

THE INSOLVENCY
REVIEW

ELEVENTH EDITION

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I INSOLVENCY LAW, POLICY AND PROCEDURE

i Statutory framework and substantive law

Introduction

Insolvency law in Austria is primarily regulated by the Austrian Insolvency Act, which entered into force in 2010. For businesses, the Austrian insolvency regime provides for the following types of insolvency proceedings:

- a* bankruptcy proceedings;
- b* restructuring proceedings where a bankruptcy administrator is appointed; and
- c* restructuring proceedings where the debtor retains the right to self-administration.²

While bankruptcy proceedings usually lead to a realisation or winding up of the debtor's estate, restructuring proceedings aim at the continuation of the debtor's business and the discharge of debts.

ii Policy

General

In general, the Austrian insolvency regime follows the principle of uniform and proportionate satisfaction of (unsecured) creditors. Similarly, debt-ridden businesses have the opportunity to engage in restructuring measures.

To enhance the chances of success of restructuring efforts, Austrian law provides various options for debtors:

- a* ahead of insolvency proceedings, solvent debtors may apply for reorganisation under the Business Reorganisation Act (Reorganisation Act). The Reorganisation Act aims at enabling otherwise economically stable businesses facing temporary financial difficulties to continue their business activities through a reorganisation process. However, the procedure set out in the Reorganisation Act has only been used in very few cases since its introduction;
- b* after bankruptcy proceedings have been initiated, insolvent debtors may submit restructuring plans if certain preconditions are met. Additionally, Austrian insolvency law provides for specific safeguards that allow the debtor to continue pre-insolvency

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2 For natural persons, additional types of proceedings are applicable: insolvency proceedings applicable to natural persons; and garnishment applicable to natural persons. This chapter will focus on the applicable regime for businesses only.

contractual relationships, including the possibility for the administrator to apply for deferral of evictions regarding business premises or restrictions concerning contractual termination rights of business partners; and

- c as a principle, bankruptcy proceedings that lead to a realisation or winding up of the debtor's estate should be considered an instrument of last resort.

Directive (EU) 2019/1023 and the Restructuring and Insolvency Directive Implementation Act

On 20 June 2019, the European Parliament and the Council of the European Union issued a directive on restructuring and insolvency (Directive (EU) 2019/1023). The Directive aims at providing restructuring tools available across Europe to enable debtors in financial distress to solve their problems at an early stage in order to avoid formal insolvency proceedings. Member States must have implemented the Directive by 17 July 2021.

On 22 February 2021, the ministerial draft of the Restructuring and Insolvency Directive Implementation Act was published. It includes a new Austrian Restructuring Code and amendments to the Austrian Insolvency Act (providing for facilitation of debt relief for private individuals and individual entrepreneurs within three years and – in relation to restructuring proceedings under the Austrian Restructuring Code – gives privileges to new or interim financing as well as other transactions under certain conditions and to provide (limited) protection against rescission in subsequent insolvency proceedings). After an evaluation procedure involving various stakeholders, the government on 16 June 2021 submitted an (updated) Restructuring and Insolvency Directive Implementation Act to the Austrian parliament; it passed the parliament in July 2021 and entered into force on 17 July 2021.

The Austrian Restructuring Code is basically applicable to all entrepreneurs excluding the financial sector.³ It should give the debtors the opportunity to achieve a turnaround by means of a restructuring plan during a non-insolvency procedure while generally retaining self-administration. The procedure may only be initiated upon application of the debtor and requires a likelihood of insolvency of the debtor.⁴ The application must be accompanied by various items of documentation, in particular by a restructuring concept, which must be expanded to a restructuring plan within 60 days.⁵

The restructuring plan should regulate the reorganisation measures and contributions of the creditors concerned (notably, claims of employees are excluded; they remain unaffected by the restructuring). The restructuring plan is voted on in creditor classes; a double majority (head and claim majority) within each creditor class is required for acceptance. If the majorities are not reached, the approval of the dissenting creditor classes can be replaced by a (court-approved) cross-class cramdown (including minority protection).⁶ If only financial creditors are affected, of whom a large majority has already approved the restructuring plan, the debtor can apply for a simplified procedure.⁷

