and the creditors' representative as well as the administrator, where one has been appointed.⁷⁵ Once the decision has been made, the list is filed in court.⁷⁶

⁶⁸L Art 98 *al* 1.

⁶⁹L Art 98 *al* 2.

⁷⁰L Art 100.

⁷¹L Art 99.

⁷²L Art 54.

⁷³D Art 72.

⁷⁴L Art 101 *al* 1.

⁷⁵L Art 101 *al* 2.

⁷⁶L Art 103.

Relations with Third Parties

Following the date when a debtor declares himself unable to meet his business debts, the debtor is precluded from performing certain acts to the detriment of the business. These include the transfer of property for little or no consideration to third parties and entering into contracts where the benefit lies exclusively with the third party and the burdens are largely assumed by the debtor.

Other prohibitions extend to the payment of any debts which have not fallen due, payment for debts in kind, the transfer of moneys over which no court has decided ownership, the grant of any legal charge over the debtor's assets in favour of creditors as well as permitting the enforcement of injunctions over goods of the business obtained by creditors without knowledge of the court.⁷⁷ Payment of debts effected after this time as well as performance of contracts of an onerous type may be voidable at the instance of the administrator, *commissaire* or creditors' representative provided evidence is obtainable that the third party knew of the declaration of cessation of payments made by the debtor.⁷⁸

Nevertheless, these prohibitions do not extend to the holders of cheques, drafts or other bills of exchange, who may receive full payment on bills drawn validly before the date of the debtor ceasing payment, unless it can be proved that they knew that the debtor would be making a declaration at the time the bill was issued.⁷⁹ The spouses of debtors may, if the debtor is placed in *redressement judiciaire*, establish a list of property that belongs in principle to the spouse alone, according to the relevant matrimonial rules governing their union.⁸⁰ In any event, the creditors' representative may prove that property belonging to the spouse was purchased with funds provided largely by the debtor, in which case the property becomes subject to the insolvency proceedings.⁸¹

Third party rights, including mortgages, validly granted over the property, may be proved in priority to the interests of the insolvency procedure.⁸² A spouse is unable to insist, in insolvency proceedings, on the performance by the debtor of agreements reached between them of a pre-nuptial nature or within the first year of marriage.⁸³

Third Party Title

An action claiming an interest in property of the debtor must be brought by a third party within three months of the judgment instituting *redressement judiciaire* or *liquidation judiciaire*.⁸⁴ The reforms of 1994 modified many of the

⁷⁷L Art 107.

⁷⁸L Art 108.

⁷⁹L Art 109.

⁸⁰L Art 111.

⁸¹L Art 112.

⁸²L Art 113.

⁸³L Art 114.

⁸⁴L Art 115 *al* 1.

requirements for a creditor to prove an interest in property including, where the property is the subject of a contract between the third party and the debtor, extending this period to run from the date of the resolution of the contract.⁸⁵ Another important reform is the dispensation for any creditor, whose interest in the property has been advertised, from having to prove again his interest in the property in the insolvency proceedings.⁸⁶ A creditor in this situation has merely to address himself to the administrator to request the return of the property.⁸⁷

In case of dispute, the *juge-commissaire* will pronounce on the interest of the creditor in the property.⁸⁸ Where the owner of the property does not come forward within a month of notice being given to claim an interest, the administrator may sell the property, proceeds from which will be held for the benefit of the owner, less any fees involved in the disposal.⁸⁹ Goods sold to the debtor under a contract which was dissolved prior to *redressement judiciaire* being pronounced, whether by operation of law or according to the terms of the contract, may be reclaimed if they are still in existence at the time of the request.⁹⁰ Where judgment was obtained after the opening of *redressement judiciaire*, the goods may be claimed if proceedings had been commenced prior to the *redressement judiciaire*.⁹¹

Goods received by the debtor at his warehouse may be claimed by the vendor unless before they had arrived a sale was made to a third party without there being evidence of fraud or deception involved.⁹² Goods which have not been expedited to the debtor may also be retained.⁹³ Merchandise delivered to the debtor on bail or for sale on behalf of the vendor may also be reclaimed.⁹⁴ The reforms of 1994 added several new instances where a third party could exercise rights over property in the hands of the debtor. Where goods sold subject to a clause retaining title, title to pass only in the event of the whole of the price being settled, are still in existence at the time of insolvency proceedings, they may be reclaimed, provided the clause was contained in a contract or written document bearing a date not later than the date of delivery of those goods.⁹⁵

