

Risks for Transactions and Directors in Financially Distressed Businesses (France)

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A Practice Note addressing the legal and practical considerations in France for a company director where that company is in financial distress and may subsequently enter in insolvency proceedings. This Note also explores certain types of claims that an official appointed by the court to oversee the insolvency proceedings or to represent the creditors' interests may bring against directors and to unwind antecedent transactions.

When a company is in financial distress and enters into insolvency proceedings, there are a variety of legal and practical issues to consider. Before the distressed company goes into insolvency proceedings, the directors may need advice on what they need to do to fulfil their duties to the company, its creditors and shareholders, and will need to consider the status of any ongoing transactions the company may be engaged in. Once the company has gone into insolvency proceedings, the pre-insolvency actions of the directors will be scrutinised by insolvency officials attempting to either protect the company's business as a going concern or achieve the greatest return for the company's creditors, depending on their role and the type of proceedings the company has entered.

This Note considers the legal and practical issues involved in the law of France and addresses:

- The duties that directors owe to their company, its shareholders and its creditors and how these may change according to the company's financial situation.
- The investigation of the pre-insolvency actions of the directors by insolvency officials and judicial authorities.
- The powers of the insolvency officials to have the courts unwind any ongoing transactions and general powers of recovery in their aim to achieve the greatest possible return for company's creditors and other applicable aims.
- The potential for any claims against the company's directors, and whether the directors can be personally pursued because of certain conduct even if ordinarily they would not be liable for the insolvent company's debts.

The insolvency-related liability risks referred to in this Note apply to both *de jure* directors and *de facto* directors. *De jure* directors are the officially appointed directors and officers entrusted with the administration and management of the company. As a matter of principle, members of supervisory or advisory corporate bodies do not qualify as *de jure* directors if, based on the company's articles of associations or shareholders agreement, they are effectively deprived of active management powers and have a purely supervisory or advisory role.

De facto directors include any person who is effectively and repeatedly involved in the management of the company without being officially appointed as a director and regardless of their official position, for example, members of supervisory or advisory corporate bodies if they are vested with decision-making powers. Shareholders interfering with the management of their subsidiary may also qualify as *de facto* directors. French courts require evidence of a number of concurrent factors (*faisceau d'indices*) to determine whether a person has acted as a *de facto* director.

Directors' Duties

General Directors' Duties

French statutory law does not specifically list directors' duties. Directors have a general duty of loyalty and care to the company. This means they must:

- Always act in the interests of the company (which is not to be confused with and does not include the interests of other stakeholders, including employees, shareholders, or creditors, nor the interest of a corporate group as a whole).
- Comply with applicable laws and regulations, the company's articles of association, and the decisions of the shareholders made at general meetings.
- Avoid a situation in which they may have an interest that conflicts with the company's interests and disclose any conflict of interests that may arise.
- Act as a reasonably diligent, prudent, and active director.
- Keep accurate and regular accounting records and file the company's financial statements with the French company's register when required by law.

Unlike many jurisdictions, directors do not owe specific duties to creditors or shareholders. French case law has developed a duty of loyalty owed by directors towards the shareholders, but it does not mean directors can prioritise the shareholders' interests over the company's or that they should run the company with the sole purpose of maximising shareholders' profits. The company's interests remains paramount.

Relevant Considerations When the Company is Facing Financial Difficulties

When the company's financial health is declining, there are no specific statutory provisions imposing enhanced duties on directors, but they are still expected to act diligently and take appropriate measures to avoid aggravating the company's position. This includes:

- Seeking adequate professional advice to assess available restructuring options (including resorting to the preventive confidential proceedings described below).
- Strictly complying with the corporate governance rules applicable to the company (including observing the allocation of authority and powers between the corporate bodies).
- Being particularly careful when incurring new liabilities, disposing of the company's assets, and granting new security interests or guarantees on behalf of the company. These decisions can later be challenged and expose the directors to liability (see [Potential Claims Against Directors](#)).
- Regularly making sure they are not causing the company to trade and incur new liabilities when there is no reasonable prospect that the company can recover or ultimately be turned around (*poursuite d'activité déficitaire*). This may later qualify as mismanagement and lead to personal liability for the directors (see [Potential Claims Against Directors](#)).
- Strictly keeping accurate and regular financial and accounting records, as failure to do so may lead to personal liability (see [Potential Claims Against Directors](#)).

