

THE INSOLVENCY  
REVIEW

TENTH EDITION

Editor  
Donald S Bernstein

THE LAWREVIEWS

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INSOLVENCY  
REVIEW

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# CONTENTS

PREFACE.....	vii
<i>Donald S Bernstein</i>	
Chapter 1 ABU DHABI GLOBAL MARKET .....	1
<i>Amir Ahmad and Patrick Schumann</i>	
Chapter 2 AUSTRALIA.....	13
<i>Dominic Emmett, Hannah Cooper and Charbel Moujalli</i>	
Chapter 3 AUSTRIA.....	33
<i>Eva Spiegel and Alexander Zollner</i>	
Chapter 4 BERMUDA .....	47
<i>John Wasty, John Riihiluoma and Lalita Vaswani</i>	
Chapter 5 BRAZIL.....	54
<i>Mauro Teixeira de Faria and Rodrigo Saraiva Porto Garcia</i>	
Chapter 6 CAYMAN ISLANDS .....	69
<i>Angela Barkhouse, Kim Leck and Phillip Pierson</i>	
Chapter 7 CHINA.....	90
<i>Ren Yimin and Zhu Yun</i>	
Chapter 8 DUBAI INTERNATIONAL FINANCIAL CENTRE .....	103
<i>Amir Ahmad and Patrick Schumann</i>	
Chapter 9 ENGLAND AND WALES.....	113
<i>Karen McMaster, Sarah Levin and Matthew Fonti</i>	
Chapter 10 FRANCE.....	138
<i>Saam Golshani and Alexis Hojabr</i>	

Chapter 11	GERMANY..... <i>Andreas Dimmling</i>	148
Chapter 12	GREECE..... <i>Athanasia G Tsene</i>	160
Chapter 13	HUNGARY..... <i>Zoltán Faludi and Enikő Lukács</i>	182
Chapter 14	INDIA..... <i>Margaret D'Souza</i>	194
Chapter 15	JAPAN..... <i>Dai Katagiri, Ryo Kawabata and Takashi Harada</i>	207
Chapter 16	KAZAKHSTAN..... <i>Lola Abdukhalykova</i>	217
Chapter 17	LUXEMBOURG..... <i>Clara Mana-Marhuenda, Sébastien Binard and Grégory Minne</i>	229
Chapter 18	MEXICO..... <i>Dario U Oscós Coria and Dario A Oscós Rueda</i>	245
Chapter 19	POLAND..... <i>Karol Tatara, Pawel Kuglarz, Anna Czarnota, Michał Masiór and Mateusz Kaliński</i>	268
Chapter 20	SAUDI ARABIA..... <i>Adli Hammad</i>	281
Chapter 21	SINGAPORE..... <i>Stephanie Yeo, Clayton Chong and Eden Li</i>	294
Chapter 22	SPAIN..... <i>Manuela Serrano</i>	311
Chapter 23	SWITZERLAND..... <i>Daniel Hayek and Mark Meili</i>	322
Chapter 24	UNITED ARAB EMIRATES..... <i>Amir Ahmad and Patrick Schumann</i>	335

## Contents

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Chapter 25	UNITED STATES .....	342
	<i>Donald S Bernstein, Timothy Graulich, Christopher S Robertson and Mary Kudolo</i>	
Appendix 1	ABOUT THE AUTHORS.....	369
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	387

# AUSTRIA

*Eva Spiegel and Alexander Zollner*<sup>1</sup>

## I INSOLVENCY LAW, POLICY AND PROCEDURE

### i Statutory framework and substantive law

#### *Introduction*

Insolvency law in Austria is primarily regulated by the Austrian Insolvency Act, which entered into force in 2010. For businesses, the Austrian insolvency regime provides for the following types of insolvency proceedings:

- a* bankruptcy proceedings;
- b* restructuring proceedings where a bankruptcy administrator is appointed; and
- c* restructuring proceedings where the debtor retains the right to self-administration.<sup>2</sup>

While bankruptcy proceedings usually lead to a realisation or winding up of the debtor's estate, restructuring proceedings aim at the continuation of the debtor's business and the discharge of debts.

### ii Policy

#### *General*

In general, the Austrian insolvency regime follows the principle of uniform and proportionate satisfaction of (unsecured) creditors. Similarly, debt-ridden businesses have the opportunity to engage in restructuring measures.

To enhance the chances of success of restructuring efforts, Austrian law provides various options for debtors:

- a* ahead of insolvency proceedings, solvent debtors may apply for reorganisation under the Business Reorganisation Act (Reorganisation Act). The Reorganisation Act aims at enabling otherwise economically stable businesses facing temporary financial difficulties to continue their business activities through a reorganisation process. However, the procedure set out in the Reorganisation Act has only been used in very few cases since its introduction;
- b* after bankruptcy proceedings have been initiated, insolvent debtors may submit restructuring plans if certain preconditions are met. Additionally, Austrian insolvency law provides for specific safeguards that allow the debtor to continue pre-insolvency

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1 Eva Spiegel is a partner and Alexander Zollner is counsel at Wolf Theiss.