3 Section 2 Austrian Restructuring Code.

4 Section 1 Austrian Restructuring Code.

5 Section 8 Austrian Restructuring Code.

6 Section 32 et seqq. Austrian Restructuring Code.

7 Section 45 Austrian Restructuring Code.

iii Main effects of the opening of insolvency proceedings

General

Once insolvency proceedings are opened, the debtor loses its right to dispose assets that belong to the estate. Any obligations of the debtor that are not due at the time of the opening of the insolvency proceedings are accelerated and assumed to be due.

Creditors may not initiate or continue legal actions – specifically enforcement actions – against the debtor. Exceptions are as follows:

- a* legal proceedings that do not affect the debtor's estate;
- b* proceedings relating to creditors with a right to segregate assets and creditors with existing rights to separate satisfaction (see below);
- c* proceedings relating to claims disputed by the administrator; and
- d* legal proceedings resulting from transactions concluded after the opening of the insolvency proceedings.

In the first exceptional case, legal action may be brought or continued against the debtor; in all other cases, the plaintiff must bring the action against the debtor's estate represented by the administrator.

Contracts

The opening of insolvency proceedings does not terminate existing contracts automatically. Nevertheless, the administrator may choose whether or not to fulfil contracts that:

- a* were agreed between the contractual parties prior to the opening of insolvency proceedings; and
- b* were not fully satisfied by both parties prior to the opening of the insolvency proceedings.

The other contractual party may request the court to set a deadline for the administrator to make this decision. Where the administrator does not respond in a timely manner, contracts are deemed terminated. If the administrator chooses to terminate the contract, the other contracting party may file a claim for damage resulting from such termination as a creditor in the insolvency proceedings, in which case he or she will receive the respective quota.

Contractual agreements that grant one contractual party the right to terminate the agreement in the event of insolvency are void.⁸

Contracts that are potentially necessary for the continuation of the debtor's business may not be terminated during a six-month period following the opening of insolvency proceedings, unless there is a compelling reason to do so. In this context, the mere worsening of the debtor's economic situation is not sufficient, and neither is late payment by the debtor of receivables that have become due and payable prior to the opening of insolvency proceedings. An exception is made only if the fulfilment of the contract would be detrimental to the economic situation of the creditor, with respect to employment agreements (to which a special termination regime applies) and credit agreements.

Priority of creditors' claims

Austrian law distinguishes between secured and unsecured creditors.

⁸ Exceptions apply for certain financial instruments such as derivative contracts.

Secured creditors

Secured creditors are creditors with a right to segregate assets; and creditors with existing rights to separate satisfaction.

A creditor's right to segregate assets usually refers to assets in the creditor's property that are in the possession of the debtor. Creditors with a right to segregate assets are generally not affected by insolvency proceedings. The rightful owner of the property may bring an action against the administrator, respectively the debtor (in restructuring proceedings where the debtor retains the right to self-administration – see below), for the return of its property.

A creditor's right to separate satisfaction concerns creditor security rights over assets of the debtor. Creditors with a right to separate satisfaction only take part as insolvency creditors (unsecured creditors – see below) to the extent their claims exceed the value of the secured assets.

Secured creditors may be barred by the court from enforcing their rights in respect of security for a maximum period of six months (as determined by the court) following the opening of insolvency proceedings, if such enforcement would jeopardise the continuation of the debtor's business and provided that such prohibition would not cause severe economic damage to the secured creditors.

Unsecured creditors

Unsecured creditors' claims must be filed as insolvency claims in order to take part in the insolvency proceedings. In this context, obligations of the debtor that are not due at the time of commencement of the insolvency proceedings are deemed accelerated and due for the purpose of the proceedings.

