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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 6A**

**FRANCE**

This is the **summative (formal) assessment for Module 6A** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 6A**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment6A]**. An example would be something along the following lines: 202223-336.assessment6A. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

7. Prior to being populated with your answers, this assessment consists of **8 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Which option below comprises a procedure which is **not** a pre-insolvency mechanism?

1. *Mandat ad hoc*, conciliation and safeguard.
2. *Mandat ad hoc,* conciliation, safeguard and rehabilitation proceedings.
3. Conciliation, safeguard and accelerated safeguard.
4. *Mandat ad hoc* and safeguard.

**Question 1.2**

Which statement below is **incorrect** in relation to the accelerated safeguard procedure?

1. The accelerated safeguard procedure is not a standalone procedure; it can only be used following the opening of conciliation proceedings.
2. The accelerated safeguard is the flagship of preventive restructuring in France.
3. The accelerated safeguard is the same procedure as the safeguard, except that its timeline is shorter.
4. The accelerated safeguard was revamped following the passing of EU Directive 2019/1023.

**Question 1.3**

What is the **main difference** between the safeguard procedure and the rehabilitation procedure?

1. The main difference lies in the person who can request the opening of the procedure (creditors of the company in the case of the safeguard and the company’s director(s) in the case of rehabilitation proceedings).
2. The main difference lies with in court that will deal with the case (the commercial court for the safeguard and the specialised commercial court for rehabilitation proceedings).
3. The main difference lies in the duration of the procedures (10 months for the safeguard procedure and 18 months for rehabilitation proceedings).
4. The main difference lies in the condition required to open the proceedings (insolvency for rehabilitation proceedings and no state of insolvency for the safeguard).

**Question 1.4**

Who can request the **opening** of an *ad hoc* mandate procedure?

1. The debtor’s creditors.
2. The president of the court.
3. The director(s) of the company.
4. The director(s) of the company or the company’s auditor.

**Question 1.5**

What are the **conditions** for a company in financial difficulties to resort to conciliation proceedings?

1. A debtor must not be in a state of insolvency (in a payment failure situation) and must not encounter difficulties that it is not able to overcome.
2. A debtor must not have been in a state of insolvency for longer than 45 days.
3. A debtor must prove that it has availed of an *ad hoc* mandate first, which has failed.
4. The rescue of the company must be deemed impossible by its directors.

**Question 1.6**

Can the president of the court impose a **conciliation procedure** on a debtor company?

1. Yes, at the request of the creditors.
2. Yes, at the request of the Public Prosecutor.
3. Yes, at the request of a contractual third party.
4. No, never.

**Question 1.7**

What are the conditions for a company to avail of **safeguard proceedings**?

1. When the company is not in a state of insolvency (in a payment failure situation) but is experiencing difficulties which it is not able to overcome.
2. When the company has not been in a state of insolvency for longer than 45 days.
3. When the company is insolvent.
4. When the company is insolvent and the company has attempted conciliation or *ad hoc* mandate proceedings which have failed.

**Question 1.8**

Which statement regarding liquidation proceedings is **incorrect**?

1. Liquidation proceedings trigger an automatic stay of proceedings and enforcement actions against the company.
2. All pre-filing creditors are barred from enforcing their rights to obtain payment from the debtor, subject to some exceptions.
3. All pre-filing creditors are barred from enforcing their rights to obtain payment from the debtor, with no exceptions.
4. If a sale plan is conducted, third parties cannot terminate or rescind their contracts with the debtor.

**Question 1.9**

In relation to the recognition of judgments under French law, choose the **accurate** statement:

1. Foreign judgments can only be enforced if they have been subject to a procedure of *exequatur*. The granting of *exequatur* to a foreign judgment is left at the discretion of the court.
2. Foreign judgments can only be enforced if they have been subject to a procedure of *exequatur*. For a foreign judgment to be granted *exequatur*, three conditions must be met: (i) the original judgment must be devoid of any fraudulent intention, (ii) the judgment must comply with international public policy, and (iii) the foreign court or tribunal who issued the judgment must have been competent to do so.
3. Even if foreign judgments have not been granted *exequatur*, there are some ways in which they can be recognised and enforced by French authorities. It is, for example, possible for the French court to recognise a foreign judgment if there are also local insolvency proceedings pending against the same debtor.
4. Once *exequatur* has been conferred, the foreign judgment is considered a French judgment.