It is good practice for directors of a company in financial distress to request the opening of court-supervised, preventive confidential proceedings available under French law (*mandat ad hoc* or conciliation proceedings). In these proceedings, the court appoints an independent insolvency practitioner to help the company negotiate with its creditors and reach an amicable restructuring agreement, putting an end to the company's difficulties.

If no unanimous agreement is reached during conciliation proceedings and the company is not cash-flow insolvent (or has not been cash-flow insolvent for more than 45 days), the company can file for accelerated safeguard proceedings (*procédure de sauvegarde accélérée*). These are fast-tracked, court-driven, and public proceedings affecting only the creditors selected by the company and brought into the prior conciliation proceedings. This enables directors to overcome dissenting stakeholders opposed to the adoption of a restructuring agreement otherwise supported by a large majority of stakeholders. Accelerated safeguard proceedings can last up to four months.

Alternatively, directors of a company which is not cash-flow insolvent but which faces difficulties it cannot overcome can also file for regular, court-driven public safeguard proceedings (*procédure de sauvegarde*) to implement a debt restructuring plan. These are not accelerated and can last up to 12 months. Regular safeguard proceedings affect all creditors.

The decision to resort to preventive confidential proceedings, accelerated safeguard, or regular safeguard proceedings is at the directors' sole discretion. As these proceedings are optional, failure to use them should not in itself be sufficient to qualify as mismanagement or incur personal liability. However, resorting to these proceedings can help mitigate personal liability risks for directors in case of subsequent insolvency proceedings if these preventive tools were used appropriately in the company's situation. French courts do not automatically grant a safe harbour to directors who have filed for the opening of preventive, accelerated safeguard, or regular safeguard proceedings.

How Directors' Duties Change in the Pre-Insolvency Period

The French Insolvency Test

The French insolvency test (*cessation des paiements*) is not a balance sheet test but rather a cash-flow test. Article L. 631-1 of the [French Commercial Code](#) (FCC) defines it as the company's inability to pay its debts as they fall due with its immediately available assets, considering moratoria and available credit lines.

When in the Zone of Insolvency

Unlike many jurisdictions, the duties of a director do not shift to shareholders or creditors when the company is in the zone of insolvency or becomes cash-flow insolvent. Instead, directors continue to owe their duties to the company itself. In practice, even when the company is not yet cash-flow insolvent, directors must regularly ensure that they are not trading while knowing that there is no reasonable prospect for the company to recover and be turned around; this may qualify as wrongful trading and trigger liability (see [Potential Claims Against Directors](#)).

Insolvency Filing Requirement

When the company is cash-flow insolvent, directors must file for court-driven insolvency proceedings within 45 days of the company becoming insolvent, which means they must file for either:

- Rehabilitation proceedings (*redressement judiciaire*) if recovery is possible.
- Liquidation proceedings (*liquidation judiciaire*) if recovery is obviously impossible.

Alternatively, if the company has been cash-flow insolvent for less than 45 days, directors can request the opening of preventive conciliation proceedings (see [Relevant Considerations When the Company is Facing Financial Difficulties](#)). Opening conciliation proceedings temporarily satisfies the statutory obligation to file for court-driven insolvency proceedings. This aims to encourage directors to anticipate difficulties and willingly engage in court-supervised preventive proceedings before or shortly after the company is cash-flow insolvent.

However, if conciliation proceedings do not result in an agreement restoring the company's cash-flow solvency and viability, directors must file for either rehabilitation or liquidation proceedings. Failure to do so or undue delay in filing can qualify as mismanagement and result in personal liability for directors notably for causing the company to incur additional liabilities (see [Potential Claims Against Directors](#)).

Although cash-flow insolvency does not trigger specific director duties towards creditors, including after the filing of insolvency proceedings, directors must always be careful to avoid authorising preferential or undervalue transactions. These transactions can later be voided by courts if they ultimately impact creditors' rights, and approving these transactions can expose directors to personal liability (see [Potential Claims Against Directors](#)).

Examination of Directors' Pre-Insolvency Actions During Insolvency Proceedings

In French court-driven insolvency proceedings, the question of whether court-appointed insolvency officers will investigate the pre-insolvency actions of former directors mainly depends on the type of proceedings the company is subject to and how those proceedings impact the management of the company.

Safeguard and Rehabilitation Proceedings

In safeguard proceedings (including both accelerated and regular safeguard proceedings), directors remain in charge of the management of the company and the court-appointed administrator merely has a supervisory or assisting role.

