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Pre-insolvency/early intervention, Reorganization measures and winding up proceedings of banking groups

National Report

FRANCE

By

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For the purpose of these questions:

- "reorganization measures" shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

- "winding-up proceedings" shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

- "pre-insolvency/early intervention" shall mean any intervention except and before reorganization measures and winding-up proceedings

I - Background information

In November 2005, the European Banking Committee identified five areas (liquidity risk management, crisis management, lending of last resort, deposit guarantee schemes and reorganization measures and winding-up proceedings) as part of the supervisory arrangements review to be performed according to Article 156 of Directive 2006/48/EC. Consequently, the Commission initiated the review process of the Directive on the reorganization and winding up of credit institutions (2001/24/EC) in August 2006.

Under Directive 2001/24/EC, where a credit institution with branches in other Member States is wound up or reorganised, the winding up or reorganization

measures are initiated and carried out under a single procedure by the authorities of the Member State where the credit institution has been authorised (known as the home Member State). This procedure is governed by the law of the home Member State. This approach is consistent with the principle of home Member State supervision pursuant to the EU Banking Directives.

The Directive does not aim at harmonising national legislation, but at ensuring mutual recognition of Member States' reorganization measures and winding up proceedings as well as the necessary cooperation between authorities.

Due to the mere coordinating nature of the Directive, Member States have different reorganization measures and winding up proceedings. Consequently, insolvency proceedings for credit institutions differ. Some Member States use the same general company and insolvency law for the reorganization measures and winding up of credit institutions as for other businesses, while others have special reorganization measures for credit institutions.

The Directive covers only the insolvency of branches of credit institutions in other Member States, but does not cover subsidiaries of banking groups in other Member States.

Directive 2001/24/EC is limited to procedural aspects concerning each legal entity within a cross border banking group. This limited scope does not allow to take into account synergies within such a group, which may benefit all creditors in case of reorganization measures. This lack of group-wide approach to winding up and reorganization measures could lead to the failure of subsidiaries or even the group, which could otherwise have been reorganised and remained solvent in whole or part.

The October 2007 ECOFIN strategic roadmap for strengthening EU arrangements for financial stability requests the Commission

For this purpose, the Commission carried out a public consultation (see also point 6 of the technical specifications). This consultation seeks clarification on:

- whether Directive 2001/24/EC on the reorganization and winding up of credit institutions leaves gaps and ambiguities which need to be removed, and
- issues related to the treatment of cross-border banking groups (i.e. parent credit institutions with subsidiaries in other Member States) in a crisis situation or under reorganization measures.

The purpose of the public consultation was to take stock of legal frameworks in the different Member States relating to the reorganization and winding up of banking groups. The consultation also aimed at identifying problems preventing a smooth crisis management and a smooth resolution process.

The focus of Commission's work is on possible reorganization of banking groups in contrast to ring fencing legal entities (and apply national resolution tools).

II - National regulation

Please provide a presentation of your national regulation (law, cases,...) and attach it as Annex A the relevant legal texts and cases summarized in English.

The main focus of the work is how to find solutions in a cross border case of a banking group for both pre-insolvency/early intervention systems and formal insolvency (reorganization and winding up measures). Please formulate your answers in light of it.

Differences between pre-insolvency/early intervention measures and reorganization/winding-up proceedings

1) Differences between pre-insolvency/early intervention measures and reorganization/winding-up proceedings

1.1 Please provide precise information about the key moments during or preceding a banking crisis:

- Moment/event at which competent authorities trigger the requirement on a credit institution to take the necessary steps to redress the situation in order to meet minimum requirements in the Directive and to implement the measures referred to in Article 136(1) CRD.

The Banking Commission is responsible for monitoring the credit institutions' compliance with the laws and regulations applicable to them and for penalising any breaches found. It examines their operating conditions and watches over the quality of their financial situation. It ensures compliance with the profession's rules of good conduct. It proposes and requests implementation of the Deposit Guarantee Fund as determined in Articles L. 312-5 and L. 613-34 (Monetary and Financial code, article L. 613-1).

The Banking Commission may enjoin any credit institution to take all measures necessary to restore or bolster its financial situation, improve its management methods or ensure that its organisation is suitable for its business or its development plans within a given time limit (Monetary and Financial code, article L. 613-16).

- Moment at which Member States trigger early intervention measures

-Composition procedure and safeguard proceedings which apply to any kind of company

French authorities do not trigger early intervention measures; the decision to request early intervention measures stands on the company who is facing troubles. Then, the court decides to launch the procedure petitioned or not.

-Intervention of the Banking commission

The Banking Commission is responsible for monitoring the credit institutions' compliance with the laws and regulations applicable to them and for penalising any breaches found. It examines their operating conditions and watches over the quality of their financial situation. It ensures compliance with the profession's rules of good conduct. It proposes and requests implementation of the Deposit Guarantee Fund as determined in Articles L. 312-5 and L. 613-34 (Monetary and Financial code, article L. 613-1).

The Banking Commission may enjoin any credit institution to take all measures necessary to restore or bolster its financial situation, improve its management methods or ensure that its organisation is suitable for its business or its development plans within a given time limit (Monetary and Financial code, article L. 613-16).

The Banking Commission may appoint a provisional administrator to a credit institution to whom full powers relating to the legal entity's administration, management and representation are transferred.

Differences between pre-insolvency/early intervention measures and reorganization/winding-up proceedings

That appointment is made either at the request of the executives, if they consider that they are no longer able to exercise their functions normally, or at the initiative of the Commission, if the management of the institution or company can no longer be carried out in normal conditions, or if a penalty has been imposed (Monetary and Financial code, article L. 613-18).

The Banking Commission consults the Executive Board chairman of the Deposit Guarantee Fund on any question regarding an institution for which it intends to implement the guarantee or intends to propose a precautionary intervention by the fund. The Executive Board chairman may also address the Banking Commission at his request (Monetary and Financial code, article L. 613-34).

- Moment at which insolvency is declared.

Credit institutions which are unable to meet their current liabilities, immediately or in the near future, are deemed to be insolvent.

Judicial winding-up proceedings may be instituted against credit institutions which have been deleted from the list by order of the Banking Commission and whose liabilities towards third parties, excluding debts which are only redeemable after the unsecured creditors have been fully paid off, are effectively greater than the assets less the mandatory provisions (Monetary and Financial code, article L. 613-26).

- Moment at which the Deposit Guarantee Scheme (DGS) is triggered.

The guarantee fund intervenes at the behest of the Banking Commission when it establishes that one institution is no longer able, immediately or in the near future, to return the funds it has received from the public in accordance with the legislative, regulatory or contractual conditions applicable to their return. Recourse to the guarantee fund automatically entails the deletion of that institution from the list of authorised credit institutions.

As a precaution, and when proposed by the Banking Commission, the guarantee fund may also intervene in connection with a credit institution whose situation gives grounds for fearing that the deposits or other repayable funds may be unavailable when due, bearing in mind, moreover, the support from which it could benefit. When the guarantee fund agrees to intervene with an institution as a precautionary measure, and having sought the opinion of the Banking Commission, it determines the terms of its intervention. It may make its intervention conditional upon the total or partial sale of the credit institution or the cessation of its business and the sale of its assets (Monetary and Financial code, article L. 312-5).

1.2. Are the following criteria used in order to determine the moments you have described:

- The credit institution possesses adequate **resources** for it to be able to continue activities.
- The credit institution maintains adequate **suitability** for it to be able to continue activities

- The credit institution does not comply anymore with the solvency ratio
- The credit institution is facing **liquidity** difficulties

2) Pre-insolvency and early intervention system

2.1 Pre-insolvency/early intervention systems tailored for banks

Are there, in your national legislation, special pre-insolvency/early intervention systems that are tailored for banks?

Yes

No, there is no specific system tailored for bank as such, but please refer to the question relating to the Banking commission powers in the paragraph 2.3 Paragraph 5

2.2 Pre-insolvency/early intervention systems that can be applied to banks

If it is not the case, is there in your legislation, any pre-insolvency/early intervention system that can be applied to banks

Yes

No

2.3 Conditions and features

Please explain briefly the systems currently available in your Member states.

Description

1- Alarm proceeding

a- Company law

This proceeding can be launched by different kinds of persons:

-Accredited prevention groups to which any registered company can be a member of (article 611-1 of the Commercial code). When the group identifies

difficulties, it may inform the head of the business and may suggest that an expert provides assistance. This proceeding is confidential.

-President of the Commercial court: when the company is facing difficulties which could undermine the continuation of its business operation, its managers may be summoned by the president of the commercial court to determine appropriate steps to remedy the situation (article L.611-2 of the Commercial code).

At the end of this meeting, or if the managers have not come to the meeting, the president of the court may obtain information on the company's economic and financial situation.

-Auditors of corporate accounts : if, in the performance of its duty, the auditor notes that the continuity of the business is likely to be compromised, he shall inform the chairman of the board of directors, the executive board chairman for a limited company (article L.234-1 of the Commercial code), or the managers for the other types of companies.

If he does not receive any reply in a 15 days delay, he shall request the chairman of the board of directors or the executive board chairman for limited liability companies. For other companies, he shall inform the worker's representatives and, if there is one, to the supervisory board.

The letter is copied to the presiding judge of the commercial court and the decision communicated to him.

If these provisions are not complied with or if the auditors find that despite the decisions taken, the decision remains compromised, a general meeting shall be convened under conditions, and the auditors shall draft a report which will be read at this meeting.

If, after the meeting, the auditors still think that, despite the decisions, the situation is compromised, he shall inform the presiding judge of the commercial court.

In both cases, the letter is copied to the presiding judge of the commercial court, to have the board of directors or the supervisory board deliberate about the situation.

