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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*



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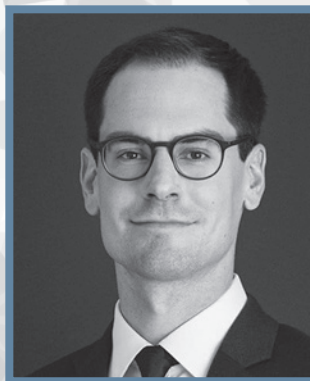
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Daniel Hayek is chairman of the management committee and head of the insolvency and restructuring team, as well as the corporate and M&A team, of Prager Dreifuss. Mr Hayek has been a partner with Prager Dreifuss since 2001. His practice focuses on 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.

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Mark Meili joined Prager Dreifuss in 2013 and became a partner in January 2024. He advises companies in company and contract law matters, focusing on distressed and finance transactions.

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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.** When the financial support measures taken by the Swiss Federal Council to support businesses suffering from the effect of the coronavirus (COVID-19) pandemic came to an end in 2022, the number of bankruptcies increased by 22 percent compared to 2021. Higher interest rates, rising inflation and the global banking crisis caused the number of bankruptcies to rise further in 2023, but only by 5 percent compared to 2022. It is likely that Switzerland reached its peak in terms of the number of bankruptcies in 2023. While bankruptcy filings in recent months have mainly been related to small and medium-sized enterprises, we have also seen some larger companies like Signa Group requiring restructuring efforts and having to file for a moratorium. A successful restructuring of Credit Suisse took place in March 2023 when it merged into UBS.

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**Q. Could you outline the primary macroeconomic trends currently affecting**

**businesses? Are any particular sectors demonstrating structural weaknesses, resulting in distress?**

**A.** Rising commodity and energy prices, supply shortages and skilled labour shortages are currently major concerns for businesses in Switzerland. Companies have responded to these risks by investing in process adjustments, most notably in digitalisation, as well as investments in innovation and adjustments to customer and pricing strategies. The unclear bilateral relations between Switzerland and the EU are identified as another major risk. Companies are demanding a solution to this issue. In general, the wood and furniture industry experiences three times as many business bankruptcies as the Swiss average. Crafts, hospitality and construction are also among the most vulnerable sectors. This is only partly due to macroeconomic trends, in particular because of inadequate wood supply and the rising prices of raw materials, but also due to the low barriers to setting up a business and a lack of business knowledge.

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

**A.** There have been two larger cases which recently captured our attention. The successful restructuring of banking giant Credit Suisse took place in March 2023 when it merged into UBS. In addition, the Signa Group required restructuring and had to file for a moratorium. Besides these two larger cases, no new landmark bankruptcy or restructuring proceedings have been opened in the last 12 months. One high profile case, the Swissair insolvency proceedings, was concluded at the beginning of 2024 after more than 20 years. Some other high-profile cases, which are still ongoing, include 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 Espirito Santo SA, as well as the bankruptcy proceedings of the Swiss Lehman Brothers entity.

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**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 general economic situation, with high inflation and high interest rates, the challenging environment for businesses and investments, and ongoing geopolitical uncertainty, has led to a more selective and thoughtful approach to financing. Traditional lenders like banks have become increasingly careful and more reluctant to renegotiate existing debt and grant loans. Businesses are therefore looking for alternative and less conservative lenders, such as hedge funds, distressed funds, 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. Innovative companies that use artificial intelligence, operate in climate or environmental technology, or offer solutions that help save costs, have better chances to find a more favourable financing environment. The Credit Suisse merger with UBS could have a negative impact on investor confidence in the financing market, as a large amount of Credit Suisse's notes were

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completely wiped out and its shareholders suffered substantial losses. Legal proceedings are ongoing in this regard. In relation to the financial difficulties of Signa Group, hedge funds were reportedly considering providing significant funding, however the group's financing requirements were quite high and the transparency was probably insufficient.

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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.** In 2020, many companies postponed planned deals due to the prevailing uncertainties in connection with COVID-19. Investor confidence returned in 2021 and M&A activity in Switzerland reached an all-time high in 2022. However, in 2023, M&A activity declined due to fears of a global recession and rising interest rates. Measured by the number of transactions, 2023 was an average year in a 10-year comparison. We have also not yet seen a wave of distressed M&A deals.

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**Q. Could you outline some of the personal risks facing directors and officers (D&Os)**



*Because macroeconomic factors remain challenging, we expect that a substantial number of companies will require restructuring efforts.*

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**of a company that nears insolvency or enters bankruptcy in Switzerland?**

**A.** According to Swiss law, the board of directors must take restructuring measures, such as strengthening the company's capital base, when the last annual balance sheet shows a so-called capital loss. If the board suspects over-indebtedness 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 or there are reasonable prospects that the over-indebtedness can be eliminated within 90 days. If the board of directors does not comply with these duties, it can be held personally liable for the resulting financial damage. 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 and the other governing bodies may face criminal sanctions if they breach their statutory duties and the company files for bankruptcy. On 1 January 2023, the revised Swiss company law came into force. The revised law directs the board

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

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

**A.** Most companies in Switzerland remain confident in their own abilities and trust in Switzerland as a successful business location. For 2024, we expect the number of failing companies in Switzerland to decrease despite a generally negative trend in Europe. For 2025, we expect a further decrease. Despite this decline, insolvencies will likely remain above the levels of 2018 to 2019. The looming pressure on profitability, global geopolitical uncertainties, tense financing and liquidity conditions, and the strength of the Swiss franc present Swiss companies with challenging obstacles that need to be overcome. In March 2024, the Swiss National Bank cut its main interest rate by 25 basis points to 1.5 percent, which made it the first major central bank to cut interest rates since the pandemic abated



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and immediately weakened the Swiss franc.

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

**A.** Because macroeconomic factors remain challenging, we expect that a substantial number of companies will require restructuring efforts, and some will be at risk of having to file for bankruptcy in the coming months. This should also create distressed acquisition opportunities and the chance to buy assets at reasonable prices. Alternative investment funds, particularly hedge funds, are always looking to invest in distressed companies in Switzerland, and therefore we expect to see more distressed deals in the coming months. □

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**PRAGER DREIFUSS** is one of the leading Swiss law firms for commercial law. 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. With many years of experience in asserting civil claims and in complex international commercial disputes, the firm understands the needs of its clients and provides its services accordingly. Prager Dreifuss is ideally positioned to advise and support international and domestic clients in a wide range of legal matters.

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