

# NORDEN

## ASSOCIATION D'AVOCATS

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### La Lettre de NORDEN Association d'avocats

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#### DEBT RESTRUCTURING IN FRANCE

With the financial crisis, the number of companies in financial difficulties has arisen.

Before such companies are in bankruptcy, the creditors and the company may enter into discussions in order to find an agreement as to restructure the company's debts.

As to secure such discussions, articles L611 - 1 to L 611-15 of the French commercial code have organised two legal frames, the "mandate ad hoc" (agency) and the "conciliation" (reconciliation).

#### **A – The « mandat ad hoc » :**

Any debtor may require from the President of the Tribunal of commerce that an agent, the "*Manadataire ad hoc*", be designated to assist the directors of the company in order to discuss and find an agreement with the main creditors as to restructure the indebtedness of the company.

Such designation can not be required by the creditors.

No publicity of such designation will be made at the Registry of commerce. Therefore, any counterpart of the company, not being a party to the discussions, will not have knowledge of its financial difficulties.

Under such agency, the directors of the company will remain at the head of the company. No receiver will be designated by the tribunal.

The directors and the creditors are totally free to reach or not an agreement. The Tribunal of commerce may not impose any conditions to such or such creditors.

The advantage of such legal frame is that the discussions and the agreement between the company and the creditors will remain totally confidential. Thus, the company may not risk that its suppliers and clients, not being a party to the agreement, stop trading with it fearing that the company would not be able to face, in the near future, to its financials undertakings.

#### **B – The "conciliation" :**

The procedure of « conciliation » is possible when the company is facing financial, economical or legal difficulties and is not in "cessation des paiements" (suspension of payments), since at least 45 days.

The demand for such procedure is made before the Tribunal of commerce. It shall be made only by the debtor.

The “conciliation” last for a maximum period of 4 months only.

The social security organisms and the tax administration may grant remission of debts in the frame of this procedure. Such remission is not possible in the “mandat ad hoc”.

Also, the Tribunal may grant to the debtor term of payment for a maximum duration of two years.

The agreement reached by the parties may be « constaté » (ascertained) or « homologué » (approved).

If the agreement is “constaté”, no publicity of the agreement is made at the Registry of commerce.

If the agreement is “homologué”, such agreement shall be registered at the Registry of commerce. Furthermore, pursuant to article 611 – 11 of the Code of commerce, the creditors who agree to grant new money to the debtor, in the frame of an agreement “homologué” will be paid in priority to the others creditors, should a bankruptcy procedure is, afterwards, opened as against the company, excepting however debts resulting from legal fees and wages.

Therefore, the company and the creditors will have to make a choice between the wish of confidentiality from the company, where in such case the agreement may only be “constaté” and the wish for some creditors to benefit from a first rank in a bankruptcy procedure, should they grant new money, where in such case, the agreement shall be published at the Registry of commerce publicity.

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