The decision is communicated to the president of the Commercial court and to the representatives.

The auditors are required to inform the Banking Commission as soon as possible of any fact or decision concerning the persons referred to in the first paragraph of I of the present article which they have become aware of in the performance of their duties and which could:

1. Constitute a breach of the laws or regulations applicable to them and have significant effects on their financial situation, profits or assets;
2. Jeopardise continued exploitation;
3. Give rise to the issuing of reservations or a refusal to certify the accounts.

The same obligation applies to any facts and decisions as indicated above which the auditors might become aware of in the performance of their duties in relation

to a parent company or subsidiary of an institution or company (Monetary and Financial code, article L. 613-9).

-the worker's representatives: This proceeding can also be launched by the worker's representatives (article L.432-5 and 422-4 of the Labour code) if the worker's representatives notes that the continuity of the business is likely to be compromised.

2. Ad hoc mandate

Article L.611-3 of the commercial code provides: *"The president of the Tribunal de commerce (Commercial court) or of the Tribunal de grande instance (High court) may, at the request of the business's representative, appoint a special commissioner (mandataire ad hoc) whose duties he shall set out. »*

This procedure is only available in situation where the company is not in "cessation des paiements".

The commissioner shall help the manager to solve the difficulties faced by the company, without taking his place for the management of the company. He can, for instance, help him to spread the debts of the company by concluding agreement with its creditors.

General the commissioner is appointed for three months renewable several times.

His mission ends up:

- in case of an agreement between the parties (company and its creditors);
- if an agreement between the parties is not possible.

3. Composition

Article L.611-4 of the Commercial code provides : *"A composition procedure is instituted before the Tribunal de commerce (Commercial court) for the persons who carry out a commercial or craftsman's activity, who encounter an actual, or a foreseeable legal, economic or financial difficulty, and who have not been in a state of cessation of payments for more than forty-five days. »*

This procedure is based on a contract agreed between the company and its creditors and can remain confidential or not.

-Conditions

Composition is available when the company has not been in a state of "cessation des paiements" for more than 45 days.

The debtor shall file the case with the president of the court (article L.611-6 of the Commercial code).

The president of the court can appoint an expert to determine the situation of the company.

The president of the court appoints a conciliator for a period not exceeding four months but that he may, through a reasoned ruling, extend by one month at the most when so requested by the conciliator.

The debtor may object to the conciliator under some conditions.

-the conciliator's mission

Article L.611-7 of the commercial code states the mission of the conciliator:
« *The conciliator's duty is to promote the conclusion of an amicable agreement between the debtor and its main creditors as well as, if applicable, its usual contracting partners, which is intended to put an end to the business's difficulties. He may also make any proposals for the safeguarding of the business, the continuation of the economic activity and the maintenance of employment.* »

For this purpose, the conciliator may obtain useful information from the debtor.

Financial authorities, social security bodies, institutions managing the unemployment insurance system may consent to a cancellation of debt.

The conciliator shall inform the president of the court of the progress of his duties.

The composition shall end in the following circumstances:

- agreement is certified by the court
- agreement is not executed
- no agreement is possible
- if the debtor requires to
- a procedure of sauvegarde, redressement or winding up is launched

-Consequences of the agreement concluded

If an agreement is concluded between the debtor and its creditors, it can be certified by the court or not.

If the agreement is not certified by the court, then it only has a contractual value, it is confidential and cannot be enforced against parties who have not signed it. The agreement which is not certified is concluded on the declaration of the debtor that he is not or not anymore in a state of "cessation des paiements".

If the agreement is certified by the court, it is not confidential. For the certification, the president of the court checks that the debtor is or not anymore in a state of "cessation des paiements".

He also checks that the terms of the agreement ensure the continuity of the business' activity and that the agreement does not harm the interests of non-signatory creditors.

The persons who, in the approved agreement, supply new assets or services or have made contribution to fresh funds to the debtor will be paid up to the amount of this sum, according to a preferential lien before all other claims in case of a "sauvegarde" or "redressement" procedure.

4. Safeguard proceedings

-Commercial law, applying to any company

Article 620-1 provides for the definition of the "sauvegarde judiciaire" proceeding.

The "sauvegarde judiciaire" proceeding is available for the debtor who shows he is facing difficulties that could lead him to "cessation des paiements".

The goal of this proceeding is to allow the continuation of the company's activities, preservation of employment and the discharge of debts.

The decision to launch the proceeding is taken by the Commercial Tribunal.

A judge can be appointed by the tribunal in order to collect any useful information on the financial, economic or social situation of the company. This judge can be assisted by any expert he needs.

When the debtor has been submitted to a "conciliation" or a "mandat ad hoc" proceeding during the 18 months preceding the introduction of the request, the prosecution service has to be present at the audience.

-Specific provisions for banks

Article L.613-27 of the Commercial code provides that the "sauvegarde judiciaire" proceeding cannot be launched toward a bank if the opinion of the banking commission has not been requested.

5. Powers of the Banking commission

The Banking Commission is responsible for monitoring the credit institutions' compliance with the laws and regulations applicable to them and for penalising any breaches found. It examines their operating conditions and watches over the quality of their financial situation. It ensures compliance with the profession's rules of good conduct. It proposes and requests implementation of the Deposit Guarantee Fund as determined in Articles L. 312-5 and L. 613-34 (Monetary and Financial code, article L. 613-1).

When so instructed by the Banking Commission, the General Secretariat of the Banking Commission carries out on-the-spot document inspections (Monetary and Financial code, article L. 613-6). The on-the-spot inspections may be extended to the subsidiaries of a credit institution or an investment firm. They may also be extended to legal entities which directly or indirectly control a credit institution or an investment firm, to the subsidiaries of those legal entities and to any other business or legal entity belonging to the same group (Monetary and Financial code, article L. 613-10).

The Banking Commission determines the list, model and submission schedule for the documents and information which must be submitted to it. It may, moreover, request from the persons subject to its supervision any information, document, clarification or justification which is necessary for the accomplishment of its mission. It may request sight of auditors' reports and, more generally, any accounting records, which it might require, and request certification thereof, as

well as any other relevant information (Monetary and Financial code, article L. 613-8).

The Banking Commission may ask the auditors of persons subject to its supervision any information concerning the business and financial situation of the entity that they audit and the work they have carried out within the scope of that assignment. The Banking Commission may also send written observations to the auditors, who are then required to provide written answers (Monetary and Financial code, article L. 613-9).

The Banking Commission may enjoin any credit institution to take all measures necessary to restore or bolster its financial situation, improve its management methods or ensure that its organisation is suitable for its business or its development plans within a given time limit (Monetary and Financial code, article L. 613-16).

Article 613-21 of the Monetary and Financial Code also states that the Banking Commission may also pronounce disciplinary sanctions against a credit institution or other person who has breached a legislative or regulatory provision, or failed to respond to a recommendation or heed a warning, or has not complied with the special conditions imposed or the undertakings given in connection with an application for authorisation or an authorisation or a derogation provided for by the laws or regulations applicable to :

1. A warning
2. 2. A reprimand
3. A prohibition on the execution of certain transactions and any other restriction on the conducting of the business
4. The temporary suspension of one or more persons referred to in Article 511-13 (persons deciding the general orientation of the credit institution's business) and Article L.532-2 (the persons determining the policy of the credit institution) with or without appointment of a provisional administrator
5. Automatic dismissal of one or more of those same persons, with or without appointment of a provisional administrator
6. Deletion of the credit institution or investment firm from the list of the authorised credit institution or investment firms, with or without appointment of a provisional administrator.

Those sanctions apply if the order contained in Article 613-16 has not been complied with.

Furthermore, the Banking Commission may pronounce a financial penalty or may prohibit or limit the distribution of a dividend to the shareholders, or a return to the holders of membership shares, or the persons referred to in 4.

Sanctions pronounced under this article may be published.

The Banking Commission may appoint a provisional administrator to a credit institution to whom full powers relating to the legal entity's administration, management and representation are transferred.

That appointment is made either at the request of the executives, if they consider that they are no longer able to exercise their functions normally, or at the initiative of the Commission, if the management of the institution or company can no longer be carried out in normal conditions, or if a penalty has been imposed (Monetary and Financial code, article L. 613-18).

The presiding judge cannot be requested to initiate the amicable settlement in relation to a credit institution or an investment firm until the Banking Commission's opinion has been obtained (Monetary and Financial code, article L. 613-27). This article refers to the amicable settlement which does not exist anymore. We can think that this article applies to the composition procedure which is the equivalent of the amicable settlement after the law of 2005. We also think that this article applies the safeguard procedure which was instituted by the law of 2005. The Banking Commission consults the Executive Board chairman of the Deposit Guarantee Fund on any question regarding an institution for which it intends to implement the guarantee or intends to propose a precautionary intervention by the fund. The Executive Board chairman may also address the Banking Commission at his request (Monetary and Financial code, article L. 613-34).

Can it be commenced on a voluntary basis and/or does it have to be ordered by the authorities?

- Voluntary basis
- Ordered by the authorities

Description

The composition and the safeguard procedures are to be commenced on the petition of the debtor. The debtor is free to request these procedures and the president of the court cannot impose these procedures to the company but the president of the court is also free to accept the petition and to launch these procedures.

On the contrary, the reorganization and the winding up procedures, which are formal measures, are ordered by the authorities.

Powers of the Banking commission :

The Banking Commission may appoint a provisional administrator to a credit institution to whom full powers relating to the legal entity's administration, management and representation are transferred.

That appointment is made either at the request of the executives, if they consider that they are no longer able to exercise their functions normally, or at the initiative of the Commission, if the management of the institution or company can no longer be carried out in normal conditions, or if a penalty has been imposed (Monetary and Financial code, article L. 613-18).