**Question 1.10**

Marlon SARL, a company registered in France, has been experiencing financial difficulties since 10 June 2023. On 1 July 2023, it is officially insolvent (*en cessation des paiements*). On 11 August, it wants to file for an insolvency procedure. Which **procedure(s)** is / are available to the company?

1. *Ad hoc* mandate.
2. Conciliation.
3. Safeguard or rehabilitation proceedings.
4. Rehabilitation or liquidation proceedings.

**QUESTION 2 (direct questions) [10 marks in total]**

**Question 2.1 [maximum 2 marks]**

Consider the following two statements:

Statement 1: A procedure which can only be opened following conciliation proceedings.

Statement 2: The procedure is not limited in time; its objective is to avoid the insolvency of the company.

Which insolvency procedures do these statements refer to?

Statement 1 refers to the accelerated safeguard which is a stand-alone procedure and can only be opened to a debtor who is engaged in a conciliation procedure.

Statement 2 refers to an ad hoc mandat which can only be opened by the debtor if they are not insolvent and is an amicable confidential out of court proceeding designed to encourage debtors to enter into workouts with their creditors.

**Question 2.2 [maximum 3 marks]**

**List three** of the main variations between the safeguard procedure and the rehabilitation procedure under the Commercial Code.

Rehabilitation procedures follow a lot of the same rules and procedures as safeguards with a few variations. First, in order to commence a rehabilitation procedure, the company needs to be in a payment failure situation, rather than just a temporary cash flow problem which can occur under a safeguard. Second, in a rehabilitation procedure, an unpaid creditor or the public prosecutor can commence the procedure whereas a safeguard is only commenced by the debtor. Third, the observation period for a rehabilitation procedure can be up to 18 months, whereas it can only be no more than 12 months under a safeguard.

**Question 2.3 [maximum 3 marks]**

**List three** new elements of insolvency law which had been introduced in the French Commercial Code following the Order of 15 September 2021.

New Class System

Prior to the Order of 15 September 2021, Article 6626-30-2 of the French Commercial Code required creditors of a safeguard to be grouped into three committees: bondholders, main suppliers and financial institutions. The Order of September 2021 instituted a new class system that is mandatory for all accelerated safeguard proceedings and for safeguard proceedings when the Debtor either (a) employs over 250 employees and has over $20m EUR turnover, or (b) has over $40m EUR turnover.

Considerable flexibility still exists to group creditors in a way that recognizes some form of economic commonality but at a minimum (a) secured creditors must be separate from unsecured creditors; (b) class formation must acknowledge and comply with subordination agreements; and (c) equity holders must comprise one or more classes.

Cross-Class Cram Down

Another element introduced by the Order of 15 September 2021 is the ability to cross-class cram down dissenting creditors. This procedure requires (1) debtor’s consent; (2) unless the Court makes exception, compliance with the absolute priority rule and (3) voting requirements to be satisfied.

Post-Money Privilege

Third, the Order of September 15 2021 introduced a “post-money” privilege, which means that any cash contributions made to a debtor during the observation period and for the purpose of implementing or modifying a safeguard plan, enjoys super priority repayment privileges in the event of subsequent restructuring.

**Question 2.4 [maximum 2 marks]**

Explain the difference between *homologation* and *constatation* of the conciliation agreement.

Constatation of the conciliation agreement means that the Court approves the agreement but preserves its confidentiality.

