



# The reform of the French Insolvency Law

Main contributions of the ordinance dated 12 March 2014

4 september 2015

**C L I F F O R D**  
**C H A N C E**

# Introduction

A recent evolution :

- An important law : **the “Loi de sauvegarde”, in 2005**
- Last reform introducing new proceedings in French insolvency law : **the ordinance dated 12 March 2014**

Two goals :

- **Improving the anticipation of difficulties**
- **Encouraging turn around**

# Introduction

Six proceedings :

- **Mandat ad hoc**
- **Conciliation**
- **Safeguard** (“*sauvegarde*”), **accelerated safeguard** (“*sauvegarde accélérée*”), **accelerated financial safeguard** (“*sauvegarde financière accélérée*”)
- **Judicial rehabilitation** (“*redressement judiciaire*”)
- **Judicial liquidation** (“*liquidation judiciaire*”)
- **Professional recovery** (“*rétablissement professionnel*”)

# Introduction

## **Preventive confidential measures :**

- Mandat ad hoc
- Conciliation

## **Collective insolvency proceedings :**

- Safeguards
- Judicial rehabilitation
- Judicial liquidation

## **Special proceedings for private individuals :**

- Professional recovery

# Introduction

**Proceedings that can be opened in case the debtor is not insolvent (i.e. in a state of cessation of payments) :**

- Mandat ad hoc
- Safeguard

**Proceedings that can be opened in case the debtor is insolvent :**

- Judicial rehabilitation
- Judicial liquidation
- Professional recovery

**Proceedings that can be opened whether the debtor is insolvent or not :**

- Conciliation
- Accelerated safeguard
- Accelerated financial safeguard

# Introduction

Type de procédure	Procédure collective	Cessation des paiements du débiteur
Mandat ad hoc	non	non
Conciliation	non	Oui ou non
Sauvegarde	oui	non
Sauvegarde accélérée	oui	Oui ou non
Sauvegarde financière accélérée	oui	Oui ou non
Redressement judiciaire	oui	oui
Liquidation judiciaire	oui	oui
Rétablissement professionnel	non	oui

# Contents

1. Conciliation : a preventive autonomous proceeding or a proceeding preparing the opening of a collective insolvency proceeding
2. Collective insolvency proceedings : what's new since the Ordinance ?

# **1. Conciliation : a preventive autonomous proceeding or a proceeding preparing the opening of a collective insolvency proceeding**

## **1.1. Conciliation : a preventive autonomous proceeding**

1.1.1. Incentive to the debtor to request the opening of conciliation proceedings

1.1.2. Incentive to the creditors to participate in conciliation proceedings



# **1. Conciliation : a preventive autonomous proceeding or a proceeding preparing the opening of a collective insolvency proceeding**

## **1.2. Conciliation : a proceeding preparing the opening of a collective insolvency proceeding**

1.2.1. Conciliation with the aim to prepare a continuation plan :  
accelerated safeguard and accelerated financial safeguard

1.2.2. Conciliation with the aim to prepare the sale of the on-going business : the “prepack cession”

## 2. Contributions of the reform to the insolvency law

Two key ideas :

- **The rebalance of powers in favour of the creditors**
- **The will of helping the debtor to turn around**

## 2.1. The rebalance of powers in favour of the creditors

French insolvency law : a debtor friendly law

Ex : safeguard proceedings, an instrument in the shareholder's interests ?  
(the case "Coeur Défense")

### What are the main changes ?

- The possibility for creditors to suggest alternative continuation plans
- Taking into account the differences between the creditors' situations within the committees
- The expulsion of shareholders (?)

## 2.1. The rebalance of powers in favour of the creditors

### 1° The possibility for creditors to suggest alternative continuation plans

*Before the reform :*

- Draft plan prepared by the debtor or the judicial administrator
- Possibility for the creditors to make proposals
- Possibility for the debtor or the judicial administrator not to take into account these proposals