What are the legal and economic conditions that must be met for these regimes to be prompted and applied?

For the safeguard procedure, the debtor has to show difficulties that it is unable to overcome on its own and that would lead to a cessation of payments (Commercial code, article L. 620-1).

The composition procedure is for debtors which encounter an actual, or a foreseeable legal, economic or financial difficulty, and who have not been in a state of cessation of payments for more than forty-five days (Commercial code, article L. 611-4).

Is a judicial decision which states that the legal and economic conditions are met necessary?

If the debtor is free to petition for a composition procedure or a safeguard procedure and has the duty to declare its cessation of payments, the procedure which will be applied only stands on the decision of the court.

2.4 Powers and responsibilities of the intervening authorities

For the execution of these measures, what are the powers of (i.e appointment of a negotiator in charge of finding solutions to the difficulties faced; organization of the negotiations with the main creditors of the bank; shares freeze; capital increase in derogatory conditions; forced transfer of the subsidiary; transfer of assets enabling the isolation of the risky activities; stay of actions (full or partial) of payment actions; rescheduling of the main debts due for payment)

the nominated administrator
Description of the powers

<p>1-Safeguard procedure</p> <p>In the safeguard procedure, the administrator is only allowed to supervise or to assist the debtor in its management whereas in the reorganization and winding up procedures, the administrator is only allowed to assist or to appear for the debtor in its management.</p> <p>Only the administrator has the right to require the debtor's contracting party to perform executory contracts in exchange for the performance of the debtor's obligations. The contract shall automatically be terminated once a formal notice has been sent to the administrator that has remained unanswered within a month. Before this time limit expires, the supervisory judge may grant the administrator a shorter time limit or an extension, which may not exceed two months, to take a position (Commercial code, article L. 622-13).</p>
<p>2- Ad'hoc mandate :</p>
<p>3- Composition :</p>

Article L.611-7 of the commercial code states the mission of the conciliator:
« The conciliator's duty is to promote the conclusion of an amicable agreement between the debtor and its main creditors as well as, if applicable, its usual contracting partners, which is intended to put an end to the business's difficulties. He may also make any proposals for the safeguarding of the business, the continuation of the economic activity and the maintenance of employment. »

For this purpose, the conciliator may obtain useful information from the debtor.

Financial authorities, social security bodies, institutions managing the unemployment insurance system may consent to a cancellation of debt.

The conciliator shall inform the president of the court of the progress of his duties.

4- Banking commission's administrator ?

the national bank
Description of the powers

No specific powers. Please refer to the powers of the banking supervisor.

the banking supervisors
Description of the powers

<p>When a provisional administrator or a liquidator has been appointed to a credit institution, the Banking Commission may, having obtained the opinion of the guarantee fund refer the matter to the <i>tribunal de grande instance</i> to enable it, if it considers that the depositors' interests warrant it, to order the transfer of the shares held by one or more of that institution's de facto and de jure executives, salaried or otherwise.</p> <p>In the same circumstances, the <i>tribunal de grande instance</i> may decide that the voting right attached to shares or voting right certificates held by one or more de facto and de jure executives, salaried or otherwise, shall be exercised, for a period which it determines, by a court officer designated for that purpose.</p> <p>In the same circumstances, the <i>tribunal de grande instance</i> may also order the assignment of all of the institution's shares, or of the shares and membership shares which have not been assigned pursuant to the provisions of the first paragraph of the present article (Monetary and Financial code, article L. 613-25).</p> <p>The presiding judge cannot be requested to initiate the composition or the safeguard procedures in relation to a credit institution or an investment firm until the Banking Commission's opinion has been obtained (Monetary and Financial code, article L. 613-27).</p> <p>The Banking Commission may appoint a provisional administrator to a credit institution to whom full powers relating to the legal entity's administration, management and representation are transferred.</p> <p>That appointment is made either at the request of the executives, if they consider that they are no longer able to exercise their functions normally, or at the initiative of the Commission, if the management of the institution or company can no longer be carried out in normal conditions, or if a penalty has been imposed (Monetary and Financial code, article L. 613-18).</p> <p>The Banking Commission consults the Executive Board chairman of the Deposit Guarantee Fund on any question regarding an institution for which it intends to implement the guarantee or intends to propose a precautionary intervention by the fund. The Executive Board chairman may also address the Banking Commission at his request (Monetary and Financial code, article L. 613-34).</p>

the courts
Description of the powers

1-General powers of the Court :

The president of the court shall commence the procedure needed and shall appoint the bodies of the procedure.

The president of the court may summon the managers to determine the appropriate steps necessary to remedy the situation (Commercial code, article L. 611-2).

2-Ad'hoc mandate :

The president of the court may, at the request of the business's representative, appoint a special commissioner (mandataire ad hoc) whose duties he shall set out. The debtor can propose someone as the special commissioner (Commercial code, article L. 611-3).

3-Composition procedure :The debtor shall file its case with the president of the court, stating therein its economic, employment and financial situation, financing needs and, if necessary, the means to tackle them. The debtor can propose someone as a conciliator.The president of the court may appoint an expert of his choice to draw up a report on the debtor's economic, employment and financial situation and, notwithstanding any statutory or regulatory provision to the contrary, obtain all information enabling him to know the debtor's accurate economic and financial situation from banking and financial institutions. The composition proceedings shall be commenced by the president of the court who shall appoint a conciliator for a period not exceeding four months but that he may, through a reasoned ruling, extend by one month at the most when so requested by the conciliator. The debtor may propose a conciliator to be appointed by the president of the court. At the end of this period, the conciliator's duties and the proceedings shall come automatically to an end.

The order commencing the composition proceedings shall not be subject to appeal (Commercial code, article L. 611-6).

In the composition procedure, the court may, taking into account the debtor's position and in consideration of the creditor's needs, within a two-year limit, defer or spread out the payment of sums due. This defer or spread out is only possible for debts which creditors do not want to participate to the composition procedure (Civil code, article 1244-1).

4- Safeguard procedure

The Court may, before making a ruling, appoint a judge who will gather information regarding the business's financial, economic and employment situation. This judge may apply the provisions of Article L623-2. He may be advised by any expert of his choice (Commercial code, article L. 621-1).

Where the Court appoints one or more administrators, it will assign them to jointly or individually supervise the debtor's management operations or to assist

the debtor in all or some of the management (Commercial code, article L. 622-10).

The Court may order the partial cessation of the business's operations at any time during the observation period, on motion of the debtor, or, of its own motion.

The Court will, on motion of the debtor, administrator, court nominee, the Public prosecutor or, of its own motion convert the safeguard proceedings into reorganization proceedings if the conditions in Article L631-1 are satisfied or will order liquidation proceedings if the conditions of Article L640-1 are satisfied. (Commercial code, article L. 622-10).

The supervisory judge shall supervise the speedy progress of the proceedings and the protection of the parties' interests. Where the appointment of an expert is necessary, this may only be made by the supervisory judge, for the duties he shall determine, without affecting the powers of the Court to appoint one or more experts (Commercial code, article L. 621-9).

The supervisory judge may allow the head of the business to carry out acts of disposition not included in the ordinary management of the business, to grant mortgages or collateral or to compromise or settle.

The supervisory judge may, under conditions, also allow them to pay debts arising prior to the issuance of the order. (Commercial code, article L. 622-7).

Based on the proposals submitted by the court nominee, the supervisory judge shall decide on the admission or rejection of the claims or mention the existence of a pending legal action or his lack of jurisdiction in respect of the dispute (Commercial code, article L. 624-2).

Where there is a serious likelihood of saving the business, the Court will draw up a plan, terminating the observation period in so doing.

Ministry of Finance
Description of powers

No special powers.

Others (including DGS)
Description of powers

For the creditors

In the composition proceedings, the creditors are free to grant the debtors a remit of debt, a postponement or a spread out of payment, but the court may use the article 1244-1 of the Civil code above-mentioned.

In the safeguard proceedings, the supervisory judge shall appoint up to five controllers from among those creditors requesting to be appointed. Where he appoints several controllers, he must ensure that at least one of them is chosen from among the secured creditors and one from among the unsecured creditors. The controllers shall assist the court nominee in his functions and the supervisory judge in his duty of supervising the management of the business. They may consult all documents sent to the administrator and to the court nominee. They shall observe confidentiality. Controllers shall not be paid for their duties (Commercial code, articles L. 621-10 & L. 621-11). Moreover, if the court

nominee fails to act, any creditor appointed as controller may act in the general interest of the creditors (Commercial code article L. 622-20).

For the execution of these measures (or the lack of decision to set these measures), what are the responsibilities of:

- the nominated practitioner
- the nominated administrator
- the national bank
- the banking supervisors
- the courts

Description of the responsibilities

<p>The nominated practitioner See nominated administrator</p>
<p>The nominated administrator</p> <p>The nominated administrator is liable on a general responsibility basis. This general rule is provided by the article 1382 of the Civil code: "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it". Provided the case law, the legal action is allowable only if the administrator is sued personally and not for his mandate. Moreover, the prosecuting party will have to prove a serious fault.</p>
<p>The national bank</p> <p>No responsibility</p>
<p>The banking supervisors</p> <p>The French State is liable for the faults of the banking commission has committed in its acts, but not only, the French State is also liable for the abstentions the banking commission did in its control of the banking groups.</p>
<p>The court</p> <p>Jurisdictions are almost not liable. In practice it is very difficult and very rare to sue courts for their faults.</p>

2.5 Confidentiality

Which measures are confidential and which measures must be made public?

The composition procedure is made public only when the agreement is certified by the court,

The safeguard, the reorganization and the winding up procedures are made public from the moment that the court issues an order on the commencement of the proceedings.

