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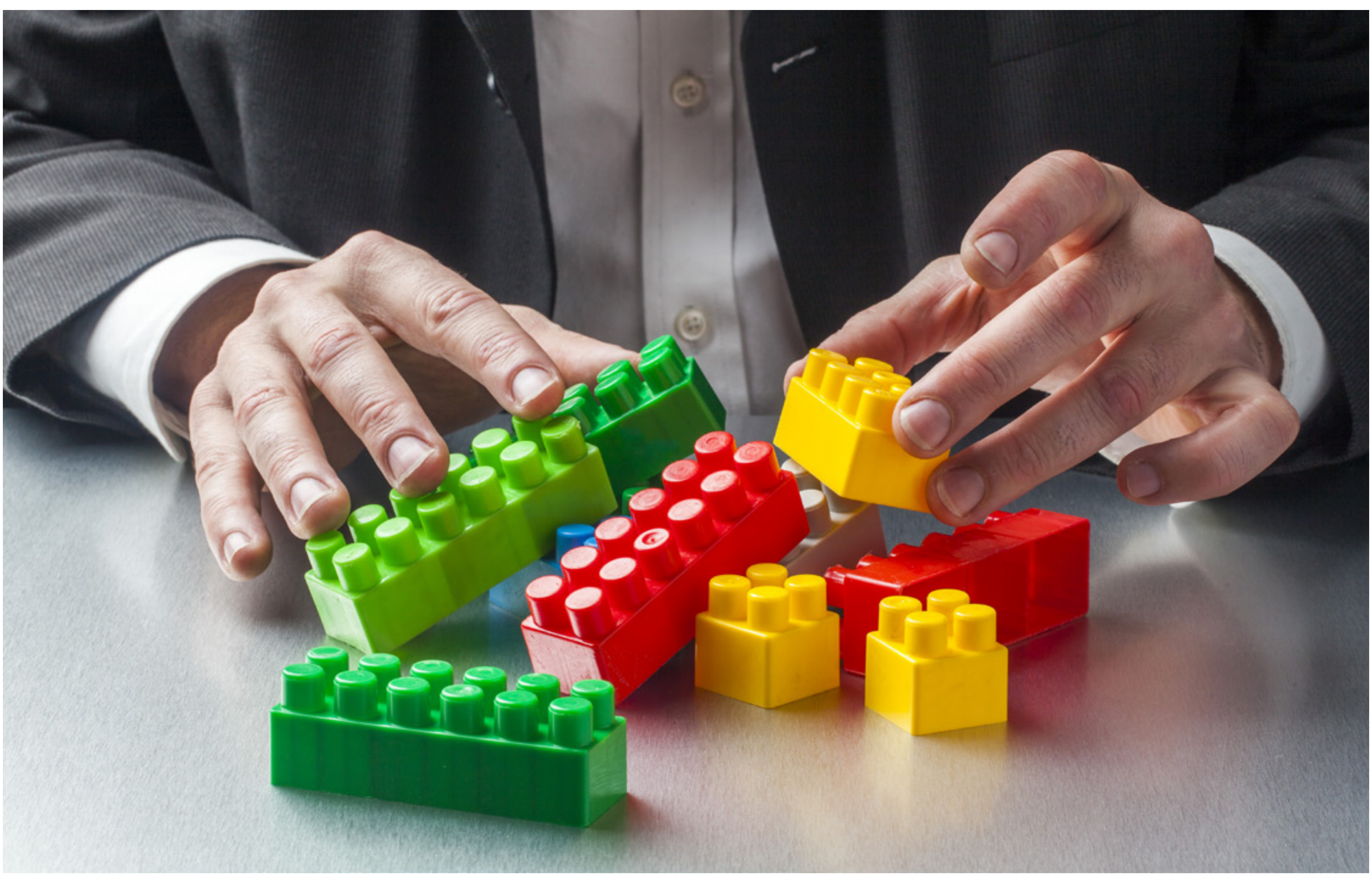
ATTORNEYS AT LAW

Published by Financier Worldwide Ltd

INDEPTH FEATURE Reprint May 2021

BANKRUPTCY & RESTRUCTURING

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



SWITZERLAND

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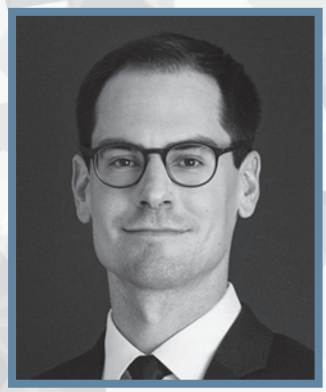

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Mark Meili is a member of Prager Dreifuss' corporate, M&A and dispute resolution teams. He mainly advises clients in matters of insolvency and restructuring law. Mr Meili's areas of practice further include M&A and corporate financing as well as contract,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

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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?

