Legal 500
Country Comparative Guides 2025

Austria

Restructuring & Insolvency

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Austria.

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Austria: Restructuring & Insolvency

1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Under Austrian law, the following security instruments can be granted over assets: pledges (*Pfand*), transfers of securities (*Sicherungsübereignungen*), assignments of claims for security reasons (*Sicherungszession*) and retention of title (*Eigentumsvorbehalte*). Pledges intend to secure the individual claim of a creditor and entitle the creditor to receive the proceeds of the sale of the pledged property. A pledge of an asset does not change the ownership of the pledged asset, rather ownership remains with the debtor. In contrast, a transfer of security transfers the ownership of the asset from the debtor to the creditor. Subject to the full payment of the debt the creditor will re-transfer the asset to the debtor. An assignment of claims for security reasons occurs, when the debtor assigns its claim against a third party to the creditor.

The valid granting of securities generally requires a valid title and a corresponding act of transfer. Possible underlying titles include not only contracts, but also title by operation of law. What act of transfer is necessary depends on the type of security to be granted. For example, pledges and transfers of securities require registration with the land register where the asset concerned is real property.

Proper establishment of the security is essential in order for the creditor in the insolvency proceedings to have the right to realise the security and receive all proceeds from it. The ineffective establishment of the security means that there is only a claim to the granting of security. However, without proper establishment of the security the secured claim is only an insolvency claim for which the creditor receives a quota.

2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

Secured creditors either have claims of separation to receive assets (*Aussonderungsanspruch*) and/or claims of separation to receive the proceeds of enforcement after sale (*Absonderungsanspruch*). Neither of these claims is affected by the opening of insolvency proceedings – apart from possible voidance claims (*Anfechtung*). The secured creditor merely has to inform the insolvency administrator to assert its claim. If the insolvency administrator does not acknowledge the claim the creditor has to file a lawsuit in order to enforce the senior security.

However, secured creditors are subject to the restraint that no secured claim can be fulfilled within six months from the opening of insolvency proceedings in case such claims might jeopardise the business continuity of the debtor. Only if the enforcement is vital to prevent severe economic disadvantage to the secured creditor may this provision be disregarded.

Notwithstanding this general provision, the issues that may arise in the realisation of the collateral depend on the particular collateral.

- Immovable property must be realised in an auction process. The realisation of pledged property can take place in an out-of-court or in-court procedure. In order to facilitate the realisation, this should take place out-of-court as a matter of principle. Nevertheless, a large number of steps have to be followed and deadlines observed when it comes to realisation (e.g. expert opinion on the value of the property, publication of the auction, confirmation by the insolvency court).
- In the case of assignments of securities, there is a risk of voidance claims by the insolvency administrator, since the assigned claims usually arise shortly before the opening of the insolvency proceedings.

In restructuring proceedings, no creditor, including secured creditors, affected by the restructuring plan may be worse off than in the insolvency proceedings (best-interest-of-creditors test). In this respect, the position of secured creditors in insolvency proceedings and in out-of-court restructuring proceedings is comparable.

3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan

approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

In Austria there are pre-insolvency restructuring proceedings with debtor in possession and two kinds of reorganisation proceedings, either with or without debtor in possession, available to a debtor in distress.

While the requirements for opening these proceedings are similar, there are also important differences.

In all proceedings, the debtor does not necessarily have to be materially insolvent (illiquid or over-indebted). Restructuring proceedings can take place in the event of a likelihood of insolvency. Likelihood of insolvency means in particular that insolvency is imminent, which is presumed if the equity ratio falls below 8 percent and the notional debt repayment period exceeds 15 years. These proceedings, however, are not available to companies that are materially insolvent. Reorganisation proceedings can also be opened if insolvency is imminent, however, as a rule, these proceedings are only opened in the event of material insolvency, which is permissible in this type of proceedings.

Only the debtor has the right to apply for the initiation of these proceedings, not a creditor or any other third party.

However, the type of debt relief differs in the individual proceedings.