All unsecured creditors whose claims are recognised receive the same pro rata quota of their insolvency claim. As a class, they are subordinate to administrative expenses, consisting, generally, of the costs of the proceedings (including the remuneration and reimbursement awarded to the creditors' committee and the special creditors' associations), the fees of the administrator, and claims for labour, services and goods furnished to the estate after the commencement of the proceedings, and the rights of secured creditors to the extent the respective claims are secured by assets subject to security interests.

iv Insolvency procedures

Bankruptcy proceedings

Bankruptcy proceedings usually lead to a realisation or winding up of the debtor's estate. The proceeds remaining after the satisfaction of administrative expenses and secured claims (see above) are subsequently distributed among the (unsecured) creditors on a pro rata basis. In bankruptcy proceedings, an administrator is appointed by the court. At the beginning of bankruptcy proceedings, the administrator provides an overview of the debtor's assets and establishes whether the debtor's business can be continued. Generally, Austrian insolvency law follows the concept of reorganisation instead of the realisation of the debtor's assets. Only if the continuation of the debtor's business would increase the loss of creditors, the debtor's business is closed, and its estate liquidated under the supervision of the court. After the proceeds of such liquidation have been distributed, the bankruptcy proceedings are terminated by court order.

In general, the termination of bankruptcy proceedings does not discharge the debtor of debts that have not been satisfied in full. Therefore, creditors whose claims have been

recognised by the bankruptcy administrator, or after being disputed by the administrator, and confirmed by a court judgment, may bring actions against the debtor regarding the unsettled portion of their claims even after bankruptcy proceedings have been terminated. However, with corporate debtors, bankruptcy will eventually result in the ultimate dissolution of the company. Therefore, claims against the debtor for payment of outstanding amounts are usually prevented.

The bankrupt debtor may also apply for a restructuring scheme in the course of bankruptcy proceedings. In the application, the debtor has to submit a proposal for the satisfaction of at least 20 per cent of all insolvency debts within a maximum period of two years.⁹ Administrative expenses have to be paid in full and the rights of secured creditors remain in principle unaffected. Usually, such a proposal presumes that the debtor's business can be continued. After a preliminary formal examination by the court,¹⁰ the creditors decide at a creditors' hearing on the acceptance of the debtor's proposal. In this regard a quorum of both a simple majority of the creditors attending the hearing and a simple majority based on the value of their claims is required.¹¹

The quota of 20 per cent is a statutory minimum requirement for any restructuring scheme and needs to be proportionate to the debtor's actual economic and financial standing. Depending on the circumstances of the case, it may be necessary to offer a proposal with a higher quota or shorter payment period to obtain the creditors' acceptance. In practice, creditors usually request a payment plan that sets forth instalments, starting with a first payment immediately after the acceptance of the restructuring scheme.

Following the creditors' acceptance, the court confirms the restructuring scheme in cases where no grounds for denial are given.¹² Once the debtor has fulfilled the restructuring scheme, it is discharged of its debts. Completed restructuring schemes are also effective against creditors who did not accept the proposal – respectively those who did not take part in the insolvency proceedings.¹³

Restructuring proceedings (under the Austrian Insolvency Act)

In addition to applying for a restructuring scheme during already initiated bankruptcy proceedings, debtors may also apply for the opening of restructuring proceedings (as an alternative to bankruptcy proceedings). In this context, only the debtor may file for the opening of restructuring proceedings (a creditor's application for restructuring proceedings is not possible).¹⁴ There are two types of restructuring proceedings available:

- a* a procedure where a bankruptcy administrator is appointed; and
- b* a procedure where the debtor retains the right to self-administration.

9 Section 141 Austrian Insolvency Act.

10 Section 141 Austrian Insolvency Act. An application for a restructuring scheme is dismissed, inter alia, in the case of a final conviction of the debtor – or, in the case of a corporate debtor, (one of) its managing directors – for a fraudulent bankruptcy offence (Section 156 Austrian Criminal Code).

11 Section 147 Austrian Insolvency Act.

12 Section 152a Austrian Insolvency Act. A reason for denial is the non-payment of priority claims or of the bankruptcy administrator's compensation.

