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SHORT PAPER

A COMPARATIVE ANALYSIS OF THE BALANCE BETWEEN LIQUIDATION AND RESTRUCTURING GOALS AND PROCEEDINGS IN FRANCE & THE UK

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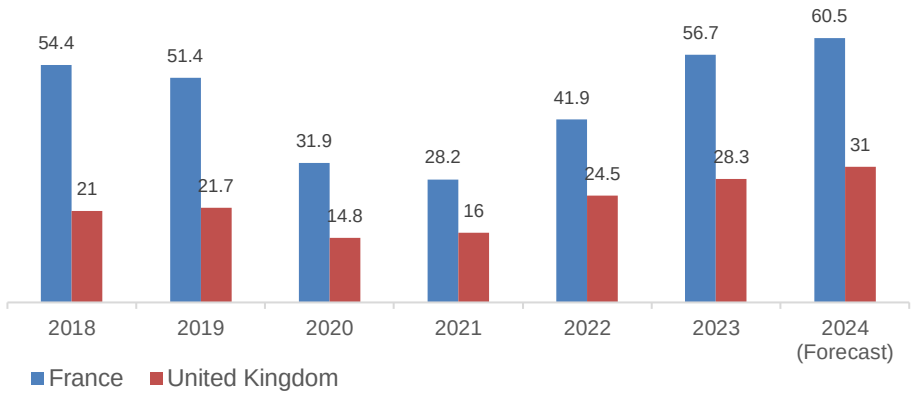
We're all busy again…

'We're all busy again', say UK restructuring experts1 to Michael O'Dwyer from the Financial Times this February. Inflation and higher interest rates across the world are driving a rise in Corporate insolvencies and administrations.

On both sides of the Channel, 2023 has been seen a "black year" for French and UK Companies: the number of insolvencies reaches again the pre-pandemic levels.

Number of insolvencies per year (In thousands)



Source: Allianz Trade

In current market conditions coupled with the complex geopolitical situation, the strength, robustness, and trust in the insolvency laws plays a key role protecting countries corporates, business, and social environment to navigate through uncertainties.

First stress since the departure of the United Kingdom of the European Union and as the infusion of liquidity is draining out, the old continent braces for a high insolvency and business failures.

Under the new paradigm of the post-Brexit of the UK and the further integration of the French legal framework with the other EU countries, the proceedings for restructuring and liquidation ought to be reviewed to bring further focus on their targeted goals or underlying impacts through a comparative analysis.

After considering the translation between the French and the English definition of insolvency, the review of the 2 systems and the proposed proceedings for restructuring and insolvency

[1] See FT - Michael O'Dwyer FEBRUARY 29, 2024 - https://www.ft.com/content/71364c18-ab49-4789-8f8b-89e59f538534

will bring the side-by-side review of the key differences and advantages of each legal framework. Considering the international assessment of those framework, we will look at understanding how the systems are recognized and seen in term of insolvency resolution.

Finally, we will be looking into the orientations of the insolvency legal frameworks in France and the UK through the recent "enhancement" of the laws.

Is Insolvency the same as "cessation of payments"?

Having a join history for at least a 1 millennium[2] and considering the estimate that 2/3 of the English vocabulary have some French origin[3], we would expect similar conceptual definition for the event triggering the distress of a Company: insolvency.

Generally speaking, insolvency refers to situations where a debtor cannot pay the debts it owes. However, the definition can be situational and defer between perspectives as well as jurisdictions.

Hence, under the English and Wales law, the assessment of Corporate Insolvency is defined as well as the testing tools to establish the same. This is primarily the duty of the Company's Directors to make this assessment. Alternatively, creditors will force for the recognition of the insolvency and the underlying impacts it will have on the Company.

The tests of the solvency of a Company include:

- **The Cash-Flow test.** Main tool to demonstrate the Corporate insolvency in the UK: Under the Insolvency Act 1986, Section 123(1)(e): a company is considered insolvent if it is unable to pay its debts as they become due. This cash flow test evaluates whether the company has enough available funds to meet its obligations, including debts to suppliers, employees, and other creditors.
- **The Balance Sheet Test (less frequently):** In addition to the cash flow test, the UK insolvency law incorporates the "balance sheet" test, found in Section 123(2) of the Insolvency Act 1986. This test assesses whether the value of the company's assets exceeds the value of its liabilities, including contingent and prospective liabilities. If the company's liabilities exceed the value of its assets, it is considered balance sheet insolvent.
- **The Legal Action Test:** In addition to the cash flow and balance sheet tests, the UK insolvency law also incorporates the "legal action" test. This test, found in Section 123(2)(a) of the Insolvency Act 1986, focuses on a situation where a creditor has taken legal action against the company, and the debt remains unpaid. The legal action test serves as an indicator of insolvency when a creditor seeks a court judgment to recover the debt, and the company fails to satisfy the judgment within a specified period.

[2] The Battle of Hastings in 1066 sealed the mixed lineage of the France and English royalty.
[3] The incredible love story between French and English language - le petit journal. Henriette Walter 1/3/2001.

