

Ad Hoc Administration: A Practical Alternative to Bankruptcy

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In today's economy, shaken by the Asian crisis, terrorist attacks, the bursting of the new technology bubble and a lack of growth in certain markets, companies are often unable to pay their debts on time. However, many bankrupt companies could be saved if an *ad hoc* administrator were appointed.

Rebuilding Confidence

Creditors' confidence in the company must be restored. They must understand that they will have a greater chance of recovering the whole or a part of their money if the company does not go bankrupt. However, convincing creditors that the situation may be rectified is especially difficult if obligations have not been met on time.

Consequently, the interposition of a third party between creditors and the debtor company can prevent the situation from becoming more acrimonious and make it possible to begin restoring confidence.

Aims of ad hoc administrator

The aim of the *ad hoc* administrator is to continue the company's operations and seek the conclusion of a creditors agreement (Article 36 of the Act of March 1 1984). However, despite the fact that it is the company which seeks an amicable settlement through the *ad hoc* administrator, the *ad hoc* administrator is not answerable to the debtor.

The *ad hoc* administrator is an intermediary, an 'arbitrator' named by the president of the Commercial Court whose objective is established by the president (Article 35 of the Act of March 1 1984). The *ad hoc* administrator must ensure that (i) the company is able to continue, and (ii) all creditors recover their outstanding credit.

The *ad hoc* administrator is given certain legal powers to achieve his goals. If the *ad hoc* administrator estimates that a temporary moratorium will facilitate the conclusion of a creditors agreement, he can seek such an order from the court. This will help the *ad hoc* administrator to conclude an agreement even with the toughest creditors, as creditors will not be able to:

- seek the performance of contractual payment obligations;
- claim money from the debtor; or
- seize the the debtor's property.

Creditors Agreement

Sometimes creditors will refuse to grant extensions of payment deadlines, either because of bad faith or because they face financial problems themselves. Consequently, certain legal means exist to convince the most intractable.

Several situations can arise when creditors are presented with a creditors agreement:

- The creditors may reject the terms of the agreement;
- The majority (more than 70%) of the creditors may agree to the terms of the agreement; or
- All creditors may agree to the terms of the agreement.

If the majority of the creditors refuse, then a temporary moratorium may be ordered by the judge in order to convince parties to approve the amicable agreement.

If the principal creditors agree to the terms of the agreement, the *ad hoc* administrator will be able to ask the president of the Commercial Court to pronounce a consensus. This will lead to an extension of the moratorium for the signatories of the agreement.

The president of the Commercial Court will then enforce the agreement as if it had obtained the votes of all the creditors. Thus, any legal actions or attempts to seize the movable property or real estate of the debtor to obtain payment of outstanding credit will be prohibited.

The *ad hoc* administrator is a flexible and expedient alternative to other legal procedures. The use of *ad hoc* administrators rose by 20% between 2000 and 2001, although only 898 companies in 2000 and 1,085 in 2001 sought the appointment of an *ad hoc* administrator.