

The judicial crisis recovery management procedure: A new temporary tool for businesses in financial distress because of the health crisis

Seeking to ensure the survival of companies that could become insolvent in the coming months due to the phasing-out of the support measures that have been put in place, the French legislator has adopted a Law introducing a new procedure, i.e., the judicial crisis recovery management procedure.

This temporary procedure is of particular interest to debtors who may be experiencing short-term difficulties caused by the COVID-19 health crisis and who wish to benefit from a simple and rapid mechanism for spreading out their current liabilities over a long period of time.

In addition to the extension of financial aid and the evolution of procedural rules to favor preventive judicial procedures^[1], Law of May 31, 2021^[2] on health crisis recovery management introduced a so-called “*crisis recovery management*” procedure ^[3] from June 2, 2021 until “*applications filed before the expiration of a period of two years from that same date.*”

By making this tool - which favors a simple and rapid spread of current liabilities over a long period of time through a debt repayment plan - available to companies, the objective is not to prevent the difficulties caused by the crisis, but actually to resolve such difficulties.

In fact, the French legislator is seeking to ensure the survival of companies that could become insolvent in the coming months due to the phasing-out of the support measures put in place and to the difficulties encountered by businesses that are faced with the six-year amortization limit for renegotiating their state-guaranteed

loan(s).

Compared to existing amicable and insolvency/bankruptcy proceedings, this new procedure, which is a temporary addition to the measures provided for in Book VI of the French Commercial Code, will definitely be of great interest to debtors who are encountering economic difficulties as a result of the health crisis.

What debtors are eligible for the crisis recovery management procedure?

- **A debtor who is eligible for the preventive procedures and insolvency/bankruptcy proceedings that already exist**

This new procedure is intended for, and will benefit, any person engaged in a commercial, craft or agricultural business, any natural person engaged in an independent professional activity, including a liberal profession subject to a legislative or regulatory status or whose professional title is protected, as well as any private law legal entity^[4].

- **A debtor that does not exceed certain thresholds relating to the number of employees and the balance sheet total**

The procedure will not be available to all economic actors since *“the procedure can only be implemented for debtors whose number of employees and balance sheet total fall below thresholds fixed by decree”*.

These thresholds will soon be set forth in an Implementing Decree.

However, large companies seem to be excluded from the scope of application of this new procedure since the presentation of the Bill referred to small and medium-sized businesses.

- **A debtor who is in a state of cessation of payments**

The procedure will only benefit the debtor who is in a state of cessation of payments, i.e., a debtor who is *“unable to meet his outstanding liabilities out of his available assets”*.

- **A debtor who has duly paid the employees’ wages**

Article 13, I. A of the Law of May 31, 2021 specifies that the debtor must have “[...] *however, funds available to pay the wages [...]*”.

Consequently, the *Assurance Garanties des Salaires* (Wage-Guarantee Insurance Fund or “AGS”), which usually intervenes in the context of receivership or liquidation proceedings, will not be involved in the opening of the crisis recovery management procedure to advance wages.

- **A debtor who draws-up accounts that appear true and faithful**

The debtor will have to draw-up accounts that “[...] *appear true, faithful and capable of giving a fair view of*

the financial situation of the company.”

In these circumstances, it would be appropriate for the debtor to provide the court with a certificate from the accountant or statutory auditor to support its application for the opening of the crisis recovery management procedure.

- **A debtor who is able to demonstrate his capacity to draw up a draft plan**

Finally, the debtor will have to provide evidence that his is able to draw up a draft plan aimed at ensuring the survival of the company.

What are the various steps of the crisis recovery management procedure?

- **A procedure exclusively initiated by the debtor**

Just like for the safeguard procedure, the crisis recovery management procedure can be solely initiated at the debtor’s initiative.

- **Opening of an “observation period”**

The judgment that opens the procedure marks the start date of a three-month observation period.

During this period, the debtor must draw up and submit to the court a draft plan aimed at ensuring the company’s survival.

At the opening of the procedure, the court shall appoint as agent a judicial representative who can be either a judicial administrator (“*administrateur judiciaire*”) or a creditor’s representative (“*mandataire judiciaire*”).

This judicial representative will not only have the mission of defending the collective interest of the creditors, but also a mission of supervision.

- **Approval of the plan**

The court shall approve the plan under the same conditions as those laid down for a safeguard plan.

As such, the duration of the plan cannot exceed ten years. Several measures can be taken to settle the debts, such as payment extensions, discounts or conversions into securities giving access to capital.

The plan can only concern debts that arose prior to the opening of the procedure.

- **If the plan is not approved, receivership or judicial liquidation proceedings are initiated**

If a draft plan has not been submitted to the court or if a plan has not been drawn up within 3 months from judgment that opened the procedure, receivership or liquidation proceedings may be initiated at the request of the public prosecutor, the judicial representative or the debtor.

As no bridge has been provided for between the crisis recovery management procedure and receivership and judicial liquidation proceedings, new proceedings will be initiated.

This new procedure seems ideally suited for small and medium-sized businesses that experience difficulties due to the COVID-19 health crisis, that were perfectly viable before the outbreak of crisis, and that wish to spread out the payment of their liabilities over a long period of time.

[1] <https://www.economie.gouv.fr/covid19-soutien-entreprises/sortie-crise-aides-entreprises-situation-fragilite#>

[2] <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043567200/>

[3] The health crisis recovery management Bill was approved by the French Constitutional Council in Decision No. 2021 -819 dated May, 31 2021 : <https://www.conseil-constitutionnel.fr/decision/2021/2021819DC.htm>

[4] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038587804

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