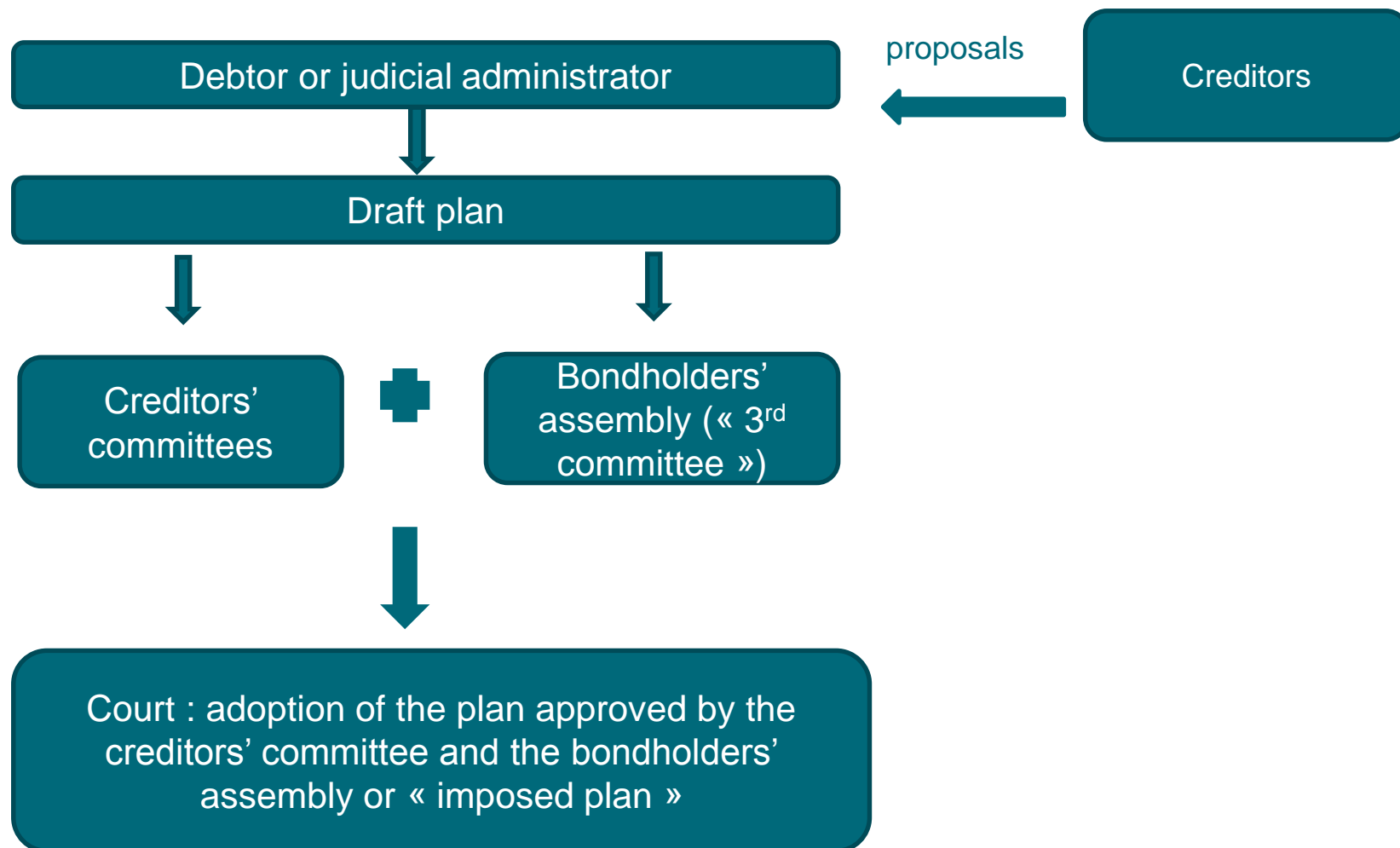


Refusal of the plan by committees →

Imposed « plan »

