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Assessing Your Business Viability and Director Risk Guide – France

September 2022

Contents

Directors' Duties

Considerations for Directors When a Company Is in Financial Difficulty

This quick guide summarises the duties that directors of companies incorporated in France are subject to, and how those duties change when the company is insolvent or at risk of being insolvent.

It also gives an overview of the personal risk to directors when the company is in financial difficulty.

Directors' Duties When Solvent

- Each director owes individual duties to the company, to promote the success of the company for the benefit of its shareholders as a whole.
- Directors' duties must be exercised in good faith.
- The directors can be held liable, with both civil and criminal liability, individually or jointly, to the company or third parties for breach of applicable laws and regulations, the company's constitutional documents or for mismanagement of the company.
- There may be other specific duties, depending on the form of the company.

Financial Distress

Directors' Duties When Insolvent, or at Risk of Being Insolvent

- If a company is facing serious financial difficulties (but not yet insolvent) the director(s) can apply to the court for the appointment of an agent (mandataire ad'hoc) or a conciliator (conciliation) to carry out specific rescue measures and assist in negotiations with the main creditors on a confidential basis.
- If the company faces serious difficulties, but is not yet insolvent, the director(s) can also resort to safeguard proceedings or accelerated safeguard proceedings to restructure all or part of its debts, while benefiting from the protection of the insolvency regime.
- However, if the company can no longer pay its current debts with its available assets for more than 45 days, the legal representative of the company or the director must file a declaration to the court to file for insolvency (*déclaration de cessation des paiements/ dépot de bilan*). Not doing so is considered as mismanagement.
- Depending on the financial situation of the company and the possibility of redress, the director can either file for rehabilitation or liquidation proceedings.

It is important for directors to understand their directors' duties, as well as how their actions and the decisions the board makes when the company is in financial distress could expose them to personal liability and risk.

Below is an overview of the potential claims and potential exposure for directors if the company is insolvent or at risk of insolvency.

Wrongful Trading

Continuing to Trade

- The directors may be liable for wrongful trading if they continue to trade in circumstances where the company has been unable to pay its current debts with its available assets for more than 45 days.
- The directors can be ordered to compensate creditors for any additional losses that they suffer as a result of that continued trading.

Extending Credit

- A director (including shadow director) may be liable for granting or extending credit or specific advantages to a company facing irremediable financial difficulties, to keep it artificially operating when it should have filed for bankruptcy.
- In cases of safeguarding, restructuring or liquidation proceedings liability is limited to circumstances of (i) fraud, (ii) indisputable interference with management of the subsidiary/debtor, or (iii) providing guarantees obtained from the creditor, in return for disproportionate credits or loans. If liable, the director can be liable for all or part of the company's debts.

Mismanagement Errors

Once insolvency proceedings have been initiated, a director can be liable for all or part of the company's debts if, as a consequence of mismanagement errors a company's assets do not cover its debts.

Bankruptcy

It is compulsory for a director to cooperate with the receiver and/or the judicial representative appointed by the court following filing for rehabilitation or liquidation proceedings, otherwise a personal bankruptcy action may be brought against the director.

Liability Towards Employees

Under certain conditions, the employer obligations can be imposed on a third party, including a director (legal entity) or a shadow director.

Wrongdoing

Directors may also be exposed to non-pecuniary/professional sanctions ("*faillite personnelle*") and/or criminal sanctions known as "*banqueroute*". The below are examples of types of action that may lead to sanction:

- Using the company to conduct and conceal business transactions for the director's benefit
- Using the company's assets or credit for the director's benefit, or to the benefit of another legal entity in which the director holds a direct or indirect position
- Fraudulently continuing to trade at a loss (whether to further one's own interests or not), knowing that this would lead to the company's insolvency
- Fraudulently embezzling or concealing all or part of the company's assets or fraudulently increasing the company's debts
- Failing to file for insolvency within 45 days of the date on which director(s) knew, or ought to have known, of the company's insolvency
- Obtaining credit at rates that are significantly higher than commercial rates or selling assets below market value, with intent to avoid or delay the opening of insolvency proceedings
- Undertaking, on behalf of a third party, without consideration, commitments deemed too onerous at the time they were undertaken in view of the company's situation
- Paying or causing the payment to a certain creditor, by defrauding other creditors, after the insolvency date and knowing that such a date had occurred
- Obstructing proceedings by voluntarily refraining from cooperating with the administrator/liquidator
- Concealing accounting documents or failing to keep the accounts