In the restructuring proceedings, the debtor must submit a restructuring plan (*Restrukturierungsplan*). The restructuring plan must contain in particular the restructuring measures to be taken, their duration, the reduction and deferral of claims and any new financial support that may be needed. However, the debtor does not have to offer the creditors any specific minimum quota within a certain time period.

If the debtor is not a SME or smaller company, the following classes of creditors have to be established: creditors with secured claims, creditors with unsecured claims, bondholders, creditors in need of protection, in particular creditors with claims of less than EUR 10,000, and creditors of subordinated claims.

The restructuring plan needs to be adopted by affected creditors representing at least 75% of the total amount of the affected claims per class present at the restructuring plan hearing and confirmed by court; then it is legally binding and the debtor is relieved of the obligation to pay to the creditors the amount exceeding the quota.

In February 2025, a vote on a restructuring plan took place – for the first time in Austria – as part of the restructuring plan resolution in the restructuring proceedings of Pierer Industrie AG. This acceptance of the restructuring plan represents a significant milestone in Austrian restructuring practice: For the first time since the law implemented to deal with corporate financial crises came into force in 2021, a restructuring plan has been successfully accepted by creditors.

In order for the provisions of reorganisation proceedings to be applicable, the debtor must submit to the court a reorganisation plan (*Sanierungsplan*) and financial records of the past three years that show the debtor's ability to pay 20% of its debt to unsecured creditors within a period of two years. If the debtor can prove that he is able to pay 30% of its debt within a period of two years, the debtor may additionally apply for debtor in possession.

The approval of a suggested reorganisation plan is subject to a "double majority requirement" of the creditors in the reorganisation plan hearing. The proposal for the reorganisation plan is accepted by the creditors if (i) the majority of the creditors present at the hearing and entitled to vote approves and (ii) if the total sum of claims of the creditors approving the proposal for the reorganisation plan amounts to more than 50% of the total sum of the claims of the creditors present at the hearing. Fully secured creditors are not entitled to vote.

After the creditors have approved the reorganisation plan, the insolvency court also has to confirm the reorganisation plan. There are certain prerequisites that have to be fulfilled so that the court can confirm the reorganisation plan, for example that all creditors are treated equally. Once the reorganisation plan is approved, confirmed and legally binding, the debtor is relieved of the obligation to pay to the creditors the amount exceeding the quota as provided in the reorganisation plan. The effects of the legally binding reorganisation plan also apply to those creditors that did not approve the reorganisation plan or who did not participate at all.

If a debtor defaults on the payment of a quota according to the reorganisation plan, the respective creditor's claim comes into effect again, but only proportional to the unpaid quota.

4. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if

available)?

Financing can be provided by the shareholders or by third parties (such as banks or financial investors). Depending on how the fresh money is made available and which legal provisions apply, there is a ranking for repayment. It is usually the shareholders who provide new financing to the debtor during restructuring proceedings. Generally, shareholders cannot request the repayment of the loans granted to the debtor as long as the debtor is not restructured, in particular if they fall within the scope of the Equity Substitution Act. This repayment ban does not apply if third parties such as banks grant the debtor a loan. The repayment of fresh money from investors depends on whether the money is equity or debt.

5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Austrian restructuring law does not provide for a release of claims against non-debtor parties. In insolvency proceedings, the debt discharging effects of a reorganisation plan in a company with unlimited liability are extended to the shareholder.

6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

No further organization other than the forming of classes of creditors is mandated. The covering of advisory fees of the creditors by the debtor is not prescribed.

7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

Under the Austrian Insolvency Act, a debtor is deemed insolvent, if the debtor is illiquid or over-indebted. According to Austrian case law and commentary, a debtor is illiquid if the debtor lacks the means of payment in order to pay all claims due and will not be able to obtain the necessary means to do so in the foreseeable future. A debtor is over-indebted if the following criteria are met:

- the debtor's liabilities exceed its assets; and
- a positive going-concern prognosis is not feasible.