2.6 Powers and responsibilities of the intervening authorities

Can the intervening authorities reduce the rights of the stakeholders (creditors, shareholders, deposit holders)?

Is there in your legislation a judicial control of those measures? Please explain.

How are handled the rights of the following stakeholders in the execution of this kind of measures?

- Shareholders
- Creditors
- Employees
- Deposit holders

Description

When a provisional administrator or a liquidator has been appointed to a credit institution, the Banking Commission may, having obtained the opinion of the guarantee fund, refer the matter to the *tribunal de grande instance* to enable it, if it considers that the depositors' interests warrant it, to order the transfer of the shares held by one or more of that institution's executives. The transfer price is determined on the basis of a court-ordered appraisal. The shares are valued in accordance with the methods used in the event of a transfer of assets, applying the appropriate weightings to each case, consistent with the value of the assets, the profits achieved, the existence of any subsidiaries and the commercial prospects, and, for companies whose securities are admitted to trading on a regulated market, the market value.

In the same circumstances, the *tribunal de grande instance* may decide that the voting right attached to shares or voting right certificates held by one or more executives, shall be exercised, for a period which it determines, by a court officer designated for that purpose.

In the same circumstances, the *tribunal de grande instance* may also order the assignment of all of the institution's shares, or of the shares and membership shares which have not been assigned pursuant to the provisions of the first paragraph of the present article. When the shares are admitted to trading on a regulated market, the assignment arrangements are determined by the General Regulations of the Financial Markets Authority (Monetary and Financial code, article L. 613-25).

Safeguard procedure :

Concerning the creditors, their rights are reduced by the procedure and not by the authorities. In deed, during the observation period, the creditors cannot be paid for their credits: the order commencing the proceedings shall automatically prohibit payment of claims arising prior to the issuance of the commencement

order (Commercial code article L. 622-7). They have to declare their credits within a delay of two months so as to have a chance to be paid later.

The authorities cannot reduce the rights of the deposit holders. Their rights are guaranteed by the Deposit Guarantee Fund whose purpose is to indemnify the depositors in the event of their deposits or other repayable funds being unavailable (Monetary and Financial code, article L. 312-4).

Can intervention decisions override shareholder's rights in the scope of these measures?

Yes

No

Description

As described above, there are several solutions in this situation:

-first, the authorities can order the transfer of the shares held by one or more of that institution's executives;

-or secondly, the voting right attached to shares or voting right certificates held by one or more executives, shall be exercised, for a period which it determines, by a court officer designated for that purpose.

Anyway, the authorities cannot impose there will to the credit institutions. There is a special procedure under the control of the court in the aim of preventing the shareholders from abuses.

2.7 Relation with the formal insolvency proceedings

What is the relation of pre-insolvency/early intervention systems with formal insolvency legislation? How do they interact?

For the safeguard proceedings

At any time during the observation period, on motion of the debtor, administrator, court nominee, one of the controllers, the Public prosecutor or, of its own motion, the court will convert the safeguard proceedings into reorganization proceedings or will order liquidation proceedings if the conditions of these procedures are satisfied. It shall rule upon the case after having heard or duly summoned the debtor, the administrator, the court nominee, the controllers, the works council, or, in the absence of a works council, the employee delegates and after having received the Public prosecutor's opinion (Commercial code, article L. 622-10).

The safeguard procedure is the early intervention system used in France. The safeguard procedure is very likely to the reorganisation procedure. The main difference is that the debtor has not to be in state of cessation of payments. If it

appears, after the commencement of the proceedings, that the debtor was already in a state of cessation of payments at the time of issuance of the commencement order, the Court will record this and fix the date of the cessation of payments. It shall convert the safeguard proceedings into reorganization proceedings. If necessary, it may modify the length of the remaining observation period. The administrator, the court nominee or the Public prosecutor may apply to the Court which may also initiate a case of its own motion. It shall rule upon the case after having heard or duly summoned the debtor (Commercial code, article L. 621-12).

For the composition proceedings

The commencement of safeguard, reorganization or liquidation proceedings shall automatically terminate the agreement recognised or approved in compliance with Article L611-8. In this case, the creditors will recover all their claims and guarantees, after deduction of sums received, without prejudice to the provisions of Article L611-11 below mentioned (Commercial code, article L. 611-12).

If safeguard proceedings, reorganization proceedings or liquidation proceedings as a result are commenced, those persons who, under the approved agreement of composition have made a contribution of fresh funds to the debtor in order to ensure the continuation and long-term future of the business's activity will be paid, up to the amount of this sum, according to their preferential lien before all other claims prior to the commencement of the composition proceedings. Under the same conditions, those persons who, in the approved agreement, supply new assets or services in order to ensure the continuation and long-term future of the business will be paid, for the amount of the price of the assets or services, according to their preferential lien before all claims born prior to the commencement of the composition proceedings (Commercial code, article L. 621-11).

If the conciliation proceedings fail, the court will initiate a case of its own motion in order to rule upon the commencement of reorganization proceedings if it appears from the conciliator's report that the debtor is in a state of cessation of payments (Commercial code, article L. 631-4).

Is there in your legislation any special effect of the pre-insolvency/early intervention measures on special contracts (set off, netting for example)?

(Monetary and Financial code, articles L. 211-38; L.211-39; L.330-1; L.330-2).

Is there in your legislation any specific financing system for banks under pre-insolvency/early intervention?

As described below, the DGS can intervene under pre-insolvency (intervention for deposit holders only)

Can the deposit guarantee scheme be used to finance the pre-insolvency measures?

As a precaution, and when proposed by the Banking Commission, the guarantee fund may also intervene in connection with a credit institution whose situation gives grounds for fearing that the deposits or other repayable funds may be unavailable when due, bearing in mind, moreover, the support from which it could benefit. When the guarantee fund agrees to intervene with an institution as a precautionary measure, and having sought the opinion of the Banking Commission, it determines the terms of its intervention. It may make its intervention conditional upon the total or partial sale of the credit institution or the cessation of its business and the sale of its assets.

For application of the present provisions, the guarantee fund may, at the behest of a central body, participate in action taken by the latter by assuming responsibility for a portion of the cost of the measures intended to guarantee the solvency of a credit institution affiliated to that central body..

For application of the provisions above mentioned, the guarantee fund may acquire a credit institution's capital shares or, with the approval of the central body concerned, its membership shares (Monetary and Financial code, article L. 312-5).

2.8 Group aspect and Cross-border situations

In a national context (when both the parent company and the subsidiaries are located in your Member state), do the pre-insolvency measures apply to the subsidiaries?

Since subsidiaries have their own legal personality, the rule in the French legislation is that each entity of the group is subject to a proceeding.

Therefore, there is no special legislation or court practise for treating a banking group as on economic entity in reorganisation measures and winding up proceedings.

If the subsidiary is a limited liability company, its creditors have the possibility to introduce a claim against the parent company only on the basis of common civil liability or common insolvency law (faute de gestion, extension de faillite) or under a specific convention (surety agreement , sponsorship agreement) agreed by the parent company.

Do the systems you have described above apply to cross-border situations (on which legal basis, i.e territoriality or universal principles)? How would a cross border case be managed in the following cases:

- When the ailing bank in your Member state is the subsidiary of a parent company located in another Member state?

No link between the procedure against the subsidiary and the procedure against the parent company since both are independent entities (except in cases of intermingled assets or fictitious subsidiary).

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in another Member state?

No link between the procedure against the subsidiary and the procedure against the parent company since both are independent entities (except in cases of intermingled assets or fictitious subsidiary)

- When the ailing bank in your Member state is the subsidiary of a parent company located in a third country?

No link between the procedure against the subsidiary and the procedure against the parent company since both are independent entities (except in cases of intermingled assets or fictitious subsidiary)

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in a third country?

No link between the procedure against the subsidiary and the procedure against the parent company since both are independent entities, (except in cases of intermingled assets or fictitious subsidiary)

Is there in your legislation state a specific pre-insolvency/early intervention created for cross border situations (please consider both subsidiaries and branches separately)?

No.
Directive 2001/24/CE has been transposed in French Law and concerns branches. Nevertheless, this directive concerns only winding-up and reorganization procedures.

How does (or would) your national legislation deal with the cross-border aspects (are there situations where the Law of another Member state is applied) in the case of subsidiaries, not branches?

Formal reorganization measures and winding up rules

Since subsidiaries have their own legal personality, the rule in the French legislation is that each entity of the group is subject to a proceeding (except intermingled assets or fictitious subsidiary).

Therefore, the Law of another Member state is never applied.

How does your court deal with a conflict with another Member states' Law: when there is a divergence between both Laws, can an agreement be concluded under the control of your national judge?

No

2.9 Efficiency of those proceedings

Do you think the measures you have described above provide for optimal response in order to deal with problems in an ailing cross-border bank (please explain)?

Are there changes recently adopted or being discussed in your legislation?

3) Formal reorganization measures and winding up rules

3.1 General question

Can you briefly explain what types of insolvency systems currently apply in your Member states (please briefly explain the differences if there are several)?

Credit institutions which are unable to meet their current liabilities, immediately or in the near future, are deemed to be insolvent. Judicial liquidation proceedings may be instituted against credit institutions which have been deleted from the list by order of the Banking Commission and whose liabilities towards third parties, excluding debts which are only redeemable after the unsecured creditors have been fully paid off, are effectively greater than the assets less the mandatory provisions (Monetary and Financial code, article L. 613-26).

3.2 Definition and scope of reorganization measures

What do "reorganization measures" mean in practice in your Member state? (in general and for banks especially)?

"Reorganization measures" means "redressement judiciaire" and "sauvegarde judiciaire".