Homologation of the conciliation agreement means that the judgment is publicized. Also, in the case of homologation, any new money creditors will obtain the post-money privilege (see 2.3 above)

**QUESTION 3 (essay-type question) [15 marks]**

**In addition to the correctness, completeness (including references to case law, if applicable) and originality of your answers to the questions below, marks may be awarded or deducted on the basis of your presentation, expression and writing skills.**

**Question 3.1 [maximum 5 marks]**

Why can it be said that the reform of 15 September 2021 has been somewhat minor and not an overhaul of the *status quo*?

The adoption of the Order of September 2021 can be viewed as instituting minor reform rather than a statutory overhaul in several ways. First, the change to the class formation requirements on the surface did not change the law significantly. A primary reason for this change was to prevent domination by a secured creditor over an unsecured class because the new law requires secured creditors to be in a separate class from unsecured creditors. However, it would seem that France on the surface already followed this requirement by requiring credit institutions to be separate from main suppliers and bondholders. Nevertheless, France was severely criticized prior to the Order of September 2021 for allowing senior, junior privileged and unsecured creditors to be grouped in the same committees.

 France was also criticized for not meeting international standards in complex cases where there are multiple layers and varieties of debts involved. The class formation requirements contained in the Order of September 2021 remain optional for smaller company safeguards, which would indicate a minor change in the law. However, in deference to the criticism of not meeting international standards in complex cases, the Order of September 2021 is mandatory for larger companies and for Accelerated Safeguard Proceedings (but with regard to Safeguards, only is mandatory for very large companies and thus rarely applicable unless the judge uses his discretion to apply the class formation requirements to smaller companies).

 Also the Accelerated Safeguard proceedings were essentially in existence prior to the Order of September 2021 because Debtors simply negotiated an agreement prior to entering into a Safeguard Procedure, which was then adopted as part of the Safeguard Plan. The Accelerated Safeguard was introduced in 2014 as a “pre-pack” version of the Safeguard. With the Order of September 2021, this procedure became part of the core framework. With the required conciliation procedure first, the Order of September 2021 satisfied the EU directive of requiring a vote on a restructuring plan within a short time period. Essentially, then, the Order of September 2021 can be said to be a codification of existing practices with respect to the Accelerated Safeguard proceedings.

 One change that is hard to argue as slight is the addition of the cross-class cram down for dissenting creditors during safeguard proceedings and the adoption of the absolute priority rule. Also, the Court must ensure that any dissenting party is treated at least as favorably as it would have been treated in a liquidation or sale of the company. This appears to be a significant change from prior law.

**Question 3.2 [maximum 5 marks]**

While they exhibit some similarities, the safeguard and accelerated safeguard procedures are nonetheless very different proceedings. **List the main similarities, differences and objectives of these two proceedings**.

The similarities, differences and objectives of Safeguard and Accelerated Safeguard procedures are listed below:

Similarities

1. Must involve all creditors
2. Includes a stay on enforcement actions
3. Can only be instituted by the Debtor (although the initial decision in Accelerated is made by the debtor but whether to progress from conciliation to acceleration is based on the conciliator report)
4. Debtor remains in possession
5. Ability of Court to bind dissenting creditors through cross-class cram down
6. New financing protected with priority of payment (post-money privilege)
7. Same voting requirements for adoption of plan

Differences

1. Safeguard introduced by the Law of 2005 and reformed in 2008, 2014 and 2016. Accelerated Safeguard was introduced in 2014 initially as a variant of the Safeguard and then promulgated into law with the Order of September 2021.
2. Accelerated – must be first engaged in conciliation proceedings; not so with Safeguard.
3. Accelerated – formation of classes is mandatory; Safeguard – only mandatory for large companies
4. Accelerated – not a standalone procedure; must be combined with conciliation
5. Accelerated – must demonstrate that company is engaged in the conciliation procedure, that a conciliation agreement has been prepared with goal of company rescue and that the conciliation agreement is likely to be supported by creditors/affected parties within two months of the opening judgment
6. Accelerated – maximum duration 4 months and plan must be adopted within two months of opening judgment; Safeguard has observation period of 6 months, which is renewable once by judgment of the court and a second time, if necessary, at the request of the Public Prosecutor. And repayment of claims in a safeguard can be up to 10 years.
7. Accelerated – can be in a payment failure situation if less than or equal to 45 days since this occurred
8. Decision to enter accelerated is made based on the report of the conciliator; Safeguard – decision made by the debtor
9. Accelerated - Begins as confidential in the conciliation stage (but then not confidential in the acceleration procedure stage; Safeguard – not confidential
10. Accelerated – plan is prepared and negotiated for approval during the conciliation stage; Safeguard – plan is prepared during the observation period