In distressed situations, even before the existence of illiquidity or over-indebtedness, the legal representatives of the debtor have to take restructuring measures to avert insolvency. Prior to judicial restructuring, out-of-court restructuring steps should be taken when the first signs of a crisis appear. If a debtor is illiquid or over-indebted, the legal representatives are obliged to file for insolvency without undue delay, and generally no later than 60 days after having determined that the debtor is insolvent. If the debtor's insolvency is caused by a natural disaster like an epidemic or pandemic such as the Corona virus, the 60-day period is doubled to 120 days.

If the entity is illiquid or over-indebted and the legal representatives fail to file for insolvency in time, the legal representatives expose themselves to possible civil and criminal charges for impairment of creditors' interests.

8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

In Austria, the following three types of insolvency procedures are available for business entities:

- reorganisation proceedings with debtor in possession: The main focus of these proceedings lies in the continuation of the debtor's business or parts thereof. The debtor retains, generally and subject to certain restrictions, control over the estate's assets and is only monitored by a court-appointed insolvency administrator;
- reorganisation proceedings without debtor in possession: The main focus of these proceedings also is the continuation of the debtor's business, but the insolvency administrator takes control; and
- liquidation (bankruptcy) proceedings: the court-appointed insolvency administrator takes control of the task of selling the estate's assets at a maximum value, with the proceeds being paid out to the creditors.

Reorganisation proceedings with and without debtor in possession, according to the legislation, are to be carried out within three months, whereas bankruptcy proceedings may take up to a few years.

In addition, there is also a restructuring proceeding with debtor in possession that can be opened if there is a

likelihood of insolvency.

9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

The commencement of insolvency proceedings automatically leads to a stay of all legal proceedings by and against the debtor in Austria, which relate to the insolvency assets. The insolvency administrator then decides whether or not to engage in the legal dispute. In the case of legal disputes over claims that are subject to being filed in insolvency proceedings, the proceedings cannot be commenced before the conclusion of the examination hearing.

Whether the opening of insolvency proceedings also causes a stay of legal proceedings within the European Union depends on the law of the EU member state in which the legal proceedings are pending. In addition, enforcement proceedings cannot be commenced or continued due to the opening of insolvency proceedings. However, secured creditors generally are not affected by the commencement of insolvency proceedings.

10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?

Usually, creditors do not take any further action in the insolvency proceedings apart from filing their own claim and participating in the vote on a reorganisation plan, should such a vote take place. Besides this, creditors have various rights of petition and information.

In Austria, it is common for creditors to be represented in the proceedings by one of the four creditor protection associations (*Gläubigerschutzverbände*). These usually carry out the filing of claims and attend the hearings at court. Representation by a creditor protection association is not mandatory, which is why creditors can also file their claims themselves and participate in the proceedings in person or appoint a representative to do so.

Secured creditors are not obliged to file their claims. However, they are regularly also insolvency creditors with parts of their claims, which is why filing is recommended.

For the forms governing the adoption of restructuring and reorganization plans see Question 3.

11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?

In all three types of insolvency proceedings under the Austrian Insolvency Act claims are classified and ranked in the following order of priority:

1. Secured Creditors

The first rank is taken by secured creditors, who either have claims of separation to receive assets and/or claims of separation to receive the proceeds of enforcement after sale (for further details see Question 2).

2. Estate Claims

Ranked behind secured creditors are estate claims (*Masseforderungen*), which are claims that arise after the opening of insolvency proceedings and include the costs of the insolvency proceedings; the expenses of the management and administration of the estate; and claims for labour, services and goods furnished to the estate post-filing. Preferential creditors of estate claims share in such claims on a pro rata basis.

3. Insolvency Claims

The third rank is taken by insolvency claims (*Insolvenzforderungen*), which are claims of unsecured creditors and have to be filed with the competent court within a time period after the opening of insolvency proceedings as fixed by the court. The insolvency administrator and the debtor make a statement on the registered claim as to whether the claim is acknowledged or contested. Those insolvency creditors who filed a claim that was acknowledged by the insolvency administrator also share in such claims on a pro rata basis.

