

**Orders 947/2009**

**Voluntary Insolvency of AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A.**

**Section 947.05/09**

**Negotiated: JV**

**TO THE MERCANTILE COURT 2 of MALAGA / 1 BIS**

***Evaluation document***

Mr Antonio Jesús Franco Sánchez, Mr Nicolás Molina García and Mr Ignacio Álvarez Rello, Official Receivers of AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., the Voluntary Insolvency Proceedings of which is processed with no. 947/2009, appear before the Courts, and in accordance with applicable legislation,

**STATE:**

That on 28 May 2014, AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., filed an Arrangement Proposal in the Mercantile Court 1 of Malaga.

On 7 July 2014, a Ruling from the Court was issued, which was made on the same day, and which granted a period of 10 days to the Official Receivers, to issue **an evaluation document concerning the content of the Arrangement Proposal with respect to the accompanying Payment Plan and, if the case, the Business Plan**, under the terms and conditions set out in Article 115 of the Spanish Insolvency Law.

That through the present document, the Official Receivers will complete the transfer granted based on the following:

## CONSIDERATIONS

### ONE: Business Plan

As the arrangement aims to be achieved using the resources generated by continuing activities, in compliance with Article 100.5 of the Spanish Insolvency Law, the Arrangement Proposal is accompanied by a Business Plan which, in accordance with Article 115.1 of the Spanish Insolvency Law, must be evaluated by the Official Receivers. We think this Report should begin with an evaluation of the Business Plan presented by the Insolvent Company.

We have analysed the Business Plan presented by AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., which mainly includes forecasts revenue generation, expenses payable and cash generation for the years 1 to 10 as from the approval, if the case, of the Company's Arrangement Proposal.

Firstly, we note that, strictly speaking, the Insolvent Company may not have used the appropriate terminology, as the terms revenue and expense are used as synonyms of the terms collections and payments. These are not the same in accounting terms, as revenue and expense refer to the actual flow of the economy (movement in goods and services) and collections and payments refer to the cash flow of the economy (cash movements).

Items appear in the section *revenue generation*, which in reality should be included under collections, such as what is termed net recoveries. Similarly, items are included in the section *expenses payable* which do not relate to such section, as they are payments, such as payments of credits against the solvency estate.

This analysis of the Business Plan was carried out as an inseparable part of the evaluation of the content of the Arrangement Proposal presented by the Company to the Mercantile Court 1 of Malaga. This analysis was carried out in accordance with our professional practices and regulations for this purpose and includes procedures which were deemed to be necessary to evaluate both the assumptions employed, and the preparation and presentation of the Business Plan.

When they were prepared, the Business Plan and, consequently, revenue generation, expenses payable and cash generation for the years 1 to 10 as from the approval, if the case, of the Company's Arrangement Proposal reflected, in the opinion of the Governing Body of AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., the circumstances of the factors which such Body considered to be the most significant to the Company, and the most probable with relation to performance, but which may not be achieved if facts or circumstances arise which were unforeseen by the governing body. This could give rise to significant variations to the forecasts and the figures which are finally generated.

Our analysis is mainly based on:

- Verification, with the qualifications to be mentioned, of the relationship between the actual assets held by AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A. and the content of the forecasts for revenue generation, expenses payable and cash generation for the years 1 to 10 as from the approval, if the case, of the Company's Arrangement Proposal.
- Evaluation and reasonableness of the assumptions and data contained in the explanatory documentation accompanying the Business Plan, prepared by the Governing Body.

- The application of analytical procedures to verify certain calculations, trends, correlations, among other things, as well as to determine the overall approach to the assumptions employed to prepare the Business Plan forecasts.

As a result of our analysis, significant aspects have come to light which prevent us from considering that the Business Plan, and consequently, revenue generation, expenses payable and cash generation for the years 1 to 10 as from the approval, if the case, of the Company's Arrangement Proposal of AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., presented before the Mercantile Court as an inseparable part of the Arrangement Proposal, reasonably respond to the outcome of applying the assumptions employed by the Single Shareholder of the Company, and that these are the best estimates on a reasonable basis.

Specifically, there are uncertainties as to the company's revenue generation forecasts, as a significant amount of the revenue forecast in sections 3.1.1 and 3.1.2, are subject to the result of various legal proceedings and/or negotiations which, in the event that the expected result is not obtained, would negatively impact the company's revenue generation forecasts.

As well as the uncertainties inherent in any legal proceeding, we must add that, given the company's current cash deficit, it is questionable whether the company can assume the high costs associated with the various legal actions (payments of legal fees, lawyers and legal representatives' fees, etc.) which could affect these collections or cash sources.

Regarding point 3.1.3, it should be noted that this means of generating revenue is a new line of business for the Insolvent Company. As it is subject to the achievement of a

series of very complex agreements, we are unaware of whether positive results will be produced during the period which covers the Business Plan.