There are two situations where goods may have been mixed. In the first instance, the vendor's goods may have been incorporated in goods belong to the debtor. In this situation, provided the vendor's goods may be detached from the ensemble without damage to either the vendor's or the debtor's goods, they may be reclaimed.⁹⁶

⁸⁵L Art 115 *al* 2 (inserted by the law of 1994).

⁸⁶L Art 115-1 (inserted by the Law of 1994)

⁸⁷D Art 85-4 *al* 1 (inserted by the Law of 1994).

⁸⁸D Art 85-4 *al* 2.

⁸⁹D Art 85-4 *al* 3-*al* 4.

⁹⁰L Art 117 *al* 1.

⁹¹L Art 117 *al* 2.

⁹²L Art 118.

⁹³L Art 119.

⁹⁴L Art 121 *al* 1.

⁹⁵L Art 121 *al* 2 (inserted by the Law of 1994).

⁹⁶L Art 121 *al* 3 (inserted by the Law of 1994).

In the second situation, goods supplied by the vendor may have been mixed with other goods so that a bulk is produced. Provided that goods similar in quality and nature to those supplied by the vendor are still in the debtor's hands, a quantity of the bulk equal to that supplied may be reclaimed. In either case, restitution may be avoided by the payment of the price of the goods, which may be subject to a delay approved by the *juge-commissaire*, who will also decide in situations where there is doubt as to the identity of the goods. This payment is treated as if it were a debt arising in the course of business after the opening of insolvency proceedings.⁹⁷

The administrator is empowered to deal directly with third parties in the event of claims for the return or restitution of goods and may agree terms, subject to the approval of the debtor. Where approval is not forthcoming, the *juge-commissaire* will decide after hearing the observations of all parties.⁹⁸ In the case of a sub-sale, the vendor may claim against the third party if the goods, sold to the debtor subject to a retention of title clause, have not yet been paid for,⁹⁹ even where the goods are no longer in the possession of the debtor.¹⁰⁰ If the price of the goods has been paid by the third party, the vendor may recover it from the debtor as a priority.¹⁰¹

Employees as Creditors

The special status of employees is guaranteed by the Law of 1985 and few amendments have been made as a result of the reforms of 1994. The creditors' representative is required, after having established the list of creditors of the business, to establish a list of business debts arising out of provisions of employment law. The list is submitted to the workers' representative for agreement before being filed in court.¹⁰² This list is drawn up irrespective of whether the creditors' representative is proceeding with a list of the unsecured creditors, normally an indicator of situations where the proceeds of the sale of assets would be insufficient to meet the demands of all the creditors.¹⁰³

An aggrieved employee, in cases where all or part of his claim has not been admitted to the list, may pursue a claim before the competent court.¹⁰⁴ The creditors' representative and administrator may defend any claim on behalf of the business.¹⁰⁵ Once a list has been established, employees' claims are met in full, these sums being guaranteed in priority.¹⁰⁶ Normally, the *juge-commissaire* will order the administrator to pay these debts within ten days of

⁹⁷L Art 121 *al* 4.

⁹⁸L Art 121-1 (inserted by the Law of 1994).

⁹⁹L Art 122.

¹⁰⁰Cassation commerciale, 27 May 1986 Bull. Civ. IV No. 389.

¹⁰¹D Art 85-3 (inserted by the Law of 1994).

¹⁰²L Art 123.

¹⁰³D Art 76.

¹⁰⁴L Art 123 *al* 2, citing the jurisdiction of the Conseil des Prud'hommes.

¹⁰⁵L Art 124.

¹⁰⁶L Art 128.

the judgment opening insolvency proceedings, whether the business is to be placed in *redressement judiciaire* or *liquidation judiciaire*.