4. Subordinate Claims

In general, subordinate creditors only participate in the insolvency proceedings, if a surplus for distribution is generated. Subordinate claims may arise from

contractual provisions or from statutory provisions.

12. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

Legal acts and transactions that have taken place within certain time periods prior to the opening of insolvency proceedings, and which relate to the debtor's assets, can be challenged by the insolvency administrator.

The general prerequisites for any avoidance under Austrian insolvency law are the following:

- the avoidance results in an increase of the insolvency estate (*Befriedigungstauglichkeit*); and
- the challenged legal act or transaction caused a discrimination of creditors (*Gläubigerbenachteiligung*).

A transaction can be challenged for intent to discriminate (*Benachteiligungsabsicht*), squandering of assets (*Vermögensverschleuderung*), free-of-charge disposal (*unentgeltliche Verfügung*), preferential treatment of creditors (*Begünstigung*) and based on knowledge of illiquidity (*Kenntnis der Zahlungsunfähigkeit*). In the case of avoidance because of preferential treatment of creditors and based on knowledge of illiquidity, another prerequisite is that the debtor is materially insolvent (illiquid or over-indebted). The look-back period is different from provision to provision, ranging from a maximum of ten years for intent to discriminate, to 60 days prior to the commencement of insolvency proceedings for preferential treatment of creditors.

Voidance claims need to be asserted by the insolvency administrator on behalf of the estate within a time period of one year from the opening of insolvency proceedings. Furthermore, the administrator may raise the defence of voidance in claims made against the insolvency estate without any time limit.

If a pre-insolvency transaction is successfully challenged, it is invalid. Thus, the addressee of avoidance is obliged to return the debtor's assets, alternatively to provide value replacement. If the addressee of avoidance has paid any consideration on the basis of the challenged legal transaction, he generally is entitled to reclaim such consideration.

13. How existing contracts are treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

In principle, the opening of insolvency proceedings has no effect on the debtor's contracts; all contracts remain in force. Clauses in contracts that grant a right to terminate the contract when insolvency proceedings are opened are invalid. However, the insolvency administrator, or in certain cases the debtor, has a preferential right of termination.

In reorganisation proceedings with debtor in possession, the debtor is entitled to decide whether to assume or withdraw from existing contracts, but these actions require the approval of the insolvency administrator. The insolvency administrator / the debtor may only decide to assume or withdraw from specific contracts, for example from contracts with a mutual obligation to perform, where not all the parties have fully performed at the time of the opening of the insolvency proceedings. If a contract is assumed, both parties are obliged to continue to perform their obligations.

Contractual provisions that grant the contracting partner of the debtor the right to terminate the contract remain in force. However, the Austrian Insolvency Act stipulates a six-month moratorium in case a contracting partner wants to terminate a contract with the debtor that is essential for business continuation. These contracts may only be terminated for good cause, whereby a deterioration of the economic situation of the debtor or default of payment of claims which were due before the opening of insolvency proceedings are not considered to constitute such good cause.

In general, retention of title provisions also remain in force. Creditors who have been granted a retention of title have claims of separation to receive assets (for details see Question 2).

The possibility of set-off of claims is not affected by the opening of insolvency proceedings if such claims have already been subject to compensation according to general civil law at the time of commencement of insolvency proceedings. However, set-off is not possible for claims that arose within the last six months prior to the commencement of insolvency proceedings if the creditor knew (or negligently did not know) of the debtor's insolvency.

14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

In bankruptcy proceedings as well as reorganisation proceedings without debtor in possession, it is the insolvency administrator's responsibility to realise the debtor's assets. Also, in reorganisation proceedings with debtor in possession, essential realisation measures are reserved for the insolvency administrator, who, however, requires the debtor's consent for realisation. In general, the sale of the debtor's company or parts thereof, of the main movable assets as well as of real property requires the approval of the insolvency court as well as the creditors'committee. As long as reorganisation proceedings are pending, the debtor's business essentially may not be sold.

