

The Winding-
up of
Insolvent
Companies in **ENGLAND**
and **FRANCE**

CHRISTOPHER
LIVADAS

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THE WINDING-UP
OF INSOLVENT COMPANIES
IN ENGLAND AND FRANCE

Christopher Livadas, M.A., Ph.D.

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Preface

This book has two main objectives. The first is to set out the law in force in England and France regarding the winding-up of insolvent companies and the second to point out the similarities and differences in the way in which the various questions of law which arise in relation to insolvency are treated by the legal systems of these countries, as well as their respective advantages and disadvantages. However, the law is set out only in so far as is necessary to attain this second objective – that is to say, to the extent that it serves comparative purposes. The nature of this work is therefore principally comparative, since the contribution to the knowledge of the subject selected is intended to be a comparison of the English and the French legal systems in relation to the insolvency of companies.

The scope of the book is defined so as to include those procedures relating to insolvent companies which lead to the realisation of a company's assets to the exclusion of those aimed at a scheme of arrangement or similar measure.

Since it is the author's opinion that both legal systems leave much to be desired, certain proposals are made where, in his view, a change would be beneficial.

Within the framework of the subject treated, special emphasis is placed on the question of the protection of the company's creditors – especially those who are unsecured – and its employees, as well as to the questions of the position of secured and preferential creditors and the liability of directors.

As both England and France are members of the EEC, the latter's efforts to bring about an approximation of the insolvency laws of its Member States are examined in the appropriate places.

November 1981

Christopher Livadas

To my Wife

Glossary¹

- à forfait*: in a lump sum.
à titre onéreux: for valuable consideration.
au fond: on the merits.
actif et passif des sûretés: list of securities given for and by the company.
action: share.
action au porteur: bearer share.
action Paulienne: Paulian action (see p. 228).
administrateur délégué: manager to whom the board of directors has delegated much of its powers.
appel: appeal, recourse to a Court of Appeal.
assignation: winding-up petition filed by a creditor.
Association Nationale: Organisation of *Syndics*.
associé: shareholder (S.A.R.L.).
attribution du gage: passing of the ownership on a *gage* to the pledgee by court order.
avocat: attorney (similar to a barrister).
banqueroute: criminal bankruptcy (see p. 349).
bilan: balance sheet – statement of affairs.
billet à ordre: promissory note.
bordereau récapitulatif: list of documents substantiating a debt.
Bureau National: Organisation of *Syndics*.
Caisse des dépôts et consignations: Deposits and Consignments Office.
Caisses de congé: Redundancy Funds.
Caisses de retraite: Retirement Funds.
Caisses de secours: Mutual Assistance Funds.
cessation des paiements: (roughly) suspension of payments (see pp. 25 et seq.).
cession à forfait: sale in a lump sum.
Chambre civile: Division of the *Cour de Cassation* dealing with recourse on civil matters.
Chambre commerciale: Division of the *Cour de Cassation* dealing with recourse on commercial matters.
Chambre criminelle: Division of the *Cour de Cassation* dealing with recourse on criminal matters.
Chambre de discipline: Disciplinary Office of *Syndics*.
chèque: cheque.
Code de commerce: Commercial Code.
Code de procédure civile: Code of Civil Procedure.
Code du travail: Labour Code.
Code Général des Impôts: General Tax Code.
commerçant: merchant, trader.
commissaire aux comptes: auditor.
compensation: set-off.
compte d'exploitation générale: general trading account.

1. This glossary contains the main words and expressions used in this book in connection with French law. As translation into entirely accurate English legal terminology is most of the time impossible, the translation given is only approximate.

compte des pertes et des profits: profits and losses account.
concordat: scheme of arrangement.
confusion: merger.
conseil d'administration: board of directors (see p. 339).
conseil de surveillance: supervisory board (see p. 339).
contrôleurs: committee of inspection.
conventions collectives du travail: collective labour agreements.
Cour de Cassation: The Supreme Court.
créance: claim.
créance dans la masse: claim against the company's estate.
créance de la masse: costs and expenses of the liquidation.
créancier: creditor.
créancier chirographaire: unsecured creditor.
créancier dans la masse: creditor of the company (see p. 167).
créancier de la masse: creditor of the *masse* (see p. 167).
créancier gagiste: creditor secured by a *gage* (see pp. 247 et seq.).
créancier hypothécaire: creditor secured by an *hypothèque* (see p. 253).
créancier privilégié: creditor secured by a *privilège* (see p. 279).
déclaration: company's winding-up petition.
déclaration de la créance: statement of the creditor or his agent that the company owes him a debt.
déconfiture: civil law procedure against insolvent non-traders.
délai: period.
délai-congé: period of notice.
demande: petition of a creditor.
dessaisissement: state of a company dispossessed of its power to manage and dispose of its property.
détournement: embezzlement.
dette: debt.
dette certaine: debt not depending on a contingency, certain debt.
dette civile: debt governed by civil law.
dette commerciale: debt governed by commercial law.
dette conditionnelle: contingent debt.
dette éventuelle: contingent debt.
dette exigible: immediately payable debt.
dette fiscale: fiscal debt.
dette liquide: liquidated debt.
dette litigieuse: debt contested in court proceedings.
directeur: director.
directeur délégué: executive director (S.A.).
directeur général: general manager.
directeur général unique: sole general manager.
directoire: directorate (see p. 339).
dissolution: the state of a company after a *liquidation des biens* order has been made against it (see p. 23).
double emploi: double proof.
droit civil: civil law.
droit commun: general law (in contradistinction to law governing specific fields).
droit privé: private law.
droit public: public law.
droits civiques: civil rights.
effets de commerce: negotiable instruments.
effets de complaisance: accommodation bills.