If insufficient funds exist for the settlement of the full amount, a minimum equivalent to a month's salary will be paid then. If funds still do not permit, the debts will be paid following the realisation of any assets or the collection of any debts owed to the business.¹⁰⁷

The Accelerated Procedure

Instituting Insolvency Proceedings

The accelerated procedure applies to all businesses which do not employ more than fifty workers and whose turnover does not exceed a defined threshold of twenty million French Francs.¹⁰⁸ As many of the insolvencies experienced in France are below this threshold, the accelerated procedure, setting as it does a fast pace in the management of insolvency, is of considerable benefit. Nevertheless, if a court, on the application of the debtor or *procureur* or *ex proprio motu*, is of the opinion the chances of the business surviving will be assisted by a less accelerated procedure, it may order that the conventional *redressement judiciaire* proceedings apply to the business concerned.¹⁰⁹

As part of the procedure instituting insolvency proceedings, a court will appoint a *juge-commissaire* to oversee the proceedings and a *mandataire de justice* to represent the interests of the creditors.¹¹⁰ The employees of the business will be invited to nominate a representative who will fulfil, in cases of businesses having no formal organisation for their employees, all the functions normally exercised by the organisation during insolvency proceedings.¹¹¹

The Observation Period

The maximum period a business may be under observation is fixed at four months.¹¹² It may be extended once by the court on application by the debtor, *procureur*, administrator or by the court so moving.¹¹³ During this period, the *juge-commissaire* enjoys the same powers of access to information as in the conventional procedure.¹¹⁴ During the observation period, it is the debtor who is largely responsible for the continued management of the business unless it appears necessary to the court to appoint an administrator or other qualified person to replace or assist him.¹¹⁵

¹⁰⁷L Art 129.

¹⁰⁸D Art 1.

¹⁰⁹L Art 138.

¹¹⁰L Art 139 *a* 1.

¹¹¹L Art 139 *a* 2.

¹¹²D Art 111.

¹¹³L Art 140 *a* 1.

¹¹⁴L Art 140 *a* 2, applying the provisions of L Art 19.

¹¹⁵L Art 141 *a* 1.

If no administrator is appointed, the powers he normally exercises are divided among the other participants in the process. The debtor will be responsible for the administration of the process leading to any redundancies among the workforce under Article 45 and the continuation of contracts under Article 37. The creditors' representative will be in charge of the bank accounts and financial affairs of the business according to the provisions of Article 28. The *juge-commissaire* will take over the role accorded to the administrator by Article 22 in deciding any changes in the structure of capital within the business.¹¹⁶

The court may decide, a discretion conferred by the Law of 1994, whether the business may carry on its activities with view to the establishment of a business plan or whether to place the business in *liquidation judiciaire*.¹¹⁷ In deciding to order *liquidation judiciaire*, a court is not bound to hold off its decision before hearing the views of the workforce.¹¹⁸

The Business Plan

The debtor, or the administrator if one is appointed, is responsible for putting together a draft plan for the restructuring of the business with the assistance of a court-appointed expert. At the same time, the debtor will inform the creditors' representative and the *juge-commissaire* of the proposals for the settlement of debts as provided in Article 24 as well as carrying on consultations with creditors and the workforce as provided under Articles 20 and 25.¹¹⁹

In the absence of an administrator, any offers to purchase all or part of the business under the provisions of Articles 21 and 83 are addressed to the court office, which in turn will contact all interested parties. The debtor will mention in his business plan any offer that the *juge-commissaire* deems worthy of consideration.¹²⁰ Once the plan has been deposited with the court, the *juge-commissaire* will provide an opinion on which offer presents the best opportunity for the future of the business.¹²¹ A *commissaire*, appointed by court, is responsible for carrying out this plan.¹²² The court may at any time order, on the application of an interested party under the provisions of Article 36, that all or part of the activity of the business be ended or that the business as a whole be placed in *liquidation judiciaire*.¹²³

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¹¹⁶L Art 141 a/2.

¹¹⁷L Art 142.

¹¹⁸Cassation commerciale, 12 May 1992 Bull. Civ. IV No. 180.

¹¹⁹L Art 143.

¹²⁰L Art 144.

¹²¹L Art 145.

¹²²L Art 147.

¹²³L Art 146.