Moreover, there are uncertainties which in our opinion are significant, in sections 3.1.4, 3.1.5 and 3.1.6, as the Cash generation as a result of these recoveries could be affected by variables which are not directly controlled by the Insolvent Company, such as the result of various legal proceedings, among others.

Other than the above uncertainties, it has been verified that in section 3.1 *Revenue Generation*, of the Business Plan, equity items are included which are not recorded in the Inventory of Goods and Rights in the Definitive Texts.

With respect to number 3.2 of the Business Plan, relating to Expenses Payable, it should be noted that:

- The company's Operating Costs that are contained in the forecasts are not consistent with the current situation of such costs, as, for example, staff costs accruing are higher than forecast.

The fact that the company has expenses which are higher than forecast causes a negative impact with regard to compliance with the Payment Plan.

However, at the date of this Report, a redundancy is being carried out during the course of the bankruptcy, which could decrease structural costs. This would contribute to the generation of higher cash surpluses than forecast in the Business Plan which we are evaluating.

- At the preparation date of this Report, as can be inferred from the proceedings, we have not received the details of the creditors which will receive special treatment in the Arrangement Proposal that we are analysing, although, the insolvent company has made calculations of €30 million.

As regards the credits against the insolvency estate, which the insolvent company calculates to be €11.6 million, as indicated by the Official Receiver in the Definitive Texts, this amount relates to the balances covered in the administrative certifications, as well as other unquestioned credits against the insolvency state. This results in a very significant amount for these types of credits, the definitive determination of which is subject to the various rulings associated with the different incidents set out to claim these kinds of credits, which could cause the figure to be paid for this item to be higher than considered in the Point relating to Expenses Payable, with a negative impact when it comes to complying with the Business Plan objectives.

However, subsequent to the presentation of the Definitive Text, it was verified that the Municipal Authorities of Mijas is included among the credits against the insolvency estate with an amount including insolvency credits, therefore, once the improvement process being carried out has been finished, the amount of short-term credits payable could decrease.

Furthermore, as the indemnities which may be payable as a result of the redundancy which is being processed have not been calculated, these have not been included in the payment forecasts. This would also have a negative impact on the compliance with the Plan objectives.

It should be noted that insolvency credit payment forecasts are not in line with the amounts which appear in the Definitive Texts, and, also, it must be highlighted that

they have a high number of contingent credits from private sale-purchase contracts, the objects of which were taken from the assets of the estate as a result of the different foreclosures which were processed during the common phase of the insolvency proceeding. This confirmation of contingent credits and the arising of ordinary credits as a result of the fact that mortgage guarantees forfeited have not been sufficient to cancel the debts which they secured, will cause the amount of liabilities to increase significantly, which could jeopardise compliance with the Payment Plan using the resources which appear in the forecasts.

The current special privileged credits have not been calculated, which, following the related foreclosure, were not fully paid with the product associated to the asset which they secured. This will significantly impact compliance with the Arrangement Proposal which we are analysing.

It should be noted that the Business Plan only includes the forecasts for revenue generation, expenses payable and cash generation for the years 1 to 10 as from the approval, if the case, of the Arrangement Proposal of AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., presented before the Mercantile Court as an inseparable part of the Arrangement Proposal, and does not specify which revenue will be generated to pay the subordinated credits, which should be paid using the same recomposition and restructuring as the ordinary credits, i.e., in years 11 to 20 as from the approval, if the case, of the Company's Arrangement Proposal we are analysing as understood from Article 158 of the Spanish Insolvency Law.

In the event that the final result of the situations which caused uncertainties and limitations to the scope of our work, as mentioned in the above paragraphs, are resolved in accordance with the assumptions established by the company in its

forecasts, the goals would be attained and the Company would achieve the objectives established.

Noteworthy is that the Business Plan was prepared by AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A. without including, to date, the financial support of its main shareholders.

If the Company does receive financial support from its shareholders from this point on, by either a capital increase or any other means, or, if the case, circumstances arise which result in additional cash, this support would not just be beneficial to the company but greatly advisable, and would strengthen the Business Plan.

The Business Plan of AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A. is a set of forecasts of very tight revenue generation, expenses payable and cash generation both to meet its own needs as well as to deal with the bankruptcy debt. Therefore, we consider that any unfavourable variation or deviation which may arise could prevent the desired outcome and compliance with the expected Payment Plan to pay outstanding debt with the creditors originating from the Bankruptcy. For this reason, we believe that AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., should seek the financial support of its shareholders, by capital increase or other alternatives, or otherwise, attain other forms of funding that contribute to the effective reinforcing of the Company's continuance.

