

How the global economic crisis is impacting the work of French Insolvency judges

I.I.I. Judicial meeting

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More insolvencies, hence more work. Far more bankruptcies of large Companies, hence situations more complex

Much more efforts made in finding alternative/innovative ways of reorganizing

More creditors involved (multi-tier debt). Complex financial packages being developed testing the mettle of insolvency proceedings/dispositions

Two kinds of bankruptcy judges are involved in the French judicial system :

-The judges of the court (three or five at sitting) : open the proceedings, rule on some litigations arising in the course of the proceedings

- The supervising judges (one judge who takes over after the opening of the proceedings has been ordered by the court): authorize certain types of décisions, such as admitting or rejecting claims filed by creditors, sales of assets.

The Eurotunnel case, which unfolded before the crisis, allowed us a preview of the complexity now facing insolvency judges.

The financial package included in the plan was very complex for judges not having a finance background. To fill in the legal holes of the very new sauvegarde proceedings, they had to understand the financial intricacies to apply the législation appropriately in the matter (e.g. composition of creditor committees) ;

A typical situation now develops, where companies « too big to fail » are encouraged, under intense pressure from everywhere (employees, local government representatives, the Prosecutor's office, even the national « mediator »), to build financial rescue plans where creditors are asked to waive a significant part of their claims, or convert part of it into equity (new possibility brought by the 18 February Amendment Order), even setting up a new company. All these constructions raise a lot of controversies between all parties, which only the judges have the power to arbitrate or mediate, and end up with by the dilemma : « You take it or you lose all ».

To sum it up, bankruptcy judges must more and more become « judges of the economy ».

Apart from the 18 February 2009 Amendment Order that intended to make the 2005 Insolvency law more attractive, especially for preventive proceedings, no new legislation has been made to deal specifically with the crisis. But again case law runs ahead of legislation, for example with « prepackaged plans ». They plans were not prohibited as such, but made virtually impossible given the legal time limits allocated to work out and negotiate the plan, then present it to the legal company bodies (comités d'entreprise).

In the Autodistribution case (court of Evry, april 2009), the holding company went first through a conciliation proceedings (voluntary arrangement), which is confidential, then through the sauvegarde proceedings. During the conciliation proceedings the rescue plan was worked out and almost entirely negotiated with the creditors. Then enough time was made available to get the plan accepted

What is the role of the judges when companies are bailed out with government money ? Such bail outs have always been made out of court, and the companies (banks, automotive and a few others) have not declared insolvency. Judges have not been involved, at least so far.