Under English law, when a company is deemed insolvent, or close to insolvency, the directors have a duty to act in the best interests of creditors rather than shareholders. Failure to do so may result in personal liability for the company's debts.

By evaluating a company's financial health through the cash flow, balance sheet and legal action tests, UK insolvency law provides a robust approach to assess financial distress. This legal framework encourages responsible corporate behaviour while offering potential avenues for rescuing financially troubled companies or efficiently resolving their affairs. It is imperative for directors to understand their duties in times of financial difficulty to protect both the company's interests and their personal liability.

On the contrary, in France, insolvency is referred to as "cessation des paiements," which translates to "cessation of payments" or "inability to pay debts as they fall due."[4] As defined under the French Commercial Code. The assessment of the insolvency is a pure cash flow test, defined as the debtor's inability to pay its debts as they fall due to its immediately available assets, taking into account available credit lines and moratoria. Within 45 days from the insolvency date, the legal representative of the insolvent company is required to file for reorganization proceedings or liquidation proceedings.

In the event the directors or officers were aware of the debtor's insolvency status but failed to file the appropriate proceedings within this required time period, they may be held personally liable in tort for an act of mismanagement (faute de gestion) and may also be subject to professional sanctions.

In addition to the Directors responsibility to assess the solvency of the Company, the French Commercial Code provides for different types of warning measures (procédures d'alerte) to draw the directors' attention to any matter likely to jeopardize the continued operation of the company. These alerts can be triggered by the company's external auditors, the employees' representatives or shareholders, or the president of the local commercial court. Since the 2021 Ordinance, auditors are permitted to inform the president of the court at a very early stage.

The warning measures have two objectives:

- to inform the directors of the debtor's financial difficulties; and
- to encourage them to take appropriate steps to remedy those difficulties.

Insolvency is defined in both jurisdictions in opposition to the Going Concern of the Company, accounting terminology for a business that is assumed will meet its financial obligations when they become due.

In summary, both French and UK laws define insolvency based on the company's inability to pay its debts when they fall due, reflecting a common understanding of financial distress and the need for appropriate legal mechanisms to address it.

[4] Article L631-1 of the French Commercial Code defines insolvency as follows:
"Est en état de cessation des paiements tout commerçant qui est dans l'impossibilité de faire face au passif exigible avec son actif disponible."
Translation: "Any merchant who is unable to meet his due liabilities with his available assets is in a state of cessation of payments."

England and France have developed a highly mature legal framework and recognized business tradition. However, the approaches and conduct of the proceedings over liquidation and restructuring present strong differences with impacts on the potential expected outcomes from the processes.

Genesis of the systems and their objectives.

During the course of the nineteenth and twentieth centuries[5], economic transformations, cultural change, and general institutional modifications had a massive impact on the structure and working of bankruptcy laws, procedures and enforcement mechanisms. Western countries witnessed the rise of industrialization, the separation between company ownership and control and attitude changes towards debts. In this changing environment, old bankruptcy laws, conceived to deal with pre-industrial economies and relatively undeveloped credit markets, appeared inadequate.

Since the mid-nineteenth century, and earlier in Britain, bankruptcy legislation therefore passed through a process of rethinking and change. Despite similarities in the causes leading to the transformation of bankruptcy laws in various Western countries, England and France have developed very dissimilar bankruptcy regimes. Two key dimensions of the legislation such as the balance of power between debtors and creditors and the attitude towards firm liquidation or survival, took very different forms.

Three causes have been identified influencing the structure of bankruptcy law in those countries:

1) the distance between the popular attitude towards debt and bankruptcy and legislators' view on the same issues.
2) the degree of interference of legal bodies (parliament, government, and courts) with spontaneous non-judicial contractually based solutions to bankruptcy disputes; and
3) the impact of economic and financial crises.

Inter alia, we can look into the historical roots of the countries to seek sources of deviant frameworks:

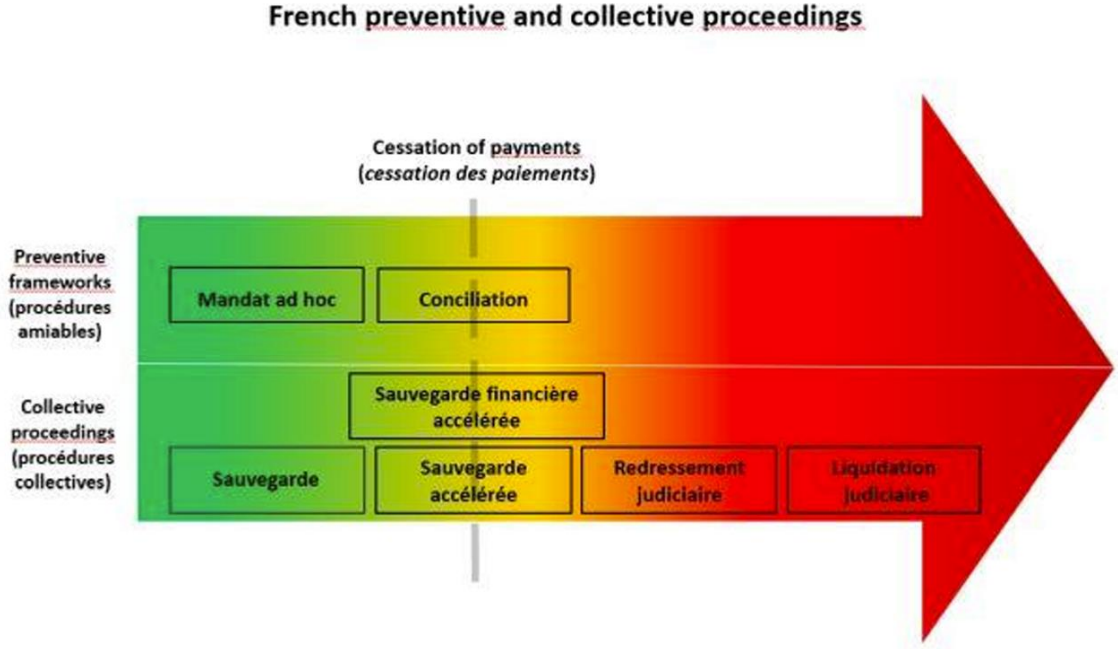
From the Magna Carta issued in 1215, the UK codified equality of treatment and fairness between parties against the law. Hence, commitment to creditors is expected to be fulfilled and respected. On the contrary, the social footprint of the French revolution which echoed throughout the country history is deeply marked by the night of August 4th, 1789, when privileges of the royals and religious society have been abolished and the wealthy creditors have been antagonised to the debtor working class.

Indeed, France tends to prioritize formal restructuring procedures aimed at preserving businesses and jobs, while the UK favors a more flexible and market-driven approach that emphasizes achieving a compromise between the interests of the company and its creditors.

[5] History of Insolvency and Bankruptcy from an International Perspective, by Karl Gratzer and Dieter Stiefel

The French restructuring and liquidation proceedings: Champion in Europe for early warnings and preventive measures.

The French regime is perceived as Debtor friendly [6] : help the debtor to find a restructuring solution. Priority is given to the definition and implementation of restructuring by the debtor itself. If not, Judicial administrator will try to sell the business as a going concern (asset deal).



Preventive proceedings (Ex-ante, confidential and amicable)

Unlike other EU Member States, for many years France has been proposing pre-insolvency proceedings:

- Mandat ad hoc and
- Conciliation proceedings.

Those preventive proceedings proved their efficiency with 75 per cent[7] of these proceedings ending with an agreement with their main creditors.

Those available for debtors that are not yet insolvent looking at addressing potential future distress situation. Starting those proceedings are at the initiative of the Debtor and even if it is under the "protection" of the local commercial court, preventive proceedings are strictly

[6] France: Restructuring & Insolvency- 21 May 2020 by Mylène Boché-Robinet, DFBD Avocats.
[7] [7] 'L'entreprise en difficulté en France en 2020, Des entreprises asymptomatiques face à la pandémie?', May 2021, Altares Deloitte.

confidential: the content of the discussions are covered by strict confidentiality, which helps to preserve the value of the business and the debtor's relationships with clients and suppliers.

These are usually intended to facilitate negotiations between the debtor and its main creditors, with a view to reaching agreement and avoiding the commencement of collective proceedings. Debts may only be restructured on a consensual basis in preventive proceedings.

Preventive proceedings are generally used to help a company to renegotiate its financial indebtedness. However, they can also be used to support the company in its negotiations with other stakeholders, such as employees, or to prepare for subsequent collective proceedings or the sale of the business.

They involve the appointment by the president of the court of a third-party 'mediator' (the mandataire ad hoc or the conciliator) upon the sole initiative of the legal representative of the debtor, with a mission to assist in identifying solutions to the debtor's financial and economic difficulties.

These proceedings are purely amicable tools: there is no cram-down of creditors and the debtor remains in possession. The mediator has no coercive powers; but de facto, his or her authority stems from the fact that:

- he or she reports (confidentially) to the president of the court; and
- if no amicable solution can be found, he or she may recommend the commencement of collective proceedings (safeguard, rehabilitation, or liquidation proceedings), if the criteria for the opening of such proceedings are met.

Preventive proceeding is a highly performing process which concludes in positive resolutions in the majority of cases. However, those can evolve into Collective proceedings when not successful.

Collective proceedings (ex-ante or ex-post, public and "formal")

Collective proceeding covers several frameworks for restructuring or liquidation under French laws.

When looking at rescuing the Company and its business, the **safeguard and the reorganization proceedings** both allow a company to reorganize its outstanding debts and continue to operate its business while a draft plan of safeguard or plan of reorganization is being established.

The safeguard and reorganization proceedings engender highly similar effects with the difference that the safeguard proceeding is initiated by the Company, and this should happen before the Company is insolvent, and the reorganization proceeding must be initiated when the Company is insolvent either through the Company voluntary filing (within 45 days of insolvency) or by the Third party (creditor) filing.