13 Section 156 Austrian Insolvency Act.

14 Section 167(1) Nos. 1–2 Austrian Insolvency Act.

In both cases, the application needs to contain a restructuring proposal, with a minimum quota of 20 per cent of all debts needing to be satisfied within a period of two years in the first case (i.e., no self-administration) and of 30 per cent in the second case (i.e., self-administration). In the course of restructuring proceedings, the debtor's business may only be liquidated if the debtor's restructuring proposal has not been accepted by the creditors within 90 days of the opening of the proceedings.

In restructuring proceedings where a bankruptcy administrator is appointed, the debtor loses control over its business and the court-appointed insolvency administrator controls all decisions. The procedure follows the process for restructuring schemes as described above. If the restructuring proposal is not accepted by the creditors, the court will reclassify and continue the proceedings as bankruptcy proceedings.¹⁵

In the case of restructuring proceedings where the debtor retains the right to self-administration, the debtor retains control over the business as well as the legal capacity to act on its behalf, with supervision of the court-appointed restructuring administrator. Certain material actions and transactions require the consent of a restructuring administrator or the court. The right to self-administration may be withdrawn; that is, if action by the debtor could lead to a disadvantage for creditors. In this instance, the restructuring proceedings would again be reclassified and continued as restructuring proceedings without a debtor's right to self-administration.¹⁶ Proceedings would follow the process for restructuring schemes (see above).

v Starting proceedings

While a petition to open bankruptcy proceedings may be filed either by the debtor or a creditor, a petition for the commencement of restructuring proceedings may only be filed by the debtor.

In general, the management of a corporate entity is required to file for bankruptcy proceedings immediately, without culpable delay, as soon as it becomes apparent that the company is illiquid (liquidity gap of more than 5 per cent) or over-indebted (liabilities exceed value of assets based on a liquidation status and no positive continuation prognosis exists), but at the latest within 60 days of becoming insolvent (in exceptional cases, such as the covid-19 pandemic, this period is prolonged to 120 days).¹⁷

If a creditor attempts to put the debtor into (involuntary) bankruptcy, the creditor must provide evidence that the following statutory requirements are met:

- a* existence of a claim against the debtor: the creditor's claim must be sufficiently specified and evidenced. In general, Austrian law does not require a final and enforceable judgment. Austrian legal practice, however, shows that there is the risk that a creditor's application, which is not based on a final and enforceable judgment, may be successfully objected to by the debtor; and
- b* insolvency of the debtor: the creditor must show that the debtor is insolvent – that is, over-indebted or illiquid.

The creditor that applies for the opening of insolvency proceedings bears the burden of proof that the requirements set forth above are met. Austrian insolvency courts take a strict

15 Section 167 et seqq. Austrian Insolvency Act.

16 Section 170 Austrian Insolvency Act.

17 Section 69(1) to (2a) Austrian Insolvency Act.

approach in this regard. In cases of over-indebtedness, it can be especially difficult for the creditor to convince the court that the debtor is in fact insolvent, as the creditor often does not have substantial information on a debtor's financials. Therefore, creditors' petitions to open insolvency proceedings are in most cases based on the ground of illiquidity.

In the case of an application by the debtor, the court generally decides within a few days whether insolvency proceedings are opened. An application filed by a creditor will be served on the debtor and the debtor is given the opportunity to raise objections. In most cases, the insolvency court also schedules an oral hearing to give the debtor's managing directors an opportunity to be heard. The debtor may also file a restructuring plan in order to achieve that restructuring proceedings are opened instead of bankruptcy proceedings.

Insolvency proceedings are commenced by court decision if the court concludes:

- a* the criteria for insolvency are fulfilled; and
- b* the debtor's estate comprises sufficient assets to cover the initial costs of the insolvency proceedings (usually a deposit of €4,000 is required).

Court decisions on the opening or denying of insolvency proceedings can be appealed by any party whose rights are adversely affected. Appeals must be filed within a time period of 14 days following the publication of the court decision on the insolvency database.

vi Control of insolvency proceedings

Insolvency proceedings are generally controlled by the administrator and the competent insolvency court. In addition, creditors have certain rights of control:

Insolvency court

The insolvency court decides on the opening and termination of insolvency proceedings and takes all main decisions during ongoing proceedings. The insolvency court appoints the administrator and establishes – if provided for – a creditor's committee. Certain actions in the insolvency proceedings are subject to the court's approval – that is, the sale of the debtor's business or the sale of a substantial portion of the debtor's assets.