Objectives

The objective of the Accelerated Safeguard is to allow a prepack type proceeding (which is negotiated during the conciliation. The Accelerated Safeguard also meets the EU Directive for a short time period restructuring plan due to its maximum duration of 4 months. The objective is to preserve the value of the company while instituting a speedy prepack type process for repayment of creditors.

The objective of the Safeguard is to provide a rescue procedure for debtors without having to be in a payment failure situation (originally a payment failure situation was required but this was relaxed in 2008 to only require “difficulties” but not yet insolvent). The objective here also is to allow the Debtor to remain in possession while undergoing a court assisted observation period, to analyze and implement any necessary restructuring tools in order to rescue the company. Similar to a chapter 11, the debtor is allowed to continue to trade and enjoys a stay of enforcement actions in order to be able to come up with a repayment plan.

The Safeguard remains the cornerstone in the French insolvency system.

**Question 3.3 [maximum 5 marks]**

Explain what the main features of the new class formation are under French insolvency law following the reform of 2021. Explain, also, what issues may arise in insolvency cases in relation to classes of creditors.

Prior to the Order of September 2021, Article L626-30-2 of the French Commercial Code required that all creditors be grouped into three committees: credit institutions, main suppliers, and bondholders. In the Order of September 2021, the Commercial Code creates a new class system (mandatory for Accelerated Safeguard and for large company Safeguard Proceedings). There is still considerable flexibility for practitioners to create appropriate classes as long as the classes reflect a sufficient economic commonality. At a minimum, however, the following must occur: (a) in rem secured creditors must be separate from unsecured creditors; (b) the class formation must adhere to the requirements of any subordination clauses for agreements entered into prior to commencement; (c) equity holders much comprise one or more classes; and (d) for creditors secured by a trust, only the amount not secured by the trust is counted. Also, tax creditors, social creditors and employees are not part of any class.

The administrator notifies the parties of their grouping and class and either the debtor or the administrator sets the date for voting. Anyone objecting to their classification or to the calculation of voting may petition the Court for resolution. The Debtor, public prosecutor, creditors’ representatives or administrator can also petition the Court for resolution.

Pursuant to Article L626-30-2, votes are cast and the plan is approved if two thirds of the amount of claims held by voters of each class have voted in favor. In that event, the Court will either sanction the plan if it considers that the terms are appropriate and the company can succeed. The Court can alternatively reject the plan if these requirements are not met. However, even if not approved, it can be sanctioned by the Court and the Debtor or Administrator (with debtor’s consent) can request that the plan be imposed on dissenting classes. This is known as the cross-class cram down.

Given the ability to cram down dissenting classes, the Order of September 2021 also instituted procedures designed to ensure fairness to all parties. For example, the debtor’s consent is mandatory to apply cross-class cram down. Also, the Order of September 2021 mandates (with certain exceptions) application of the absolute priority rule (ie all creditors of a class must be paid in full prior to any junior class member receiving anything). In addition, the Court must find either that (1) a majority of the impaired classes have voted in favor of the plan or (2) at least one of the “affected” classes has voted in favor (ie a class that otherwise would not be entitled to distribution in a liquidation or sale). Lastly, the Court must find, for any person voting against the plan, that they would not be better off in a liquidation or sale of the company.

