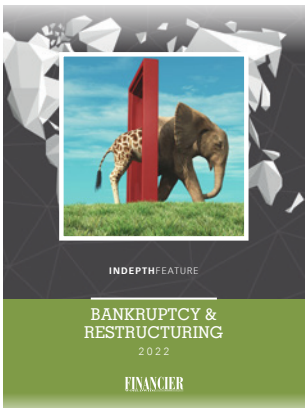


PRAGER DREIFUSS
ATTORNEYS AT LAW

Published by Financier Worldwide Ltd
©2022 Financier Worldwide Ltd. All rights reserved.
Permission to use this reprint has been granted by the publisher.

INDEPTH FEATURE Reprint April 2022

BANKRUPTCY & RESTRUCTURING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in bankruptcy & restructuring.




FINANCIER
WORLDWIDE corporatefinanceintelligence

SWITZERLAND

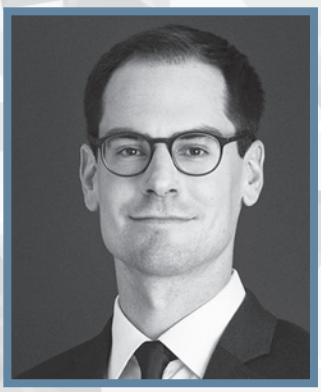
Prager Dreifuss Ltd

Respondents



DANIEL HAYEK
Partner
Prager Dreifuss Ltd
+41 44 254 55 55
daniel.hayek@prager-dreifuss.com

Daniel Hayek is chairman of the management committee and head of the insolvency and restructuring team, as well as the corporate and M&A team, of Prager Dreifuss. Mr Hayek has been a partner with Prager Dreifuss since 2001. His practice focuses on all aspects of insolvency and restructuring matters, including representing creditors in bankruptcy-related litigation, registering or purchasing claims or in enforcing disputed claims before courts. His longstanding expertise includes M&A, corporate finance, takeovers, banking and finance and corporate matters in restructuring situations.



MARK MEILI
Counsel
Prager Dreifuss Ltd
+41 44 254 55 55
mark.meili@prager-dreifuss.com

Mark Meili is a member of Prager Dreifuss' corporate, M&A and dispute resolution teams. He mainly advises clients in matters of insolvency and restructuring law. Mr Meili's areas of practice further include M&A and corporate financing, as well as contract, corporate and commercial law matters.

Prager Dreifuss Ltd

Q. Reflecting on the last 12-18 months, how would you characterise Switzerland in terms of failing businesses and bankruptcy filings?

A. The coronavirus (COVID-19) pandemic has had severe impacts on businesses. In 2020, Switzerland's domestic product (GDP) saw its largest decline since 1975. However, there were only 12,912 bankruptcy proceedings opened in 2020, a decrease of 7.2 percent compared to 2019. A large and general increase in bankruptcies also did not happen in 2021, as had been expected by many. The financial measures taken by the Swiss Federal Council to support businesses suffering from the effects of COVID-19 seem to have successfully prevented a sharp increase in bankruptcies, at least in the short term. However, it is probable that many bankruptcies were merely postponed rather than definitively prevented, thereby creating a 'COVID-19 bankruptcy gap'. The sanctions imposed on Russia because of its invasion of Ukraine have created substantial financial difficulties for certain companies in Switzerland. For example, according to media reports, Nord Stream 2 AG, the company that should be operating the Nord Stream 2 pipelines, no longer has access to its bank accounts and may therefore soon have to file for bankruptcy or a moratorium.

Q. Could you outline the primary macroeconomic trends currently affecting businesses? Are any particular sectors demonstrating structural weaknesses, resulting in distress?

A. Now that Switzerland has lifted most government measures in relation to COVID-19, the direct effects of COVID-19 on businesses are remote. Inflation and the war in Ukraine are currently the most important factors affecting businesses, which will lead to supply chain disruptions and price increases. The worldwide loss of purchasing power also means that demand for Swiss products and services could be falling. This would create challenges for many companies and require restructuring efforts. Switzerland is home to many commodity trading companies which are directly or indirectly affected by the sanctions imposed on Russia, for example in relation to access to commodity sources and credit, as well as to insurance

and shipping. In general, crafts and the hospitality industry are the biggest bankruptcy drivers in Switzerland. This is only partly due to macroeconomic trends, in particular because of inadequate wood supply and the rising prices of raw materials, but more due to the low barriers to set up a business and a lack of business knowledge.

Q. Have any recent restructuring trends or cases in Switzerland captured your attention in particular?

A. No new landmark bankruptcy or restructuring proceedings have been opened in the last 12 months. The most high-profile cases, which are still ongoing, include the Swissair insolvency proceedings, the liquidation of the Petroplus group, which operated oil refineries in several European countries, including the liquidation of its holding company Petroplus Holding AG and the main operating company Petroplus Marketing AG, both domiciled in Zug, the insolvency proceeding of the Banque Privée Espírito Santo SA, as well as the bankruptcy proceedings of the Swiss Lehman Brothers entity.

