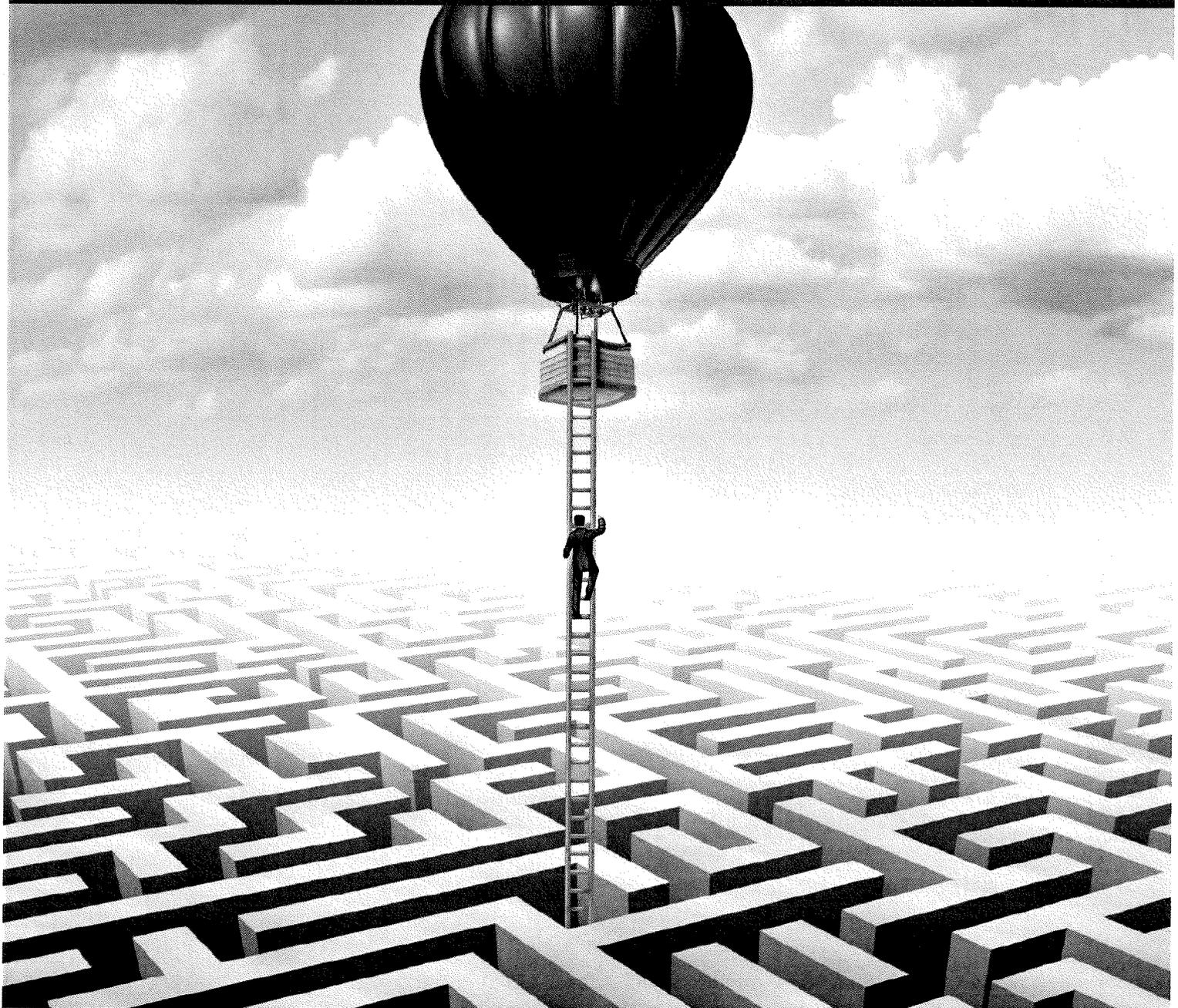


BANKRUPTCY & RESTRUCTURING

ANNUAL REVIEW 2015



FINANCIER
WORLDWIDE corporate finance intelligence



ALEXANDER ISOLA
GRAF & PITKOWITZ RECHTSANWÄLTE GMBH



Q HOW WOULD YOU DESCRIBE CORPORATE BANKRUPTCIES AND INSOLVENCIES IN AUSTRIA OVER THE LAST 12-18 MONTHS? ARE YOU SEEING MORE OR FEWER BUSINESS FAILURES IN GENERAL?

ISOLA: We believe that the directors of distressed companies are well aware of both the opportunities and threats the Austrian insolvency regime provides for debtors. Typically, companies try to restructure their debts out of court before material insolvency occurs and filing for insolvency becomes mandatory. In general, failing firms are well prepared and often manage to restructure, whether in or out of court, mostly with the help of new external funds. In recent years, the numbers of business failures have been rather stable, if not declining, notwithstanding the extraordinary event of the Alpine group insolvency – Austria's largest insolvency case since World War II. In 2015, due to the negative commercial indicators – a rise in unemployment and therefore a reduction in spending capacity – we expect a moderate rise in insolvencies.

Q IN YOUR EXPERIENCE, WHICH SECTORS SEEM TO BE DEMONSTRATING STRUCTURAL WEAKNESSES LEADING TO MORE RESTRUCTURING EFFORTS?

ISOLA: In Austria, the most vulnerable sectors in 2014 were trade with 1045 insolvencies, construction with 990 insolvencies and gastronomy with 828 insolvencies. These sectors are largely dependent on the spending capacity of the public, while at the same time being in considerable need of working capital. Traditional trading and construction companies often have to finance outdated, bloated structures. Over-the-counter trade seems to suffer from the rise of online mail-orders. The construction sector struggles because both the private and the public sector cut their investments. In general, we expect to see consolidation in these and other – mainly industrial – sectors, either resulting from outdated business-models or an excess of suppliers.