## 2.1. The rebalance of powers in favour of the creditors

***Before the reform :***



## 2.1. The rebalance of powers in favour of the creditors

### 1° The possibility for creditors to suggest alternative continuation plans

*After the reform :*

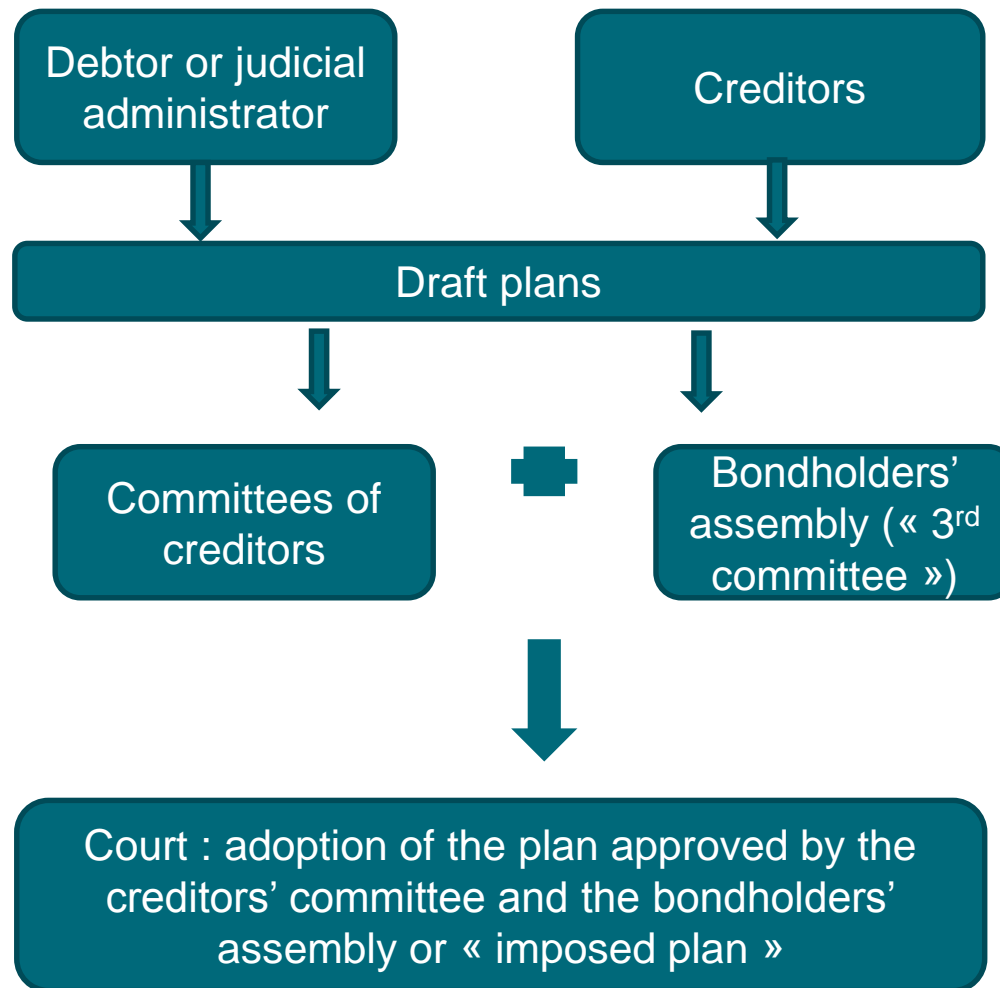
- In case of committee, possibility for the creditors to suggest a draft plan
- This draft plan also has to be submitted to the creditors' committee votes (and as the case may be, to the bondholders' assembly votes)

Still the possibility for the court to refuse the creditors' plan (even if approved by the creditors' committee) and to impose a plan

