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DREIFUSS

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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

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Respondents



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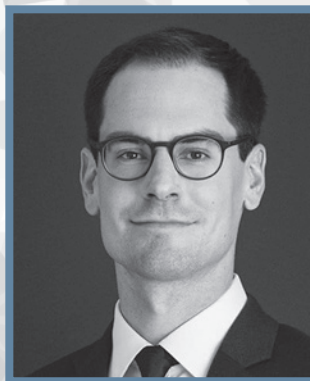
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Q. How would you describe corporate bankruptcies and insolvencies in Switzerland over the last 12-18 months? Are you seeing more or fewer business failures in general?

A. The coronavirus (COVID-19) pandemic has had a severe impact on the economy and on businesses failures. In 2020, the Swiss gross domestic product (GDP) saw its largest decline since 1975. In contrast to the economic downturn, bankruptcy proceedings in 2020 decreased compared to 2019 and did not substantially increase in 2021. The financial measures taken by the Swiss Federal Council to support businesses suffering from the effects of COVID-19 successfully prevented a sharp increase in bankruptcies in the short term. However, in 2022 the number of bankruptcies sharply increased by 22 percent, which can be attributed to the end of the financial support measures. Many bankruptcies were merely postponed rather than definitively prevented, which is referred to as ‘COVID-19 bankruptcy gap’. A potential major bankruptcy was avoided in March 2023 when banking giant Credit Suisse merged into banking giant UBS, creating an even larger banking behemoth.

The Swiss federation actively supported the merger and provided guarantees for certain financial risks. Based on the emergency ordinance issued by the Swiss federal government, the merger could be carried out without the approval of the shareholders of both companies. The Swiss Financial Market Supervisory Authority (FINMA) also decided that Credit Suisse’s additional tier 1 capital in the aggregate principal amount of approximately CHF16bn will be written down to zero. Finally, it is noteworthy that shareholders of Credit Suisse will only receive a fraction of the share price at which they traded before the merger was announced.

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

A. Inflation, rising interest rates, the war in Ukraine and the global banking crisis are currently the most important factors affecting businesses, which have led to supply chain disruptions, price increases and financing problems. The looming risk of recession in many countries may lead to a worldwide loss of purchasing power

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which would also mean that demand for Swiss products and services could fall. This would create challenges for many companies and require restructuring efforts. Switzerland is also 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. To what extent are troubled companies able to refinance and renegotiate existing debt structures in the current market?

A. Traditional lenders like banks have become increasingly careful and more reluctant to grant loans because of the increased default risks of struggling companies and the global banking crisis. Businesses are therefore looking

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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. It remains to be seen whether and what effects the Credit Suisse merger with UBS will have on the financing market, as, for example, a substantial amount of Credit Suisse's notes were completely wiped out and its shareholders will suffer huge losses.

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. On 1 January 2023, the revised Swiss company law entered into force. The revised law compels the board to initiate restructuring measures not only in the case of a capital loss or overindebtedness, but also earlier in the event of insufficient liquidity. This also means that the board now must increasingly monitor the company's solvency, which means it must draw up a liquidity plan. If the company is in actual danger of becoming insolvent

and can no longer meet its liabilities when they fall due, the board must take appropriate measures to strengthen the company's solvency. Compared to the previous framework, the board of directors has additional obligations to act if the company is in financial distress. It remains to be seen whether the new framework will support restructuring efforts in a more targeted manner and prevent insolvency proceedings to a larger extent.

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 hit a new record high in 2022. In 2020, many companies postponed planned deals due to the prevailing uncertainties in connection with COVID-19, however investor confidence and appetite to make deals returned in 2021 and reached an all-time high in 2022. The high volume of M&A activity is expected to continue in 2023. We have not yet seen a wave of distressed M&A deals. Except for the merger between UBS and Credit Suisse, we are also not aware of any recent substantial

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transactions in Switzerland where troubled targets were fully purchased. Higher interest rates, rising inflation, the war in Ukraine and the global banking crisis could lead to more businesses running into financial difficulties and therefore more distressed M&A deals. Alternative investment funds, particularly hedge funds, are always looking for investment opportunities in distressed companies in Switzerland.

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, in 2020 and 2021 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 UK 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 of restructuring 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. The expiration of the financial support measures to support businesses suffering from the effects of the COVID-19 pandemic led to an increase of bankruptcies in 2021 and 2022. Higher interest rates, rising inflation, the war in Ukraine and the global banking crisis will



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have additional negative effects on many businesses. We therefore expect that the number of bankruptcies will stay high in 2023 and is not likely to decrease in the short to medium term. Companies will increasingly require restructuring efforts or are at risk of having to file for bankruptcy.



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