employé: clerk, servant, non-manual worker.
en audience public: in open court.
état de situation: statement on the company's financial situation.
état des engagements hors bilan: list of the company's activities which are not shown in the balance sheet.
faillite personnelle: civil sanction against the person of traders.
faute lourde: grave default.
filiale: subsidiary.
fonds de commerce: business of the company (see p. 252).
forclusion: sanction against a creditor who failed to prove (see p. 306).
frais de justice: legal expenses and costs.
gage: pledge, pawn.
gage avec dépossession: possessory pledge.
gage sans dépossession: non-possessory pledge.
gérant: manager (S.A.R.L.).
greffier: registrar of the court.
groupement d'intérêt économique: association engaging in commercial activities.
hypothèque: mortgage.
hypothèque légale: mortgage provided for directly by the law.
hypothèque conventionnelle: contractual mortgage.
inopposabilité: inoperativeness of an act or transaction (see p. 174).
inscription: registration.
insolvabilité: insolvency.
interdiction: interdict.
Journal Officiel: Official Gazette.
juge-commissaire: member of the winding-up court appointed to supervise the liquidation des biens.
juge d'instance: judge of the tribunal d'instance.
juge-enquêteur: judge delegated to investigate a winding-up case.
lettre de change: bill of exchange.
liquidation: liquidation of a company for any reason apart from insolvency.
liquidation des biens: winding-up of an insolvent company or partnership or sole trader.
malversation: embezzlement.
mandataire: remunerated agent.
masse: the creditors as a body.
mesures conservatoires: measures of preservation.
nantissement: (roughly) pledge.
nantissement de l'outillage et du matériel: pledge on equipment and materials.
nantissement du fonds de commerce: pledge on the company's business.
obligation naturelle: contract not legally enforceable.
opposition: judicial recourse before the same court which pronounced the judgment opposed against.
ordre public: public policy.
paiement en espèce: payment in specie.
Parquet: the body of Public Prosecutors.
passif exigible: liabilities due and payable.
personne morale: legal person.
perte du crédit: loss of financial credit.
porteur: bearer.
pourvoi en cassation: an appeal (recourse) to the Cour de Cassation.
président: chairman.
président directeur général: chairman general manager.

président du conseil de surveillance: chairman of the supervisory board.
président du directoire: chairman of the directorate.
privilège: (roughly) right of preference.
privilège général: right of preference on all or part of the company's assets.
privilège spécial: right of preference on a specific item of the company's assets.
Procureur de la République: Public Prosecutor.
registre du commerce: register of companies.
règlement judiciaire: procedure leading to a *concordat*.
réhabilitation: discharge of a director.
saisie: seizure.
saisie immobilière: seizure of land.
société: company or partnership.
société à responsabilité limitée: (roughly) the equivalent of the English private company.
société anonyme: (roughly) the equivalent of the English public company.
société en commandite simple: the equivalent of the English limited partnership.
société en nom collectif: the equivalent of the English general partnership.
superprivilège: *privilège* guaranteeing a certain amount of employees' claims.
surété: security.
suspension provisoire des poursuites: provisional stay of proceedings (see p. 60).
syndic: (roughly) liquidator.
syndicat: trade union.
taxe: tax.
taxe communale: municipal tax.
taxe départementale: regional tax.
titre cambiaire: negotiable instrument.
titre exécutoire: executory title.
Trésor public: (roughly) the equivalent of the Crown, Inland Revenue.
trésorier-payeur général: tax officer of high rank.
tribunal: court.
tribunal de commerce: commercial court.
tribunal de grande instance: kind of civil court.
tribunal d'instance: kind of civil court.
union: the state of creditors as a whole upon the making of a *liquidation des biens* order (see p. 167).
vérification: examination of proofs.
virement: bank transfer.

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