The "redressement judiciaire" is based on the notion of "cessation des paiements" (for definition, see hereunder).

The "procédure de sauvegarde" has been introduced by the 26th July 2005 law and also belongs to the category of "reorganization measures", but we decided to explain this procedure in the chapter dedicated to the early intervention, pre-insolvency measures because this procedure is launched on petition of the debtor which is not in state of cessation of payments (this proceeding has been introduced in the French commercial code in order to create a proceeding based on a voluntary basis and which can be launched when the company is facing difficulties that could lead her to the situation of "cessation des paiements").

What are the conditions for commencing reorganization measures (for banks especially)?

The common proceedings of, "sauvegarde judiciaire" and "redressement judiciaire" are available for banks. Nevertheless, specific regulations are provided by the Monetary and financial code.

The conditions for commencing those measures are different from one to another.

For each proceeding, the commercial law provisions that are explained apply to banks. Nevertheless, they must be combined with the specific legislation explained after.

Conditions for the "redressement judiciaire" proceeding

-Under commercial law

The goal of this proceeding is to allow the continuation of the company's activities, preservation of employment and the discharge of debts (goal is the same as sauvegarde proceeding but the situation concerned is not the same).

Article L.631-1 of the Commercial Code states that the "redressement judiciaire" proceeding has been introduced for the debtor which in a situation of "cessation des paiements".

The proceeding can be launch by two different ways :

-by the debtor : Article L.631-4 of the commercial code states that the request from the debtor to launch this proceeding must be introduced at the latest within 45 days after the "cessation des paiements" unless he has asked for a conciliation proceeding during this delay.

-by the tribunal automatically: when the conciliation proceeding has not been successful and when the conciliator's reports states that the debtor is in "cessation des paiements" situation, the tribunal automatically launches a "redressement judiciaire" proceeding.

-Specific provision for banks

The notion of "cessation des paiements" has been the subject of many debates relating to banks.

A specific definition for this notion is provided by the Monetary and financial Code. Article L.613-26 of this code provides: *"Notwithstanding the provisions of Article L. 631-1 of the Commercial Code, credit institutions which are unable to meet their current liabilities, immediately or in the near future, are deemed to be insolvent."*

Therefore, this notion refers to a liquidity crisis and enables an intervention at an earlier stage than for other companies.

Who can initiate a reorganization measures (in general and for banks especially)?

The decision to launch a reorganisation measure always stands on the commercial tribunal.

Nevertheless, the request for "redressement judiciaire" can be introduced by :

- the debtor within 45 days after the "cessation des paiements"
- the creditors
- the prosecution service

The commercial tribunal can also decide to launch such proceedings by itself, when the conditions are met.

The "sauvegarde judiciaire" proceeding can only be initiated on the request of the debtor.

It has to be noted that the opinion of the Banking Commission is always requested for the launching of reorganisation measures.

Are banks treated specifically in insolvency legislation (are there specific rules for either reorganization measures or winding up proceeding)?

There are specific rules for banks, as explained in the previous questions:

- the notion of "cessation des paiements" which enables to launch proceeding is different when banks are considered (article L. 613-26 of the Financial and Monetary code).

- Opinion of the Banking commission is always requested (article L.613-27 of the Financial and Monetary code).

- a specific proceeding has been introduced by the Financial and Monetary code (article L.613-26, paragraph 2).

3.3 Relations between reorganization measures and winding up

Are the triggering events defined by laws for both reorganization and winding up measures or it is up to the courts to decide? Explain

1- Triggering events for reorganisation measures

As it has been explained in the previous question, the triggering events for reorganisation measures are defined by the Commercial code and the Financial and Monetary code.

Nevertheless, those triggering events are generally organised on the basis of the notion of "cessation des paiements" which is a wide notion and can lead to different interpretation by the court.

2- Triggering event for the winding up proceeding

There are two kinds of winding up proceeding under French legislation:

- the common proceeding, available for all kind of company (banks included) set by the Commercial code

- a specific proceeding for banks, provided by the Financial and Monetary code

- The winding up proceeding set by the Commercial code

Article L.640-1 of the Commercial code states that the winding up proceeding is available for the debtor who is in situation of "cessation des paiements" and for whom the "redressement judiciaire" is obviously not possible.

The goal of the winding up proceeding is to put an end to the company's activity and to realize assets of the debtor by a global or part assignment of its rights and assets.

The commercial tribunal always decides if the winding up proceeding has to be launched.

Nevertheless, the Tribunal may act on the request of:

- the debtor, within 45 days after the "cessation de paiements" if he has not asked for a conciliation proceeding.
- the creditors
- the prosecution services
- the company's creditors

In order for a winding up proceeding to be launched, the company has to be in a situation of "cessation des paiements" and no "redressement judiciaire" should be possible (article L.640-1 of the commercial code).

The notion of "cessation des paiements" when banks are considered is the notion described in the financial and Monetary code (as for "redressement" and "sauvegarde").

Therefore, As for "redressement" and "sauvegarde", even if the conditions are set by laws, they are quite wide and subject to different interpretations. Therefore, those notions have been defined by the Court of cassation

-specific conditions for banks

Article L.613-26 paragraph of the Financial and Monetary Code has introduced another possibility to launch a "liquidation judiciaire" proceeding against a bank.

Hence, article L.613-26 paragraph 2 states that: *"liquidation judiciaire" proceedings may be instituted against credit institutions which have been deleted from the list by order of the Banking Commission and whose liabilities towards third parties, excluding debts which are only redeemable after the unsecured creditors have been fully paid off, are effectively greater than the assets less the mandatory provisions."*

Therefore, the conditions for winding up proceeding set by the Financial and Monetary code, are quite objective and cannot be the object of different interpretation.

It has to be noted that the opinion of the Banking commission always has to be requested, as for "sauvegarde" and "redressement".

3.4 Power and authorities of the authorities intervening

Regarding reorganization and winding up, what are the powers of (for the commencement and the management of this kind of measures):

- the nominated administrator
- the central bank (if it is not the banking supervisor)
- the banking supervisor
- the court
- Ministry of finance
- Others

Description of the powers

For the nominated administrator

As the case may be, the administrator will have different missions which will consist in supervising the debtor's management operations, assisting or appearing for the debtor in its management.

In the reorganization and winding up procedures, the administrator is only allowed to assist or to appear for the debtor in its management.

For the banking supervisor

When a provisional administrator or a liquidator has been appointed to a credit institution, the Banking Commission may, having obtained the opinion of the guarantee fund refer the matter to the *tribunal de grande instance* to enable it, if it considers that the depositors' interests warrant it, to order the transfer of the shares held by one or more of that institution's de facto and de jure executives, salaried or otherwise.

In the same circumstances, the *tribunal de grande instance* may decide that the voting right attached to shares or voting right certificates held by one or more de facto and de jure executives, salaried or otherwise, shall be exercised, for a period which it determines, by a court officer designated for that purpose.

In the same circumstances, the *tribunal de grande instance* may also order the assignment of all of the institution's shares, or of the shares and membership shares which have not been assigned pursuant to the provisions of the first paragraph of the present article (Monetary and Financial code, article L. 613-26).

The judicial reorganisation and liquidation procedures cannot be initiated in relation to a credit institution or an investment firm until the Banking Commission's opinion has been obtained (Monetary and Financial code, article L. 613-27).

The Banking Commission may appoint a provisional administrator to a credit institution to whom full powers relating to the legal entity's administration, management and representation are transferred.

That appointment is made either at the request of the executives, if they consider that they are no longer able to exercise their functions normally, or at the initiative of the Commission, if the management of the institution or company can no longer be carried out in normal conditions, or if a penalty has been imposed (Monetary and Financial code, article L. 613-18).

In the event of judicial liquidation proceedings being instituted or ordered in relation to a credit institution or an investment firm, the Banking Commission appoints a liquidator who draws up an inventory of the assets and gives effect to the liquidation and the redundancies (Monetary and Financial code, article L. 613-29)

The Banking Commission consults the Executive Board chairman of the Deposit Guarantee Fund on any question regarding an institution for which it intends to

implement the guarantee or intends to propose a precautionary intervention by the fund. The Executive Board chairman may also address the Banking Commission at his request (Monetary and Financial code, article L. 613-34).

For the court

The president of the court shall commence the procedure needed and shall appoint the bodies of the procedure.

The president of the court may summon the managers to determine the appropriate steps necessary to remedy the situation (Commercial code, article L. 611-2).

For the Ministry of finance

No special powers

For the execution of these measures (or the lack of decision to set these measures), what are the responsibilities of:

- the nominated administrator
- the national bank (if it is not the banking supervisor)
- the banking supervisor
- the court

Description of the responsibilities

The nominated administrator

The nominated administrator is liable on a general responsibility basis. This general rule is provided by the article 1382 of the Civil code: "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it".

Provided the case law, the legal action is allowable only if the administrator is sued personally and not for his mandate. Moreover, the prosecuting party will have to prove a serious fault.

The national bank

No responsibility

The banking supervisors

The French State is liable for the faults the banking commission has committed in its acts, but not only, the French State is also liable for the abstentions the banking commission did in its control of the banking groups.

The court

Jurisdictions are almost not liable. In practice it is very difficult and very rare to sue courts for their faults.

3.5 Group treatment

The purpose of this paragraph is to determine if group of companies are treated in your Member state at an entity level or in a coordinated way (by the legislation or case law, in internal or cross border situations, for banks specifically or other companies).

For the purpose of this paragraph, please consider that a group is constituted by a parent company and subsidiaries, not branches.

-Is there any legislation or court practise that specifically applies to a group?

No

-Is there any special legislation or court practise that specifically applies to a banking group?

No

What is the definition of the "group" that can be treated in a coordinated or joint way?