Addition to the above, since 2010 and 2014, accelerated financial precautionary procedure and accelerated precautionary procedure focuses on operating businesses with positive contribution from operations but a debt and commercial indebtedness bringing insolvency. This allows to cram-down dissenting creditors and bind the debtor and its financial creditors

to a workable outcome through a safeguard plan within a reasonable timeframe (2 to 3 months).

French law tends to favor restructuring, offering various mechanisms to facilitate it. However, if restructuring is not feasible, liquidation is efficiently carried out.

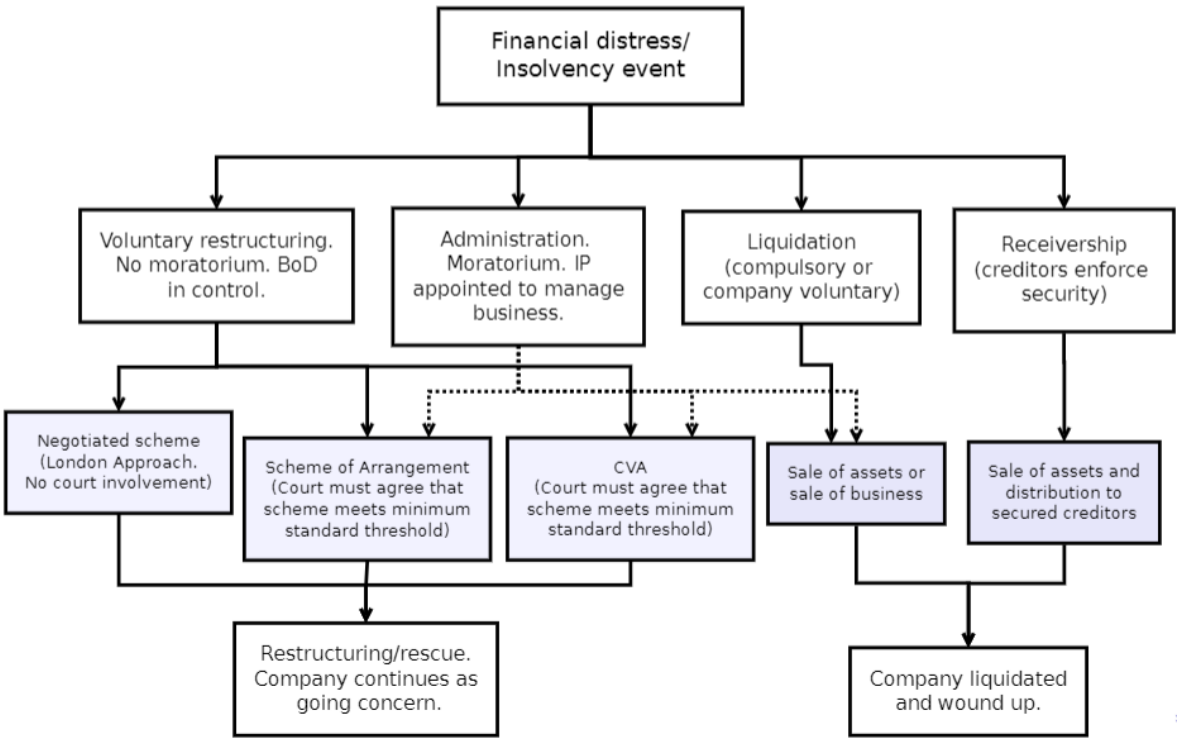
When a company is irretrievably insolvent, the judicial liquidation is considered: The goal is to sell the company's assets and distribute the proceeds to creditors.

Ultimately**, Judicial liquidation** would be ordered by the court if it is obvious that the company in cessation of payments has no chance of recovery.

Furthermore, at any time during the observation period under the safeguard or reorganization proceedings, the court can order the liquidation of the company if it appears that the company has no more money to continue operating.

In the case of liquidation, there is also an immediate stay of claims. Contracts entered into by the debtor are automatically terminated, except if the court orders a temporary continuation of the business. The employees must be dismissed within 15 days of the judgment ordering the liquidation.

Navigating Financial Distress: The Flexible Framework of Restructuring and Liquidation in the UK



The UK's insolvency and restructuring framework is primarily governed by the Insolvency Act 1986 and the Enterprise Act 2002. It has a well-established legal system for dealing with insolvency cases.

The UK insolvency framework is characterized by a flexible and market-driven approach that offers various tools for both restructuring and liquidation.

Restructuring proceedings:

Before looking at legal options, let's mention the optionality for the out-of-court process which has a strong interest in the UK considering its potential flexibility, agility and cost efficiency: a restructuring process can be triggered by the Board of Directors pre-distress or insolvency event, and carried out through an out-of-court workout process between the Debtor and its creditors. The London Approach, as a unanimous and consensual process, demonstrates success for large transactions but has implementation limits for smaller businesses.[8] Other tools like the INSOL Statement of Principles for a Global Approach to Multi-Creditor Workouts frames approaches and a toolkit on out-of-court Workouts.