In rehabilitation proceedings, the court-appointed administrator's role is generally limited to assisting the company (as opposed to fully replacing the management). In very rare cases, usually where former directors are suspected of having mismanaged the company in the pre-insolvency period, the court can entrust the administrator with powers to fully replace the management and to act on behalf of the company (in which case the administrator is vested with prerogatives to investigate pre-insolvency actions).

Otherwise, in both safeguard and rehabilitation proceedings, there is no legal rule providing that court-appointed insolvency officers should investigate the pre-insolvency actions of former directors (see [Duties of Insolvency Officials and Other Authorities to Investigate Pre-Insolvency Transactions and Director Conduct](#)).

Although directors are subject to additional obligations once such proceedings commence (for example they are precluded from paying any pre-filing claims on behalf of the company, they must seek court approval for actions taken outside of the ordinary course of business, and they must obtain the administrator's approval to make payments over certain thresholds), they generally remain in control and continue to operate the company. As such, the duty to investigate the actions of former directors taken during the pre-filing period primarily falls on the current directors since they remain the only persons entitled to act on behalf of the company.

Liquidation Proceedings

In liquidation proceedings, directors are divested from their management prerogatives. The liquidator is therefore the only person with the power and duty to investigate pre-insolvency actions and to act on behalf of the company when seeking

compensation from former directors (see [Duties of Insolvency Officials and Other Authorities to Investigate Pre-Insolvency Transactions and Director Conduct](#)). The liquidator has a reporting duty to the judge supervising the insolvency proceedings and the public prosecutor, highlighting any relevant facts and directors' behaviors that may eventually qualify as mismanagement and give rise to liability claims and sanctions. In practice, the liquidator includes these facts in a report that must be filed with the supervisory judge and the public prosecutor at least once a year.

The liquidator can ask the supervisory judge to appoint an expert to investigate the pre-insolvency actions of former directors, as well as the date on which the company became cash-flow insolvent (when the liquidator suspects that the actual date is older than the one indicated by the directors at the time of filing) as this may have consequences on the validity of actions taken during this period. Based on the expert's findings, the liquidator can file liability actions against directors (in most cases on the ground of liability for asset shortfall, see [Potential Claims Against Directors](#)).

Potential Claims Against Directors

Directors' General Liability

Grounds For Tort Liability

Whether the company is solvent or cash-flow insolvent, directors can incur general tort liability mainly for:

- Breach of applicable laws and regulations.
- Failure to comply with the articles of association of the company (for example when a director acts without the prior authorisation of another corporate body required by the articles of association).
- Breach of the duty of loyalty towards the shareholders.
- Mismanagement (mainly breach of the duty of skill and care in management).

To assess mismanagement, French courts apply a standard of reasonable and due care (that is, that of an ordinarily prudent, diligent, and active director in the same position and in similar circumstances). Any act or omission which might damage the company's interests can qualify as mismanagement, whether this act or omission is intentional, reckless, or merely negligent.

Actions for Damages

Directors have a duty to act in the best interests of the company, as opposed to the shareholders or other third parties (including creditors). As a result, additional requirements apply for shareholders or creditors to bring an action against directors.

In practice, actions for damages against directors can be brought by:

- The company itself or by any of its shareholders on behalf of the company (*action ut singuli*) when the company has suffered a loss as a result of the breach of a director's duties.
- One or more shareholders to seek remedy for losses they have suffered individually (that is, distinct from the loss suffered by the company).
- Third parties (including employees, suppliers, and creditors) to seek compensation for losses they have suffered individually as a result of directors' intentional wrongful actions which are incompatible with the ordinary discharge of their official duties (*faute séparable des fonctions*).

Criminal Liability

General criminal charges can be brought against directors for theft, bribery, and fraud. French corporate law also provides for specific criminal offences, for example, when directors use the company's assets in bad faith for improper personal gain to the detriment of the company.

Directors can face criminal sanctions for:

- Misuse of power (*abus de pouvoir*).
- Misappropriation of the company's assets (*abus de biens sociaux*).
- Distribution of fictitious dividends.
- Publication of irregular financial accounts. (Annual accounts must be regular, honest, and give a true and fair view of the company's assets, financial position, and results).

Alongside criminal charges, tort liability claims can be brought by the company, shareholders, or third parties who have personally suffered direct loss as a result of the offence (see [Directors' General Liability](#)).

