

The Law of 26 July 2005, as amended by the Order of 18 December 2008, introduced different rules on the consultation of creditors in connection with the reimbursement of a company's debts.

> Protection proceedings

Amounts advanced by the AGS after the introduction of a protection plan are not covered by the preferential lien provided pursuant to **Article L.622-17 of the Commercial Code**.

These claims are governed by ordinary law and are immediately due and payable.

> Receivership proceedings

Creditors who are members of creditors' committees (which can be set up by credit institutions and the company's main suppliers subject to criteria relating to financial thresholds and numbers of employees) are consulted on the draft receivership plan, and determine the length of the plan and the first repayment date.

Other creditors will also be consulted when the receivership plan is prepared, although their opinion is in no way binding on the court, which has sole authority to determine and approve the terms of the plan.

However, the provisions of **Article L. 626-20 of the Commercial Code** provide that special privilege claims, into which AGS has been subrogated, are not covered by the rules applying to privileged claims and unsecured claims.

No discounts or payment extensions can be negotiated for special privilege claims. Accordingly, special privilege claims must be reimbursed first and foremost, using the first available funds.

> Judicial liquidation proceedings

- **As the holder of a special privilege claim**, the AGS has special ranking above any other creditors, including the French Treasury. In principle, this also applies to the pledgee's lien. However, in the event the liquidator sells pledged assets, **Article L.642-25 of the Commercial Code** provides that the sale price will be automatically applied to satisfy the pledgee's right of retention. The special privilege claim also ranks before claims covered by **Article L. 622-17 (para. 2) or Article L. 641-13 of the Commercial Code**.

This means the proceeds of the first sales of fixed or moveable assets must be used to reimburse any special privilege claims.

- **As regards the claim guaranteed by the general wage lien**, the order of payment will depend on whether the lien is exercised against fixed or moveable assets.

Lien against moveable assets: the wage lien ranks 4th in the list of general liens found in **Article 2101 of the Civil Code**. Special liens rank above it, including the seller's lien, the lessor's lien and the pledgee's lien, which encompasses pledges of a business as an on-going concern. In addition to the liens listed in the Civil Code, other legislation provides that certain

other claims also outrank the wage lien. These include any claims held by the French Treasury, which are satisfied after court costs, conciliation costs, pledges of plant or tools, and claims covered by Article L. 641-13. Claims held by the State Social Security system and other social and welfare organisations have the same ranking as wages.

Lien against fixed assets: the wage lien ranks below claims for court costs or conciliation costs (Article L.611-11 of the Commercial Code) and claims of contractors (*façonniers*). It ranks above mortgages and special liens against real property. However, **Article 2105 of the Civil Code** provides that the wage lien can only be exercised as a subsidiary claim. The creditor must establish the existence of sufficient moveable assets to first satisfy all privileged wage claims. In accordance with the rule that a lien is not divisible, the AGS, as the holder of the general wage lien, may exercise its right against any of the debtor's fixed assets without any proportional distribution.

- **As the holder of an unsecured claim,** the AGS is bound by the rule that all remaining proceeds will be divided among all unsecured creditors in proportion to their claims: **Article L. 643-8 of the Commercial Code.**