Preference

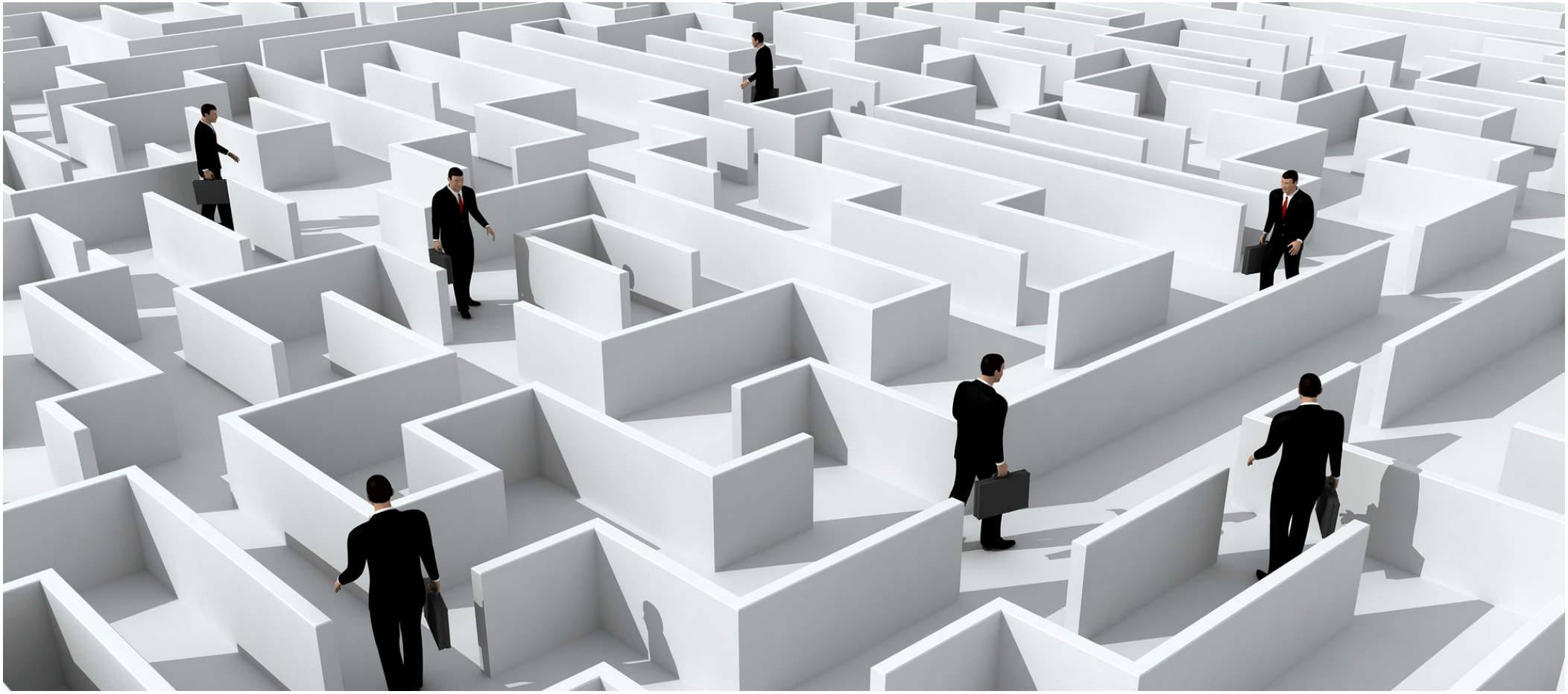
Any payment made, or contract created, in the period before the insolvency can be voidable if it was not made or concluded in the interest of the company and/or had a detrimental effect on other creditors.

Where the company is subject to insolvency proceedings (rehabilitation or liquidation), directors can be subject to professional sanctions if they paid or caused the payment, after the date of insolvency, of a pre-petition creditor to defraud other creditors.

In addition "*de jure*" or "*de facto*" directors who carried out certain wrongful transactions in the framework of insolvency proceedings, such as paying a pre-petition creditor by preference, could face criminal sanctions.