**But: reinforcement of “contractualization”**

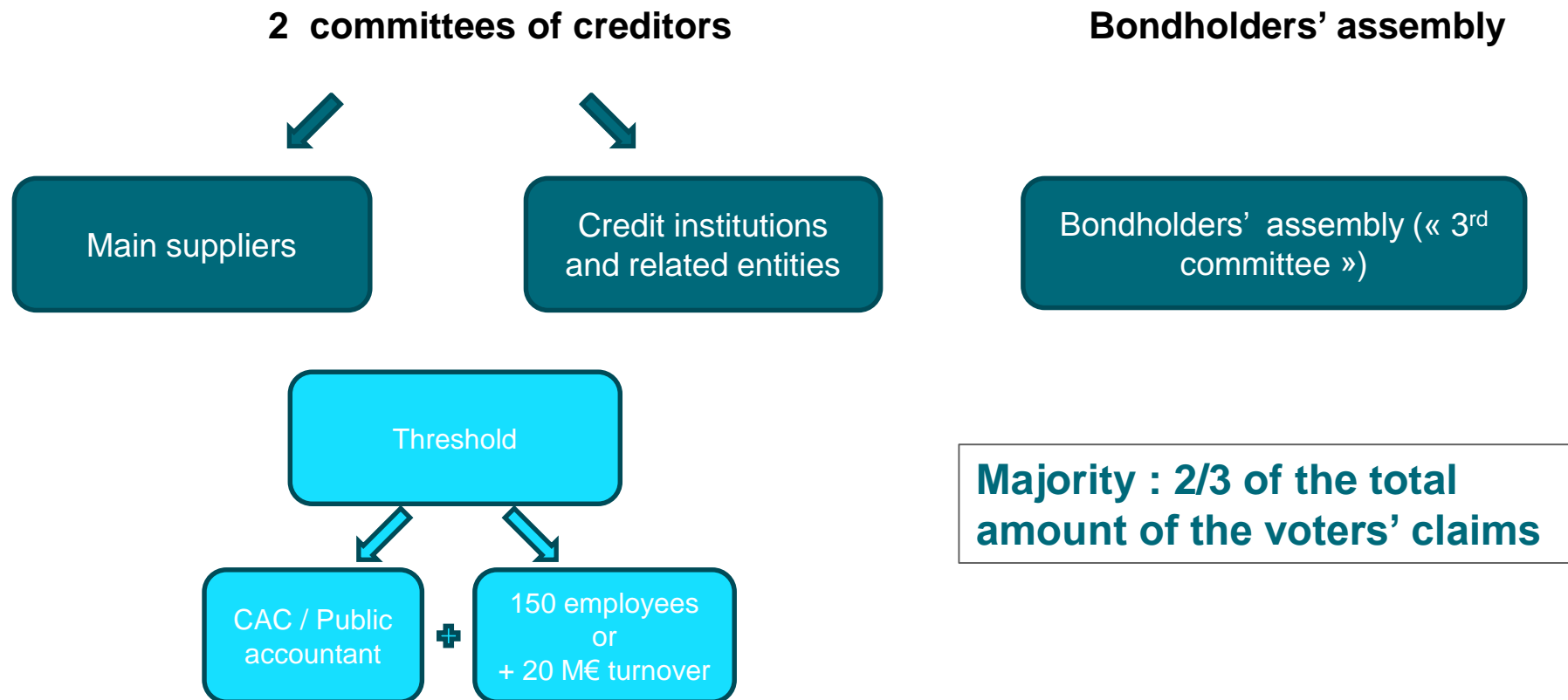
## 2.1. The rebalance of powers in favour of the creditors

*After the reform :*



## 2.1. The rebalance of powers in favour of the creditors

### 2° Taking into account the differences between the creditors' situations within the committees





## 2.1. The rebalance of powers in favour of the creditors

### 2° Taking into account the differences between the creditors' situations within the committees

- No “class” of creditors
- But possibility for the judicial administrator to adjust the calculation of votes in order to take into account the differences of situations between the creditors who participate in the committee
- But : legal imprecision, ground for litigation and for legal uncertainty

## 2.1. The rebalance of powers in favour of the creditors

3° A possibility to expulse shareholders ?

- No sale of shares can be imposed (except for managers)
- Ordinance dated March 2014 : some possibilities to expulse shareholders through a conversion of claims into capital against the majority shareholders' will
- Loi "Macron" : new possibilities to impose sale of the shares or dilution of shareholders

## 2.2. The will of helping the debtor to turn around

### 1° Accelerating (once again) judicial liquidation proceedings

- Average length of judicial liquidation proceedings :
  - ✓ 2005 = 45 months
  - ✓ 2010 = 20 months
  
- Obstacle to the recovery of activity
  
- News conditions to terminate proceedings :
  - Despite the existence of remaining assets to recover (disproportion principle)
  - Despite the existence of pending legal actions

## 2.2. The will of helping the debtor to turn around

### 2° The new professional recovery proceedings (*“le rétablissement professionnel”*)

- Helping the **small-business entrepreneurs** to turn around easier and faster
- A debt write-off without **liquidation** : no sale of assets
- Length: **4 months**
- The **good faith** condition : for the benefit of the “poor but honest” man

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