2 For natural persons, additional types of proceedings are applicable: (1) insolvency proceedings applicable to natural persons; and (2) garnishment applicable to natural persons. This chapter will focus on the applicable regime for businesses only.



- contractual relationships, including the possibility for the administrator to apply for deferral of evictions regarding business premises or restrictions concerning contractual termination rights of business partners; and
- c as a principle, bankruptcy proceedings that lead to a realisation or winding up of the debtor's estate should be considered an instrument of last resort.

### ***Directive (EU) 2019/1023 and the Restructuring and Insolvency Directive Implementation Act***

On 20 June 2019, the European Parliament and the Council of the European Union issued a directive on restructuring and insolvency (Directive [EU] 2019/1023). The Directive aims at providing restructuring tools available across Europe to enable debtors in financial distress to solve their problems at an early stage in order to avoid formal insolvency proceedings. Member States must implement the Directive by 17 July 2021.

On 22 February 2021, the ministerial draft of the Restructuring and Insolvency Directive Implementation Act was published. It includes a new Austrian Restructuring Code and amendments to the Austrian Insolvency Act (providing for facilitation of debt relief for private individuals and individual entrepreneurs within three years and – in relation to restructuring proceedings under the Austrian Restructuring Code – gives privileges to new or interim financing as well as other transactions under certain conditions and to provide (limited) protection against rescission in subsequent insolvency proceedings). After an evaluation procedure involving various stakeholders, the Austrian government on 16 June 2021 submitted an (updated) Restructuring and Insolvency Directive Implementation Act to the Austrian parliament; it passed the Austrian parliament in July 2021 and entered into force on 17 July 2021.

The Austrian Restructuring Code is basically applicable to all entrepreneurs excluding the financial sector.<sup>3</sup> It should give the debtors the opportunity to achieve a turnaround by means of a restructuring plan during a non-insolvency procedure while generally retaining self-administration. The procedure may only be initiated upon application of the debtor and requires a likelihood of insolvency of the debtor.<sup>4</sup> The application must be accompanied by various items of documentation, in particular by a restructuring concept, which must be expanded to a restructuring plan within 60 days.<sup>5</sup>

The restructuring plan should regulate the reorganisation measures and contributions of the creditors concerned (notably, claims of employees are excluded; they remain unaffected by the restructuring). The restructuring plan is voted on in creditor classes; a double majority (head and claim majority) within each creditor class is required for acceptance. If the majorities are not reached, the approval of the dissenting creditor classes can be replaced by a (court-approved) cross-class cramdown (including minority protection).<sup>6</sup> If only financial creditors are affected, of whom a large majority has already approved the restructuring plan, the debtor can apply for a simplified procedure.<sup>7</sup>

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3 Section 2 Austrian Restructuring Code.

4 Section 1 Austrian Restructuring Code.

5 Section 8 Austrian Restructuring Code.

6 Section 32 et seqq. Austrian Restructuring Code.

7 Section 45 Austrian Restructuring Code.

### iii Main effects of the opening of insolvency proceedings

#### *General*

Once insolvency proceedings are opened, the debtor loses its right to dispose assets that belong to the estate. Any obligations of the debtor that are not due at the time of the opening of the insolvency proceedings are accelerated and assumed to be due.

Creditors may not initiate or continue legal actions – specifically enforcement actions – against the debtor. Exceptions are as follows:

- a* legal proceedings that do not affect the debtor's estate;
- b* proceedings relating to creditors with a right to segregate assets and creditors with existing rights to separate satisfaction (see below);
- c* proceedings relating to claims disputed by the administrator; and
- d* legal proceedings resulting from transactions concluded after the opening of the insolvency proceedings.

In the first exceptional case, legal action may be brought or continued against the debtor; in all other cases, the plaintiff must bring the action against the debtor's estate represented by the administrator.

#### *Contracts*

The opening of insolvency proceedings does not terminate existing contracts automatically. Nevertheless, the administrator may choose whether or not to fulfil contracts that:

- a* were agreed between the contractual parties prior to the opening of insolvency proceedings; and
- b* were not fully satisfied by both parties prior to the opening of the insolvency proceedings.

The other contractual party may request the court to set a deadline for the administrator to make this decision. Where the administrator does not respond in a timely manner, contracts are deemed terminated. If the administrator chooses to terminate the contract, the other contracting party may file a claim for damages resulting from such termination as a creditor in the insolvency proceedings, in which case he or she will receive the respective quota.

Contractual agreements that grant one contractual party the right to terminate the agreement in the event of insolvency are void.<sup>8</sup>

Contracts that are potentially necessary for the continuation of the debtor's business may not be terminated during a six-month period following the opening of insolvency proceedings, unless there is a compelling reason to do so. In this context, the mere worsening of the debtor's economic situation is not sufficient, and neither is late payment by the debtor of receivables that have become due and payable prior to the opening of insolvency proceedings. An exception is made only if the fulfilment of the contract would be detrimental to the economic situation of the creditor, with respect to employment agreements (to which a special termination regime applies) and credit agreements.