Practical Tips to Mitigate Liability

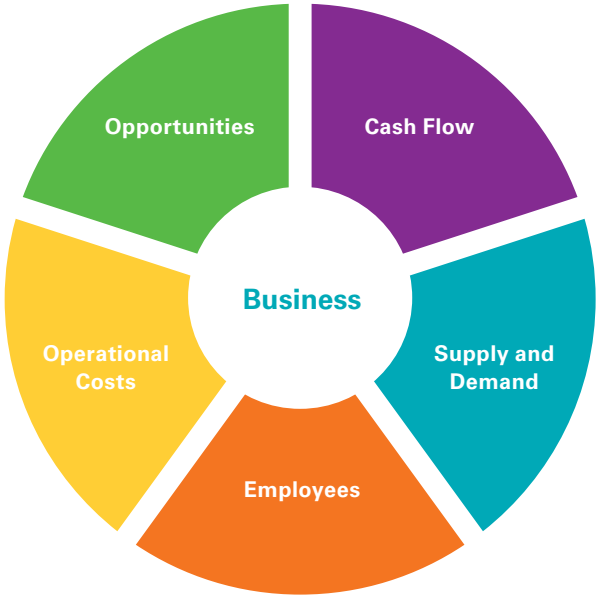
- If the company is facing financial difficulties that are likely to cause insolvency (but crucially the company is still solvent), the director can request the intervention of an agent (*mandataire ad'hoc*) or a conciliator. These preventive measures are confidential. This can limit the directors' exposure in this sensitive period, while negotiating (confidentially) the restructuring of the debt with the main creditors.
- If these preliminary preventive measures are insufficient, safeguard proceedings (public) are also an option to restructure its debt, while benefiting from the protection of the court.
- To limit the risk of acts taken before insolvency being nullified, any agreements, settlement agreements, etc. can be subject to the "homologation" of the court.
- Great caution should be taken before making any redundancy plans or taking serious structural decisions for the company. In many cases employee representatives or work councils must be consulted.
- Parent company directors should ensure it remains independent, refrains from interfering in the subsidiary's management or providing excessive financial support.
- Appointing various directors can also reduce the risk of liability, as the decision-making and the liability is not then resting on one person – but this is not customary in France.
- Directors should not take any action with the intention of putting a creditor in a preferential position if the company is facing financial difficulty.



Assessing Viability and Business Risk

Key Points for French Businesses to Consider

The purpose of this quick guide is to help organisations focus on key issues that impact viability and sustainability



Cash Flow and Financing

Directors should prepare new cash flow forecasts for best and worst case scenarios (i.e. further restrictions impacting the business and economy), considering any expected changes to supply and demand, any changes to operational costs and factoring in any deferrals of historic liabilities, and any new debt which has been taken on. Forecasts and projections should be continually reviewed and updated to reflect changes in the market, and lessons learnt.

Cash Flow Pressures

Repayment of borrowing
- Aggressive debt recovery
- Use of government financial support
- Other additional borrowing from existing lenders
- When and how will payments be met?
- Is there a need to restructure debt?

Rent
- Rent holiday/reduction agreed?
- Ability to meet future (and missed) rent payments
- Restructure future rent
- Dealing with rent arrears

Restrictions
- Impact of remaining worldwide COVID-19 restrictions on supply chain and demand

Deferred payments
- Paying deferred payments/rent/suppliers/tax (if applicable)

Suppliers
- Catching up on payments to suppliers
- Agreeing and abiding by new terms
- Ability to meet future obligations – increased costs
- Aggressive debt recovery action

Forbearance
- Repaying existing lenders – forbearance may end and payments need to resume
- Availability of financial support

Employees
- Is a redundancy programme going to be necessary? If so, how should this be managed?

Debtors
- Have debtor days slipped?
- What action can/should be taken to address any potential bad debt issues?
- Reduced credit terms/payment on delivery/increased prices/ credit insurance

Supply and Demand

Operational
- Identify key suppliers: business critical and projected spend
- Able to meet demand
- Changes to delivery timescales
- Alternative sourcing? Costs consequences?
- Material/staffing shortages
- Impact of COVID-19 restrictions on suppliers

Pricing and payment
- Changes to payment terms/cost (e.g. cash on delivery)
- Financial health of suppliers
- Ability to obtain credit

Stock
- What stock is available?
- Are goods stranded at port or elsewhere in distribution network?
- Right to reject
- Import/export tariffs and taxes

Termination of existing contracts
- *Force majeure*
- Material adverse change
- Termination rights

De-risking the supply chain for the future
- Enhanced IT due diligence
- Business continuity measures
- Review of whole supply chain
- Look to achieve greater diversity in supply chain
- Potential investments in technology

Supply → **Company** → **Demand**

Shape of demand
- Has demand returned? Increased?

End-user/customer
- Decrease in consumer confidence
- Cash-strapped customers

Changes to product and offering
- Changes to consumer habits (e.g. e-commerce and importance of home delivery)
- Increase in appetite for online suppliers and delivery services

Pricing and payment terms
- Review pricing structure, are pre-COVID-19 margins still achievable?
- Consider credit terms and customer insolvency risk
- Is credit insurance still available?
- Is invoice discounting an option to improve working capital?