Issues can certainly arise in insolvency cases in relation to class formation. For instance, a common occurrence prior to the Order of September 2021 is that a secured creditor was placed in the same class as unsecured creditors and the secured claim would dwarf or control the class voting (because of the large dollar amount of the claim). In this instance, the secured creditor could have absolute control over whether or not the debtor could accomplish an approvable plan.

The same could have occurred with regard to large tax claims. However, the Order of September 2021 excludes taxes and employee claims from the class formation.

Another issue could occur with lack of responsiveness of trade creditors or employee claims. The class formation, with its division into multiple classes of claims, the significant discretion afforded to practitioners in setting up the classes and the requirement that only 2/3 in amount vote in favor, allows a plan to be approved despite non-responsiveness of creditors and/or despite a recalcitrant creditor. And the cross-class cram down allows an entire class of nay saying creditors to be subject to a plan, as long as it is found to be reasonable by the Court.

**QUESTION 4 (fact-based application-type question) [15 marks]**

Mireille has been working as an independent fitness coach for 10 years. During the Covid-19 pandemic, her business took a serious hit due to confinement restrictions. In January 2022, she started experiencing serious cash flow difficulties, which have continued ever since. She is now starting to struggle to pay her expenses, especially the rent of her fitness studio, which is her main liability each month. Mireille is starting to feel very anxious that she may become insolvent in the near future.

One of her friends told her that she should apply for conciliation proceedings, but Mireille fears that it will give her business bad publicity and scare off her clients. This is of particular importance to her as most of her business is premised on word-of-mouth clientele.

**Question 4.1 [maximum 5 marks]**

Should Mireille apply for conciliation given her personal circumstances? Does she meet the different criteria to open the procedure? Justify your answer.

Mireille does qualify for conciliation and likely should apply given her personal circumstances. First, conciliation is for the most part confidential and is specifically designed for companies that are not yet insolvent but need to negotiate a workout with the creditors. The procedure allows the debtor to stay in control and to nominate an insolvency practitioner as conciliator (or one can be appointed by the Court). The conciliator will oversee negotiations with creditors and can make any proposals designed to preserve the business and to preserve employment. The Court then approves the agreement (constatation) while maintaining the confidentiality. In this scenario, Mireille would be under no risk of bad publicity.

There is a risk that the Court would sanction the agreement, rather than approving it. This is known as homologation and involves publicizing the judgment. However, prior to homologation, the Court must hear from the Debtor and the Court must be satisfied that the agreement aims to ensure the viability of the business. Thus, it seems that Mireille would be adequately protected here.

In that Mirielle is stated as not yet insolvent, she qualifies for a conciliation proceeding. In France, the insolvency test is based entirely on cash flow (referred to as a payment failure situation). For conciliation proceedings, a debtor must not have been insolvent for more than 45 days at the time of opening proceedings. (note: given that her cash flow issues began in January 2022, I would be concerned that her definition of insolvency does not mesh with French law. In this event, she would not qualify for a conciliation.

**Question 4.2 [maximum 5 marks]**

Explain to Mireille the way conciliation proceedings run and the advantages of opening such procedure. Further advise her whether she could also avail of any other insolvency procedure.

Mireille,

You have asked me to explain the way conciliation proceedings work and the advantages of opening this type of procedure. First, it is important to note that a conciliation proceeding is an amicable, and largely out of court proceeding. In order to qualify you cannot have been insolvent for more than 45 days. Insolvency in France is determined by using what is known as a cash flow test, which means that you are experiencing an inability to pay your debts as they come due, with reference to your immediately available assets (including credit lines and any moratoriums). You have indicated to me that you do not believe you are currently insolvent, but we should talk about this requirement to be sure.