When it comes top formal restructuring proceedings, **the UK Scheme of Arrangements and Restructuring Plan** aim at rescuing the Company through a court-approved arrangement between a company, its shareholders, and its creditors executed under English company law. A company's key stakeholders can use schemes of arrangement to restructure or reorder the company's obligations to its creditors and shareholders.

A Company's creditors, and other key stakeholders can use schemes of arrangement throughout the company's life cycle. However, in practice, most schemes of arrangement arise in the context of a company experiencing financial difficulties. During the process of a scheme of arrangement or restructuring plan, the Directors usually remain in control of the debtor and the creditors are typically free to enforce their claims. Hence, the Company will typically launch a scheme/plan only if the requisite majority of affected creditors have executed a lock-up agreement, which will typically include waivers or forbearances to maintain stability through the process.

The targeted outcome of the scheme / plan is the restructuring of the Company's obligations and resume as a going concern.

Nevertheless, at any point, when insolvency triggers, the Company can enter or transition into an insolvency court process.

The British insolvency toolbox includes mechanism such as **company voluntary arrangements (CVAs) and administration** allow financially distressed companies to propose voluntary agreements with creditors or obtain a moratorium period to protect the business while a rescue plan is formulated.

Similarly, the Administration proceedings aims at rescuing the business, although successful exits from administration are relatively rare. Administration provides the protection of a statutory moratorium to allow it to be rescued or reorganised or its assets realised (sale of the

[8] The professional restructuring of corporate rescue: Company Voluntary arrangements and the London Approach – J. Flood, R. Abbey, E. Skordaki, P. Aber – Certified Accountants Educational Trust, London 1995

assets). An administrator takes control of the affairs of the Company (licensed insolvency practitioners and officer of the court). Note that the administration in the UK is used as a "vehicle" for **pre-pack sale** : this is an arrangement under which the sale of all or part of the Company's business or assets is negotiated with a purchaser prior to the appointment of administrators.

CVAs enable companies to restructure their debts and continue trading, while administration provides a framework for the orderly management of the company's affairs to achieve a better outcome for creditors than immediate liquidation. These procedures prioritize achieving a compromise between the interests of the company and its creditors while maximizing returns to stakeholders.

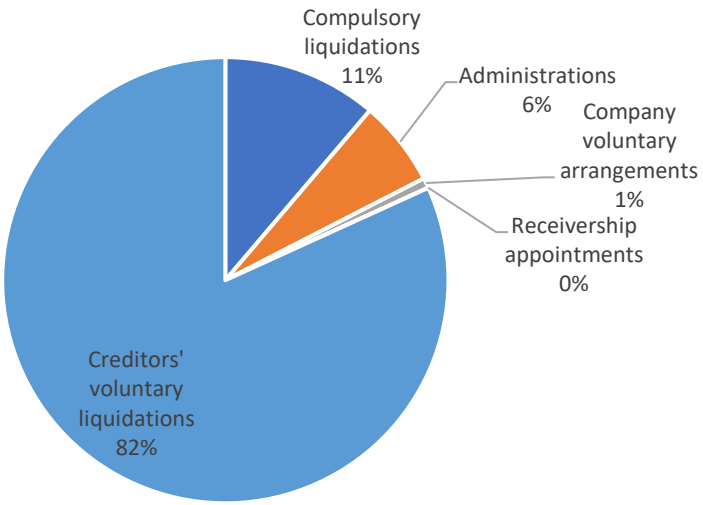
Liquidation proceedings

However, when restructuring is not feasible and the business remains insolvent, the liquidation of the business has to be initiated through one of the 3 types of liquidation:

- Members' voluntary liquidation (MVL), initiated by the shareholders
- Creditors' voluntary liquidation (CVL), initiated by creditors or
- Compulsory liquidation, initiated by a court order.

Liquidation aims to realize the company's assets, settle its debts, and distribute proceeds to creditors or shareholders according to their rights. It involves the appointment of liquidators who collect and sell company's assets and distribute the proceeds to creditors. This is a dissolution procedure involving the termination of the company.

2023 Company Insolvencies



Source: Monthly Insolvency Statistics, January 2019 to December 2023, The Insolvency Service – official statistics.

The Crunch[9]: Comparing the French and English insolvency frameworks

Both jurisdictions offer a range of restructuring and insolvency tools, but the specific mechanisms and procedures differ. France relies heavily on preventive proceedings with a conciliation approach, while the UK employs CVAs and administration.

France prioritizes preserving businesses and jobs through formal restructuring procedures, with liquidation seen as a last resort. In contrast, the UK emphasizes a flexible and market-driven approach that offers various tools for both restructuring and liquidation, aiming to achieve a compromise between stakeholders' interests.

However, we note several specific differences to be considered when comparing the 2 jurisdictions:

"Moving on or looking back to fix it."

UK pre-packed administration has an efficiency driven approach toward protecting the value of the business with accelerated sales. France looks at the current shareholders and directors to be "in the solution". Experienced CROs voiced during the 2024 INSOL conference in Riyad "when restructuring you might need to change management (business approach and strategy) or change management (Directors and leadership team)". Considering its high structural employment rate, France has a tend to retain business till exhausting the last resort options.

