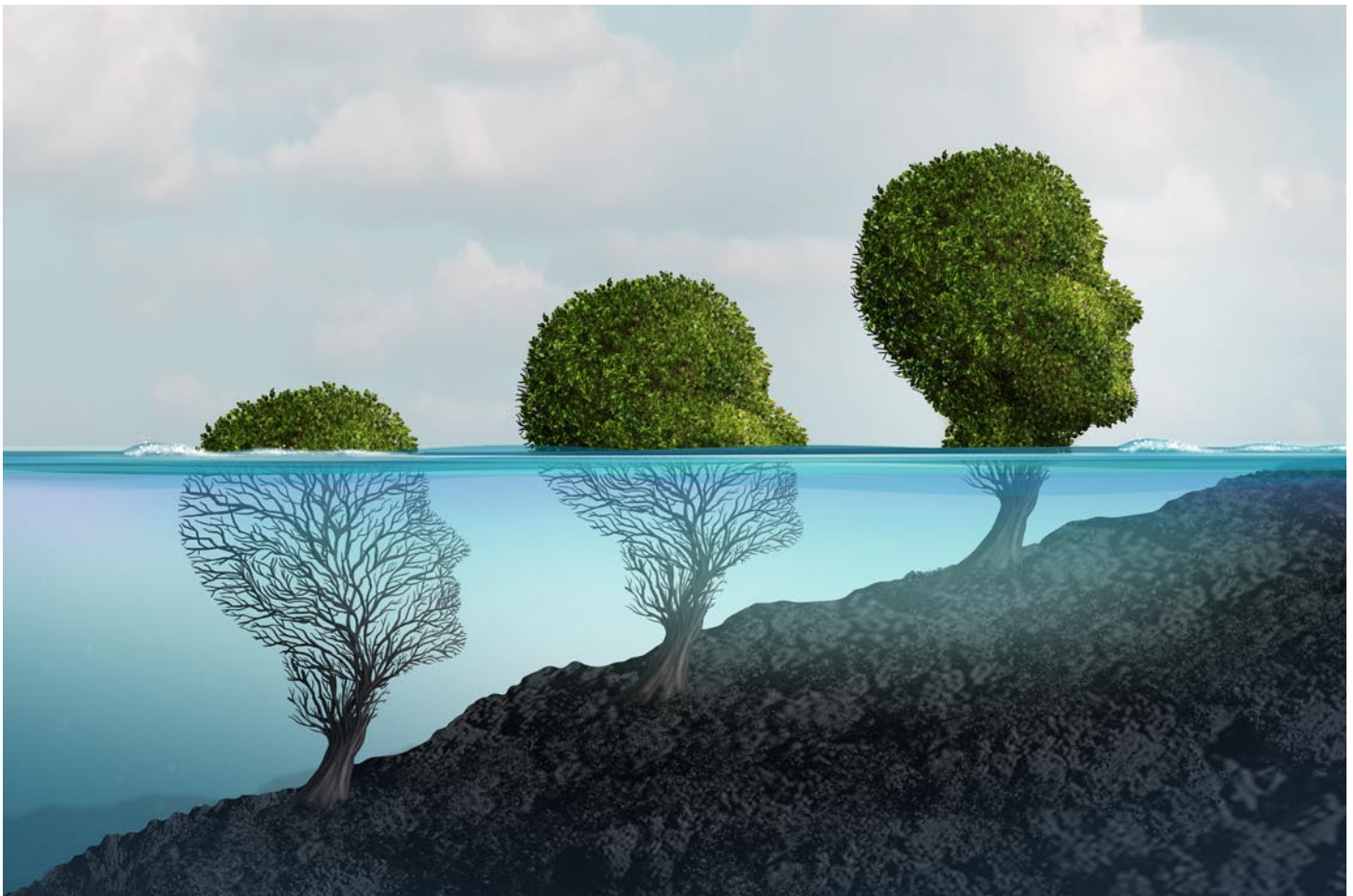


Published by Financier Worldwide Ltd
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■ ANNUAL REVIEW Reprint June 2019

Bankruptcy & Restructuring

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





Switzerland

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Daniel Hayek is a member 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.

■ **Q. How would you describe corporate bankruptcies and insolvencies in Switzerland over the last 12-18 months? Are you seeing more or fewer business failures in general?**

HAYEK: The economic situation in Switzerland is generally favourable and there have been very few sizeable bankruptcies in recent years. However, bankruptcies of small- and medium-sized enterprises reached an all-time high in 2018. In October 2018, 521 companies had to file for bankruptcy in Switzerland, a year-on-year increase of 10 percent on October 2017. While there was a general increase in insolvencies for smaller businesses in Switzerland, certain regions recorded a substantially high amount of bankruptcies compared to previous years. The cantons of Uri and Glarus showed the highest increase in bankruptcies in 2018, with 26.1 percent and 31 percent, respectively. However, there were also regions in Switzerland with encouraging numbers. In Zurich, Switzerland's most important economic centre, the number of bankruptcies decreased 6 percent in 2018 compared to 2017. Additionally, a slight decrease of 1 percent was recorded in the southwestern part of Switzerland.