In general, the purchaser acquires the assets free and clear of third-party claims and liabilities. The release of security does not require the creditor's consent.

Austrian law does not provide for credit bidding or prepackage sales.

15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

Also in times of crisis of the company, managing directors must exercise their duties with the diligence of a prudent businessman. In particular, during a crisis of the company the managing directors must comply with the following duties:

i. In general, the managing directors must convene the general meeting if the welfare of the company so requires. If one-half of the share capital is lost or if the reorganisation criteria pursuant to the Austrian Business Reorganisation Act (equity ratio below 8% and notional debt repayment period of more than 15 years) are met, this must be done immediately.
ii. The managing directors must report without undue delay to the supervisory board on circumstances which are of considerable importance for the profitability or liquidity of the company and to the chairman of the supervisory board, if there is an important reason to do so.
iii. The managing director must deal more intensely with the economic development of the company and take appropriate restructuring measures.
iv. If the company is insolvent pursuant to the Austrian Insolvency Act or the reorganisation criteria pursuant to the Austrian Business Reorganisation Act are met, shareholder loans may not be repaid as long as the company is not restructured.
v. With the onset of material insolvency, the debtor may no longer make any payments, with the exception of those payments that are absolutely necessary to maintain ordinary business operations.
vi. The occurrence of material insolvency triggers the insolvency application period, which generally is 60 days (for details see question 7 above).

If the managing directors breach any of the above-mentioned obligations, they may be liable to the company. Only in exceptional cases may the managing directors be held liable for damage inflicted on the company's creditors, for example for delay in insolvency. Also, shareholders may only be held liable to the company's creditors in exceptional cases, for instance if they lead the managing directors not to apply for the opening of insolvency proceedings, even though the conditions are met.

The risk of directors being liable for the debts of an insolvent debtor because of delay of insolvency can be insured. Liability due to intentional actions is generally excluded in the insurance conditions.

16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

Under Austrian law, restructuring or insolvency proceedings do not have the effect of releasing directors and other stakeholders from liability for previous actions and decisions. There is an exception in the case of a company with unlimited liability: the conclusion of a reorganisation plan at the company also leads to a debt discharge for the shareholder. See also Question 15. Directors are responsible if they do not act with the diligence of a prudent businessman, in particular if they do not take the necessary reorganization measures or

apply for the opening of insolvency proceedings.

17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

As to EU member states, any judgment opening insolvency proceedings passed by a court of a member state must be recognised without any process for recognition in all the other member states from the time that it becomes effective in the member state where the proceedings were opened. The recognition of the decision to open insolvency proceedings in all other EU member states takes place if the debtor has its COMI in one of the member states and the jurisdiction of the respective national court is derived from this. Any other proceedings opened subsequently after the opening of main insolvency proceedings are secondary insolvency proceedings, which only concern the debtor's assets in the member state where the secondary proceedings were opened.

With regard to non-member states, judgments opening insolvency proceedings must be recognised automatically if amongst others the centre of the debtor's main interests is in the state, in which the insolvency proceedings were opened and these proceedings are comparable to Austrian insolvency proceedings. If, however, insolvency proceedings have already been opened in Austria, judgments opening insolvency proceedings in a non-member state are not recognised in Austria.

The UNCITRAL Model Law on Cross Border Insolvency as well as the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgements have not been adopted in Austria yet.

18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

Brexit has only very limited effects insofar as, in addition to the originally applicable Regulation (EU) 2015/848, there are also bilateral agreements and national provisions that provide for the recognition of foreign insolvency proceedings under a comparable system.

19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Debtors incorporated in an EU member state can enter into restructuring or insolvency proceedings in Austria, if they have their centre of main interests (COMI) in Austria. The COMI is the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. If the debtor has its COMI in another EU member state, the insolvency proceedings can only ever be opened as secondary insolvency proceedings. In general, debtors incorporated outside the European Union can enter into restructuring or insolvency proceedings in Austria if they operate a business or have a branch office in Austria.

