

FRENCH PROCEEDINGS in pre-insolvency and insolvency

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French process for dealing with 'fragile' companies

PREVENTION

PROCEDURES COLLECTIVES (INSOLVENCY PROCEEDINGS)

« ad hoc »
mandate
(counselling)

Conciliation

Rescue
Proceedings
(sauvegarde)

suspension
of payments

Conciliation
Suspension
of payments
<45 days

Judicial
restructuring

Judicial
Liquidation

Difficulties

Insurmountable difficulties

Presentation of the different proceedings in the prevention and treatment of company difficulties

1. « ad hoc » mandate (counselling)
2. conciliation
3. rescue proceedings « sauvegarde »
4. judicial restructuring
5. judicial liquidation

The « ad hoc » mandate (1 of 2)

Goal ?

To ensure the continuation of the company and to save the jobs. President of the Commercial Court implied.

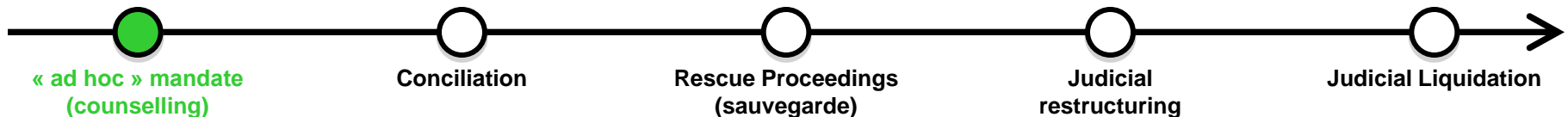
The company is not in administration and the “ad hoc” mandate is not quite like chapter 11

When, how, what kind of proceedings ?

- ✓ At any time
- ✓ On the request of the directors

The « ad hoc » receiver

- ✓ The « ad hoc » receiver is a judicial auxiliary
- ✓ His/her name is on a national list (110 persons)
- ✓ This is a regulated profession; deontological rules are to be observed by the receiver
- ✓ The mission is defined by the Directors and approved by the President of the Commercial Court
- ✓ The terms of the mission can be amended



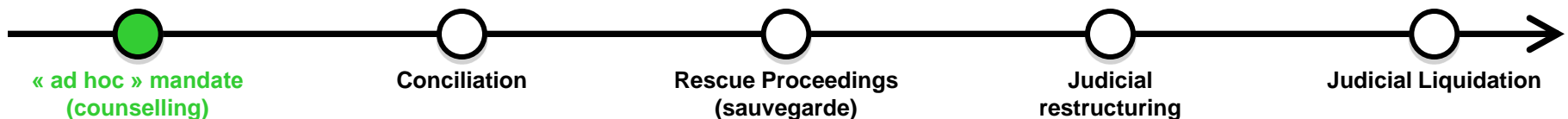
The « ad hoc » mandate (2 of 2)

Why these proceedings are interesting :

- ✓ **Negotiations are conducted freely by the company with the creditors and the other interested parties, in their mutual interest**
- ✓ **Equality of treatment of creditors of the same rank**
- ✓ **The proceedings are confidential in the interest of the company, which however can organise its communication**
- ✓ **The receiver has a privileged position, at the same time chosen by the company and appointed by the Court; obligation to report to the Court about the negotiations between the debtor and the other parties involved;**
- ✓ **No period of time imposed**
- ✓ **Debtor's management not affected**
- ✓ **The mission thus consists in trying to find agreements with the creditors and the other parties involved (including the debt's spreading out) and analysing the restructuring propositions.**
- ✓ **Also, exploring all possibilities which would allow the company to continue trading on a profitable basis, while respecting the rights of its creditors as much as possible, even if unusual efforts are necessary. The economic balance of the contractual dispositions can also be revised, as authorised by the Cahors Commercial Court**

What befalls the debtor, the creditors and the guarantors during the proceedings?

- ✓ **No stay, but possibility to conclude agreements with the creditors, thus cancelling the suspension of payments.**



Conciliation (1 of 2)

Goal ?

Following an « ad hoc » mandate,

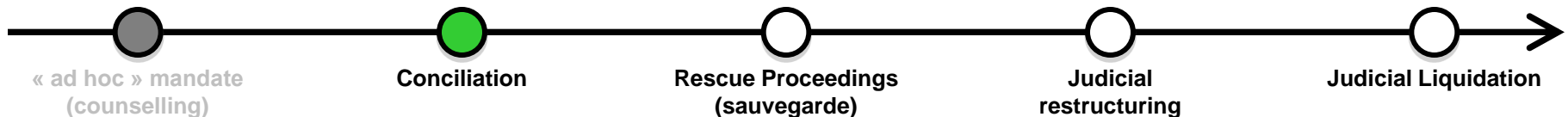
- It ensures the continuation of the company and saves the jobs
- It favours the conclusion of agreements between debtors and creditors

Who takes part in the proceedings?