Q TO WHAT EXTENT ARE TROUBLED COMPANIES ABLE TO REFINANCE AND RENEGOTIATE EXISTING DEBT STRUCTURES IN THE CURRENT MARKET?

ISOLA: A recent decision of the Austrian Supreme Court has made it especially difficult for distressed companies to negotiate debt restructuring with banks. The court held, in principle, that granting an unsecured or not fully secured loan, under certain circumstances, is a breach of trust, conducted by the loan-granting bank authorities against the obliged bank. Thus, the banks' loan policies have become significantly stricter and subsequently, nowadays it is most difficult for distressed companies to renegotiate debt structures or the prolongation of credit lines, not to speak of new loans. This has shifted the focus toward private equity and investors.

Q HAVE THERE BEEN ANY RECENT LEGISLATIVE OR REGULATORY DEVELOPMENTS, INCLUDING HIGH PROFILE CASES, IN AUSTRIA THAT WILL HAVE A SIGNIFICANT EFFECT ON BANKRUPTCY AND RESTRUCTURING?

ISOLA: In 2013, Austria saw its largest insolvency case since World War II: the Alpine group, the country's then second-largest building group. The company's debt amounted to €3bn, with some 5000 employees affected. Luckily, the employees have found new jobs rather quickly. One major task of this insolvency was the liquidation of Alpine's many joint-ventures under civil law or *Gesellschaft bürgerlichen Rechts* (GesBR), which are typical structures in Austria's building sector when various building companies join to complete a larger project. This has led to new legislation on GesBR, stating, for example, that they are deemed dissolved if one of the members becomes insolvent, and the remaining partners can decide whether to continue the GesBR. Another major legal development was the implementation of the Act on restructuring or winding-up of banks – *Bankensanierungs- und Abwicklungsgesetz* (BaSAG) – which provides regulations for failing banks, especially the all-new concept of bail-in of shareholders and creditors. The prominent HETA Asset Resolution AG, the publicly owned asset-resolution company of the Hypo Alpe Adria group, a publicly owned bank which would have gone bankrupt were it not for the country's contributions, was the first institution to make use of the BaSAG. Under its regime,

HETA was able to stop its loan and interest repayments lawfully. This resulted in an uproar among its creditors which are believed to be secured by the country's guarantees. We are expecting a good number of lawsuits from institutional creditors and shareholders, who are of the opinion that the BaSAG violates constitutional rights.

Q WHAT TRENDS ARE YOU SEEING IN THE MARKET'S APPETITE TO PURCHASE TROUBLED ASSETS? HOW WOULD YOU DESCRIBE RECENT DISTRESSED M&A ACTIVITY?

ISOLA: Given that it is rather difficult to negotiate restructuring loans with banks since the *Styrian Spirit* decision, today investors are the new number-one addressees for distressed companies. Since the acquisition of distressed companies is one of the few remaining alternatives for attractive returns on investment, there is a range of new market participants who see possibilities in this situation. We are regularly mandated by both new and renowned investors, whose innovative investment approaches often differ from long-known practice, creating an interesting environment for both debtors and banks. In particular, we have seen institutional investors joining with private equity investors to purchase troubled companies as a consortium.

Q WHAT TRENDS ARE YOU SEEING IN CROSS-BORDER OR MULTIJURISDICTIONAL INSOLVENCIES? WHAT ADDITIONAL CHALLENGES DO SUCH ENGAGEMENTS PRESENT?

ISOLA: Cross-border insolvencies are tricky tasks for administrators for various reasons. For example, some countries still have no functional land registries, and often an insolvent company's cash and tangible assets abroad vanish rather quickly. Therefore, networks of independent, qualified lawyers in other countries are important. As far as EU countries are concerned, the situation is significantly simplified thanks to the Council's Regulation on Insolvency Proceedings which provides for jurisdiction rules, automatic recognition of decisions of insolvency courts, and secondary procedures, which can be implemented once an insolvent company has substantial assets in another EU country.



“We are expecting a good number of lawsuits from institutional creditors and shareholders, who are of the opinion that the BaSAG violates constitutional rights.”

Q LOOKING AHEAD,
WHAT DEVELOPMENTS
DO YOU EXPECT TO SEE
IN RESTRUCTURING AND
BANKRUPTCY PROCESSES IN
THE MONTHS AHEAD?

ISOLA: We expect to see the implementation of the Amendment on the European Council’s Regulation on Insolvency Proceedings, which will see a range of improvements to cross-border insolvencies in the EU. The draft will be adopted soon. Major changes will see the extension of the scope of the application of the Regulation and fine-tuning of the jurisdictional rules, as well as improvements to the rules on secondary procedures. Also, since major insolvencies have not taken place this year so far, we expect a good number of interesting cases to be opened in the second half of the year, with attractive opportunities for investors.



GRAF & PITKOWITZ



Dr Alexander Isola

Equity Partner
Graf & Pitkowitz Rechtsanwälte GmbH
+43 316 833 777 0
graz@gpp.at

Dr Alexander Isola M.C.J. (NYU) is one of Austria’s top lawyers in the area of insolvency and restructuring law and an equity partner of Graf & Pitkowitz Rechtsanwälte GmbH, Attorneys-at-law. He and his team of the insolvency and restructuring practice group specialise in insolvency proceedings, criminal bankruptcy law, restructuring law, D&O liability issues and audits, securing of loans, avoidance, capital preservation and equity replacement. Dr Isola’s practice group is known for quick and often unconventional solutions, particularly with regard to publicly commented issues.