



# Regulation of IP in the EU

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- IBRD, EU, Insol Europe, Uncitral reviews:  
A variety of situations
- -**Status** Lawyers/Accountants/Specialized body
- -**Supervision** Court/creditors/prof order/Spe Body
- -**Discipline**
- **Qualification**
  
- (IBRD « lack of ongoing formation for non specialists »)

# IP appointment



- Appointed by:
  - -court
  - -creditors, majority of creditors
  - -suggested by debtor

# Conflict of interest

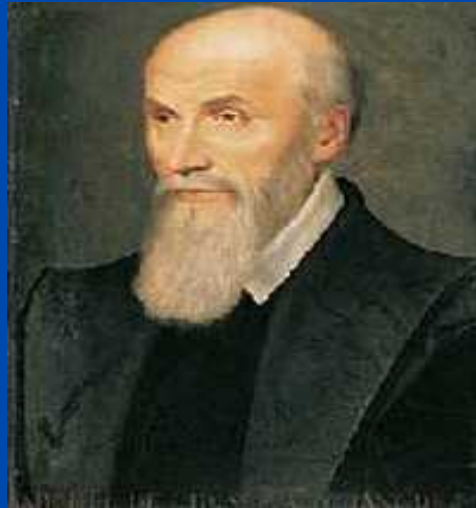


- Independance of the IP
- Canadian example CCAA
- Belgium
- French experience
  
- -applicable corpus

# France from the outside perspective / point of view



# But in fact..



- Since the Middle Ages, commercial justice is established by the merchants ;
- 2 different bodies of IPs since 1985; administrator or liquidator
- Efficient and speedy commercial justice: specialization of judges



# « STEP BY STEP »



## CONCILIATION, « PREPACK » & FAST-TRACK SAFEGUARD

Ordonnance n°2014-326 of 12 March 2014 (reforming preventive restructuring and insolvency)

- Prepack Sale
- Prepack Plan

2014

2010

2005

1985

## PRE INSOLVENCY

Law 84-148 of 1 March 1984 (on the prevention and amicable settlement of business difficulties)

- Lightly Court supervised

## JUDICIAL ADMINISTRATION & LIQUIDATION PROCEEDINGS

Law 85-98 of 25 January 1985 (on judicial administration and liquidation proceedings)

- Formal restructuring
- Social concerns : safeguard of employment

## FINANCIAL FAST-TRACK SAFEGUARD

Law 2010-1249 of 22 October 2010 (on financial and banking regulation)

- Cram-down of financial creditors only

## BUSINESS SAFEGUARD ACT

Law 2005-845 of 26 July 2005

(on safeguarding businesses)

- Cram-down of all creditors



# PRE-INSOLVENCY



- Preinsolvency driven by Judicial Administrator
- CONFIDENTIALITY
- Only condition : existence of difficulties that could lead to Insolvency or illiquidity
  
- Court- lightly supervised (only control of creditors interests)
- Consensual settlement of difficulties
- 70% success (5 years 60%)

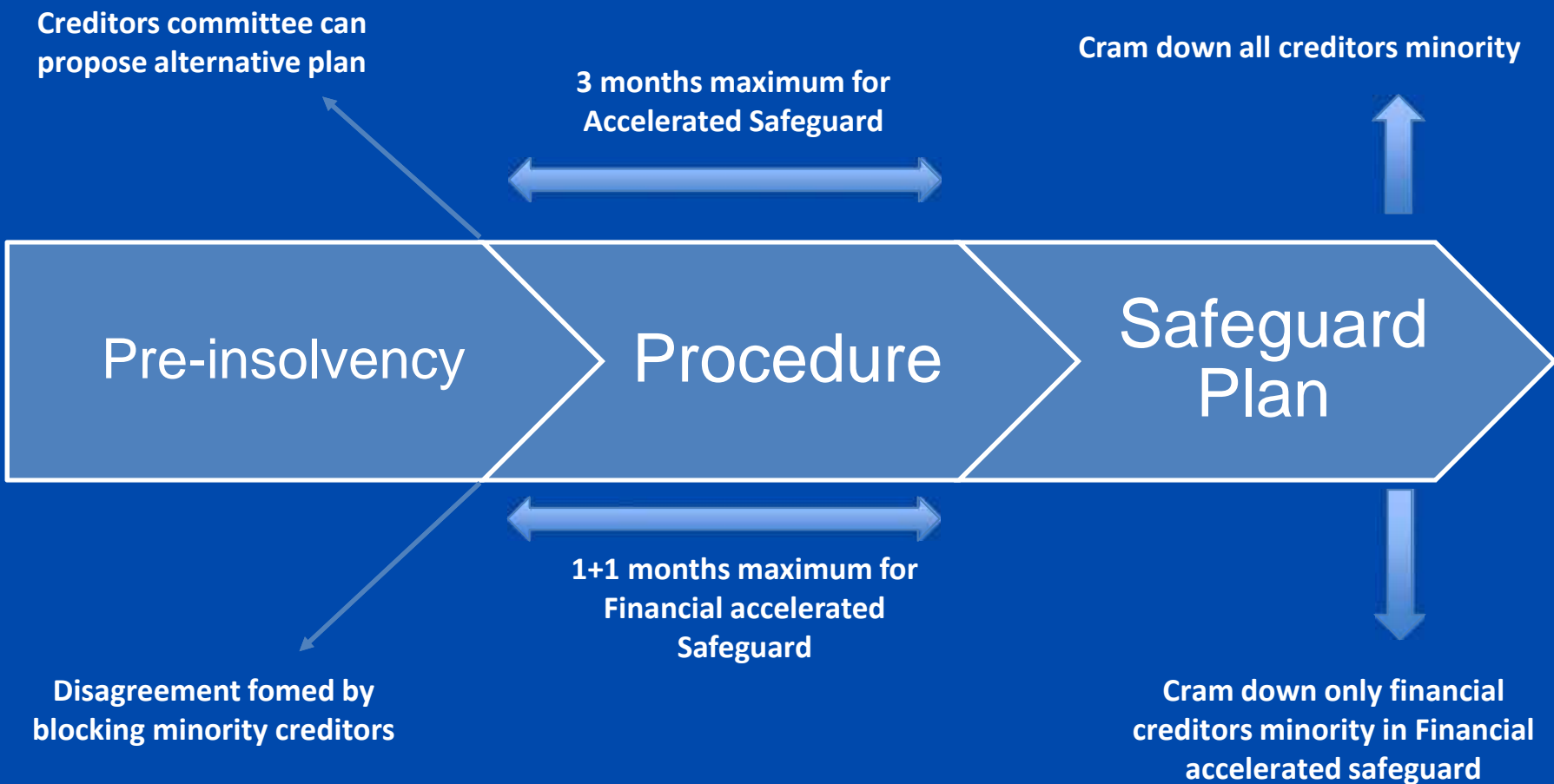
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# Financial fast-track safeguard & Fast-track safeguard



# Prepack sale



Prepack sale  
presented to  
creditors

15 days maximum



Pre-insolvency

Procedure

Sale Plan

Opening Judicial  
administration or  
Liquidation proceedings



# CONCLUSION



- **IPs are absolutely necessary including for SMEs to:**
  - **coordinate the proceeding**
  - **organise the creditors committees, avoid future litigation**
  - **link with the Court who controls the fairness of the process for all stakeholders**
- **Seeking balance between debtor,shareholders and creditors during the procedure**
- **Pre-insolvency procedure more flexible and aimed to prepare a plan**
- **(France / EU Directive: amendments to commitees; secured & unsecured and shareholders, absolute priority rule and cross class cramdown to be created)**