Government/Other Restrictions
- Impact of restrictions in the UK or countries where end users/customers are based e.g. self-isolation and reduced operating capacity

Employee Considerations

Business requirement/need
- Does the business need the same number of employees in light of any changes to supply/demand/business model? Are redundancies necessary?
- Re-allocation of resource according to business plan

Availability/costs
- Impact on employees (fear of infection, childcare responsibilities or self-isolation etc.)
- Will there be any permanent changes to working patterns/habits that impact operational costs? (i.e. increase in homeworking and decrease in office space)
- Psychological support – assisting employees to adapt

Long-term changes to contracts and remuneration
- Flexible remuneration plans
- Agree reductions in salary and bonuses

Macro Economics
- Expected interest rate rises
- Rising inflationary costs (energy, food, etc.)
- Fuel inflation/rationing
- Impact of sanctions on Russia
- Shortage of or increased costs of major commodity supplies
- Cautious end users/customers
- Supply chain cost increases (shipping, re-routing)

Operational Costs

Licences

- Inability and capacity of named individuals/licence holders/trained individuals to carry out role (e.g. long-term absences, sickness, self isolation)
- Licence amendments to reflect changed trading arrangements (e.g. changes to hours or activities)

Increased health and safety costs

- Strategies for managing COVID-19 risk in the workplace
- Sanitisation and cleaning programmes

Changes in operational practices and procedure

- Changes to real estate footprint to accommodate changes to employee and working practices (e.g. reduced office space or larger warehouses)
- Investment in technological capabilities to accommodate changes
- Greater automation of processes (or parts of processes)

Opportunities

Many businesses have already made changes to their day-to-day operations, many changes will be permanent or will require further adaption to meet new government guidelines but all will impact on future cash requirements.

- Home deliveries and e-commerce
- Consumer analytics and choice
- Permanent changes to working practice
- Streamlining business operations and efficiency
- Ability to operate from smaller footprints
- Use of technology and automation

Managing Supply Chain Issues and Risk

There is an almost infinite variety of issues that can arise within the supply chain, from minor irritants that make business just that bit more difficult to transact than is necessary, to catastrophic failures. We have selected a few of the more high-profile current issues for consideration.

COVID-19 and Resulting Supply Chain Challenges

The effects of the COVID-19 pandemic on the supply chain continue to be felt by businesses, driving product/service shortages, transport problems and unpredictable cost increases. In particular, parties should carefully consider (among other things):

- Supply chain mapping (if not already completed)- to identify risk areas, particularly further down the supply chain.
- COVID-19 managing related provisions in contracts- whether as general terms or to address specific identified issues (e.g. delays, materials/staffing shortages, travel restrictions and costs).
- Increased risk of significant changes in inflation rates (and variations in these between countries) and the extent to which these may be passed down the supply chain.
- Compliance with provisions that require staff to visit sites in particular territories.
- Increased risk of supply chain insolvencies, cost increases, skills and asset shortages (including warehouse space, access to certifying bodies and specialist service providers).

Reducing the Risk of Insolvency in the Supply Chain

The current volatile financial and political landscape, combined with extensive reliance on outsourced supplies of critical systems and lean manufacturing processes, means that managing the risk of suppliers (and any of their suppliers) becoming insolvent has become even more important. Points to consider when seeking to reduce this risk include:

- Dual source wherever possible. Identify and monitor particularly carefully any areas where dual sourcing is not possible and plan how you would deal with the loss of any single-source supplier.
- Identify practical issues that could make it difficult to move to a new supplier (e.g. tooling held at the supplier's premises, certifications tied to a particular production line, reliance on proprietary supplier intellectual property) and put in place contractual protections or contingencies to deal with these.
- Ensure that exit plans have all been agreed and tested well before any potential contract termination event occurs.
- Ensure contracts are signed with the group company against whom financial due diligence has been performed and seek parent company guarantees where appropriate.
- Monitor and audit the supplier's financial health throughout the life of the contract. Include rights to obtain necessary information/access from the supplier, as well as obligations on the supplier to do the same with their suppliers and to report to you (and check that they do this). Be vigilant for any early warning signs, such as late or missed deliveries or requests for money on account (where that is not usual practice).
- Consider including rights to terminate (to the extent legally permissible) and/or increased monitoring for material adverse change in the supplier's finances.
- Consider the use of escrow for key software programmes and risk assess any hosted or cloud-based solutions where escrow may not provide effective protection.
- Ensure that the insolvency provisions in contracts are up to date, appropriate for the jurisdiction and take effect early enough in the insolvency process.
- Review the contract, be aware of any retention of title provisions and assess their likely effectiveness.

Mitigating the Impact of Global Trade Disputes

Trade tensions between global superpowers, notably the ongoing tensions between the US and China, as well as the impact of sanctions on Russia, have the potential to disrupt supply chains globally. Different companies will be affected by the imposition of/increases in tariffs, blacklisting of companies and other trade restrictions in different ways, but it is possible to take steps to mitigate risks, including:

- Mapping the whole of the supply chain to identify high-risk areas and put in place measures to address any identified risks and develop contingency plans for worst-case scenarios (including dual/multi-sourcing).
- Actively monitoring potential future trade policy developments in key territories. The last few years have seen tariff threats between trade blocks, including on steel and aluminium. Proactive monitoring enables you to:
  - Lobby for changes before the scope of tariffs has been determined, either directly or through industry bodies
  - Assess likely consequences for the supply chain and plan accordingly, including amending long-term contracts and making alternative sourcing arrangements, where appropriate
- Identify any levels of the supply chain that may suffer from trade blacklists and plan how each element could be removed in short order if required. In recent times, the US has added dozens of companies to its trade blacklist, including many Chinese chipmakers, Huawei, and Israeli NSO Group whose Pegasus spyware made headlines in 2021. Accordingly, businesses need to have a clear understanding of the sources of all components and plans to address their loss where appropriate.
- Reviewing existing agreements to assess risks and scope for passing these down the supply chain or terminating arrangements that are/become uneconomical or unlawful.
- Identifying and applying for available exemptions. For example, by the end of 2018, the US had granted almost 1,000 waivers from tariffs on Chinese goods. More recently, China has extended existing tariff exemptions from on a list of 81 US products ranging from electric vehicle batteries to timber to shrimp.
- Looking for opportunities that may be presented by trade being diverted to third countries as a result of tariff impositions (while remembering that these opportunities may be temporary). For example, it has been estimated that the EU will be able to attract up to US$90 billion of trade related to value chains as a result of US-China tariffs.

Ensure Compliance With Data Protection Laws

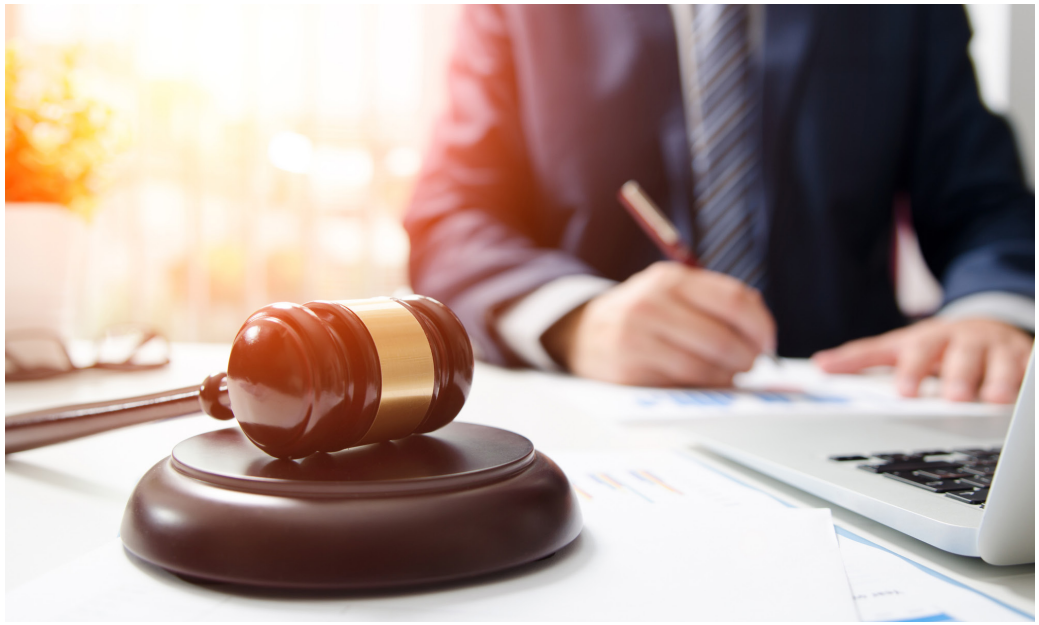
The introduction of the General Data Protection Regulation (GDPR) brought new obligations for businesses, with significant fines for non-compliance being levied (e.g. Amazon- €746 million, H&M- €35 million). It has been followed by the California Consumer Privacy Act (CCPA), China's Personal Information Protection Law, the Brazilian Data Protection Law and the likelihood is that more countries will follow suit. With this in mind, in relation to the supply chain, companies should (if they have not already done so):

- Identify key territories in which the company's group is obliged to comply with local data protection laws, monitor changing requirements in those territories and ensure that compliance programmes take account of differing approaches between these key territories, in particular any data localisation requirements (e.g. in Russia and China).
- Review existing records of processing to ensure there is a clear understanding of what data is processed by the supply chain on the group's behalf, where it is processed and the procedures in place to ensure compliant processing by the supply chain.
- Reassess whether suppliers act as controllers or processors of company group data and update contracts as necessary to address this and to ensure all contracts include mandatory data protection clauses.
- Ensure that suppliers with access to company group data are regularly audited and monitored.
- Continue to monitor the effect of cases (notably the Schrems II decision on data transfers to the US) and enforcement action, and be ready to make changes to data hosting and transfer processes with suppliers and customers if required.
- Maintain and test breach response plans, to include dealing with breaches by suppliers, and ensure that supplier agreements contain appropriate breach notification and support commitments.