Insolvency administrator

The insolvency administrator is appointed by the court and has a central oversight and management function in insolvency proceedings. Administrators primarily represent the creditor's interests.

Usually, insolvency administrators are chosen from a list of potential appointees.¹⁸ Most of the administrators appointed in Austria are attorneys.

The duties of a bankruptcy administrator – in both bankruptcy and restructuring proceedings – inter alia, are as follows:

- a* assessment of the debtor's economic situation and determining reasons that led to the debtor's insolvency;
- b* the preparation of an inventory listing the debtor's assets and liabilities as of the date of the commencement of the insolvency proceedings; and
- c* representation in all legal disputes concerning the debtor's estate.

18 The list of potential appointees is posted on the following website of the Federal Ministry of Justice: www.insolvenzverwalter.justiz.gv.at.

In bankruptcy proceedings, a bankruptcy administrator must additionally:

- a* establish whether the debtor's business can be continued or, if applicable, reopened (at least for a limited period);
- b* assess whether a restructuring scheme is possible and would be in the common interest of the creditors; and
- c* liquidate the debtor's estate.

Creditors

Creditors also have certain rights of control in insolvency proceedings as the creditors' committee needs to approve certain actions taken by the administrator. A creditor's committee is, however, not established in all insolvency proceedings but rather in complex and large-scale cases.

vii Measures taken by the legislature in the context of the covid-19 pandemic

The efforts made by the Austrian legislature to contain the global covid-19 pandemic brought some changes to the Austrian insolvency and restructuring regime. The Austrian legislator,¹⁹ *inter alia*, clarified certain aspects with respect to the period to file for insolvency: according to the Austrian Insolvency Act, a debtor is generally obliged to file for insolvency without undue delay, but at the latest within 60 days from the date grounds for insolvency are established (illiquidity or over-indebtedness (see above)). In the event of natural disasters, such as earthquakes, floods, storms or avalanches, Austrian law provides for an extended filing period of 120 days. Through the Austrian Second Covid-19 Act, the legislator makes it clear that the already existing rules providing for this extended 120-day period shall also apply in the event of an epidemic or a pandemic.

viii Special regimes

Under Austrian law, special insolvency regimes exist for banks,²⁰ insurance companies,²¹ investment companies²² and cooperatives.²³

For banks, special provisions on the recovery and resolution apply (Act on the Recovery and Resolution of Banks). Banks are under the obligation to implement appropriate conditions and procedures, in the form of restructuring plans, to ensure that restructuring measures can be taken in a timely manner in a crisis scenario. Such restructuring plans must be renewed at least once a year and need to be submitted to the Financial Market Authority (FMA).²⁴

Insurance companies, banks and investment companies cannot file for opening of bankruptcy proceedings themselves but must notify the FMA of their illiquidity or

19 Federal Law Gazette I No. 16/2020; Federal Law Gazette I No. 24/2020, latest amendment Federal Law Gazette I No. 72/2022; Federal Law Gazette I No. 58/2020, latest amendment Federal Law Gazette I No. 72/2022.

20 Section 81 et seqq. Austrian Banking Act.

21 Section 307 et seqq. Austrian Insurance Supervision Act 2016.

22 Section 77 et seqq. Austrian Securities Supervision Act 2018.

23 Section 1 et seqq. Austrian Cooperative Insolvency Act 2010.

24 Section 8 et seqq. Act on the Recovery and Resolution of Banks.

over-indebtedness. The FMA is subsequently obliged either to file for opening of bankruptcy proceedings or, if applicable, for placement under court-supervised management for a maximum period of one year.²⁵

Austrian law does not provide for a procedure on insolvency regarding company groups. Instead, each group entity must be evaluated individually. Consequently, individual insolvency proceedings must be opened regarding each group entity and possibly different administrators are appointed.

ix Cross-border issues

The relationship with respect to EU Member States (except Denmark, to which the Regulation does not apply) is governed by the Regulation (EU) 2015/848 (Insolvency Regulation).²⁶ The relationship with all other countries (i.e., non-EU countries and Denmark) is solely regulated by the Austrian Insolvency Act.