In France, the Debtor remain in possession with continuation of incumbent management control. The court appointee assists the debtor in managing the business and has an oversight of the debtor decisions.

In the UK, the Debtor management team remains in control subject to provisions and supervision of the administrator, unless in an Administration proceeding where the Administrator takes power.

Debtor-in-possession: Super-priority for New Money in France

In France, a "New Money" privilege grants a priority repayment ranking over all pre-petition claims (except for certain employee-related liabilities and post-filing procedural fees) and prevents forced cram-down and rescheduling in subsequent proceedings.

Note under the confidential conciliation process, there is 100% super priority for "new money" injected at the time of the court-confirmed conciliation agreement or during the process (if conciliation is ultimately confirmed).

During the Safeguard Proceedings, in addition to the New-Money super priority, there is priority for "post-money" injected during the observation period, with prior authorization from the insolvency judge, for the purposes of financing the business during the process. This priority also results in cash contribution to the debtor for implementation or modification of the

[9] Terminology used to call a rugby game between France and England.

safeguard plan. The priority for "post-money" is paid off after the priority for "new money" in the ranking of creditors' claims.

There is no express provision for super-priority for rescue financing in restructuring or insolvency processes in the UK.

However, under the Administrators may borrow after the commencement of the administration on a super priority basis, provided they have secured the creditors' consent. For the other forms of restructuring process, Scheme of Arrangement and Restructuring Plan, New Money priority will require approval of the creditors as part of the proposed scheme or plan.

Credit extended to a company in administration may be given priority over the claims of unsecured, preferential or floating charge creditors by virtue of its classification as an administration expense. However, administrators may well be reluctant to incur debt on this basis, as it would rank ahead of their own claims for fees and expenses.

We understand that the introduction of a specific DIP financing regime remains under consideration by the UK government.[10] At the same time, the privilege given under the French frameworks supports access to continuity of operation which brings forward business generating cash-flow from operations.

Moratorium in French proceedings

The UK restructuring proceedings does not allow for a stay but the Administration upon the appointment of the administrators and accordingly the switch of power from the Company's Directors. There is no free lunch.

The French "cuisine" allows for an automatic stay upon the opening of safeguard proceedings which can be initiated before an event of insolvency. The stay prevents the enforcement of judgments obtained prefiling: collection activities, foreclosures, contract terminations and repossessions of property.

The availability of a moratorium for the Debtor provides protection of a Company against its creditors which could accelerate the insolvency of the process, and incidentally improve the prospects for rescue of the business by reallocation of available cash-flow generation.

Directors: Change of responsibilities (FR) or change of duty of care (GB)

In France, the Debtor remain in possession with continuation of incumbent management control. The court appointee assists the debtor in managing the business and has an oversight of the debtor decisions. the court is protecting the Directors from influence by appointing professionals.

In the UK, the Debtor management team remains in control subject to provisions and supervision of the administrator, unless in an Administration proceeding where the

[10] Kate Stephenson, Kirkland & Ellis.

Administrator takes power. However, directors are required to change the director's duties to the Creditors.

At the point of insolvency, French Directors have 45 days to file for insolvency. Usually, as a matter of principle, the directors are partially divested, and the court appoints insolvency officers. Contrarily, the UK Directors will have their duty of care switching to a requirement to take decisions for the benefit of the company's creditors as a whole.

The UK framework preserve the power of the Directors to protect the business continuity when France requires court representatives in the business to ensure arm-length decisions are being made.

In both jurisdictions, Directors found guilty of wrongful trading or other misconduct can also be disqualified from acting as directors for a period of between two and 15 years. They can also have to personally compensate if guilty of misconduct. Directors could be charged with Criminal offense[11] in specific cases of fraud.

In summary. We would expect the French restructuring and insolvency schemes to be more successful and appealing considering the combination of:

- Unique feature of the warning and preventive measures, being proactive on identifying and correcting business trajectories,
- The super-priority of the new money as well as the moratorium before insolvency, giving access to funding during the restructuring phase,
- The continuity of the Directors protection of the Debtors against its creditors

However, there is a strong disconnect with the assessment independently performed by the World Bank on resolving insolvency[12] were the United Kingdom and France rank respectively 14th and 26th out of 168 countries assessed by the international body (with Finland #1 and the West Bank and Gaza #168).

Hence, in addition to the legal framework, other drivers might be at play.

A strong restructuring industry platform and expertise,

There are approximately 1,600 licensed insolvency practitioners in the UK, supported by Thousands of colleagues.[13]

[11] In France, Directors can also be held criminally liable and imprisoned for up to five years and fined up to EUR75,000 (about US$105,800) in certain cases of fraudulent activity and for falsifying accounts and other gross accounting failures.
[12] World Bank Group, Doing Business project (http://www.doingbusiness.org/). - The ranking of economies on the ease of resolving insolvency is determined by sorting their scores for resolving insolvency.
[13] The role and value of insolvency practitioners in the UK economy - Nick Cosgrove, Association of Business Recovery Professionals.