Consider the Impact of Ransomware and Other IT Security Issues

Internal IT security has been a key risk area for businesses for some considerable time. However, we are now seeing an increased focus on the risks posed as a result of attacks on suppliers leading to loss of or interruption to critical supplies. Accordingly, in addition to addressing security of their own systems and of systems that connect to/interact with, parties should consider:

- Enhanced due diligence on IT security, disaster recovery and business continuity measures taken by critical suppliers.
- Including IT security, disaster recovery and business continuity commitments in contracts with all major suppliers and not just those who are providing IT services.



Compliance With Anticorruption and Anti-bribery Laws

Anticorruption and anti-bribery laws gained heightened publicity following new legislation extending potential liability up and down the supply chain. Parties should:

- Establish, implement and enforce appropriate anti-bribery and anticorruption policies throughout their organisations and ensure that their contracts flow these requirements up and down the supply chain.
- Identify key risk areas (both in terms of geography and business function) and provide increased training, monitoring and audits for them.
- Draft and use appropriate anti-bribery/anticorruption provisions for contracts that provide a reasonable level of protection, but that procurement/marketing teams are realistically likely to be able to negotiate and police.
- Consider implementing whistleblowing policies across the supply chain, but take care to respect local restrictions (e.g. in France). Be aware of the EU Whistleblowing Directive 2021, which is likely to affect many EU-based businesses.
- Stay alive to advancements or changes in relevant anticorruption and anti-bribery laws, particularly failure to prevent tax avoidance and failure to prevent bribery. Where appropriate, seek external advice on these advancements, as violation could lead to significant reputational and financial damage.

Environmental, Social and Governance

Environmental, Social and Governance (ESG) issues have come to the fore in recent months. Media and social activists are increasingly adept at identifying environmental and ethical issues arising within companies' supply chains and then tracing these back to the source.

We are also seeing more and more ESG-centred legislation targeted both at companies and their supply chains across Europe. This is only likely to increase, particularly following the conclusion of COP26. Legal teams can help support businesses' compliance efforts by:

- Designing ESG policies so that they have a particular focus on ESG issues most relevant to a businesses' industry or sector.
- Updating ESG policies regularly so they extend to cover key legislative changes promptly, and take account of policy and legislative changes that are on the horizon where appropriate.
- Help businesses stay on top of advances in the environmental law and policy (waste, water, air pollution, net zero targets, etc.) of countries in which they operate and possible implications.
- Incorporating into supply agreements a commitment from suppliers to comply with (and ensure that their own key suppliers comply with) the business' ESG policies and/or targets, or equivalent policies or targets approved by the business. It may also be prudent to include obligations to comply with (and provide the business with evidence to demonstrate compliance with) specific legislative requirements.
- Including ESG audit and reporting requirements in contracts and ensuring that these are exercised by the business and that the business has the right, if necessary, to terminate the contract for non-compliance (particularly where there has been some reputational damage).
- Checking that the business maintains adequate records to enable it to demonstrate compliance and the steps that it has taken to seek to achieve this.
- Utilising the data gathered internally and within a business' supply chain on ESG to inform future goal-setting.
- Ensuring that ESG commitments made by the business are not overly ambitious. Consumer and shareholder groups have already started to investigate the possibility of pursuing companies for failure to comply with published ESG statements.

Ensuring Product Quality and Avoiding Expensive Product Recalls

Consumer protection and product safety legislation are becoming increasingly prescriptive. Suppliers must not only ensure their products are safe, but also provide certificates of compliance with a plethora of different industry standards. Failure by the supplier or its supply chain to do this can lead to expensive and very public product recalls. Supply contracts will generally include standard product quality and compliance warranties. However, consideration should also be given to:

- Agreeing a product recall process with key members of the supply chain in advance. This reduces the supply chain's exposure to the negative impact of a recall (i.e. the knock-on effects either up or down the supply chain) and ensures that there is an agreed plan of action when a recall occurs.
- Including express recall provisions in supplier contracts that give a business the ability to initiate recalls (and recover costs of this where appropriate) where requested by regulators or the business reasonably considers appropriate, to avoid arguments about whether a recall is/is not legally required.
- Ensuring traceability of individual batches of products/components to assist in root cause analysis and minimise the scope of any recall.
- Clearly identifying territory-specific certification and other requirements and allocating responsibility for compliance with this appropriately. While it may be tempting to seek to pass responsibility for this back up the supply chain, if the supplier is not familiar with requirements in the relevant consumer market, this may cause more problems than it solves.
- Including contractual rights to reject entire shipments/batches if a particular percentage of samples prove to be faulty. It is not uncommon to see contracts that only allow for return of products that are actually faulty, which would technically require testing of every single item before it is sent back.