Conciliation proceedings are “opened” at your request to the Court. The process of opening is confidential and basically what happens is that a person is appointed to be a conciliator. This person oversees the procedure and makes a proposal for how you can negotiate with your creditors in order to preserve your business and maintain your employment (and retain your employees if you have any). Basically this proposal will be confidential and contractual with your creditors, likely to modify terms and/or give you more time to pay. Once this proposal is negotiated and approved by your creditors, the conciliation agreement is approved by the Court, at your request. It is possible that the Court approval would also be confidential (known as constatation). Or, the Court may decide to publicize the judgment (called homologation) but would only decide this after hearing from you and after deciding that the terms of the conciliation agreement ensure the continued viability of your business.

Another possibility for you, in the event that you do not wish to commence a conciliation procedure, is to commence a Safeguard Procedure. Similar to conciliation, you cannot be in a payment failure situation in a Safeguard Procedure (it is ok that you are having difficulty meeting your payment obligations). This procedure is court-based and not confidential. However, it does allow you to stay in control of your business and also involves the appointment of professionals (in this case an administrator) to assist you in preparing a plan. It also allows you to approve a repayment plan in some instances despite having some creditors who do not consent. An insolvency judge will oversee the procedure.

A third option, should you commence the conciliation procedure and find that you need additional help to get an agreement approved, is to transition to an Accelerated Safeguard Procedure. This is a variant of the Safeguard Procedure, but requires first the opening of a conciliation proceeding. The idea is to negotiate a restructuring solution during the conciliation, but to have more power to implement the conciliation agreement (without full consent of creditors) by commencing the Accelerated Safeguard. It is a very quick procedure.

One other procedure is called Rehabilitation Proceedings, but these only apply to debtors that are insolvent. It is also opened by you (or by any creditor). In the event that your situation becomes a payment inability, we can discuss this option further.

**Question 4.3 [maximum 5 marks]**

Can Mireille open accelerated safeguard proceedings? If so, explain what this procedure is and what its advantages are.

Mireille can likely open an Accelerated Safeguard Proceeding. This is not a stand-alone procedure and requires that a conciliation proceeding be opened first. The objective is to reach an agreement with creditors in a speedy fashion. It is also designed to preserve the value of a business and to quickly come to resolution with the same sort of framework as a pre-pack insolvency.

The procedure is to first commence a conciliation proceeding and to have a conciliator appointed. During this stage, a plan is negotiated and developed to pay creditors either over time or at a discounted rate. The plan will place creditors into different classes depending for instance on whether they are secured vs unsecured; equity holders vs non-equity (not applicable here because this is not an entity filing), and/or other factors which unite certain creditors into a certain class based on economic commonalities. In our fact, likely the landlord will be in his own class, given that he has unique contractual rights.

 If there is 100% agreement in the conciliation procedure, an accelerated safeguard is likely not necessary. However, if there are recalcitrant creditors, the conciliation procedure can be transitioned into an accelerated safeguard in order to avail of the cross-claim cram down provisions. Also, commencement of the accelerated safeguard effects an automatic stay on all collection and litigation against the debtor.

The Accelerated Safeguard gives substantial leeway to the insolvency practitioner to set up the various classes and set up the agreement. The agreement would be negotiated during the conciliation to ensure that sufficient votes in favor will be accomplished and then is converted into a safeguard plan. The Court must find the plan proposal to be appropriate, the plan usually must be in compliance with the absolute priority rule (unless cram down is not needed) and the Court must find either that (1) a majority of the impaired classes have voted in favor of the plan or (2) at least one of the “affected” classes has voted in favor (ie a class that otherwise would not be entitled to distribution in a liquidation or sale). And for any party that rejects the plan, the Court must find that they are receiving at least as much as they would receive in a liquidation or sale proceeding.

The advantage of this two stage process is that it combines confidentiality and flexibility during the conciliation process with the power of being able to bind recalcitrant creditors during the cross-class cram down process. Also, if new financing is needed to ensure Mireille’s success, this is easier to obtain because new money financers obtain a privileged repayment position in the subsequent safeguard plan. Another main advantage is that it is a truncated procedure; a plan in an accelerated safeguard must be adopted within two months of the opening judgment. Thus, significant administrative expenses are likely to be realized.

**\* End of Assessment \***