At the same time, similar designation in France (administrateurs et mandataires judiciaires)[14] accounted for 450 professionals and approximately 4,500 associates.

Number of proceedings in the UK is significantly smaller than the number of proceedings in France: 31,000 in the UK against 60,000 in France estimated for 2024. However, the UK has a strong culture of advisory and support outside of court to independently resolve business situations which makes it attractive for business to review and improve their performance. The UK benefits from an internationally recognized framework with a decade of international cases. In addition, the union, and specifically London makes available number of special judges in the High Courts of Justine of London, specialist lawyers, financial advisors, and distressed investors.

Similarly, Great Britain has access to the significant amount of capital and sophisticated financiers which can remediate financial stress outside of a process.

With approximately half a Trillion U.S. dollars, the United Kingdom is the second country for hedge fund assets under management when France accounts for merely US$50Billion. The level of concentration of capital and access to mature financiers to support complex restructuring enables the UK to attract and support several international complex cross-border insolvencies.

The transactional cost of a protective process

Associated with some clichés, the processing time of the French administration could impact the level of efficiency of the legal framework.

The French proceedings engage significantly more with the Court even at the stage of the preventive proceedings. From their data collection and analysis, the World Bank assessed that the timing of an overall resolution of insolvency is 1 years in the UK and almost the double (1.9 years) in France. Hence, this impacts the calculated costs of the process at 6% of the estate in the UK and 9% in France.

Lingua Franca

“Like it or not, English is the global language of business[15]”. Today 1.75 billion people speak English at a “business” level. Multinational companies such as Airbus, Daimler-Chrysler, SAP, Nokia, Alcatel-Lucent, and Microsoft in Beijing have mandated English as the corporate language. Accordingly, when it comes to international and complex situations, stakeholders will engage in a jurisdiction where the text of law and the required stakeholders, lawyers and advisors can engage with the Debtor and the Creditors.

Both jurisdictions are influential in international insolvency practices, but the UK's common law system and its influence on former colonies and in financial markets give it a broader

[14] « Compte rendu - Commission d’enquête relative à la lutte contre les fraudes aux prestations sociales [archive] », sur Assemblée Nationale, 25 juin 2020 / Béatrice Madeline, « Administrateurs et mandataires judiciaires souffrent d’une chute de leur activité [archive] », sur Le Monde, 7 octobre 2021
[15] Global Business Speaks English by Tsedal Neeley – Harvard Business Review

international footprint. In addition, the UK has adopted the UNCITRAL Model Law through the Cross-border Insolvency Regulations since 2006.

On the Contrary, France engages through the European Directives to aligned with fragmented European Union members protocol on restructuring and insolvency.

As a summary, the UK's system is more creditor-oriented and streamlined, whereas France offers a more protective environment for debtors with an increasing emphasis on restructuring. Looking ahead, we can see significant changes coming to the spectrum of restructuring and insolvency for the UK and France.

France and UK insolvency proceedings: toward alignment or further differentiation?

Recent changes have been brought by the UK Governments who legislated to protect further the debtors during the COVID-19 crisis and as part of a wider effort to protect the economy. This includes inter-alia:

- the fast-tracked introduction of a new restructuring plan procedure.
- a new standalone moratorium procedure.
- restrictions on the exercise of ipso facto clauses; and
- temporary restrictions on statutory demands and winding-up orders for Companies impacted by the COVID-19

The New restructuring plan brings material changes to the existing frameworks as it can bind a class of secured creditors without their consent, addressing accordingly the deadlocks due to dissenting classes or dissenting creditors for the approval of proposed plans.

Simultaneously, Following the United Kingdom's formal departure from the European Union, effective 1 January 2021, the vast majority of the Recast European Insolvency Regulation has been repealed as a matter of UK law. The European Insolvency Recast provided for the recognition and enforcement of cross border insolvency proceedings between EU member states.

On the continent meanwhile, from October 2021, France has been going through a "new dawn for restructurings in France"[16] as qualified by Clifford Chance: the new accelerated safeguard procedure, a subset of the existing safeguard procedure, allows debtors to restructure within 4 months and without unanimous consent of all creditors. The legislation further secured the super-priority of rescue financing. The new rules are derived from the EU Directive on restructuring frameworks. It provides a more flexible rescue mechanism more suited to dealing with complex capital and debt structures and addressing the difficulties linked to the unanimous consent of creditors.

[16] Refer to Clifford Chance publication, September 2021, Clifford Chance France.

Recent contributions to the UK restructuring frameworks with the restructuring plan are bringing further flexibility and operational effectiveness of restructuring implementation directionally toward the interest of the Debtor. French system is getting more flexibility as well with further prospects of resolutions of large and complex situation using a super majority of 2/3 for each class in value and numerosity, and ability of the court to impose the plan to dissenting creditors[17].

Looking forward, we can observe competitions between jurisdictions to provide the more modern framework given certainty on proceedings outcomes and value preservations for all stakeholders. Under this competitive environment, we can expect that:

- The UK will continue to develop the use of Restructuring plans as a flexible tool for insolvency proceedings, continue to explore moratorium utilization by Insolvency Practitioners to support continuity of business and open to potential increased security for New Money during an insolvency proceeding.
- In France, in line with the on-going transfer of the European Union Directives and the alignment of the restructuring proceedings between the member country, we should expect further amendment of the legal framework to simplify and bring together the processes relates to cross-border and group restructuring within the European Union.