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<sup>8</sup> Exceptions apply for certain financial instruments such as derivative contracts.

### ***Priority of creditors' claims***

Austrian law distinguishes between secured and unsecured creditors.

#### *Secured creditors*

Secured creditors are creditors:

- a* with a right to segregate assets; and
- b* creditors with existing rights to separate satisfaction.

A creditor's right to segregate assets usually refers to assets in the creditor's property that are in the possession of the debtor. Creditors with a right to segregate assets are generally not affected by insolvency proceedings. The rightful owner of the property may bring an action against the administrator, respectively the debtor, (in restructuring proceedings where the debtor retains the right to self-administration – see below) for the return of its property.

A creditor's right to separate satisfaction concerns creditor security rights over assets of the debtor. Creditors with a right to separate satisfaction only take part as insolvency creditors (unsecured creditors – see below) to the extent their claims exceed the value of the secured assets.

Secured creditors may be barred by the court from enforcing their rights in respect of security for a maximum period of six months (as determined by the court) following the opening of insolvency proceedings, if such enforcement would jeopardise the continuation of the debtor's business and provided that such prohibition would not cause severe economic damage to the secured creditors.

#### *Unsecured creditors*

Unsecured creditors' claims must be filed as insolvency claims in order to take part in the insolvency proceedings. In this context, obligations of the debtor that are not due at the time of commencement of the insolvency proceedings are deemed accelerated and due for the purpose of the proceedings.

All unsecured creditors, whose claims are recognised, receive the same pro rata quota of their insolvency claim. As a class, they are subordinate to administrative expenses, consisting, generally, of the costs of the proceedings (including the remuneration and reimbursement awarded to the creditors' committee and the special creditors' associations), the fees of the administrator, and claims for labour, services and goods furnished to the estate after the commencement of the proceedings, and the rights of secured creditors to the extent the respective claims are secured by assets subject to security interests.

## **iv Insolvency procedures**

### ***Bankruptcy proceedings***

Bankruptcy proceedings usually lead to a realisation or winding up of the debtor's estate. The proceeds remaining after the satisfaction of administrative expenses and secured claims (see above) are subsequently distributed among the (unsecured) creditors on a pro rata basis.

In bankruptcy proceedings, an administrator is appointed by the court. At the beginning of bankruptcy proceedings, the administrator provides an overview of the debtor's assets and establishes whether the debtor's business can be continued. Generally, Austrian insolvency law follows the concept of reorganisation instead of the realisation of the debtor's assets. Only if the continuation of the debtor's business would increase the loss of creditors,

the debtor's business is closed, and its estate liquidated under the supervision of the court. After the proceeds of such liquidation have been distributed, the bankruptcy proceedings are terminated by court order.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. Therefore, creditors whose claims have been recognised by the bankruptcy administrator, or after being disputed by the administrator, and confirmed by a court judgment, may bring actions against the debtor regarding the unsettled portion of their claims even after bankruptcy proceedings have been terminated. However, with corporate debtors, bankruptcy will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

The bankrupt debtor may also apply for a restructuring scheme in the course of bankruptcy proceedings. In the application, the debtor has to submit a proposal for the satisfaction of at least 20 per cent of all insolvency debts within a maximum period of two years.<sup>9</sup> Administrative expenses have to be paid in full and the rights of secured creditors remain in principle unaffected. Usually, such a proposal presumes that the debtor's business can be continued. After a preliminary formal examination by the court,<sup>10</sup> the creditors decide at a creditors' hearing on the acceptance of the debtor's proposal. In this regard a quorum of both a simple majority of the creditors attending the hearing and a simple majority based on the value of their claims is required.<sup>11</sup>

The quota of 20 per cent is a statutory minimum requirement for any restructuring scheme and needs to be proportionate to the debtor's actual economic and financial standing. Depending on the circumstances of the case, it may be necessary to offer a proposal with a higher quota or shorter payment period in order to obtain the creditors' acceptance. In practice, creditors usually request a payment plan that sets forth instalments, starting with a first payment immediately after the acceptance of the restructuring scheme.

Following the creditors' acceptance, the court confirms the restructuring scheme in case no grounds for denial are given.<sup>12</sup> Once the debtor has fulfilled the restructuring scheme, it is discharged of its debts. Completed restructuring schemes are also effective against creditors who did not accept the proposal – respectively those who did not take part in the insolvency proceedings.<sup>13</sup>

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9 Section 141 Austrian Insolvency Act.

10 Section 141 Austrian Insolvency Act. An application for a restructuring scheme is dismissed, inter alia, in the case of a final conviction of the debtor – or, in the case of a corporate debtor, (one of) its managing directors – for a fraudulent bankruptcy offence (Section 156 Austrian Criminal Code).

11 Section 147 Austrian Insolvency Act.

12 Section 152a Austrian Insolvency Act. A reason for denial is the non-payment of priority claims or of the bankruptcy administrator's compensation.

