Rebuilding Confidence

Aims of ad hoc administrator
Creditors Agreement

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.

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 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.