- ✓ The president of the Commercial Court who approves the opening of the proceedings
- ✓ The conciliator who is a judicial auxiliary
- ✓ Appearing on the short list
- ✓ Regulated profession; deontological rules are to be observed by the trustee

When, how, what kind of proceedings ?

- ✓ The debtor passes through « *judicial ,economic or financial difficulties, proven or presumed* »
- ✓ The company applies to the Court, bringing proof of not having suspended payments or that a suspension of payments appeared less than 45 days before (the absence of suspension of payments comes from the agreements with the creditors obtained during the period of the « ad hoc » mandate)
- ✓ Limited in time to 4 months ; possibility to dispose of one more month on request;



Conciliation (2 of 2)

Why these proceedings are interesting :

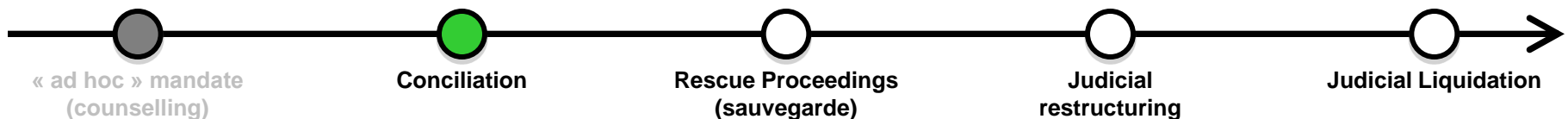
- ✓ The conciliator can be chosen from a list;
- ✓ **The proceedings are confidential** (with the exception of the approval of the results);
- ✓ **Often used in order to finalise a transaction negotiated during the « ad hoc » mandate**
- ✓ The « new money » privilege provokes a stay (if the agreement is approved)

Results of the proceedings :

- ✓ Proven agreement (no publishing : the confidentiality guarantees the life of the company)
- ✓ Approved agreement : it allows securing the negotiation but it must be published (especially communicated to employees)
- ✓ Conciliation fails : if there is suspension of payments restructurings or liquidation proceedings must follow

What befalls the debtor ?

- ✓ Debtor's management not affected
- ✓ **Postponement or spreading out of the debt possible (Art. 1244-1 à 1244-3 of the Civil Code)**
- ✓ **Tax and social security debt can be postponed**



Rescue proceedings « sauvegarde (1 of 3)

Debtor's goal ?

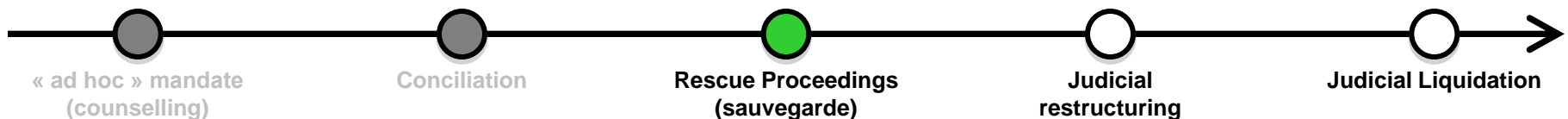
Facilitate the restructuring of the company in order to continue trading, save jobs and pay the debt

Who takes part in the proceedings?

- ✓ **The Commercial Court where proceedings are open**
- ✓ The appointed administrator – a judicial auxiliary
- ✓ Whose name appears on a list
- ✓ This is a regulated profession; deontological rules are to be observed by the administrator

When, how, in what way?

- ✓ *When the debtor appears « not to be able to overcome the difficulties »*
- ✓ After his registering with the Clerk of the Commercial Court a demand for rescue proceedings to be opened
- ✓ Proof of absence of suspension of payments (that is, the liabilities can be covered by the available assets)
- ✓ Six months of observation period, + six + six (exceptional, if requested by the Prosecutor - 18 months at most)



Rescue proceedings « sauvegarde »

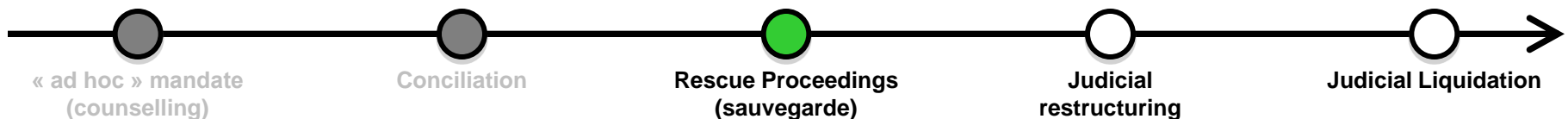
(2 of 3)

Why these proceedings are interesting for the debtor :