Moreover, it should be noted that any Business Plan is made up of a set of forecasts and, as such, are subject to additional uncertainties to those mentioned, due to all kinds of external factors, such as the economic situation, among others. It is also subject to all kinds of internal factors such as business management, among many other aspects.

We would like to point out that our analysis of the Business Plan is exclusively based on our point of view, which could be questioned or correct to a lesser or greater extent, but in no event should it be taken as an opinion in the strictest sense of the word, given the limited nature and the uncertainties which are part of a Business Plan analysis and the fact that our responsibility cannot include the prediction of future events.

## **TWO: Payment plan**

Based on the Payment Plan prepared by AIFOS ARQUITECTURA Y PROMOCIONES INMOBILIARIAS, S.A., the cash surpluses forecast for the years 1 to 10, in the event that all difficulties and uncertainties as mentioned above do not apply, in accordance with the company's forecasts, the payments to be made in accordance with the Arrangement Proposal could be assumed. In some years, the cash available may be too tight to be able to deal with the above payments, even more so when the uncertainties mentioned are taken into account.

Based on the above, it should be noted, once again, due to the bearing which this may have on the established payment schedule and the related capacity to generate the necessary resources, that the calculation basis used by the insolvency party to calculate the liabilities payable following a hypothetical approval of the arrangement proposal, in accordance with the terms and conditions set out within such proposal, is not consistent with the insolvent liabilities set out in the Definitive Text. This is regardless of the upward adjustments which could occur as a result of the subsequent transformation of contingent credits, as well as the surpluses not covered by the product related to the assets subject to special privileged credits.

It should also be pointed out that there is no forecast for the payment of the subordinated credits which, although this should be implicitly assumed to be covered

by the forecast which establishes Article 134.1 of the Spanish Insolvency Law in this respect, it is not known which Business Plan could cover the payment of such credits.

### **THREE: Arrangement Proposal**

The Arrangement Proposal is in line with the Business Plan and Payment Plan.

The Arrangement Proposal establishes a recomposition of 50% and a rescheduling of 10 years, payable in the 9th and 10th year, 20% at the end of the 9th year and the remaining 30% at the end of the 10th year, from the approval of the proposal, except for the creditors which are individual (i.e. not companies) housing purchasers and to whom it has not been possible to deliver the housing in the first nine years of this arrangement. In this case they will receive the total credit at the end of the 9th year.

It is understood that the Arrangement Proposal includes a rescheduling of more than five years. This has meant that the Court will have to give an express authorisation for such period to be met.

This Arrangement Proposal, together with the Business Plan and Payment Plan, should be understood as evaluated as a whole, based on the significant aspects and taking into account the details set out in such documents.

By virtue of the foregoing,

**THEY REQUEST FROM THE COURT**, that this document is deemed to be submitted and the statements within such document are deemed to be made. They request for such statements to be accepted and added to the proceeding, and based on the foregoing, for the Evaluation Report of the Payment Plan and Business Plan

provided by the insolvent company together with the arrangement proposal as referred to in Article 115.1 of the Spanish Insolvency Law, to be deemed to be submitted in due time and form, all for the pertinent legal purposes.

**May justice be done in Malaga, on the twenty second of July of two thousand and fourteen.**

**FIRST PETITION:** they state, under Article 231 of the Spanish Code of Civil Procedure, their willingness to comply with all the requirements required by legislation, compensating for any procedural defect which could be incurred.

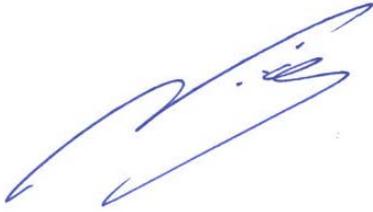
**FIRST PETITION:** they request that the statements above are deemed to have been made.

**SECOND PETITION:** they state that in accordance with Article 135, Paragraph 1 of the Code of Civil Procedure, it is hereby certified that this document has been presented before 15:00 hours before the day following the end of its validity.

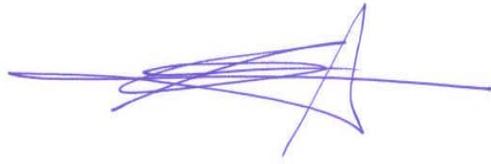
**SECOND PETITION,** they request that the statements above are deemed to have been made.

May justice be done on the date and at the place first written above.

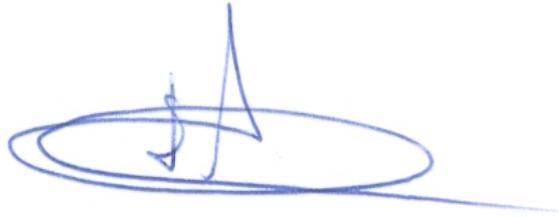
THE OFFICIAL RECEIVERS



**Nicolás Molina García**



**Antonio Jesús Franco Sánchez**



**Ignacio Álvarez Rello**