7. *France*

a. Insolvency Laws in France

The French bankruptcy system was revamped in 1984 and 1985.[1] The purpose of the legislation is not merely to facilitate, but actively to encourage effective reorganization of financially distressed business entities.[2]

The French system is unique in that Commerce Tribunals (*Tribunaux de commerce*) generally have jurisdiction over these cases. The judges who preside are lay business people elected by the local Chambers of Commerce to serve one or more days a week as judges.[3] They have practical experience and discretionary powers.[4]

The 1984 Law[5] is designed to prevent business failures. It requires greater financial reporting by corporations and outside auditors to detect early warning signs of problems.[6] The 1994 amendments require the clerk of the Commerce Tribunal (where judgments and tax defaults are filed) to report the results to the president of the Commerce Tribunal. The Commerce Tribunal can appoint a conciliator who will conduct confidential mediation with creditors. It can lead to an arrangement between creditors and the debtor allowing the debtor to obtain a reduction in indebtedness or extensions of payment deadlines.

The 1985 Law[7] is the substantive bankruptcy law. It provides for a single unified procedure applicable to companies, merchants, artisans and farmers. The prior adversarial character of the law was removed and replaced by an [494] economic rather than legal paradigm, the explicit goals of which are (1) to save the enterprise, (2) to preserve jobs, and (3) to satisfy creditors' claims, in that order.[8]

Proceedings under the 1985 Law are normally commenced as reorganization proceedings (*redressement judiciaire*). The 1985 Law requires an observation period (*période d'observation*) to determine whether or not a rescue plan is feasible. This period lasts four (4) months and may be extended for an additional four (4) months period by Court order. The 1994 amendments authorize the Commerce Tribunal immediately to order liquidation where business has ceased or rescue is manifestly impossible.[9] Following the commencement of the case the court holds a hearing at which it orders a stay of actions by creditors whose claims accrued before the proceedings and determines whether the case will proceed as a reorganization (*redressement*) or as a liquidation (*liquidation*). A judicial administrator (*administrateur judiciare*), a creditors' representative, and an employees' representative are

[1] Law No. 84-148 of March 1, 1984, effective March 1, 1985 [hereinafter the 1984 Law]; and Law No. 85-98, subject to Decree Nos. 85-1388 and 85-1389 of December 27, 1985 [hereinafter the 1985 Law]. Amendments were enacted in 1994. Law No. 94-475 of June 10, 1994 [hereinafter the 1994 Amendments]. The 1984 and 1985 Laws have been included in Chapter VI of the new French Commercial Code since several laws and the former French Commercial Code were compiled pursuant Law n°2000-912 of September 18, 2000. It should be noted that the substance of the Laws does not change though the form does.

[2] Richard L. Koral & Marie-Christine Sordino, *The New Bankruptcy Reorganization Law in France: Ten Years Later*, 70 AM. BANKR. L.J. 437, 437 (1996).

[3] *Id.* at 443.

[4] *Id.*

[5] Now Article L. 620-1 and following of the French Commercial Code

[6] *Id.* at 445-48.

[7] Now Article L. 620-1 and following of the French Commercial Code

[8] *Id.* at 442 and article L. 620-1 of the French Commercial Code

[9] .Article L. 621-1 of the French Commercial Code

appointed and one judge is designated to oversee the case.[10] The judicial administrator's powers can vary from supervision to replacement of management.

As a result of the stay of legal proceedings rule, if the case proceeds as a *redressement*, the creditors cannot enforce their claims during the observation period or until a rescue plan (*plan de redressement*) is completed, if the court adopts one. The administrator draws up the plan in cooperation with management.[13] The court has the power to approve a proposed plan independently, selecting among plans for reorganization or sale of the business, or to order liquidation. A plan is judged simply on whether it is feasible from the debtor's perspective, not on the basis of creditor satisfaction. There is no creditor participation in the reorganization process or voting on the plan, but no creditor can be bound by a plan providing for payment of less than 100% of its claim. If a creditor does not accept the payment proposed by the plan, full payment can be extended for up to ten years.

Despite the stay of legal proceedings rule, the secured creditors can sometimes be paid. For instance, the bankruptcy judge may authorize the judicial administrator or the debtor to pay debts incurred prior to the court order commencing the proceedings in order to recover assets pledged or otherwise lawfully retained when such assets are necessary for the continuation of the business.

If the case becomes a *liquidation*, the stay expires three months later (a) for creditors who have pledges, mortgages, or special preferences and (b) for the Treasury with regard to general preferences, if the liquidator has not started to liquidate the collateral within that time.[14] Upon termination of bankruptcy proceedings, prebankruptcy debts are discharged whether paid or not, except for debts for crimes, alimony, fraud, or previous filings.[15]

[10] *Id.* at 448 n.59.

[13] Koral & Sordino, *supra* note 210, at 451-53 (discussing plan formulation and approval).

[14] Laurent Gaillot, *Foreign and International Business Insolvency--France, in* MULTINATIONAL COMMERCIAL INSOLVENCY, at J-13 (1993); Article L.622-23 of the French Commercial Code

[15] *Id.* at J-17; Article L. 622-32 of the French Commercial Code