Considerations for Supply Chain Disputes

Despite best intentions (and well-worded contracts and contractual protections), some supply chain disputes cannot be avoided. Supply chain partners may find themselves in a formal legal dispute due to a supply chain failure. For example, previously harmonious relationships may have broken down, with positions having become entrenched; one or both supply chain partners may be behaving unreasonably; product supplies may be late and/or not of sufficient quality, quantity, correspond to specification, etc.; a project may suffer unexpected losses, or margins may suddenly narrow and contracts become unprofitable/unworkable; and/or as a result of management and other stakeholders demanding that action be taken. Resultant litigation can be time consuming, inherently uncertain (in terms of outcome) and costly.

When disputes unavoidably arise, then a business/its advisers will (among other things) need to:

- Establish the applicable law.
- Consider geographic locations and jurisdictional issues, including enforcement.
- Confirm the contractually applicable dispute resolution mechanism (e.g. litigation, arbitration or other).
- Assess whether the appropriate contractual procedures have been followed, including any pre-dispute/pre-action requirements.
- Ascertain whether the contract provides for a particular or exclusive remedy.
- Consider whether you have sufficient resources internally to deal with the dispute.
- Consider whether external lawyers and experts need to be engaged.
- Undertake prompt documentary and information gathering and, thereafter, manage and collate documents. This should include suspending any routine document destruction policies, and ensuring both paper and electronic records are investigated and preserved.
- Assess the operative terms and conditions- is there a battle of the forms argument?
- Investigate whether any other parties are potentially involved/culpable.
- Assess whether there are helpful/unhelpful warranties and indemnities, any caps on liability, the nature of the losses (direct or indirect) and the extent to which loss and damage have been excluded (if at all).
- Understand who your key people/witnesses of fact are and what they are saying. This may extend to interviewing and drafting witness statements- preferably by lawyers and preferably before memories dim.
- Carefully and accurately assess the merits of the case and what your overall objectives are for the dispute/litigation- what are your best, most likely and worst-case outcomes?
- Ascertain your optimum resolution strategy.
- Establish the likely overall cost of the litigation.
- Make a prompt assessment of whether any time limits apply that could bar a claim (and, indeed, if the claim is already time barred).
- Investigate whether there is insurance cover. If there is, then a timely notification to insurers will likely need to be made.
- Understand whether the opposing party is/parties are likely to be good for the money.
- Assess whether the nature of the dispute will also expose the business to reputational damage.
- Ensure communications with your lawyers/third parties remain privileged (as far as possible).
- Take stock of whether it is a business-critical dispute and/or whether an emergency remedy needs to be invoked (e.g. an injunction).
- Assess the scope for an early resolution before trial (e.g. negotiation), including the appropriate use of settlement offers.
- Consider any enforceability issues should you obtain a judgment against the opposing party, particularly if that party is located in another country.

Changes to Insolvency and Restructuring Laws

On 23 March 2020, and on 14 November 2020, France established a "state of health emergency" authorizing the government to take all necessary measures to combat the effects of the COVID-19 pandemic, including making temporary amendments to the French Commercial Code and the country's insolvency laws. The government's legislative powers and the measures, that have not already been reviewed or definitively integrated in the Code, ceased on 31 December 2021.

In parallel, on 15 September 2021, France also introduced (i) a reform of the insolvency regime in its Commercial Code, as well as (ii) a new insolvency procedure (called "crisis exit procedure") dedicated to assisting companies to exit support of the COVID-measures.

Several changes to French insolvency laws have been implemented since the beginning of the pandemic, first in 2020 with emergency measures (Orders of 27 March and 20 May), then in 2021 (Law of 31 May, Order of 15 September, Decree of 23 September and Decree of 16 October). The most recent measures in 2021 implement the EU Insolvency Directive No. 2019/1023 dated 20 June 2019 and amend certain sections of the Commercial Code, while definitively enacting some of the COVID-19 related measures. This reform entered into force on 1 October 2021.

The measures that may support French companies in overcoming the current crisis have been summarised below.

