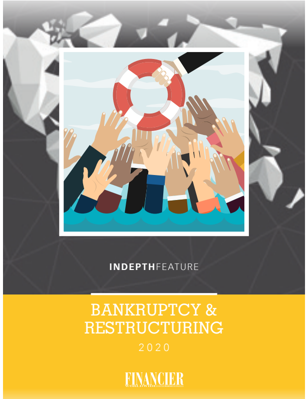


PRAGER DREIFUSS
ATTORNEYS AT LAW

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# BANKRUPTCY & RESTRUCTURING

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

# 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, one of Switzerland's leading firms for commercial law. 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 also in restructuring situations.

**MARK MEILI**
**Associate**
**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 companies regarding commercial and corporate law matters. His main areas of practice include M&A and corporate financing as well as contract, corporate and commercial law matters. Mr Meili further advises clients in matters of insolvency and restructuring law. In these fields he represents clients in court and before arbitration tribunals.

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

**A:** In recent years, and until the outbreak of COVID-19, the economic situation in Switzerland was generally favourable and there were very few sizeable bankruptcies. In 2019, 15,808 bankruptcy proceedings were opened, a slight decrease of 0.7 percent compared to 2018. While there was a general decrease in insolvencies for businesses in Switzerland, certain regions did record a substantially high amount of bankruptcies in 2019 compared to previous years. The canton of Zurich, Switzerland's most important economic centre, and Central Switzerland showed the highest increase in bankruptcies, with 8 percent and 5 percent, respectively. However, other regions showed encouraging numbers. In North-western Switzerland, for example, the number of bankruptcies decreased 13 percent in 2019. Additionally, a decrease of 12 percent was recorded in the Bern-Espace midland region. Despite the outbreak of COVID-19, bankruptcies in Switzerland continued to decrease during the first months of 2020.

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

**A:** Before COVID-19, the construction industry experienced challenges due to stricter legislation for holiday residences, a general decrease in demand for new real estate and pressure on margins. The woodworking and furniture industry were also sectors with substantially high risks of insolvencies and where companies required restructuring efforts. More recently, COVID-19 has affected businesses in all sectors due to government restrictions and lower demand. In particular, the hospitality, travel and car rental industries have suffered more than others and we expect a high number of bankruptcies in these sectors over the coming months. Some industries that may flourish despite COVID-19 are

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online retailers, delivery services and pharmaceuticals.

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

**A:** No new landmark bankruptcy or restructuring proceedings were 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 proceedings of companies of the Erb group and 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:** Even before the outbreak of COVID-19, it was becoming harder for small- and mid-sized companies without investment grade ratings to refinance and renegotiate existing debt structures. Thus, companies were looking for alternative and less conservative lenders like funds, pension funds, insurance companies and family offices. The negative impact of COVID-19 on the financial situation of many borrowers has created additional financing needs. To support businesses, on 25 March 2020 the Swiss Federal Council established a liquidity support scheme for small and mid-sized entities. The scheme has two elements. Under the first, businesses can apply for an immediate interest-free loan capped at CHF 500,000, underwritten with a full credit guarantee by the Swiss government. The second facility lends up to CHF 20m. The Swiss government guarantees 85 percent of the loan, charged at 0.5 percent interest. The banks assume the risk of the last 15 percent, charged at a competitive rate. On 4 March 2020, the Swiss Federal Council introduced an additional liquidity support scheme for innovative Swiss start-ups.

**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:** 2018 saw more M&A involving Swiss companies than ever before. In 2019, the total transaction volume remained at about the same level, however the total number of deals decreased by 20 percent, year on year. In the distressed M&A market, we are not aware of any recent substantial transactions in Switzerland where troubled targets were fully purchased. However, alternative investment funds, particularly hedge funds, are always looking for investments opportunities in distressed companies in Switzerland. We believe that the second half of 2020 may show increased distressed M&A activity due to the substantial negative financial effects of COVID-19 on many businesses in Switzerland.

**Q. Could you outline some of the personal risks facing D&Os of a company that**

*"Even before the outbreak of COVID-19, it was becoming harder for small- and mid-sized companies without investment grade ratings to refinance and renegotiate existing debt structures."*

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**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 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. In the context of COVID-19, the reporting obligations have been amended. Even if overindebtedness has been established, the board of directors is not required to notify the court if the company was not already overindebted at the end of 2019 and there is a prospect of the overindebtedness being eliminated by 31 December 2020.

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

**A:** On 18 March 2020, the Federal Council ordered a stay of enforcement until 4 April 2020 to support companies battling with the negative financial consequences of COVID-19. The statutory Easter enforcement holiday began immediately after and lasted until 19 April 2020. Thus, no enforcement acts could be carried out in Switzerland for a month. Consequently, since the beginning of the year, 2020 bankruptcies have decreased by 20 percent and in April we saw bankruptcies decrease by 65 percent. However, it is likely that bankruptcies related to COVID-19 have merely been deferred due to the legal standstill, not cancelled. Even if the liquidity support scheme established by the Swiss Federal Council may prevent some bankruptcies, we expect a hefty increase in corporate bankruptcies in the coming

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months and even for a longer period, if the negative effects of COVID-19 continue throughout the year. ❑

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

**Mark Meili** Associate
+41 44 254 55 55
mark.meili@prager-dreifuss.com

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