There can be no country singled out with which Austria has the most cross-border problems. Due to economic relations and a comparable legal (restructuring and insolvency) system, there are many interrelations with Germany. In the restructuring area, the United Kingdom is of particular interest due to a particularly debtor-friendly restructuring culture.

20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

Under Austrian law, a group of companies has no legal capacity and thus is not capable of going bankrupt. The insolvency proceedings must therefore be conducted separately for each individual group company. In order to compensate for any resulting deficits in communication, both national and European law provide for regulations

for improved communication and cooperation. The coordination of the individual insolvency proceedings in the group, both nationally and cross-border, is based on the same provisions. The Austrian Insolvency Act only provides a reference to the provisions of the Regulation (EU) 2015/848. The cooperation between the insolvency administrators among themselves, the insolvency administrators with the insolvency courts and the insolvency courts among themselves is regulated. Under these provisions, the insolvency administrator as well as the insolvency courts shall cooperate with each other to facilitate the effective administration of these proceedings.

There have been no changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023.

21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

So far no steps have been taken to implement the UNCITRAL Model Law on Enterprise Group Insolvency.

22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

On 7 December 2022 the European Commission proposed a new Directive harmonising certain aspects of insolvency law. The draft of the Directive, which is still subject to changes in the legislative process, mainly sets out rules regarding actions for avoidance, tracing of assets belonging to the insolvency estate, pre-pack proceedings, simplified liquidation procedures for microenterprises and creditors' committees.

Overall, the Commission's proposal should not trigger any significant need for change in Austrian insolvency law, except for putting in place frameworks for pre-pack proceedings and simplified liquidation procedures for microenterprises.

23. Is your jurisdiction debtor or creditor friendly and was it always the case?

Austrian insolvency law has become more debtor-friendly in recent years. For example, the minimum rate that a debtor operating a business must pay in order to obtain residual debt discharge has been reduced from 40% to 20%. In addition, the continuation of the debtor's business has been facilitated. Nonetheless, Austrian insolvency law also contains provisions that are creditor friendly. Creditors have certain rights of participation in the insolvency proceedings such as the right to approve or deny the debtor's proposal for a restructuring plan. In addition, the creditors are also constantly involved in decisions in insolvency proceedings, especially if the liquidation of significant parts of a company is planned.

24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?

Sociopolitical factors generally do not give additional influence to certain stakeholders in restructurings or insolvencies in Austria. For significant insolvencies the state may be open to state support, always to be measures against permissibility within the confines of EU state aid rules.

With respect to the corona crisis, the state has offered distressed companies with various packages of special support, including assumption of liabilities and granting of fixed-cost subsidies to distressed companies, which suffered financial difficulties due to the Corona crisis.

As a result of the war in Ukraine the Austrian government introduced the energy cost subsidy for companies, which is intended to dampen the increased prices for electricity, natural gas and fuels for energy-intensive companies.

25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

Austrian insolvency law was comprehensively reformed in 2010 and since then offers efficient and effective restructurings to insolvent companies. However, there is a need for reform in the area of pre-insolvency restructuring since residual debt discharge is protracted or difficult to obtain.

The new Restructuring Act, which came into force on 17 July 2021, represents a welcome step towards a uniform, more in-depth legal framework for restructurings. The new Restructuring Act gives debtors the important opportunity to take appropriate measures to avert

insolvency and to make the liquidation process more efficient and orderly. The possibility of forming creditor classes is a key tool in this respect. The restriction of contestation under the Austrian Insolvency Act for new financings, which offers financing partners more legal certainty, is also particularly relevant in practice.

However, first figures show that the new restructuring proceeding is not yet accepted in practice. It remains to be seen whether this type of proceeding will be accepted. In any case, this should create an awareness of the need for restructuring measures as early as possible.

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