Insolvency-Related Claims

Besides the tort liability regime (see [Directors' General Liability](#)) French law also provides for specific insolvency-related liability claims against directors.

Liability for Asset Shortfall

In the context of judicial liquidation proceedings only, directors can be held liable for all or part of the company's outstanding debts if their mismanagement contributed to the asset shortfall. This liability is subject to the following three conditions:

- There is an asset shortfall, which means that the proceeds from the sale of the company's assets are insufficient to repay creditors in full (only liabilities which arose before the commencement of proceedings are considered).
- Directors have committed mismanagement before the commencement of the liquidation proceedings. This includes any mismanagement in tort (see [Grounds For Tort Liability](#)), except mere negligence (*simple négligence*) expressly carved out by French law in this context.

Examples of directors' conduct that can qualify as mismanagement and lead to personal liability for the company's debts include:

- causing the company to continue loss-making operations while knowing there is no reasonable prospect that the company can recover and be turned around (*poursuite d'activité déficitaire*);
- obtaining credit at rates that are significantly higher than commercial rates or selling assets below market value to avoid or delay the commencement of court-driven insolvency proceedings;
- failing to take appropriate measures to address the company's difficulties or at least to avoid aggravating the situation;

- using the company's assets or credit facilities in the directors' personal interest, or to the benefit of another company in which the director holds a position;
 - fraudulently misappropriating or concealing assets or increasing the company's liabilities;
 - failing to file, or undue delay in filing for insolvency, resulting in additional liabilities;
 - paying or causing the payment by preference to a certain creditor (including repayment of shareholder or intercompany loans), by defrauding other creditors after the cash-flow insolvency date and knowing that this date had occurred; and
 - concealing accounting documents or failing to keep regular and proper accounting records.
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- The directors' mismanagement must have directly or indirectly contributed to the shortfall of assets even if it is only one among other causes. French courts have full discretion to assess the amount of the directors' contribution to the company's debts.

A liability claim for asset shortfall can be brought by the liquidator, the prosecutor, or subject to certain conditions, a majority of creditors appointed as controllers (*contrôleurs*) if they unsuccessfully requested the liquidator to act.

A claim similar to liability for asset shortfall can also arise in rehabilitation proceedings if the directors' mismanagement acts have contributed to the company being cash-flow insolvent (*responsabilité pour contribution à la cessation des paiements*). The court-appointed administrator or the creditors' representative can bring this claim.

When bringing claims of liability for asset shortfall or contribution to cash-flow insolvency, the claimants can also ask the court to order interim protective measures over the directors' personal assets.

Tort Liability in Insolvency Contexts

In an insolvency context, if the conditions for insolvency-related liability are not satisfied but some of the directors' actions nevertheless qualify as mismanagement, directors can still be held liable. This liability arises on the grounds of general tort liability for damages caused to the insolvent company, shareholders, or third parties. Actions for damages brought against directors, once the court-driven insolvency proceedings have commenced, can take one of the following forms:

- Actions for damages brought on behalf of the company:
 - in both safeguard proceedings and rehabilitation proceedings (unless the court takes the rare step of appointing an administrator to fully replace the management in rehabilitation proceedings), new directors and shareholders can act against former directors to seek compensation for the loss suffered by the company as a result of their breach; and
 - in liquidation proceedings, the liquidator is the only person vested with the powers to bring a claim on behalf of the company when the company suffers a financial loss as a result of a director's breach.
- Actions for damages brought by shareholders for a loss they have suffered personally as a result of the breach (that is, distinct from the loss suffered by the company).

- Actions brought by third parties (including creditors and dismissed employees) for losses they have suffered individually as a result of intentional wrongful actions incompatible with the ordinary discharge of the directors' official duties (*faute séparable des fonctions*).

Personal Sanctions

In the context of rehabilitation or liquidation proceedings, directors can also face sanctions prohibiting them from holding management positions in the future or a public office for several years (*faillite personnelle* and *interdiction de gérer*). Some sanctions can be imposed on directors regardless of the success of other claims (see [Insolvency-Related Claims](#)). For example, obstructing insolvency proceedings by not cooperating with the court-appointed officials can lead to a sanction.

The claims leading to personal sanctions against directors can be filed by certain court-appointed insolvency officers, the public prosecutor, or subject to certain conditions, by a majority of creditors appointed as controllers in insolvency proceedings.