Improved Detection of Weak Businesses	France introduced an increased alert mechanism through various actors such as external auditors, financial institutions, tax authorities etc., in order to allow an early detection of financial difficulties so that these difficulties can be addressed in the most effective manner. The Presidents of the French Commercial Courts received increased powers to assist in such detection.
Increased Attractiveness of Preventive Procedures	France has introduced measures to increase the interest of preventive measures, such as the "conciliation" procedure, which is carried out when companies are facing financial difficulties, but are not yet insolvent. The attractiveness is increased through various measures: • Suspension of enforceability of receivables of creditors during the conciliation ("*délai de grâce*"), even prior to any formal notice or legal action from the creditors. Payments due can be suspended or paid through installments during the conciliation process. Guarantors can also benefit from the suspension of claims during the conciliation. • Securities can now be granted during the conciliation period and be fully effective in the event of insolvency. • The confidentiality of the conciliation process has also been reinforced. • The recourse to a 3-month *ad hoc* administrator is now possible during the 18 months that follow the signature of the restructuring plan if the company has less than 10 employees and is facing issues caused by the pandemic. The cost of this procedure has been set at €1,500 for companies of less than five employees and €3,000 for companies of 5 to 10 employees.
Assistance in Debt Restructuring	This measure has been designed for large corporations or companies with particularities in their field. Businesses that have more than 50 employees or are in need of debt restructuring may be assisted by a debt restructuring and insolvency prevention officer "*le commissaire aux restructurations et à la prevention des difficultés*". Companies of more than 400 employees may benefit from the assistance of the interministerial committee for industrial restructuring "*comité interministériel de restructuration industrielle*".
Increased Efficiency of Safeguard Proceedings	• The duration of safeguard proceedings to agree on a restructuring plan, which are available to solvent companies facing serious difficulties (before administration or liquidation proceedings), has been reduced from 18 to 12 months. The rule is now that any extension granted after the first 6 months can only be up to a maximum of another 6-month period and may only be granted upon a duly reasoned request for extension. • The payments under the safeguard restructuring plan must be of a minimum of 5% of the amount of each receivable after the third year and 10% after the sixth year. • Possibility to give security during the proceedings. • Facilitated possibility of disposing of certain non-essential assets of the company. • Secured creditors must declare their receivables (also in administration proceedings). • Any "classes of interested parties" constituted under the new regime in the context of safeguard proceedings remain the same in case of conversion into administration proceedings.

Extension of "Accelerated" Safeguard Proceedings	France has extended the use of accelerated safeguard proceedings as introduced during the COVID-19 pandemic. This procedure is now available to all companies irrespective of their size. It can concern all or only part of the creditors of the debtor. It can be initiated only by a company that is not yet insolvent (but facing financial difficulties) and which has been under prior conciliation. The company must be able to propose a restructuring plan within 2 months (with a possible extension to 4 months maximum), which means that an agreement with creditors must be reached in a very short period. Another novelty is the obligation to constitute "classes of interest parties" for these proceedings. In case of failure (no restructuring plan voted), the proceedings end. Since 1 January 2022, this measure is no longer available to natural persons whose assets do not include any real estate.
Security in case of Injection of New Money	In the context of safeguard and administration proceedings, any injection of cash into the business is rewarded with a special security (paid in second rank). The investment must be authorised by the court and made public. This measure promotes the injection of new money into the business to maintain and boost activity.
Increased protection and participation of creditors	The French reform created an obligation for: i. Companies under accelerated safeguard proceedings ii. Companies of more than 250 employees and more than 20 M€ turnover or companies with more than 40M€ turnover, to establish classes of affected parties These include creditors (secured and unsecured), as well as shareholders. The administrator establishes those classes based on the nature of the claim (as opposed to the nature of the creditor). The classes then vote at a majority of 2/3 of expressed votes on the proposed plan (or can propose an alternative plan in administration proceedings). The Tribunal exercise special control where an effected party or a class has refused to vote the plan and can, in certain circumstances, adopt the plan despite the rejection by certain classes of affected parties. In this assessment, the court takes into account the best interests of affected parties and the priority of creditors with securities or of a higher rank, which must be fully paid before any other creditor of lower rank is paid.
Silence equals Acceptance	In the event of an amendment of a restructuring plan (in safeguard or administration proceedings), the silence of creditors on the proposed plan now amounts to acceptance. This measure is not applicable where classes of interested parties have been constituted.
Facilitation of Professional Recovery/Second chance	This procedure, which allows debtors to erase their debts in under 4 months, has been improved by excluding the exempt property from the calculation of the debtor's assets. The measures aim at giving a second chance to honest directors of distressed or insolvent companies.
Financial Support	Some of the financial support measures which remain available to distressed companies are: • Solidarity Funds • Government-guaranteed loans (Available to all businesses that have suffered losses during October 2021 – these businesses must file their request before 31 January 2022) • Exceptional loans (Available for small companies of less than 50 employees, which could not benefit from a government-guaranteed loan) • Rescheduling of bank loans • Furlough of employees
Health Crisis Exit Procedure	This procedure has been available since 2 June 2021[1], and may be commenced only at the debtor's initiative and is aimed at small and medium-sized companies which have less than 20 employees and a total balance sheet below €3 million that have ceased all payments. The debtor lists all of his debts that will be taken into account in the restructuring plan. The procedure lasts no longer than 3 months. The plan, adopted within 3 months from the opening of the proceedings, is enforceable against both the debtor's guarantors and its co-obligors. The procedure has no impact on the employees, which continue to be paid by the debtor. This procedure is available until 2 June 2023.

1 Established by Article 13 of Law No 2021-689 dated 31 May 2021.

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