- ✓ Two types of missions are possible for the administrator: debtor's supervision or assistance
- ✓ Debtor's management not affected;
- ✓ Trading continues;
- ✓ Redundancy charges are exceptionally covered by the State (AGS)
- ✓ Creation of two creditors' committees (main creditors and suppliers, + general meeting of bond-holders) who actively participate to the restructuring of the company

Results of the proceedings :

- ✓ Proceedings end on debtor's request when the difficulties are over;
- ✓ Rescue plan is put to practice including, if necessary, termination, mingling, or sale of one or more branches of activity;
- ✓ Judicial restructuring proceedings are opened if suspension of payments is necessary;
- ✓ Judicial liquidation proceedings are opened if restructuring is not successful

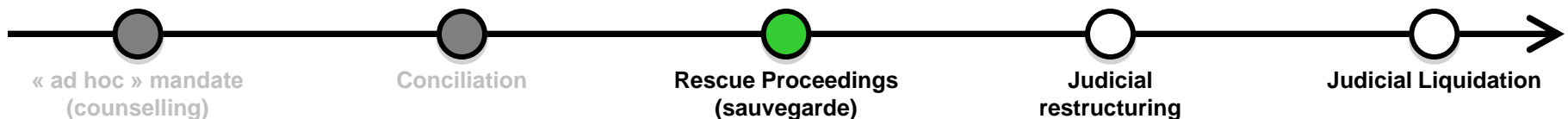


Rescue proceedings « sauvegarde » (3 of 3)

What befalls the debtor, the creditors and the guarantors ?

During the observation period of the « sauvegarde » proceedings :

- ✓ Stay of individual litigation actions against the debtor (Art. L. 622-21 of the Commercial Code). It includes :
 - actions to obtain the payment of an amount;
 - actions to end a contract because of non-payment of an amount;
 - ways to obtain payment by taking hold of mobile and et non-mobile goods.
- ✓ **Tax and social security debts can be postponed**



Judicial restructuring (1 of 3)

Debtor's goal ?

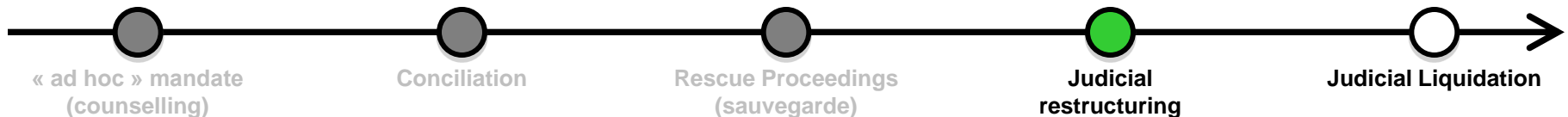
Allow for the restructuring of the company in order to continue trading, save jobs and pay the debt

Who takes part in the proceedings?

- ✓ **The Commercial Court where proceedings are open**
- ✓ The appointed administrator – a judicial auxiliary
- ✓ Whose name appears on a list
- ✓ This is a regulated profession; deontological rules are to be observed by the administrator
- ✓ His/her mission: to assist or represent the company

When, how, in what way?

- ✓ *« if the company suspended all payments (that is, it cannot cover its liabilities with the available assets)*



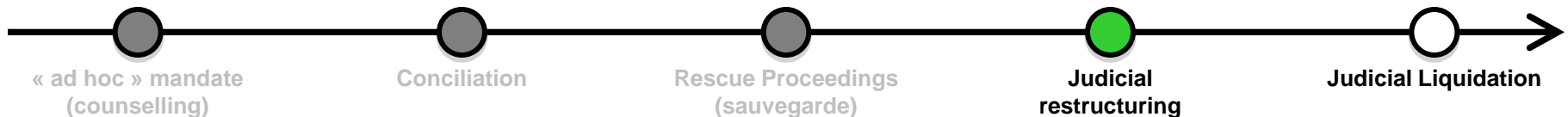
Judicial restructuring (2 of 3)

Why these proceedings are interesting for the debtor :

- ✓ Debtor's management is not affected
- ✓ Trading continues;
- ✓ Redundancy charges are exceptionally covered by the State (AGS)
- ✓ Creation of two creditors' committees (main creditors and suppliers, + general meeting of bond-holders) who actively participate to the restructuring of the company

Results of the proceedings :

- ✓ Proceedings end on debtor's request when the difficulties are over;
- ✓ Rescue plan is put to practice including, if necessary, termination, mingling, or sale of one or more branches of activity;
- ✓ Judicial liquidation proceedings are opened if restructuring is not successful

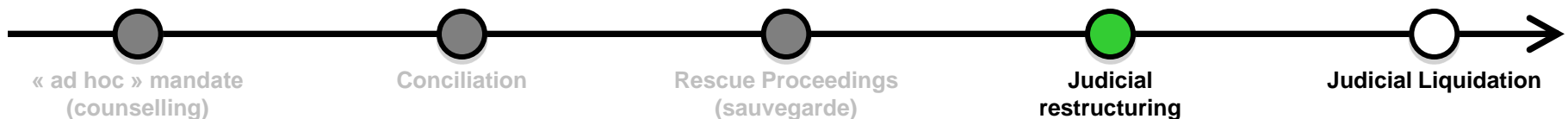


Judicial restructuring (3 of 3)

What befalls the debtor, the creditors and the guarantors ?