Criminal Sanctions

In limited cases of serious wrongdoing, directors of companies subject to rehabilitation or liquidation proceedings can incur criminal liability for fraudulent bankruptcy (*banqueroute*) if they commit one or more of the following fraudulent acts:

- Causing the company to purchase goods with a view to reselling them below market price.
- Using "ruinous" means to obtain funds (that is, obtaining credit at rates significantly higher than commercial rates).
- Misappropriating or concealing the company's assets.
- Fraudulently increasing the company's liabilities.
- Keeping fictitious, irregular, or incomplete accounts.
- Destroying accounting documents.

Fraudulent bankruptcy is punishable by prison sentences and fines (the amount of which may be higher for legal entities than for individuals). Sanctions can be more severe for directors of certain regulated companies that qualify as investment service providers. Complementary sanctions may also apply to individuals, for example, a ban on management, a prohibition from holding a public office, exclusion from public markets, and so on.

Company Transactions That Can Be Challenged and Unwound If the Company Becomes Insolvent

Some transactions entered into before the commencement of insolvency proceedings, but when the company was already cash-flow insolvent, are subject to clawback provisions.

Hardening Period

When a company is subject to rehabilitation or liquidation proceedings, court-appointed insolvency officers (in most cases the court-appointed administrator or the creditors' representative or liquidator) can file an action to the court to seek the

avoidance or unwinding of certain transactions. The transactions which can be challenged are those which took place before the commencement of court-driven insolvency proceedings during what is called the "hardening period".

The hardening period runs from the first day of the company's cash-flow insolvency until the date on which insolvency proceedings commence in court. The court-appointed insolvency officers can challenge the date the company became cash-flow insolvent. As a result, the court may decide to move the cash-flow insolvency date back by up to 18 months before the date of commencement of the insolvency proceedings. The exception to this is where there have been conciliation proceedings resulting in a court-approved agreement, in which case the court cannot move the cash-flow insolvency date back to a date preceding the judgment date approving the agreement.

Transactions Which Can Be Set Aside

Articles L. 632-1 and L. 632-2 of the FCC provide a list of transactions, payments, and unusual dealings that can or must be set aside by the courts:

- **Transactions which must be voided.** This type of transaction must be voided by the court (when challenged by one of the court-appointed insolvency officers), regardless of the parties' intent or knowledge of the company's cash-flow insolvency at the time the transaction was entered into. The court has no discretion in this respect. Voidable transactions are commonly transactions or payments that constitute voluntary preferences for the benefit of some creditors to the detriment of other creditors. Examples include:
 - transfers of assets made for no consideration;
 - contracts under which the debtor's obligations significantly exceed those of the other party;
 - payment of non-payable debts;
 - payments using methods that are not commonly employed in the relevant business sector;
 - interim measures taken by a creditor (on a court's authorisation) or willingly granted by the debtor, over the debtor's assets to protect a creditor's rights such as seizures, judicially-granted pledges or mortgages, and so on;
 - security granted for debts previously incurred by the debtor; and
 - transfer of assets or rights to a trust arrangement (*fiducie*).
- **Transactions which are voidable at the court's discretion.** For this type of transaction, even if the voiding criteria are objectively met, the court can decide not to void the transaction. These are primarily transactions, payments, or seizures made when the other party knew that the company was already cash-flow insolvent (at the date of the transaction or payment).

The underlying purpose of these actions is to restore the company to the position it would have been in if the improper transactions had not occurred (for example, returning assets that were encumbered, disposed of, or sold when the company was cash-flow insolvent, to distribute them fairly among creditors).

Duties of Insolvency Officials and Other Authorities to Investigate Pre-Insolvency Transactions and Director Conduct

The duties assigned to court-appointed officers depend on the type of court-driven proceedings the company is subject to. As a general rule, court-appointed officers do not have a specific duty to automatically investigate pre-insolvency events. While

the company's directors are still in charge of the business, this duty primarily falls on them (see [Safeguard and Rehabilitation Proceedings](#)). However, if court-appointed officers are entrusted with powers to replace the company's management, they may have to scrutinise transactions and directors' conduct as part of their role.

In court-driven insolvency proceedings, the main court-appointed insolvency officers are:

- **The court-appointed administrator** (in safeguard and rehabilitation proceedings). In safeguard proceedings, the court-appointed administrator has either a supervisory or assisting role without decision-making powers. In rehabilitation proceedings, the administrator generally has an assisting role, unless there is suspected directors' misconduct and the court appoints an administrator to replace the management. In this (rare) situation, the court-appointed administrator has duties to investigate the pre-insolvency transactions and directors' conduct on behalf of the company.