Member of a group are treated in a separate manner under French Law because each member has a legal personality.

Nevertheless, the procedure launched against one of the Members can have consequences on other members in two specific cases:

1-Fictitious subsidiaries

When the subsidiary is entirely owned by the parent company or when it has no autonomy, it can be qualified as a fictitious subsidiary.

Two relevant judgements of the French Courts have to be mentioned. Firstly, on December 18, 2007, the Commercial section of the Court of concluded that even in the case in which the management bodies of the parent company and the subsidiary were common and in which the general assembly was taking decisions according to the interest of the parent only, it should not be assumed that the subsidiary is fictitious.

Secondly, on December 13, 2006, the Civil section of the Court of Cassation stated that the autonomous character of the subsidiary could not be denied only because the parent is in charge of the establishment of the subsidiary and contracts a commercial lease or chooses the architecture firm.

2- Intermingled assets

The fact that each member of the economic group is endowed with a separate legal status and treated as a unit is probably one of the main advantages out of operating as a group. With reference to assets and liabilities, in principle, each member is autonomous. Therefore, in crisis situations, the entity facing difficulties is alone to manage the crisis.

Since the group is not endowed with legal capacity, it could not be subjected to insolvency proceedings. Therefore, operating as a group allows the economic group to limit contagion risks. However, once the procedure is established, liabilities could be extended to other entities in case of fulfilment of certain conditions.

The fulfilment of those conditions could more easily be considered in case of transfer of assets and treasury centralization. This could even lead to treat the group as a whole, or to make the liabilities of the company in question common to all the members of the group. As a result of this, the above mentioned advantage could no longer be considered.

Only transfer of assets in the context of unbalanced treasury centralization, and not in the context of balanced treasury centralization, seem to directly lead to the situations explained above. In this case, intermingled assets may lead to a unique insolvency proceeding for all the entities of the group, and the company managers may be held liable.

Even though there is no law provision in the context of crisis situations for the extension of liabilities within entities of the same group, or for the treatment of the group as a whole, courts have played an important role in this field.

When the assets of several entities have been exchanged, it is sometimes not possible to determine to which entity each asset belongs to. Therefore, courts have stated that in this case the insolvency proceeding may be extend to all the entities of the group.

Courts have extended this principle to the cases where unusual assets flows have occurred.

In principle, unbalanced transfer of assets or unbalanced treasury centralization lead to the concept of unusual assets flows. This notably applies to the cases where payments are either way too high or way too low, as well as to the cases where the company does not have its treasury at his disposal any more.

The Commercial section of the Court of Cassation, in a decision rendered on April 19, 2005, concluded that the monetary links between companies of the same group, as well as agreements concerning treasury management and personnel and financial assistance were not strong enough for considering intermingled assets. This decision has set a precedent.

Courts' decisions in this matter have most commonly stated the non-existence of equity merger rather than the opposite.

Is it possible to include solvent subsidiaries in the formal insolvency proceedings?

As a principle, it is not possible, but please refer to the paragraph above.

Could you explain if the following measures are available in your Member state (please consider both purely internal situations and if a close notion exists in your Member state, please explain):

For the four following questions, it has to be considered that in France, no coordinated or joint procedure is legally possible.

Nevertheless, article L.622-22 provides for the possibility to decide that a sauvegarde proceeding, a redressement proceeding or a winding –up proceeding can be transferred to another court that is not territorially competent because there are some specific interests which justify this change of forum.

This article can be used so that the procedure against the mother company and the procedure against the subsidiary can be treated by the same court.

Most of the time, when this measure is used, the same administrator will be appointed for both companies. No legal text in the Commercial code provides for the appointment of the same administrator but this rule a practical one.

-joint application : no (except intermingled assets and fictitious subsidiaries considered above and possibility set by article L.622-22 of the Commercial code)

-joint administrator no (except intermingled assets and fictitious subsidiaries considered above possibility set by article L.622-22 of the Commercial code)

-joint or coordinated proceedings no (except intermingled assets and fictitious subsidiaries considered above possibility set by article L.622-22 of the Commercial code)

Formal reorganization measures and winding up rules

-cooperation of insolvency administrators no (except intermingled assets and fictitious subsidiaries considered above possibility set by article L.622-22 of the Commercial code)

-joint reorganization plan no (except intermingled assets and fictitious subsidiaries considered above possibility set by article L.622-22 of the Commercial code)

-consolidation or pooling of assets please refer to the paragraph relating to intermingled assets above.

-extension of liability

Within the different law provisions concerning insolvency proceedings several rules are set for interested parties and/or authorities to bring an action for liability against the company's executive. Some of these actions can entail for some of de jure or de facto managers to be held responsible for the debts of the legal entity, in whole or in part.

In the context of treasury centralization, parent companies being at the same time the executive/manager of the company under control is a common practice. Therefore, treasury centralization under doubtful conditions can entail for the parent company to be held responsible for the debts of the subsidiary. These actions have partly been modified by the Act No. 2005-845 of July 26, 2005.

Two actions are still contemplated in the new legal system: action addressing liability for excess of liabilities over assets, and action addressing liability for the debts of the company. The former is just about a continuation of the previous existing action. The latter is new.

1- Liability for excess of liabilities over assets

With regard to the action addressing liability for excess of liabilities over assets, the most significant modification is the fact that the action cannot be brought unless a safeguard or a reorganization plan is set.

In the new system, as well as in the former, unbalanced transfer of assets can be regarded as a management fault.

For that reason, the company manager/s may be compelled to bear the debts of the legal entity, in whole or in part.

The sums paid by the manager shall form part of the debtor's assets and may be distributed to all creditors on a pro rata basis.

Article L.652-1 states that the right of action shall be barred after three years from the date of issuance of the order pronouncing the liquidation proceedings or the rescission of the plan.

2- Liability for the debts of the company

Action addressing liability for the debts of the company replaces the action to extend corporate liability which was used before the 2005 Law. It is no longer regulated as a liability but as a monetary sanction.

Formal reorganization measures and winding up rules

If the manager/s of the legal entity commit one or several faults within the ones listed in article 652-3 of the Code of commerce, he risks to bear all or part of the entity's debts.

Even if the company discharges part of its debts, obligation with regard to the manager/s is maintained. Contrary to the other action existing in the new legal system, "*sums recovered shall be used to pay off creditors according to the order of their secured claims*" (article L 652-3 of the Commercial Code). With regard to the faults listed by law, they are pretty much the same as the ones stated in the former system

- contribution orders
- full/partial liability of majority owner/mother
- Other practises that are in favour of group treatment

none

3.6 Cross border situations

In a national context (when both the parent company and the subsidiaries are located in your Member state), do the reorganization and winding up proceedings apply to the subsidiaries?

Do the systems you have described above apply to cross-border situations (on which legal basis, i.e territoriality or universal principles)? How would a cross border case be managed in the following cases:

- When the ailing bank in your Member state is the subsidiary of a parent company located in another Member state?

Formal reorganization measures and winding up rules

In France, the mother company and the subsidiary are two different entities. Therefore, the procedure launched against the subsidiary does not lead to the commencement of a procedure against the mother.

Nevertheless, extension of the proceeding to a parent company located in another state is also available in the case of intermingled assets or fictitious subsidiaries, as mentioned above. But the execution of those decisions is submitted to the other states' authorities.

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in another Member state?

As already explained, the parent company and the subsidiary are two different entities. Therefore, the procedure launched against the parent company does not lead to a procedure against the subsidiary.

Nevertheless, the principle of universality is applied by French courts and has been explicitly recognized by the Supreme court in 2002 (Cour de cassation, 19 novembre 2002, Worms).

This principle means that a reorganization or winding-up proceeding may have consequences on the assets of the company against which the procedure has been launched abroad. This principle is submitted to the acceptance of the State where the assets are located since an request for exequatur must be brought the foreign states' authorities in order to execute the French decision.

Extension of the proceeding to a parent company located in another state is also available in the case of intermingled assets or fictitious subsidiaries, as mentioned above. Nevertheless, the execution of those decisions is also submitted to the other states' authorities.

- When the ailing bank in your Member state is the subsidiary of a parent company located in a third country?

Same rule as if the parent company was in a Member state, please refer to the paragraph above.

- When the ailing bank in your Member state is the parent company of one or several subsidiary located in a third country?

Same rule as if the parent company was in a Member state, please refer to the paragraph above.

Formal reorganization measures and winding up rules

Are there in your legislation specific reorganization/winding up proceedings created for cross border situations (please consider both subsidiaries and branches separately)?

There is no specific reorganization/winding up proceedings created for cross border situations.

Regarding branches, the 2001/44 directive has been transposed at articles L613-31-1 and following of the financial and Monetary Code.

Those articles refer to the measures taken by the administrative or judicial authorities in France or in any other Member State in order to maintain or restore the financial situation of a credit institution and which affect the pre-existing rights of third parties. Those measures are the followings :

- the measures referred to in 3 of Article L.613-21;
- judicial reorganisation procedure (redressement)
- liquidation measures

Article L.613-31-3 provides that reorganization and winding up measures decided within the framework of the directive in another Member state shall have effects in every Member state.

Credit institutions concerned by the directive must have their registered office in one of the Member states.

When such a proceeding is opened in another Member state, article L. 613-31-9 provides that the administrator from this Member state can exercise in France all the powers he is authorised to exercise in that State.

As a principle, the Law from the Member state where the credit institution has its registered office must be applied.

Nevertheless, for some specific aspects (labour law for example) another rule of conflict is used in order to determine the relevant legislation to be applied (article L.613-31-5) .

Furthermore, article L.613-31-6 provides that some rights cannot be affected by the proceeding in the other Member states.

