

New Rules Protect Foreign Creditors

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Article 50 of the Bankruptcy Act of January 25 1985 states that creditors whose debts arose before an insolvency procedure begins must lodge their claims with the representative creditor within two months of the initial judgment (four months for foreign creditors).

Except in certain situations where the creditor must be notified (eg, leasing agreements), there is no real obligation to inform creditors. Thus, creditors must keep informed of the financial and economic situation of the debtor. Creditors which fail to keep informed will not be admitted to the insolvency procedure if they fail to notify the representative creditor within the specified period.

As a result of globalization, creditors increasingly come from foreign countries. Creditors are often unaware of the consequences of their failure to notify, due to language barriers and a lack of French legal knowledge. Retaining an agent in France is often a solution to this problem.

Since the EU Regulation on Insolvency Proceedings entered into force on May 31 2002, French insolvency law has significantly evolved. Representative creditors are now required to inform all known creditors which reside in a different country of the following:

- the legal period in which a claim must be lodged;
- the consequences of failing to lodge a claim within this period; and
- the documents which must be provided to make the claim valid - that is, (i) the bill of credit, (ii) contractual evidence, such as contracts, order forms and delivery notes, and (iii) the mandate if the claim has been assigned.

If he fails to inform foreign creditors, Article 1382 of the French Civil Code allows an action to be brought on the basis of the principle of equality between creditors (particularly if they are from the same rank).