Insolvency proceedings within the application of the Insolvency Regulation are opened in the Member State in which the debtor has its centre of main interest (COMI). Such proceedings embrace the debtor's asset in all other EU Member States (except Denmark) and are recognised in the other Member States.

The opening of foreign insolvency proceedings other than those governed by the Insolvency Regulation does not prevent the commencement of (additional) Austrian insolvency proceedings. Generally, foreign insolvency proceedings in respect of non-EU countries (and Denmark) are recognised if:

- a* the COMI of the insolvent debtor is located abroad;
- b* the foreign insolvency proceedings are, in principle, comparable to Austrian insolvency proceedings; and
- c* recognition does not result in a violation of Austrian public order.²⁷

If such insolvency proceedings are recognised, a foreign administrator has the same powers in Austria as in his or her own jurisdiction. However, in exercising his or her powers, the administrator must obey Austrian law. In particular, employment law matters (e.g., notification duties) need to be considered.²⁸

Foreign insolvency proceedings are published on the online insolvency database of the Ministry of Justice.²⁹

II INSOLVENCY METRICS

i Metrics for 2022

In 2022, the number of corporate insolvencies increased by 57.4 per cent compared to the previous year's level. A total of 4,775 insolvent companies were registered in 2022, reaching almost pre covid-19 pandemic levels for the first time. While the number of proceedings

25 Banks and investment companies are also entitled to file for placement under court-supervised management themselves.

26 For insolvency proceedings opened before 26 July 2017, Insolvency Regulation 1346/2000 continues to apply.

27 Cf. Section 240 Austrian Insolvency Act.

28 Cf. Section 241 Austrian Insolvency Act.

29 <http://www.edikte.justiz.gv.at/>.

opened in 2022 increased by 41 per cent to 2,904 cases, the number of proceedings not opened due to lack of assets almost doubled compared to 2021 (+92 per cent). Overall, 15,500 employees (compared to 2021, this number increased by 57 per cent) were affected by the insolvencies of their employers. The estimated insolvency debts increased considerably by 25 per cent to €2,208 million, although in only 11 cases, the debt was more than €20 million, which is the same level as previous year.³⁰

An analysis of sectors most affected by insolvencies in Austria traditionally ranks the top three sectors by cases and by liabilities. Over the years and due to the covid-19 pandemic, there have been hardly any surprises or changes because of the specific nature of the respective businesses (capital intensity) and the total number of companies active in these sectors. These three sectors are the hotel and restaurant sector, the construction sector and the business-related services sector (including all service companies, real estate businesses and holding companies). In 2022 it was the business-related services sector that occupied the position with the highest number of insolvency cases in Austria, followed by the construction sector and the hotel and restaurant sector.³¹

ii Metrics for the first half of 2023

The current (partly estimated) figures for the first half of 2023 on corporate insolvencies show a total increase of 12 per cent (including proceedings that have not been opened due to a lack of assets) compared to the first half of 2022; thus, the growing insolvency rate continues. The number of proceedings opened in the first half of 2023 increased by equally 12 per cent compared to the first half of 2022. At the same time, the estimated liabilities increased by 33 per cent to €1,09 billion. Furthermore, 11,200 employees are affected by the insolvencies of their employers, which is an increase of 60 per cent compared to the first half of 2022.³²

III PLENARY INSOLVENCY PROCEEDINGS

Examples of the most significant, recent or pending plenary insolvency proceedings within the Austrian jurisdiction are as follows.

i CPI Beteiligungen GmbH

CPI Beteiligungen GmbH, CPI Bauträger und Immobilienverwaltung and CPI Hausverwaltung, all part of the CPI group (not to be confused with CPI Property Group, which is not related to the CPI group), filed for insolvency on 7 June 2022. According to information provided by the debtor, the CPI group consists of over 160 companies, which are primarily involved in real estate development, property management, and the purchase

30 Kreditschutzverband 1870, final insolvency statistics for 2022, available (in German) at <https://www.ksv.at/insolvenzstatistik/insolvenzstatistik-2022-final>.