During the observation period of the restructuring proceedings :

- ✓ Stay of individual litigation actions against the debtor (Art. L. 622-21 of the Commercial Code). It includes :
 - actions to obtain the payment of an amount;
 - actions to end a contract because of non-payment of an amount;
 - ways to obtain payment by taking hold of mobile and et non-mobile goods.
- ✓ **Tax and social security debts can be postponed**



Judicial Liquidation (1 of 3)

Goal ?

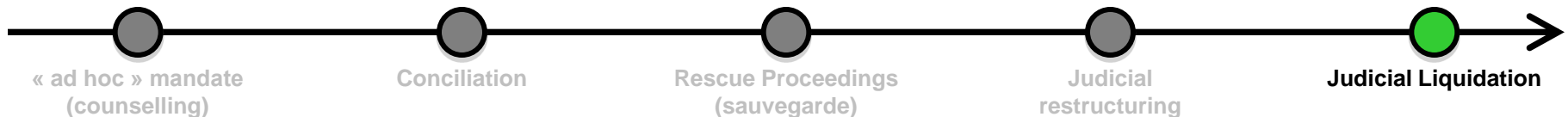
Wind up the company or sell it, wholly or partially, in order to turn the assets to value

Who takes part in the proceedings?

- ✓ **The Commercial Court where proceedings are open**
- ✓ The appointed liquidator – a judicial auxiliary
- ✓ Whose name appears on a list
- ✓ This is a regulated profession; deontological rules are to be observed by the liquidator
- ✓ His/her mission is to sell the assets and cover the liabilities

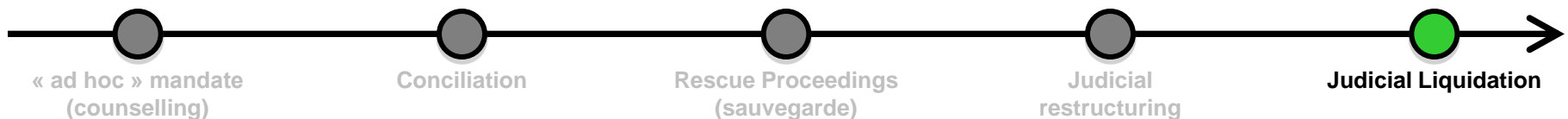
When, how, in what way?

- ✓ *« if the company suspended all payments (that is, it cannot cover its liabilities with the available assets)*
- ✓ If conciliation was not successful
- ✓ At any moment during the observation period if restructuring is impossible
- ✓ Open on the company's request, a creditor's request or directly by the Commercial Court or the Prosecutor



Judicial Liquidation (2 of 3)

- ✓ The Director is no longer the manager
- ✓ The Liquidator terminates the employees' contracts, redundancy charges are covered by the State (AGS), by 15 days
- ✓ The company is no longer trading, i.e the « chalets » cannot be rented any longer by SGCC, (except if a sale is intended with trading continuing for maximum 3 months, to be renewed once if the Prosecutor requests it), and if there is sufficient cash
- ✓ The stock is listed by the Liquidator
- ✓ The liquidator checks the claims, realises the assets in order to cover the claims, starts or continues ongoing proceedings, divides the products between the creditors, according to rank (defined by the Law),
- ✓ The liquidator realises the real estates (average time for the proceeding : 1 year)
- ✓ Average time for the all proceeding of judicial Liquidation : 3-15 years



Judicial Liquidation (3 of 3)

Effects of the proceedings for the creditors

- ✓ Stay of individual litigation actions against the debtor (Art. L. 622-21 of the Commercial Code). It includes :
 - actions to obtain the payment of an amount;
 - actions to end a contract because of non-payment of an amount;
 - ways to obtain payment by taking hold of mobile and et non-mobile goods
- ✓ Previous claims are not to be paid
- ✓ Interests payement is stopped
- ✓ Mortgages are not to be taken

Creditors' ranks:

1. employees' super-privilege
2. mortgage-holders (on unmovable assets)
3. Tax Body – direct taxes
4. Tax Body – Indirect taxes
5. Security-holders (on the business)
6. Social Bodies (URSSAF, Pension funds...)
7. Unsecured creditors (owners fall into this category)

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