13 Section 156 Austrian Insolvency Act.

### ***Restructuring proceedings (under the Austrian Insolvency Act)***

In addition to applying for a restructuring scheme during already initiated bankruptcy proceedings, debtors may also apply for the opening of restructuring proceedings (as an alternative to bankruptcy proceedings). In this context, only the debtor may file for the opening of restructuring proceedings (a creditor's application for restructuring proceedings is not possible).<sup>14</sup> There are two types of restructuring proceedings available:

- a* a procedure where a bankruptcy administrator is appointed; and
- b* a procedure where the debtor retains the right to self-administration.

In both cases, the application needs to contain a restructuring proposal, with a minimum quota of 20 per cent of all debts needing to be satisfied within a period of two years in the first (i.e., no self-administration) and of 30 per cent in the second case (i.e., self-administration). In the course of restructuring proceedings, the debtor's business may only be liquidated if the debtor's restructuring proposal has not been accepted by the creditors within 90 days of the opening of the proceedings.

In restructuring proceedings where a bankruptcy administrator is appointed, the debtor loses control over its business and the court-appointed insolvency administrator controls all decisions. The procedure follows the process for restructuring schemes as described above. If the restructuring proposal is not accepted by the creditors, the court will reclassify and continue the proceedings as bankruptcy proceedings.<sup>15</sup>

In the case of restructuring proceedings where the debtor retains the right to self-administration, the debtor retains legal capacity to act and control over the business with supervision of a court-appointed restructuring administrator. Certain material actions and transactions require the consent of a restructuring administrator or the court. The right to self-administration may be withdrawn; that is, if action by the debtor could lead to a disadvantage for creditors. In this instance, the restructuring proceedings would again be reclassified and continued as restructuring proceedings without a debtor's right to self-administration.<sup>16</sup> Proceedings would follow the process for restructuring schemes (see above).

### **v Starting proceedings**

While a petition to open bankruptcy proceedings may be filed either by the debtor or a creditor, a petition for the commencement of restructuring proceedings may only be filed by the debtor.

In general, the management of a corporate entity is required to file for bankruptcy proceedings immediately, without culpable delay, as soon as it becomes apparent that the company is illiquid (liquidity gap of more than 5 per cent) or over-indebted (liabilities exceed value of assets based on a liquidation status and no positive continuation prognosis exists), but at the latest within 60 days of becoming insolvent (in exceptional cases, such as the covid-19 pandemic, this period is prolonged to 120 days).<sup>17</sup>

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14 Section 167(1) Nos. 1–2 Austrian Insolvency Act.

15 Section 167 et seqq. Austrian Insolvency Act.

16 Section 170 Austrian Insolvency Act.

17 Section 69(1) to (2a) Austrian Insolvency Act.

If a creditor attempts to put the debtor into (involuntary) bankruptcy, the creditor must provide evidence that the following statutory requirements are met:

- a* existence of a claim against the debtor: the creditor's claim must be sufficiently specified and evidenced. In general, Austrian law does not require a final and enforceable judgment. Austrian legal practice, however, shows that there is the risk that a creditor's application, which is not based on a final and enforceable judgment, may be successfully objected to by the debtor; and
- b* insolvency of the debtor: the creditor must show that the debtor is insolvent – that is, over-indebted or illiquid.

The creditor that applies for the opening of insolvency proceedings bears the burden of proof that the requirements set forth above are met. Austrian insolvency courts take a strict approach in this regard. In cases of over-indebtedness, it can be especially difficult for the creditor to convince the court that the debtor is in fact insolvent, as the creditor often does not have substantial information on a debtor's financials. Therefore, creditor's petitions to open insolvency proceedings are in most cases based on the ground of illiquidity.

In the case of an application by the debtor, the court generally decides within a few days whether insolvency proceedings are opened. An application filed by a creditor will be served on the debtor and the debtor is given the opportunity to raise objections. In most cases, the insolvency court also schedules an oral hearing to give the debtor's managing directors an opportunity to be heard. The debtor may also file a restructuring plan in order to achieve that restructuring proceedings are opened instead of bankruptcy proceedings.

Insolvency proceedings are commenced by court decision if the court concludes:

- a* the criteria for insolvency are fulfilled; and
- b* the debtor's estate comprises sufficient assets to cover the initial costs of the insolvency proceedings (usually a deposit of €4,000 is required).

Court decisions on the opening or denying of insolvency proceedings can be appealed by any party whose rights are adversely affected. Appeals must be filed within a time period of 14 days following the publication of the court decision on the insolvency database.

## **vi Control of insolvency proceedings**

Insolvency proceedings are generally controlled by the administrator and the competent insolvency court. In addition, creditors have certain rights of control:

### ***Insolvency court***

The insolvency court decides on the opening and termination of insolvency proceedings and takes all main decisions during ongoing proceedings. The insolvency court appoints the administrator and establishes – if provided for – a creditor's committee. Certain actions in the insolvency proceedings are subject to the court's approval – that is, the sale of the debtor's business or the sale of a substantial portion of the debtor's assets.