31 Kreditschutzverband 1870, final insolvency statistics for 2022, available (in German) at <https://www.ksv.at/insolvenzstatistik/insolvenzstatistik-2022-final>.

32 Kreditschutzverband 1870, insolvency estimation for the first half of 2023, available (in German) at https://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_1HJ2023_HR_pdf.

and sale of real estate in Austria and Germany. Shortly after the opening of the insolvency of these three companies, CPI Marketing GmbH³³ and CPI Immobilien GmbH (the central parent company of the CPI group) also entered into insolvency.³⁴

CPI Beteiligung GmbH mainly focused on the management of its equity holdings. The liabilities amount to roughly €86 million; however, the existence of further liabilities is not excluded by the debtor. The liabilities of all five insolvent companies amount to €220 million.³⁵

ii Leiner & kika Möbelhandels GmbH

Leiner & kika Möbelhandels GmbH filed for insolvency on 12 June 2023. Leiner & kika's stores are among the largest furniture stores in Austria. Shortly before the commencement of the insolvency proceedings, the real estate in which Leiner & kika's stores operate was sold, while the operational business was sold to a former managing director of Leiner & kika for a symbolic amount of €3.³⁶ After the takeover, the management announced a tough restructuring plan consisting of the closure of 23 of the 40 stores and the reduction of 1,900 (of 3,900) employees; soon thereafter, the application for insolvency was filed. The liabilities of Leiner & kika amount to €200 million.³⁷ On 20 June 2023 a special insolvency administrator was appointed to examine the grounds leading to the insolvency and to examine and enforce potential claims arising from the violation of creditor protection provisions.³⁸

IV ANCILLARY INSOLVENCY PROCEEDINGS

There have not been any considerable ancillary insolvency proceedings opened in Austria over the past 12 months.

V TRENDS

The developments of the past few months confirm that company insolvencies have been, due to governmental measures, at a very low level for almost two years. However, most of these governmental measures expired at the end of September 2021. In the meantime, it can be said that the economic foundation of various corporations have proved not to be stable enough to ensure their continued existence; however, this is also due to current developments.³⁹

33 Kreditschutzverband 1870, insolvency cases, CPI Beteiligungen GmbH, available (in German) at <https://www.ksv.at/en/insolvenzfaelle/cpi-beteiligungen-gmbh-183090>; <https://www.ksv.at/en/insolvenzfaelle/cpi-bautraeger-und-immobilien-verwaltung-gmbh-183097>; <https://www.ksv.at/en/insolvenzfaelle/cpi-hausverwaltung-gmbh-183096>.

34 Insolvenzdatei, insolvency cases, available (in German) at <https://edikte.justiz.gv.at/edikte/id/idedi8.nsf/suchedi?SearchView&subf=eid&SearchOrder=4&SearchMax=4999&retfields=-%5BSchuldnerS%5D%3D%28cpi%29%29#1662964597838>.

35 <https://www.ksv.at/insolvenzfaelle/cpi-immobilien-gmbh-183822>.

36 <https://www.derstandard.at/story/3000000174173/kikalein>.

37 <https://kurier.at/wirtschaft/kikaleiner-pleite-die-unveroeffentliche-bilanz/402486095>.

38 <https://edikte.justiz.gv.at/edikte/id/idedi8.nsf/suchedi?SearchView&subf=eid&SearchOrder=4&SearchMax=4999&retfields=-%5BSchuldnerS%5D=kika%20leiner-BMAZ=NUL&ftquery=&query=%28%5BSchuldnerS%5D%3D%28kika%20%20AND%20%20leiner%29%29#1692361192316>.

39 Kreditschutzverband 1870, insolvency estimation for the first half of 2023, available (in German) at http://www.ksv.at/KSV1870_Insolvenzstatistik_Unternehmen_1HJ2022_HR_pdf.