

Case Study Scenario 1 - Use of Insolvency System by Creditors to Initiate Bankruptcy/Liquidation Proceedings

The client ('C') is a local supplier of goods in your country. One of the client's customers, a local, privately owned, limited liability manufacturing company ('D'), has failed to pay a debt due to the client in the local currency, equivalent to €10,000, as a result of cash flow problems.

The debt is more than 30 days overdue. There is no dispute regarding the underlying transaction that gave rise to the debt and the debtor has no valid defence for the non-payment of the debt.

The client now asks for your professional advice on:

- any action the client can take under the insolvency law of your country to deal with the apparent insolvency of the debtor; and
- the process that will be involved in obtaining an effective final order against the debtor.

[NB "effective final order" means the making of an order or the pronouncement of a judgment which has the effect that the affairs of the debtor will be thereafter administered under the insolvency law, whether by way of bankruptcy, liquidation or some other form of insolvency process. It does not mean to the end of such processes.]

Case Study 2 – Use of Insolvency System by Debtor to Commence Restructuring Proceedings

The client ('C') is a local, privately-owned limited liability manufacturing company in your country. Historically, the client traded successfully for a number of years and presently employs around 100 staff. The client is now experiencing major cash flow difficulties and expects that, within the next month, it will not be able to pay debts owed to a number of its creditors as those debts become due for payment and that its financial position will continue to deteriorate.

The business is basically sound but accounting, financial and other advice is that before the client can return to a profitable position, the client will require:

- a general reduction of debt owed to all non-bank creditors (for example, a 30% reduction);
- an extension of the time for payment of the reduced debts (for example, in 12 months time); and
- a rescheduling of bank financing commitments (for example, deferring repayments of principal for 12 months and a reduction of interest payable).

Some creditors are pressing for payment and are threatening to take enforcement action. In attempting to negotiate an arrangement as indicated above, the client will require protection (for example, a stay or suspension of all legal actions against the client and its assets).

The client now asks for your professional advice on the action it can take under the insolvency/reorganisation laws of your country to get to the stage at which a formal arrangement that embraces the above proposals will take effect.

[NB "arrangement" means a reorganisation/ restructuring/ composition or similar process and "take effect" means such court or other approval or confirmation as may be required under your law.]