### ***Insolvency administrator***

The insolvency administrator is appointed by the court and has a central oversight and management function in insolvency proceedings. Administrators primarily represent the creditor's interests.

Usually, insolvency administrators are chosen from a list of potential appointees.<sup>18</sup> Most of the administrators appointed in Austria are attorneys.

The duties of a bankruptcy administrator – in both bankruptcy and restructuring proceedings – inter alia are as follows:

- a* assessment of the debtor's economic situation and determining reasons that led to the debtor's insolvency;
- b* the preparation of an inventory, listing the debtor's assets and liabilities as of the date of the commencement of the insolvency proceedings; and
- c* representation in all legal disputes concerning the debtor's estate.

In bankruptcy proceedings, a bankruptcy administrator must additionally:

- a* establish whether debtor's business can be continued or, if applicable, reopened (at least for a limited period);
- b* assess whether a restructuring scheme is possible and would be in the common interest of the creditors; and
- c* liquidate the debtor's estate.

### ***Creditors***

Creditors also have certain rights of control in insolvency proceedings as the creditors' committee needs to approve certain actions taken by the administrator. A creditor's committee is, however, not established in all insolvency proceedings but rather in complex and large-scale cases.

### **vii Measures taken by the legislature in the context of the covid-19 pandemic**

The efforts by the Austrian legislature to contain the global covid-19 pandemic brought some changes to the Austrian insolvency and restructuring regime. The Austrian legislator, inter alia, enacted the following measures.<sup>19</sup>

- a* An extended period to file for insolvency is applicable: according to the Austrian Insolvency Act, a debtor generally obliged to file for insolvency without undue delay, but at the latest within 60 days from the date grounds for insolvency are established (illiquidity or over-indebtedness (see above)). In the event of natural disasters, such as earthquakes, floods, storms or avalanches, Austrian law provides for an extended filing period of 120 days. Through the Austrian Second Covid-19 Act, the legislator makes it clear that the already existing rules providing for this extended 120-day period shall also apply in the event of an epidemic or a pandemic.
- b* Over-indebtedness occurring after 1 March 2020 was suspended as a ground to file for insolvency during the period from 1 March 2020 to 30 June 2021. Furthermore, creditors were not able to file for insolvency of the debtor based on over-indebtedness during that time. If there is over-indebtedness on 30 June 2021, the debtor is obliged

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18 The list of potential appointees is posted on the following website of the Federal Ministry of Justice: [www.insolvenzverwalter.justiz.gv.at](http://www.insolvenzverwalter.justiz.gv.at).

19 Federal Law Gazette I No. 16/2020; Federal Law Gazette I No. 24/2020, latest amendment Federal Law Gazette I No. 72/2022; Federal Law Gazette I No. 58/2020, latest amendment Federal Law Gazette I No. 72/2022.

to file for insolvency without undue delay, but at the latest within 60 days of the end of 30 June 2021 or 120 days after the occurrence of over-indebtedness, whichever period ends later.

### **viii Special regimes**

Under Austrian law, special insolvency regimes exist for banks,<sup>20</sup> insurance companies,<sup>21</sup> investment companies<sup>22</sup> and cooperatives.<sup>23</sup>

For banks, special provisions on the recovery and resolution apply (Act on the Recovery and Resolution of Banks). Banks are under the obligation to implement appropriate conditions and procedures, in the form of restructuring plans, to ensure that restructuring measures can be taken in a timely manner in a crisis scenario. Such restructuring plans must be renewed at least once a year and need to be submitted to the Financial Market Authority (FMA).<sup>24</sup>

Insurance companies, banks and investment companies cannot file for opening of bankruptcy proceedings themselves but must notify the FMA of their illiquidity or over-indebtedness. The FMA is subsequently obliged either to file for opening of bankruptcy proceedings or, if applicable, for placement under court-supervised management for a maximum period of one year.<sup>25</sup>

Austrian law does not provide for a procedure on insolvency regarding company groups. Instead each group entity must be evaluated individually. Consequently, individual insolvency proceedings must be opened regarding each group entity and possibly different administrators are appointed.

### **ix Cross-border issues**

The relationship with respect to EU Member States (except Denmark, to which the Regulation does not apply) is governed by the Regulation (EU) 2015/848 (Insolvency Regulation).<sup>26</sup> The relationship with all other countries (i.e., non-EU countries and Denmark) is solely regulated by the Austrian Insolvency Act.

Insolvency proceedings within the application of the Insolvency Regulation are opened in the Member State in which the debtor has its centre of main interest (COMI). Such proceedings embrace the debtor's asset in all other EU Member States (except Denmark) and are recognised in the other Member States.

The opening of foreign insolvency proceedings other than those governed by the Insolvency Regulation does not prevent the commencement of (additional) Austrian insolvency proceedings. Generally, foreign insolvency proceedings in respect of non-EU countries (and Denmark) are recognised if:

- a the centre of main interests of the insolvent debtor is located abroad;

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20 Section 81 et seqq. Austrian Banking Act.

