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DIRECTORS' AND OFFICERS' RESPONSIBILITIES IN INSOLVENCIES

D&O Liability Policy in France

By

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Mr. Presidents
Ladies and Gentlemen

Welcome to France, welcome to Paris

My country is renowed for its monuments,its cuisine, its fashion, less for its bankrupcy Laws.

We must thank our law makers and the courts , through the precedents , who have given us one of the most complete tool box in western Europe.

From the mandat ad'hoc ,to conciliation,to sauvegarde,to sauvegarde financiere acceleree to redressement judiciaire (the american equivalent of chapter11) and liquidation judiciaire (chapter 7) courts have at their diposal a complete set of instruments to bring solutions to the most different cases.

After paying a compliment to the system here is a critic analysis of what survived from the "banca rota" the broken bench that was the symbol of the failing merchant in ancient Rome.

Let's talk first about the financial contribution to the debts :
Under the bankruptcy law of 1967 it was extremely efficient and extremely used. It was a time when sanctions were extremely hard on directors and when not paying the amount you were condemned to would lead to your own personal bankruptcy!

The bankruptcy law of 1985 changed the whole system and replaced it by one that is a classic case of responsibility : the liquidator has first to prove the insufficiency of assets compared to liabilities then to prove that management was responsible for that insufficiency .
Once the condemnation occurs then the liquidator has to execute it and has no privilege
He is actually in competition with other creditors especially financial institutions that have warranties on the different assets of the director.
In one sentence :extremely inefficient so hardly in use anymore.

Let's talk now about personal sanctions what I mean by that is the fact of being deprived of civil rights, being banned from running a company.
The law firm I have the privilege to manage has been appointed ,by the courts ,as liquidator in over 14,000 cases in the last 26 years.
It obviously had to deal with quite a few crooks ,incompetent or unlucky managers.

The most extraordinary thing about such sanctions is that the first circuit commercial judges request and when I say request I'd rather say demand from the liquidators that a sanction case be brought to them.

The Courts of Appeal are much more lenient than first circuit judges whose rulings are nearly systematically overruled ,if not on the principle at least on the length of the sanction.

The same demand would be understandable from the public attorney who is ,after all, in charge of the public interest, the respect of the public economic order, it does not appear to be the same for the commercial judges.

It is a well-known fact that the sooner the enterprise in financial trouble comes in front of the court, the better the results, for the firm itself its employees and its creditors.

Being also the court that sanctions the directors seems to be totally counterproductive.

Let the penal courts handle the matter, let them handle the real crooks .

For all the others , the unlucky ones, the incompetent ones remember that they gave their cautions to all the banks and leasing companies .

Remember that in the vast majority of cases they are already totally wiped out

Remember that the system already took care of them .

Remember that what we need is entrepreneurs because they are the only ones who actually create the wealth and employment our societies so badly need.

Thank you for your attention.

Olivier Chavane de Dalmassy