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**THE PROCEDURE OF BANRUPTCY IN CASE OF  
POLLUTED SITES AND MANAGEMENT OF  
THE FUNDS**

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## **INTRODUCTION**

### **I – THE OFFICIAL RECEIVER' S PART**

A – Bankruptcy' s Legislation

B – The application of environmental law

### **II – FUNDS MANAGEMENT BY THE OFFICIAL RECEIVER IN ORDER TO ENSURE THE IMPLEMENTATION OF EMERGENCY MEASURES TO IMPROVE SECURITY OF THE SITE**

A – The emergency' s and safety' s measures

B – Consequences of the underfunded liquidation



## I – THE OFFICIAL RECEIVER' S PART

### A – Bankruptcy' s legislation

- The opening judgement of liquidation leads to the firm winding-up, an **official receiver** is designated.
- His missions are governed by *Act No.85-99 of January, 25th, 1985* (amended by *Act No. 2005-854 of July, 26th, 2005*).
  - **Ensuring that the necessary actions aiming at mantaining the patrimony are fulfilled**
  - **Liquidating the assets ans paying the creditors** according to a legal order of priority
  - If necessary, **seeking sanctions against the liable debtors**
  - **Seeking the termination of proceedings**, in cased of insufficient assets, or the termination of the liabilities



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- In case of *safeguard proceedings* being undertaken, if the firm runs to a classified facility, the receiver requires from the debtor or a skilled technician elaborate **an environmental balance-sheet** (*Section L.623-1 of the Commercial Code*)

→ The document presents :

- the **locations of classified facilities**
- the **potential pollutions** which could affect them
- the **required measures which are or must be taken to ensure safety and the monitoring which has been taken.**



## B – The application of environmental law

### 1 – The control served by the Prefect

When a classified facility is winded up, the **Prefect** must ensure **the company in liquidation follows its environmental duties**.

The official receiver has to take the **appropriate cleaning measures** of the site to meet the interests protected by the law (*Section L.511 of the Environmental Code*).

For this reason, the latter must **inform the Prefect of measures** which have been taken or which are envisaged in order to improve **security of the site**.



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## 2 – Duty to repair

*Section L.512-17 of the Environmental Code* : **the rehabilitation rests priorily on the operator.** The latter shall undertake to place his site in such a State that it wouldn't compromise the interests referred in *Section L.511-1 of the Environmental Code* and in order to allow future use of the site.

He must ensure **the immediate safety of the site** : elaborate a review of the **environmental balance-sheet**.

While the operator in winding-up can't finance the safety measures, the Prefect might  
secure for an **intervention ot the ADEME**.



### 3 – The duties of the official receiver in case of a transfer of site or a resumption of activity

- To valorise the assets, the official receiver may undertake a total or partial transfer of the assets of the company.

#### → **information obligation towards the purchaser.**

+ an **environmental information** if the site had been run with an authorised classified facility

If the information obligation is not properly fulfilled :

- the purchaser can terminate the sale,
- ask for a restoration of the price or,
- require from the seller to clean the site.

- When the site' s activity is picked up by another operator, the receiver must remind the buyer' s obligation to **notify to the Prefect the change of operator.**



## II – FUNDS MANAGEMENT BY THE OFFICIAL RECEIVER IN ORDER TO ENSURE THE IMPLEMENTATION OF EMERGENCY MEASURES TO IMPROVE SECURITY OF THE SITE

### A – The emergency's and safety's measures

*Circular dated the 8th February 2007* : the Minister focuses on **the appropriate measures in order to put the site into a safe situation.**

If emergency measures to be taken by the official receiver are deemed inadequate, a prefectoral order may prescribe several measures to be implemented.

**Safety measures** must be prescribed separately and implemented according to the available assets.





## B – Consequences of underfunded liquidation

### 1 – The nature of environmental claim

A decision by the *Cour de Cassation* dated 17th September 2002 « Société d' utilisation du Phénol » maintains **the environmental claim's date of birth is the date of the prefectoral order prescribing to deposit a sum of money for the duty to repair.**

Therefore, the environmental claim of the treasury being a « **subsequent** » **claim** is not subject to the declaration to the liquidation procedure.

→ The environmental claim is not in a prior rank, and it's unlikely the Treasury's debt will be recovered.



## 2- The search for potential liable persons

To switch the cleaning obligating on to another person, two environmental policies come overlap :

- **The law of classified facilities**
- **Waste legislation**

### - The law of classified facilities :

The *Circular of Feb. 8th 2007* states that the **holder can't be held responsible as a holder**. The idea is upheld by Administrative caselaw.

The official receiver may be tempted to raise the rehabilitation debt up to the **parent Company**. Positive law doesn't considered such an action as admissible.

→ These environmental accounts payable fall automatically on the Public Community.



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- Waste legislation :

According to the European Communities Court of Justice, followed by the French Administrative Caselaw, **polluted soils could be considered as waste.**

Therefore, the mayor may sue the last holder of polluted site pursuant to *Section L.541-4 of the Environmental Code.*



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## CONCLUSION

The Ministry has presented a **draft to the Classified facilities Concil to allow the liability of the parent company for environmental claims** of their affiliate companies.

The *Section L.514-1 of the Environmental Code* would be completed with the following measures :

*« In the event the operator is a company belonging to a group and that the said operator is subject to a winding-up, the operator of the group or the company exercising a dominant influence upon the others group's companies, shall answer on behalf of the failing operator's duties, for theses duties. ».*