21 Section 307 et seqq. Austrian Insurance Supervision Act 2016.

22 Section 77 et seqq. Austrian Securities Supervision Act 2018.

23 Section 1 et seqq. Austrian Cooperative Insolvency Act 2010.

24 Section 8 et seqq. Act on the Recovery and Resolution of Banks.

25 Banks and investment companies are also entitled to file for placement under court-supervised management themselves.

26 For insolvency proceedings opened before 26 July 2017, the Insolvency Regulation 1346/2000 continues to apply.



- b the foreign insolvency proceedings are, in principle, comparable to Austrian insolvency proceedings; and
- c recognition does not result in a violation of Austrian *Ordre Public*.<sup>27</sup>

If such insolvency proceedings are recognised, a foreign administrator has the same powers in Austria as in his or her own jurisdiction. However, in exercising his or her powers, the administrator must obey Austrian law. In particular, employment law matters (e.g., notification duties) need to be considered.<sup>28</sup>

Foreign insolvency proceedings are published on the online insolvency database of the Ministry of Justice.<sup>29</sup>

## II INSOLVENCY METRICS

### i Metrics for 2021

In 2021, the number of corporate insolvencies remained at the previous year's level (+/- 0 per cent). A total of 3,304 insolvent companies were registered in 2021, which is less than 40 per cent compared to the 2019 figure. However, the number of proceedings opened in 2021 increased by 14.2 per cent to 2,060 cases in comparison to 2020. The number of proceedings not opened due to lack of assets fell by 20.8 per cent compared to 2020. Overall, 9,900 employees (compared to 2020, this number dropped by 39.3 per cent) were affected by the insolvencies of their employers. The estimated insolvency debts decreased considerably by 42.4 per cent to €1.761 million, although in 11 cases, the debt was more than €20 million.<sup>30</sup>

An analysis of sectors most affected by insolvencies in Austria traditionally ranks the top three sectors by cases and by liabilities. Over the years and due to the covid-19 pandemic, there have been hardly any surprises or changes because of the specific nature of the respective businesses (capital intensity) and the total number of companies active in these sectors. These three sectors are the hotel and restaurant sector, the construction sector and the business-related services sector (including all service companies, real estate businesses and holding companies).

Owing to increasing procurement costs and supply shortages,<sup>31</sup> it is the construction sector that occupied the position with the highest amount of insolvency cases in Austria in 2021, followed by the business-related services sector and the hotel and restaurant sector.<sup>32</sup> In 2020, the business-related services sector occupied both the highest number of bankruptcies and the highest number of liabilities.<sup>33</sup>

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27 Cf. Section 240 Austrian Insolvency Act.

28 Cf. Section 241 Austrian Insolvency Act.

29 <http://www.edikte.justiz.gv.at/>.

30 Kreditschutzverband 1870, final insolvency statistics for 2021, available (in German) at [https://www.ksv.at/KSV1870\\_Insolvenzstatistik\\_Unternehmen\\_2021\\_final](https://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_2021_final).

31 Cf. Baumeisterverband, Steigende Beschaffungskosten und Lieferengpässe, at <https://www.baumeisterverband.at/>.

32 Kreditschutzverband 1870, final insolvency statistics for 2021, available (in German) at [https://www.ksv.at/KSV1870\\_Insolvenzstatistik\\_Unternehmen\\_2021\\_final](https://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_2021_final).

33 Kreditschutzverband 1870, final insolvency statistics for 2020, available (in German) at [https://www.ksv.at/KSV1870\\_Insolvenzstatistik\\_Unternehmen\\_2020\\_final](https://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_2020_final).

## ii Metrics for the first half of 2022

The current (partly estimated) figures for the first half of 2022 on corporate insolvencies show a total increase of 117.9 per cent (including proceedings that have not been opened due to a lack of assets) compared to the first half of 2021, and thus the turnaround at the end of 2021 with respect to the growing insolvency rate continues. The number of proceedings opened in the first half of 2022 increased by 95.4 per cent compared to the first half of 2021. At the same time, the estimated liabilities increased by 60.5 per cent to €629 million. Furthermore, 7,000 employees are affected by the insolvencies of their employers, which is nearly twice as much as in the first half of 2021.

This course of development proves that the governmental measures, to minimise the economic effects of the global pandemic, made it possible to postpone insolvency. However, most governmental measures expired at the end of September 2021. It remains to be seen whether the economic foundation of various corporations is stable enough for their continued existence.<sup>34</sup>

## III PLENARY INSOLVENCY PROCEEDINGS

Examples of the most significant, recent or pending plenary insolvency proceedings within the Austrian jurisdiction are covered in the following.