In both safeguard and rehabilitation proceedings, the court-appointed administrator's duties are to:

- supervise the business;
- decide on matters relating to the continuation and termination of ongoing contracts during the proceedings;
- approve payments above certain thresholds; and
- help the company draw up a restructuring plan or an asset sale.

Apart from these specific prerogatives, the administrator does not have any specific duty to automatically investigate pre-filing transactions or directors' conduct. However, in practice, administrators who become aware of directors' misconduct while exercising their duties can bring these facts to the attention of the court and use them to file potential liability claims against directors.

- **The creditors' representative** (in safeguard and rehabilitation proceedings). The primary duty of the creditors' representative is to act in the interests of the creditors. Although French law reserves them legal standing to bring tort claims against directors on behalf of the creditors (see Articles L. 622-20 (safeguard proceedings) and L. 631-14 (rehabilitation proceedings) of the FCC) and challenge prior transactions (Article L. 632-4, FCC), creditors' representatives do not have a specific obligation to automatically investigate pre-filing transactions or directors' conduct. In practice, they mostly rely on the information that they become aware of when exercising their duties to report relevant facts to the courts, assess grounds for potential claims, and decide whether to bring these claims when they are entitled to do so.
- **The liquidator** (in liquidation proceedings). The liquidator serves as the company's agent, occupying a fiduciary position and acting in the interests of both the company and its creditors. The liquidator carries out the missions assigned to the court-appointed administrator and the creditors' representative described above, including bringing tort claims against directors on behalf of the creditors (Article L. 641-4, FCC) and challenging prior transactions (Article L. 641-14, FCC). The liquidator's overriding duty is to maximise returns for creditors so they will scrutinise the company's accounts, as well as pre-insolvency transactions and directors' conduct. The liquidator is the only person with the power and duty to perform this review since directors are, in principle, dispossessed from their management powers in liquidation proceedings (see [Liquidation Proceedings](#)).

As a general rule, the liquidator has far-reaching powers to file any action on behalf of the company, to seek compensation from directors or any third party for any wrongdoing caused to the company, including unjustified sales of company assets. In addition to liability claims, if a company asset has been sold at undervalue, the liquidator must file an action to have the transaction unwound and reclaim the asset (see [Transactions Which Can Be Set Aside](#)).

- **Controllers** (*Contrôleurs*). In all court-driven insolvency proceedings, one or more creditors can petition the supervisory judge to be appointed as a controller. Controllers benefit from information rights and additional prerogatives, including the right to act instead of the creditors' representative or the liquidator when they have failed to act in specific instances.

If any of the court-appointed insolvency officers (listed above) become aware of directors' conduct that may result in personal or criminal sanctions, they must report this conduct to the public prosecutor and to the judge supervising the insolvency proceedings.

Powers of Insolvency Officials and Office Holders to Require the Production of Information, Documents, or Assets When Investigating

French insolvency law provides for a wide range of situations in which court-appointed insolvency officers must request information and documents regarding the economic, financial, and social position of companies. However, while insolvency officers can bring specific insolvency-related liability claims against directors and challenge prior transactions, French law does not grant them direct and coercive powers towards the directors or any other person.

In practice, the authority that court-appointed insolvency officers have to compel directors to provide specific information or documents is the potential personal sanctions they can ask the court to impose on directors who refuse to cooperate with them (*faillite personnelle* and *interdiction de gérer*). (See [Potential Claims Against Directors](#)).

Court-appointed insolvency officers can also petition the court to seek more coercive investigative measures against directors or any person who might have relevant information, including by:

- Applying to the court (under Article 145 of the [French Code of Civil Procedure](#)) for authorisation to seek and collect evidence directly from the directors (or any other person) in relation to the liability claim they intend to file.
- Asking the supervisory judge to appoint an auditor to investigate specific issues, collect relevant documents from directors and employees, and draft a report to the court (on the basis of which court-appointed insolvency officers may later pursue the directors' liability).

Where a liability claim for contribution to the asset shortfall is brought against a director in liquidation proceedings, the court may also, at its discretion or on the request of the liquidator or the public prosecutor, request from any public administration, social security organisation, pension fund, and financial and credit institution, any document or information on the financial and asset situation of directors (including individuals representing the directors if they are legal entities).

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