In both jurisdictions, the restructuring legal framework is evolving toward further efficiency and practically (Restructuring Plan in the UK, cross-classes cram-down in France)

Nevertheless, both jurisdictions demonstrate already their ability to work jointly on complex cross-border cases and preserve value for the stakeholders: The Nortel Case[18] demonstrated the value of the insolvency professionals and the important of the ability to work jointly to make difficult and intercultural cases an excess in recovery value: under the Nortel case, the liquidation of the French assets with a COMI in the UK allowed the recovery of an excess to the amount of the debt and redistribute a surplus to the parent entities.

> Liquidation and restructuring proceedings in France and the UK reflect the current and future complexity of the business world and the progress in alignment of a fragmented international system.

In conclusion, liquidation and restructuring goals and proceedings in France and the UK reflects divergent legal traditions and economic priorities. France emphasizes preserving businesses and employment through formal restructuring procedures, while the UK adopts a flexible and market-driven approach by offering various tools for both restructuring and liquidation. While both jurisdictions seek to balance the objectives of preserving businesses

[17] Cross-class cram-down where the 2/3 has not been reached can be imposed subject to compliance with a number of specific conditions.
[18] [18] Eurofenix Winter 2020/21 - Lessons to be learned from the Nortel Case – Reinhard Dammann

and maximizing creditor returns, their approaches vary in terms of the procedures available, the role of stakeholders, and the emphasis on judicial oversight.

However, those frameworks are dynamic and driven by a further integration to the European Union for France and more agility with the restructuring plan introduced in the UK. Those changes in the frameworks are looking at bringing larger expansions:

The UK laws serving as an international platform recognizing the UN frameworks and promoting freedom of operations and initiatives under insolvency proceedings lead by Directors and Insolvency Practitioners.

France is still engaged in its journey toward European integration advocating the protection of the local corporate and industrial framework and the employments

Ultimately, liquidation and restructuring proceedings are a representation of cultural frameworks and "Social Contract"[19] defined over centuries for history for those 2 old democracies. The UK remains inspired by responsibility and respect of commitments (weight toward creditors), when France is inclined toward having protection of the entrepreneurs and employees and finding a balanced solution driven by the debtor sanctuarized by the court.

[19] "Du Contrat Social ou Principes du droit politique" - Jean-Jacques Rousseau, 1762. The concept of social contract is conceived as a compact between the individual and a collective "general will" aimed at the common good and reflected in the laws of an ideal state.

APPENDIX 1 - Sources:

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APPENDIX 2 – Comparative Analysis Resolving Insolvency

	France	United Kingdom
Resolving insolvency (1=most business-friendly regulations)	**26.00**	**14.00**
Time (years)	1.90	1.00
Cost (% of estate)	9.00	6.00
Outcome (0 as piecemeal sale and 1 as going concern)	1.00	1.00
Recovery rate (cents on the dollar)	74.80	85.40
Commencement of proceedings index (0-3) (DB15-20 methodology)	**3.00**	**3.00**
Procedures available to debtor	Liquidation & reorganization	
Creditor fling for debtor's insolvency	Yes, liquidation & reorganization	
Basis for insolvency commencement	Inability to pay debts or financial distress	
Management of debtor's assets index (0-6) (DB15-20 methodology)	**6.00**	**5.00**
Continuation of contracts supplying essential goods & services	Yes	No
Debtor's rejection of burdensome contracts	Yes	Yes
Avoidance of preferential transactions	Yes	Yes
Avoidance of undervalued transactions	Yes	Yes
Debtor obtaining credit post commencement	Yes	Yes
Priority to post commencement credit	Yes	Yes, over unsecured creditors
Reorganization proceedings (0-3)	**1**	**1**
Creditors voting on plan	Yes	Only creditors whose rights are affected by proposed plan (1.0)
Dissenting creditors receive at least as much as in liquidation	No	No
Creditor class-based voting and equal treatment	No	No
Creditor participation index (0-4) (DB15-20 methodology)	**1.00**	**2.00**
Creditor approval for selection/appointment of IP	No	Yes
Creditor approval for sale of debtor's assets	No	No
Creditor right to request information from IP	No	No
Creditor right to object to decisions accepting/rejecting claims	Yes	Yes
Getting Credit (Rank)	**104**	**37**
Strength of legal rights index (0-12) - Score	33.3	58.3
Depth of credit information index (0-8)	6	8
Enforcing Contracts (Rank)	**17**	**34**
Time (days)	447	437
Cost (% of claim)	17.4	45.7
Recovery rate (cents on the dollar) - Score	**80.49**	**91.89**
Strength of insolvency framework index (0-16)	11.00	11.00
Strength of insolvency framework index (0-16) - Score	68.75	68.75

Data from database: databank.worldbank.org
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