### i Anglo Austrian AAB AG (formerly Meinel Bank)

Insolvency proceedings against Anglo Austrian AAB AG (AAB) were opened on the 2 March 2020 following AAB's petition. AAB, formerly named Meinel Bank AG, was founded by the Meinel family in 1923.<sup>35</sup>

AAB hit the headlines due to allegations of various difficulties with regulatory authorities, eventually leading to the withdrawal of the banking licence. Owing to the withdrawal of the banking licence, a dispute arose whether the AAB, which filed for insolvency in the first place, was competent to do so. Owing to the special regulations applicable in relation to banks, the authority to file for the opening of insolvency proceedings generally lies with the FMA (see above). The FMA repeatedly argued that AAB was no longer a bank following the withdrawal of its licence and would therefore not be subject to the special insolvency regime applicable to banks.

In this regard, the Austrian Supreme Court overruled lower-instance decisions and held that the monopoly on filing bankruptcy petitions for banks lies with the FMA – even after the banking licence had been revoked. Following this decision and a petition to open insolvency proceedings filed by the FMA, the Vienna Commercial Court decided that the effects triggered by the decision to open insolvency proceedings dated 2 March 2020 will remain in place.<sup>36</sup> In February 2021, it was decided to finally close the operation of AAB.<sup>37</sup>

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34 Kreditschutzverband 1870, insolvency estimation for the first half of 2022, available (in German) at [https://www.ksv.at/KSV1870\\_Insolvenzstatistik\\_Unternehmen\\_1HJ2022\\_HR\\_pdf](https://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_1HJ2022_HR_pdf).

35 DerStandard, Ehemalige Meinel Bank wird ganz zugedreht, available at <https://www.derstandard.at/story/2000124413813/ehemalige-meinel-bank-wird-ganz-zugedreht>.

36 Kreditschutzverband 1870, insolvency cases, Anglo Austrian AAB AG (form. Meinel Bank), available (in German) at <https://www.ksv.at/presse/laufende-insolvenzfalle/anglo-austrian-aab-ag>.

37 Insolvenzdatei, insolvency cases, available (in German) at <https://edikte.justiz.gv.at/edikte/id/idedi8.nsf/suchedi?SearchView&subf=e&SearchOrder=4&SchuldnerS=aab&BMAZ=NUL&ftquery=&query>

In May 2022, the insolvency administrator drew his first positive interim result regarding the realisation of assets. Despite the complex bankruptcy process, it was possible to generate an initial interim distribution to the Einlagensicherung Austria GesmbH (the entity administering the deposit protection) of roughly 39 per cent.

Owing to the applicable provisions of the Act on the Recovery and Resolution of Banks, claims of the deposit protection have priority over the claims of other creditors. The deposit protection has an insolvency claim that amounts to €59 million. Whether the remaining creditors will receive a quota payout is still uncertain.<sup>38</sup>

## ii Autobank AG

With registered claims of around 208 creditors, amounting to €126.2 million, the insolvency of the Autobank AG ranks among the more prominent insolvency cases within Austria in 2021.<sup>39</sup> For the Einlagensicherung Austria GesmbH (the entity administering the deposit protection),<sup>40</sup> insolvency claims in the amount of €107 million were filed.

The stock corporation Autobank AG was founded in 1991 by the Tarbuk group, which was one of the largest Austrian car dealerships, and by the then Ersten Österreichischen Spar-Casse. The car dealership wanted to benefit from the then flourishing car leasing business. In 2010, the bank was listed on the stock exchange by German investors.

However, the Autobank AG advertised in the past with significantly more attractive savings interest and generated losses. Furthermore, the business model, providing car loans for unspecified brands, was not lucrative, since large car brands have their own main bank with partly better credit terms.<sup>41</sup>

On 23 August in 2021, insolvency proceedings were opened following an application of the FMA. On 3 March 2022, the insolvency administrator submitted the first interim distribution draft, which provides for a quota payout of almost 53 per cent. A termination of the proceedings is not expected before 2024.<sup>42</sup>

## iii Polytechnik Luft- und Feuerungstechnik GmbH

Polytechnik Luft- und Feuerungstechnik GmbH is a family-owned company in lower Austria, Weissenbach an der Triesting, and was founded in 1965. The company is a global leader in the planning and construction of biomass combustion plants for neutral energy production

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=%28%5BSchuldnerS%5D%3D%28aab%29%29#1627033015106.

38 Kreditschutzverband 1870, insolvency cases, Anglo Austrian AAB AG (form. Meinel Bank), available (in German) at <https://www.ksv.at/presse/laufende-insolvenzfaelle/anglo-austrian-aab-ag-ehem-meinel-bank-zwischenausschuettung>.

39 Kreditschutzverband 1870, insolvency cases, Autobank AG, available (in German) at <https://www.ksv.at/presse/laufende-insolvenzfaelle/konkursverfahren-autobank-ag-pruefungstagsatzung>.

40 According to the Act on the Recovery and Resolution of Banks claims of the deposit protection have priority over the claims of other creditors.

41 Wiener Zeitung, Autobank nun Fall für den Masseverwalter, available at <https://www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/2117733-Autobank-nun-Fall-fuer-den-Masseverwalter.html>.