A. Until the outbreak of COVID-19, the economic situation in Switzerland was generally favourable and there were very few sizeable bankruptcies. However, because of the severe impacts of COVID-19 on businesses, a sharp increase in insolvencies was expected. Yet, while in 2020 the Swiss gross domestic product (GDP) saw its largest decline since 1975, there were only 12,912 bankruptcy proceedings opened, a decrease of 7.2 percent compared to 2019. 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 for the time being. The coming months and years will show whether governmental support measures prevented a general increase in bankruptcies or simply delayed it.

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

A. COVID-19 has affected businesses in all sectors due to government restrictions and lower demand. Businesses with high fixed costs have been hit particularly hard by the crisis, with industries such as retail, culture and entertainment, hospitality and travel all suffering more than other sectors. Though the Swiss government supports these businesses financially, in some cases the actual payments arrive too late for various reasons. Furthermore, government support schemes will eventually expire and some of the loans will have to be paid back. This will create serious challenges for many companies and will lead to restructuring efforts. Finally, some sectors like food retail, online retail and delivery services have flourished despite the COVID-19 crisis.

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

A. The negative impact of COVID-19 on the financial situation of many companies has created additional financing needs.

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Traditional lenders like banks have become increasingly careful 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. Finally, 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 CHF 500,000 or loans up to CHF 20m at an interest rate of 0.5 percent. In the autumn, the Swiss Federal Council and the cantons established an additional liquidity support scheme which provides non-reimbursable contributions to affected businesses.

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?

A. The most recent legislative development occurred on 1 January 2019, when the revision of the Swiss Private International Law Act (PILA) with regard to the recognition of international bankruptcy decrees and foreign composition agreements came into force. The revision aimed to modernise and facilitate the costly and burdensome proceedings for the recognition of foreign decrees and agreements and included certain changes regarding the effects of such recognition. Further, the revision aimed at avoiding unnecessary ancillary proceedings, in cases where there are no Swiss-domiciled secured or privileged creditors. 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, as well as the bankruptcy proceedings of the Swiss Lehman Brothers entity.

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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. General M&A activity in Switzerland was slightly lower in 2020 compared to 2019. While the first half of 2020 indicated that there would be a substantial decrease in the amount and volume of deals, many investors' confidence and appetite to make deals came back in the second half of the year and to a certain extent made up for the low activity in the first half of 2020. The financial measures taken by the Swiss government have so far successfully supported struggling businesses, so 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 2021 or in 2022 when the financial support measures expire, and more businesses run into financial difficulties. Alternative investment funds, particularly hedge funds, are always looking for investment opportunities in distressed companies in Switzerland.

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

A. The restructuring of gategroup, the world's largest provider of airline catering services, was particularly notable. The effects of the COVID-19 pandemic required the company to restructure its financing arrangements, including its bonds. For this purpose, gategroup incorporated a new company in the UK which assumed the liabilities and proposed a restructuring plan according to the recently introduced Part 26A of the United Kingdom Companies Act 2006. The plan allowed gategroup to restructure all financing agreements in a single jurisdiction, despite there being jurisdiction clauses in favour of other jurisdictions, in particular Switzerland. The High Court in London approved the plan. The gategroup restructuring may institute a trend to restructure international conglomerates in a single restructuring-friendly jurisdiction like the UK. However, it is important to note that the High Court ruled that the plan fell under the bankruptcy exclusion of the Lugano Convention. In the absence of multinational treaties, a recognition of the plan in other jurisdictions pursuant to national rules may be extremely challenging.

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

A. Until recently, 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. However, current numbers may indicate what must be expected in the coming months and years. In March 2021, corporate bankruptcies increased across Switzerland for the first time since the beginning of the COVID-19 crisis. Compared to March 2020, bankruptcies increased by 16 percent and compared to February 2021, bankruptcies increased by a third. To see the full impact of the COVID-19 crisis on the Swiss economy, particularly in relation to the number of bankruptcies, we must wait until later this year or even next year. A substantial

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number of companies now lack sufficient financial reserves because of the lockdown and likely will require restructuring efforts or are at risk of having to file for bankruptcy once government support schemes expire.❑

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