■ **Q. In your experience, which sectors seem to be demonstrating structural weaknesses leading to more restructuring efforts?**

HAYEK: In recent years, the construction industry has experienced challenges due to stricter legislation for holiday residences, a general decrease in demand for new real estate and pressure on margins. The resulting downturn in sales has put the construction industry at greater risk of insolvencies. Put in numbers, the construction industry suffers 2.7 times more bankruptcies than the average industry in Switzerland. Handicrafts and the hotel and catering sectors are also industries with substantially high risks of insolvencies and where companies may require restructuring efforts. Health services, real estate, except for the construction industry, and holding companies are economically strong areas, where companies generally flourish and restructurings are seldom required.

■ **Q. To what extent are troubled companies able to refinance and renegotiate existing debt structures in the current market?**

HAYEK: Since the global financial crisis, banks in Switzerland have become stricter with regard to providing loans to companies. This trend is reinforced by the Basel III legislation which requires banks to hold more equity. Notably, it is becoming harder for small- and mid-sized companies without investment-grade-ratings to refinance and renegotiate existing debt structures in the current market. Thus, companies are looking for alternative lenders like funds, pension funds, insurance companies and family offices. These lenders are less conservative than banks and are willing to take more risk. They can often be the solution for troubled companies and can help them to meet their financing needs.

■ **Q. Have there been any recent legislative or regulatory developments, including high profile cases, in Switzerland that will have a significant effect on bankruptcy and restructuring?**

HAYEK: In Switzerland, the recognition and enforcement of foreign insolvency proceedings is dealt with in the Swiss Private International Law Act (PILA). On 1 January 2019, a revision of the PILA came into force which was designed to simplify the recognition of foreign bankruptcy



and estate proceedings in Switzerland. Under the old law, restrictive recognition requirements could sometimes delay the recognition of foreign bankruptcy decisions and in some cases even make them impossible. In particular, the revised law deletes a requirement that reciprocity is granted by the issuing country. In addition, insolvency decrees must be recognised if issued by the competent authorities at the centre of main interests. Furthermore, if there are no privileged or secured creditors or creditors of a Swiss branch, the Swiss courts can waive ancillary proceedings in favour of a foreign insolvency trustee. In conclusion, the revision took into account the increasing international interdependence of the economy and aims to improve coordination of related domestic and foreign reorganisation and bankruptcy proceedings.

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

HAYEK: Due to excellent market conditions, especially in the first half of 2018, last year saw more M&A involving Swiss companies than ever before. The total transaction volume climbed to approximately CHF107.1bn, an increase of 56 percent compared to 2017. 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, in particular hedge funds, are always looking for investment opportunities in distressed companies in Switzerland. Companies are employing tactics such as purchasing shares in troubled companies and exercising their influence as shareholders, such as GAM, or by buying claims in large bankruptcies, such as Swissair, Lehman Brothers or Petroplus.

■ **Q. What trends are you seeing in cross-border or multijurisdictional insolvencies? What additional challenges do such engagements present?**

HAYEK: Since Switzerland is not a member of the EU, the EU Insolvency Regulation does not apply to cross-border insolvency proceedings in Switzerland, but is dealt with by the PILA. The different legal bases in Switzerland and the EU can make it difficult to conduct and align bankruptcy proceedings. In the recent international bankruptcy of an international oil company, the Dutch insolvency administrator applied for recognition of the Dutch insolvency decree in Switzerland, under the old PILA. Only after the Swiss Federal Tribunal overturned the decisions of the two lower courts regarding the requirement of reciprocity, could the Dutch insolvency decree finally, and almost two years

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after the initial application, be recognised in Switzerland. The revised PILA is an important step toward the harmonisation of international insolvency law. However, foreign administrators and creditors should be aware that Switzerland's new recognition regime still differs from the EU Insolvency Regulation and the practical implementations of the revised PILA will have to be elaborated.

■ Q. Looking ahead, what developments do you expect to see in restructuring and bankruptcy processes in the months ahead?

HAYEK: We expect the new PILA to have a positive effect on the efficiency of Swiss

proceedings in cross-border insolvencies between the EU and Switzerland. Further, the restructuring market could benefit from the increased presence of non-traditional creditors, such as hedge funds with advanced knowledge of the distressed market. These investors are also able to provide liquidity to companies in trouble that may otherwise be constrained. Alternative distressed debt investors are also actively using litigation as a strategy to pursue their interests and achieve recoveries in insolvency and restructuring proceedings. We therefore expect to see more litigation in the restructuring and bankruptcy market in Switzerland where courts generally have a good reputation for their objectivity and effectiveness. ■

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