How does (or would) your national legislation deal with the cross-border aspects (are there situations where the Law of another Member state is applied) in the case of subsidiaries, not branches?

Law of another Member state is never applied because in insolvency law matters, French courts always apply the lex fori.

Formal reorganization measures and winding up rules

How does your court deal with a conflict with another Member states' Law: when there is a divergence between both Laws, can an agreement be concluded under the control of your national judge?

No agreement can be concluded as the rules relating to insolvency proceeding are considered as public policy in France.

Is there any legal basis for cross border cooperation in reorganization measures or winding up proceedings at group level? Could you explain precisely which authorities actually cooperate under this legal basis and how?

No

Could you explain if the following measures are available in your Member state (please consider only cross-border situations, and if a close notion exists in your Member state, please explain):

(only subsidiaries are considered, not branches)

For the four following questions, it has to be considered that in France, no coordinated or joint procedure is legally possible.

Nevertheless, and as already explained above, two companies may be treated as one in specific cases : intermingled assets or fictitious subsidiary.

Thus, in order for French court to be competent for subsidiaries located in another Member state, that subsidiary must be considered as fictitious or the assets of both companies must be intermingled.

Nevertheless, even in the case, the execution of the French decision is submitted to the other Member state's acceptance.

-joint application no except fictitious subsidiaries and intermingled assets

-joint administrator no except fictitious subsidiaries and intermingled assets

-joint or coordinated proceedings no except fictitious subsidiaries and I ntermingled assets

-cooperation of insolvency administrators no except fictitious subsidiaries and intermingled assets

-joint reorganization plan no except fictitious subsidiaries and intermingled assets

-consolidation or pooling of assets (see paragraph about fictitious subsidiaries and intermingled assets

Formal reorganization measures and winding up rules

-extension of liability as already explained for the internal cases, an action for liability can be brought against the Mother company if it is the de facto or de jure manager of the subsidiary.

Nevertheless, as far as cross –border cases are concerned, the decision of the French court is subject to the other Member state’s agreement in order to be executed in the other Member State.

-contribution orders

-full/partial liability of majority owner/mother\$
see above

-Other practises that are in favour of group treatment: none

3.7 Efficiency of those proceedings

Do you think the measures you have described above provide for optimal response in order to deal with problems in an ailing cross-border bank regarding:

- The interest of the entity concerned?

- The interests of its creditors?

- The interests of the deposit holders?

- The interest of shareholders?

- Formal reorganization measures and winding up rules

- The interest of the employees?

Do you think these measures can efficiently solve financial difficulties faced by a bank?

Are there changes recently adopted or being discussed in your legislation?

Annex A - The relevant legal texts and cases in English

CIVIL CODE

Art. 1244-1

(Act no 91-650 of 9 July 1991)

However, taking into account the debtor's position and in consideration of the creditor's needs, a judge may, within a two-year limit, defer or spread out the payment of sums due.

By a special judgement, setting out the grounds on which it is based the judge may order that the sums corresponding to the deferred due dates carry interest at a reduced rate which may not be lower than the statutory rate or that the payments be appropriated first to the capital.

Furthermore, he may subordinate those measures to the performance, by the debtor, of acts appropriate for facilitating or guaranteeing the payment of the debt.

The provisions of this Article shall not apply to debts for maintenance.

Art. 1382

Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.

COMMERCIAL CODE

Article L234-1

(Act No. 2005-845 of 26 July 2005 Art. 162 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

If, in the performance of his duties, the auditor of a public limited company notes costs likely to compromise the continuity of the business, he shall inform the chairman of the board of directors or the executive board chairman thereof as prescribed in a *Conseil d'Etat* decree.

If no reply is received within fifteen days or if the reply received does not provide complete assurance of such continuity, the auditor shall request the chairman of the board of directors or the executive board chairman, in a letter copied to the presiding judge of the commercial court, to have the board of directors or the supervisory board deliberate the facts noted. The auditor shall be invited to that meeting. The minutes of the board of directors' meeting or supervisory board meeting shall be sent to the presiding judge of the commercial court and to the works council or, failing this, to the workers' representatives.

If these provisions are not complied with or if the auditor finds that, despite the decisions taken, the continuity of the business remains compromised, a general meeting shall be convened under conditions, and within a time limit, determined in a *Conseil d'Etat* decree. The auditor shall draw up a special report which is presented to that meeting. The said report is sent to the works council or, failing this, to the workers' representatives.

If, after the general meeting, the auditor finds that the decisions taken do not ensure the continuity of the business, he shall inform the presiding judge of the commercial court of his actions and send him his results.

Article L611-1

(Act No 2003-721 of 1 August 2003, Article 10, Official Journal of 5 August 2003)

(Act No 2005-845 of 26 July 2005, Article 1, Article 3, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any person registered with the Register of Commerce and Companies or the craftsmen's register as well as private law entities may join a prevention group accredited by an order of the State representative in the region.

This group shall provide its members with a confidential analysis based on the economic, accounting and financial data that they must send it regularly.

Where the prevention group identifies signs of difficulty, it will inform the head of the business and may suggest that an expert provides assistance.

On motion of the State's representative, the competent public authorities shall give assistance to the accredited prevention groups. The Banque de France may also, as stipulated in an agreement, be invited to give its opinion on the financial situation of member businesses. Accredited prevention groups may also receive grants from local authorities.

Accredited prevention groups may enter into agreements with credit institutions and insurance companies in favour of their members.

Article L611-2

(Act No 2005-845 of 26 July 2005, Article 1, Article 4, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I. - Where any deed, document or proceedings shows that a commercial company, an economic interest grouping or a sole ownership, running a trading or a craftsman's business, encounters difficulties that may undermine the continuation of its business operations, its managers may be summoned by the president of the *Tribunal de commerce* (Commercial court) to determine the appropriate steps necessary to remedy the situation.

At the end of this meeting or if the managers have not come to the meeting, the president of the court may, notwithstanding any statutory or regulatory provision to the contrary, obtain information enabling him to know the debtor's accurate economic and financial situation from statutory auditors, members and representatives of the personnel, public authorities, social security bodies and provident institutions and the bodies responsible for the centralisation of information on banking risks and payment incidents.

II - Where the managers of a commercial company do not file annual accounts within the time limits provided for by the applicable legal provisions, the president of the court may summon them to do so promptly, by means of an injunction accompanied by a periodic pecuniary penalty.

If this injunction is not complied with within the time limit provided for by a *Conseil d'Etat* decree, the president of the court may also enforce the provisions of the second paragraph of (I) above against the managers.

Article L611-3

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The president of the *Tribunal de commerce* (Commercial court) or of the *Tribunal de grande instance* (High court) may, at the request of the business's representative, appoint a special commissioner (*mandataire ad hoc*) whose duties he shall set out.

Article L611-4

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A composition procedure is instituted before the *Tribunal de commerce* (Commercial court) for the persons who carry out a commercial or craftsman's activity, who encounter an actual, or a foreseeable legal, economic or financial difficulty, and who have not been in a state of cessation of payments for more than forty-five days.

Article L611-5

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The composition procedure shall be applicable, under the same conditions, to private law entities and to natural persons running an independent professional activity, including independent professional persons with a statutory or regulated status or whose designation is protected. For the implementation of this article, the *Tribunal de grande instance* (High court) shall have jurisdiction and its president shall have the same powers as those attributed to the president of the *Tribunal de commerce* (Commercial court).

The composition procedure shall not apply to farmers as they are subject to the procedure provided for in Articles L351-1 to L351-7 of the Rural Code (*règlement amiable*).

Article L611-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 7, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court shall rule upon the approval of the agreement after having heard or duly summoned to the judge's chambers, the debtor, the creditors who are party to the agreement, the representatives of the works council or, in the absence of a works council, the employee delegates, the conciliator and the Public prosecutor. The supervisory body or, if any, relevant authority of a debtor who runs an independent profession with a statutory or regulated status or whose designation is protected, shall be heard or summoned under the same conditions.

The court may hear any other person whose hearing that it deems useful

Article L611-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 9, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The commencement of safeguard, reorganization or liquidation proceedings shall automatically terminate the agreement recognised or approved in compliance with Article L611-8. In this case, the creditors will recover all their claims and guarantees, after deduction of sums received, without prejudice to the provisions of Article L611-11.

Article L611-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 10, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The duties of a special commissioner (*mandataire ad hoc*) or those of the conciliator may not be carried out by any person who has received during the last twenty-four months remuneration or payment from the debtor, from any of the debtor's creditors or from a person who controls or is controlled by the debtor within the meaning of Article L233-16 (of the present Code), for whatever reason, directly or indirectly, other than remuneration or payment for a special commission (*mandat ad hoc*) or duties in connection with an amicable settlement or a composition carried out in favour of the same debtor or the same creditor. The person thus appointed must attest on his honour, at the moment of acceptance of his duties, that he complies with these prohibitions.

The duties of the special commissioner or those of the conciliator may not be entrusted to any *Tribunal de commerce* (Commercial court) judge who is either in office or who has left office within the previous five years.

Article L611-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 10, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any person who has taken part in the composition proceedings or in a special commission (*mandat ad hoc*) or who, by virtue of his duties, knows about these shall be bound by a duty of confidentiality.

Article L621-11

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1, Article 22, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The controllers shall assist the court nominee in his functions and the supervisory judge in his duty of supervising the management of the business. They may consult all documents sent to the administrator and to the court nominee. They shall observe confidentiality. Controllers shall not be paid for their duties.

Article L622-20

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 34, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Only the court nominee appointed by the Court may act on behalf and in the general interest of the creditors. However, if the court nominee fails to act, any creditor appointed as controller may act in the general interest of the creditors under the conditions provided for in a *Conseil d'Etat* decree.