42 Kreditschutzverband 1870, insolvency cases, Autobank AG, available (in German) at <https://www.ksv.at/presse/laufende-insolvenzfaelle/konkurs-autobank-ag-zwischenausschuettung>.

as well as in heat and power co-generation plants. Since 2017, the company has also been producing biochar production plants and recently the product range was expanded to include a new grate technology for low-emission energy production.<sup>43</sup>

On 31 January 2022, restructuring proceedings, where a bankruptcy administrator is appointed, were opened. It was the biggest insolvency in the first quarter of 2022. Around 370 creditors registered claims and 108 employees were affected by this insolvency. The liabilities amount to €77 million.

On 26 April 2022, the restructuring plan was approved by the creditors with an overwhelming majority.

The following terms, regarding the restructuring plan, were agreed upon:

- a* a quota of 20 per cent must be paid, of which a partial quota of 2.5 per cent must be paid to the bankruptcy administrator;
- b* an additional 2.5 per cent is due within 6 months;
- c* another 7.5 per cent is due after 16 months; and
- d* another 7.5 per cent is due after 24 months.

If the restructuring plan is fulfilled, the old debts should be settled by the end of April 2024.

These insolvency proceedings can be seen as a prime example regarding the effectiveness of Austrian insolvency law. Owing to intensive cooperation between the court, the liquidator, the professionally represented debtor, the employee representatives, the insolvency remuneration fund and the creditor associations, it was possible to lay the foundations of restructuring the company. On that basis, the total loss of creditors' claims was prevented and roughly 100 jobs were saved.<sup>44</sup>

The reason for the insolvency was mainly the covid-19 pandemic, since it caused delays in the processing and billing of orders, price increases and longer delivery times on the procurement market. Because of fixed date transactions, the price increases could not, or only partially, be passed on to customers. Moreover, also the prices for transport and logistics increased.<sup>45</sup>

#### **iv CPI Beteiligungen GmbH**

CPI Beteiligungen GmbH, CPI Bauträger und Immobilienverwaltung and CPI Hausverwaltung, all part of the CPI group (not to be confused with CPI Property Group, which is not related to the CPI group), filed for insolvency on the 7 June 2022. According to information provided by the debtor, the CPI group consists of over 160 companies, which are primarily involved in real estate development, property management, and the purchase and sale of real estate in Austria and Germany.

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43 Kurier, Millionenpleite eines namhaften Anlagenbauers, Kurier, available at <https://kurier.at/wirtschaft/millionenpleite-eines-weltweit-fuehrenden-biomasseanlagen-bauers/401889293>.

44 Kreditschutzverband 1870, insolvency cases, Poly-technik Luft- und Feuerungstechnik GmbH, available (in German) at <https://www.ksv.at/presse/laufende-insolvenzfaelle/polytechnik-luft-feuerungstechnik-gmbh-sanierungsplan>.

45 Kurier, Millionenpleite eines namhaften Anlagenbauers, Kurier, available at <https://kurier.at/wirtschaft/millionenpleite-eines-weltweit-fuehrenden-biomasseanlagen-bauers/401889293>.

CPI Beteiligungen GmbH mainly focused on the management of its equity holdings. The liabilities amount to roughly €86 million; however, the existence of further liabilities is not excluded by the debtor. The liabilities of all three insolvent companies amount to €132.7 million.<sup>46</sup>

Shortly after the opening of the insolvency of these three companies, CPI Marketing GmbH<sup>47</sup> and CPI Immobilien GmbH (the central parent company of the CPI group) also entered into insolvency.<sup>48</sup>

#### IV ANCILLARY INSOLVENCY PROCEEDINGS

There have not been any considerable ancillary insolvency proceedings opened in Austria over the past 12 months.

#### V TRENDS

The developments of the past few months confirm that company insolvencies have been, due to governmental measures, at a very low level for almost two years. However, most of these governmental measures expired at the end of September 2021, and thus the upcoming months will show just how stable are the economic foundations of numerous companies.<sup>49</sup>

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46 Kreditschutzverband 1870, insolvency cases, CPI Beteiligungen GmbH, available (in German) at <https://www.ksv.at/en/insolvenzfaelle/cpi-beteiligungen-gmbh-183090>; <https://www.ksv.at/en/insolvenzfaelle/cpi-bautraeger-und-immobilien-verwaltung-gmbh-183097>; <https://www.ksv.at/en/insolvenzfaelle/cpi-hausverwaltung-gmbh-183096>.

47 Insolvenzdatei, insolvency cases, available (in German) at <https://edikte.justiz.gv.at/edikte/id/idedi8.nsf/suchedi?SearchView&subf=eid&SearchOrder=4&SearchMax=4999&retfields=-%5BSchuldnerS%5D=cpi-BMAZ=NUL&ftquery=&query=%28%5BSchuldnerS%5D%3D%28cpi%29%29#1662964597838>.

48 <https://www.ksv.at/insolvenzfaelle/cpi-immobilien-gmbh-183822>.

49 Kreditschutzverband 1870, insolvency statistics for the first quarter of 2022, available (in German) at [https://www.ksv.at/KSV1870\\_Insolvenzstatistik\\_Unternehmen\\_QI2022\\_final](https://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_QI2022_final).

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