Q. How easy is it to renegotiate existing debt in the current market? Is there funding available to support distressed companies and finance restructurings?

A. The negative impact of COVID-19 on the financial situation of many companies created additional financing needs. The Swiss Federal Council and the cantons established various liquidity support schemes for small and mid-sized entities suffering from the effects of COVID-19. Under the first scheme, which was established in spring 2020, businesses could apply for interest-free loans up to a CHF 500,000 or loans up to CHF 20m at an interest rate of 0.5 percent. Almost 140,000 COVID-19 loans with an aggregate volume of roughly CHF 17bn have been granted. Borrowers of COVID-19 loans are subject to certain restrictions and are therefore incentivised to repay those loans sooner rather than later. In the autumn of 2020, the Swiss Federal Council and the cantons established an additional liquidity support scheme which provided for non-reimbursable contributions to affected businesses. In general, traditional lenders have become increasingly careful

Prager Dreifuss Ltd

and more reluctant to grant loans because of the increased default risks of struggling companies. Businesses are therefore looking for alternative and less conservative lenders, such as pension funds, insurance companies and family offices. Shareholders are also likely to put up money if they believe in the long-term success of the business.

Q. What trends are you seeing in the market's appetite to purchase troubled assets? How would you describe recent distressed M&A activity?

A. M&A activity in Switzerland was high in 2021 compared to 2020. In 2020, many companies postponed planned deals due to the prevailing uncertainties in connection with COVID-19, however many investors' confidence and appetite to make deals came back in 2021 and made up for the low activity in 2020. The financial measures taken by the Swiss government have successfully supported struggling businesses, so far. We have not yet seen a wave of distressed M&A deals. We are also not aware of any recent substantial transactions in Switzerland where troubled targets were fully purchased. This might change in the second half of 2022 now that the financial support measures have expired, and rising inflation and the war in Ukraine start to negatively affect businesses. This could lead to more businesses running into financial difficulties. Alternative investment funds, particularly hedge funds, are always looking for investment opportunities in distressed companies in Switzerland.

Q. Could you outline some of the personal risks facing D&Os of a company that nears insolvency or enters bankruptcy in Switzerland?

A. According to mandatory Swiss law, the board of directors must, without delay, convene a general meeting and propose financial restructuring measures, such as a capital increase, when the last annual balance sheet shows a so-called capital loss. If the board of directors suspects overindebtedness and an interim balance sheet proves that the claims of the company's creditors are not covered, it must notify the court unless company creditors subordinate their claims. If the board of directors does not comply with these duties, it can be held personally

Prager Dreifuss Ltd

liable for the resulting financial damages. The risk of being held personally liable also applies to any person responsible for the administration, management and liquidation of the company. Finally, the board of directors and the other governing bodies may face criminal sanctions if they breach their statutory duties and the company files for bankruptcy. The revised Swiss company law is expected to come into force in the beginning of 2023. The revised law directs the board of directors to initiate restructuring measures not only in the case of a capital loss or overindebtedness, but as a novelty also in the event of insufficient liquidity.

Q. How do you expect restructuring and bankruptcy activity in Switzerland to unfold for the remainder of this year, and beyond?

A. The financial measures taken by the Swiss Federal Council to support businesses suffering from the effects of the COVID-19 pandemic have successfully prevented an increase in bankruptcies. Hence, the number of bankruptcies reached a historic low in 2020. In the first eight months of 2021, corporate



The revised law directs the board of directors to initiate restructuring measures not only in the case of a capital loss or over-indebtedness, but as a novelty also in the event of insufficient liquidity.

Prager Dreifuss Ltd

bankruptcies across Switzerland increased only by 1.2 percent compared to the same period in 2020. Now that the financial support measures have expired and a substantial number of companies lack sufficient financial reserves, it has to be expected that in the coming months and years the number of bankruptcies will come back to pre-pandemic levels. Rising inflation and the war in Ukraine will have additional negative effects on many businesses. Companies will therefore increasingly require restructuring efforts or are at risk of having to file for bankruptcy. ❑

www.prager-dreifuss.com

PRAGER DREIFUSS is one of the leading Swiss law firms for commercial law. The firm is efficiently organised and managed as an integrated partnership. The firm seeks holistic, innovative solutions adapted to legal and economic conditions for all of its clients. The firm's focus is on legal issues as well as the control of business risks. The firm knows the needs of its clients and provides its services accordingly. With many years of experience and profound expertise, Prager Dreifuss is ideally positioned to advise and support international and domestic clients in a wide range of legal matters.

DANIEL HAYEK Partner
+41 44 254 55 55
daniel.hayek@prager-dreifuss.com

MARK MEILI Counsel
+41 44 254 55 55
mark.meili@prager-dreifuss.com

PRAGER DREIFUSS
ATTORNEYS AT LAW