The court nominee shall transmit all comments that he receives from the controllers in the course of the proceedings to the supervisory judge and to the Public prosecutor.

Sums recovered following actions initiated by the court nominee or, if the court nominee fails to act, by the creditor(s) appointed as controllers, become part of the debtor's estate and shall be used to pay the debtor's liabilities according to the terms provided for paying liabilities if the continuation of the business is decided.

Article L624-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Based on the proposals submitted by the court nominee, the supervisory judge shall decide on the admission or rejection of the claims or mention the existence of a pending legal action or his lack of jurisdiction in respect of the dispute.

Article L631-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The commencement of these proceedings must be requested by the debtor at the latest within the forty-five days following the cessation of payments if the debtor has not, within this time limit, requested the commencement of conciliation proceedings.

If the conciliation proceedings fail, the court will initiate a case of its own motion in order to rule upon the commencement of reorganization proceedings if it appears from the conciliator's report that the debtor is in a state of cessation of payments.

Article L640-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

This article institutes a liquidation procedure available to any debtor mentioned in Article L640-2 that is in a state of cessation of payments and whose

reorganization is manifestly impossible.
The purpose of the liquidation procedure is to end the business activity or to sell the debtor's assets through a general or separate sale of its interests and property.

MONETARY AND FINANCIAL CODE

Article L312-4

(Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

(Act No. 2003-706 of 1 August 2003 Article 46 VI 2, Official Journal of 2 August 2003)

Credit institutions authorised in France belong to a Deposit Guarantee Fund whose purpose is to indemnify the depositors in the event of their deposits or other repayable funds being unavailable.

The deposits and other funds of credit institutions, insurance companies, unit trusts, pension funds, investment firms and the persons referred to in Article L. 518-1 or 1 of Article L. 312-2 are excluded from the said indemnity. Other deposits and funds may be excluded from the indemnity, as determined for in an order of the Minister for the Economy, as a consequence of information relating to the company's situation, specific advantages that the depositor concerned may have benefited from, the specific nature of certain funds or deposits, or the illicit source of the funds concerned.

Article L312-5

(inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

I. - The guarantee fund intervenes at the behest of the Banking Commission when it establishes that one of the institutions referred to in Article L. 312-4 is no longer able, immediately or in the near future, to return the funds it has received from the public in accordance with the legislative, regulatory or contractual conditions applicable to their return. Recourse to the guarantee fund automatically entails the deletion of that institution from the list of authorised credit institutions.

II. - As a precaution, and when proposed by the Banking Commission, the guarantee fund may also intervene in connection with a credit institution whose situation gives grounds for fearing that the deposits or other repayable funds may be unavailable when due, bearing in mind, moreover, the support from which it could benefit. When the guarantee fund agrees to intervene with an institution as a precautionary measure, and having sought the opinion of the Banking Commission, it determines the terms of its intervention. It may make its intervention conditional upon the total or partial sale of the credit institution or the cessation of its business and the sale of its assets.

III. - For application of the present provisions, the guarantee fund may, at the behest of a central body referred to in Article L. 511-30, participate in action taken by the latter by assuming responsibility for a portion of the cost of the measures intended to guarantee the solvency of a credit institution affiliated to that central body.

For application of the provisions of II and III, the guarantee fund may acquire a credit institution's capital shares or, with the approval of the central body concerned, its membership shares.

Appeals against the guarantee fund's decisions made by virtue of the present article come within the scope of the administrative courts.

Article L613-31-1

The present subsection applies to the reorganisation measures and liquidation procedures for credit institutions and their branches established in a European Community Member State other than that in which their registered office is located. The European Economic Area Member States are treated as Member States of the European Community.

It also applies to the branches of a credit institution having its registered office outside the European Economic Area, provided that it has branches established in at least two Member States.

Article L613-31-2

I. - The reorganisation measures referred to in the present subsection are those taken by the administrative or judicial authorities in France or any other Member State in order to maintain or restore the financial situation of a credit institution and which affect the pre-existing rights of third parties.

The measures taken in France which affect such rights are:

1 Those referred to in 3 of I of Article L. 613-21;

2

3 The judicial reorganisation procedure referred to in Book VI of the Commercial Code.

II. - The liquidation measures referred to in the present subsection are collective procedures initiated and overseen by the administrative or judicial authorities in France or any other Member State to realise assets under the supervision of those authorities.

When they are taken in France, these measures are those covered by Title IV of Book VI of the Commercial Code.

Article L613-31-3

Without prejudice to the provisions of Articles L. 613-31-5 and L. 613-31-6:

1 The reorganisation and liquidation measures decided by the proper authorities of a Member State other than France in relation to a credit institution having its registered office in that State produce all their effects in Metropolitan France and the Overseas Departments and in Saint-Barthélemy and Saint-Martin without any other formality, including effects relative to third parties, as soon as they produce their effects in that State. The same applies when such measures are taken in relation to a branch of a credit institution having its registered office outside the European Economic Area;

2 When they are taken by the proper French public authority in relation to a credit institution registered in France or a branch in France of an establishment having its registered office outside the European Economic Area, these measures produce all their effects in the other Member States, including effects relative to third parties located in other Member States.

Article L613-31-4

The initiation of judicial liquidation proceedings against a credit institution entails its deregistration as a credit institution.

Article L613-31-5

Notwithstanding the provisions of Article L. 613-31-3, the effects of a reorganisation measure or a liquidation procedure within the meaning of Article L. 613-31-2 on the contracts, rights and proceedings enumerated below are determined by the following rules:

1 Contracts of employment and working relationships are governed solely by the law of the Member State applicable to that contract or that relationship;

2 Contracts giving entitlement to acquire or enjoy the use of real property are governed solely by the law of the Member State on whose territory that property is located. The same law also determines whether that property is movable or immovable;

3 Rights over real property, a vessel or an aircraft which is subject to registration in a public register are governed solely by the law of the Member State under whose authority the said register is maintained;

4 Clearing agreements, those relating to temporary assignment of financial instruments and those governing transactions carried out within the framework of a regulated market remain solely governed by the law applicable to those agreements;

5 Rights over financial instruments which require an entry in a register, an account or a centralised depository system maintained or located in a Member State are governed solely by the law of that Member State;

6 Proceedings pending on the commencement date of the reorganisation measure or the liquidation procedure relating to a property or right which the credit institution has been compelled to relinquish are governed solely by the law of the Member State in which the proceedings are taking place.

Article L613-31-6

(inserted by Order No. 2004-1127 of 21 October 2004 Art. 1 II Official Journal of 22 October 2004)

I. - Notwithstanding the provisions of Article L. 613-31-3, the decision to adopt a reorganisation measure or to initiate a liquidation procedure shall not affect:

1 Rights in rem, within the meaning of the applicable law, of a creditor or a third party over tangible or intangible assets, whether movable or immovable, belonging to the credit institution which is located in another Member State on the date of the decision;

2 Vendor's rights founded on a reservation of title, when the property was in another Member State on the date of the decision;

3 The buyer's right to acquire a property sold by the credit institution, when the property was in another Member State on the date of the decision and on the date of delivery;

4 A creditor's right to call for offsetting of his debt with that of the credit institution, when the law applicable to the credit institution's debt so permits.

II. - The foregoing provisions shall not impede nullity suits, applications to set aside or unenforceability actions against deeds which are prejudicial to the creditors collectively when such actions are permitted by the law of the Member State in which the credit institution's registered office is located.

Article L613-31-7

(inserted by Order No. 2004-1127 of 21 October 2004 Art. 1 II Official Journal of 22 October 2004)

Notwithstanding the provisions of Article L. 613-31-3 and of II of Article L. 613-31-6, the provisions of the law of the Member State in which a liquidation procedure is initiated in regard to a Community credit institution via nullity suits, applications to set aside or unenforceability actions against deeds which are prejudicial to the creditors collectively are not applicable if the beneficiary of such an deed can show that it is subject to the law of another Member State and that that law does not in any way allow it to be contested in the case in question.

In the case of reorganisation measures, the rule laid down in the previous paragraph only applies to deeds prejudicial to the creditors which predate the adoption of such a measure.

Article L613-31-8

(inserted by Order No. 2004-1127 of 21 October 2004 Art. 1 II Official Journal of 22 October 2004)

When, in return for payment and through a deed executed after adoption of a reorganisation measure or the commencement of a liquidation procedure, the credit institution disposes of:

- 1 Real property;
- 2 A vessel or an aircraft subject to an entry in a public register;
- 3 Instruments or rights over instruments whose existence or transfer requires an entry in a register, an account or a centralised depositary system maintained or located in a Member State.

The validity of that deed is governed by the law of the Member State in which that real property is located or under whose authority that register, that account or that depositary system is maintained.

Article L613-31-9

(inserted by Order No. 2004-1127 of 21 October 2004 Art. 1 II Official Journal of 22 October 2004)

An administrator or liquidator appointed by the proper authority of another Member State is authorised to exercise all the powers he is authorised to exercise in that State in Metropolitan France and the Overseas Departments.

In exercising those powers, the administrator or the liquidator shall comply with French law, particularly in regard to the methods used to realise assets or provide information to employees. Such powers shall not include execution measures requiring the use of force or the right to rule on a dispute or a disagreement.

The administrator or the liquidator may appoint persons responsible for assisting them or representing them, particularly in the Member States in which the credit institution's branches are located.

Article L613-31-10

(inserted by Order No. 2004-1127 of 21 October 2004 Art. 1 II Official Journal of 22 October 2004)

A Conseil d'Etat decree determines, as necessary, the implementing regulations for the present subsection and, inter alia, those relating to publication abroad of the measures referred to in Article L. 613-31-3, as well as the information sent to creditors.