

Working Session Insolvency & Real Estate Commissions Prague 2014

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Practical example: Insolvency of a major construction company in Austria

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ALPINE Insolvency

1

ALPINE Group – Basic Data

- **Establishment:** 1964
- **Construction work (*Bauleistung*) (year 2011):**
 - ▣ Worldwide: about € 3,6 bn
 - ▣ Austria: about 1,5 bn
- **Employees (year 2011):**
 - ▣ Worldwide: 15,294
 - ▣ Austria: 7,500
- **Shareholder of ALPINE:** FCC Construction S.A.



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2

Insolvency Proceedings (ALPINE Bau GmbH)

- **October 2012: Problems of liquidity emerge**
- **Attempts to prevent insolvency**
 - ▣ November 2012: Standstill agreement with the banks was signed
 - ▣ March 2013: Comprehensive restructuring agreement



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3

Insolvency Proceedings (ALPINE Bau GmbH)

- **June 19, 2013: Filing for insolvency**
 - Estimated assets (*Vermögen*) (June 19, 2013): € 661 mn
 - Estimated debts: € 2.56 bn
- **June 24, 2013: Closure of the business**
- **August 2013: Estimated debts: about € 4 bn**



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4

1. Termination of Agreements

□ Termination of labour agreements

- Termination of 6,934 existing employment agreements worldwide (§ 25 IO)
 - 4.883 employment agreements in Austria and 2.051 in foreign countries
- Regular wages and salaries must be paid in full
- Claims of employee resulting from termination fall under the quota regime



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5

1. Termination of Agreements

- **Termination of lease/rent agreements, movables**
 - ▣ Lease/rent agreements are terminated (§§ 21, 23 IO)
- **Termination of lease agreements, real properties**
 - ▣ Some lease/rent agreements are terminated immediately; other lease/rent agreements will be terminated after the real properties are no longer necessary
 - ▣ Rent agreements regarding company housing (*Dienstwohnungen*) are terminated (§ 23 IO)



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6

1. Termination of Agreements

- **Termination of Construction Agreements (*Aufträge*)**
 - ▣ The Insolvency Code states that the trustee (*Verwalter*) can decide whether to accede to an existing contract or to withdraw from the contract (§ 21 IO)
 - ▣ If the trustee does not decide within a certain time, it is assumed that the trustee withdraws from the contract
 - ▣ The ALPINE trustee did not accede in any of the (construction) contracts
 - Consequence: All (construction) contracts were terminated



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7

1. Termination of Agreements

- **Termination of working groups**
(*Arbeitsgemeinschaften*)
 - In case one partner of the working group becomes insolvent, the insolvent partner may be squeezed out (§ 1210 Austrian Civil Code, *ABGB*)
 - Regularly the working group partners will try to squeeze out the insolvent partner and pay him a compensation
 - The termination procedure is very complex (because of e.g. distribution of proceeds, liability, etc.)
 - Termination of working groups sparked off several lawsuits



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8

1. Termination of Agreements

- **Processing of branches abroad:**
 - ▣ Public notices, entries in public register, such as commercial register (Council Regulation on insolvency proceedings, *EulnsVO*)
 - ▣ Appointment of a special liquidator
- **Termination of agreements relating to the holding function of ALPINE Bau GmbH (*Holdingsfunktion*)**
 - ▣ Insurance, IT-infrastructure, telephony, tax (group of companies)



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9

2. Realisation Procedure

- Because the business is closed, all assets must be realised
- **Collection of liquid assets** (*Vermögen*) domestic and abroad
 - ▣ Bank Balance in the amount of € 11,088,290.55



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10

2. Realisation Procedure

□ Realisation of real properties

- Total estimated value of the real properties: about € 50 mn
- So far the private sale (*freihändiger Verkauf*) of the real properties of about € 16.6 mn is authorised by the insolvency court

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11

2. Realisation Procedure

□ Realisation of movables

- (1) Regional „rescue solutions“ (*Auffanglösungen*): *Third parties bought movables at the current market value*
 - (2) Other movables were sold directly at the construction site
 - (3) Most of the remaining movables were realised by way of auctions (also online auctions) or private sale (*freihändig verwertet*)
- Revenue of the realisation of movables (Austria): about € 32.3 mn
 - Revenue of the realisation of movables (abroad): about € 3,8 mn



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12

2. Realisation Procedure

- **Open claims** (*offene Forderungen*)
 - The recovery of the claims is very complex for factual reasons (e.g. peripheral organisation of the company and the retirement of numerous experts)
 - Many claims are pledged (*verpfändet/zediert*) or sold to financial institutions



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13

2. Realisation Procedure

- **Realisation of working groups**
(*Arbeitsgemeinschaften*): so far only € 6.3 mn resulted from settlements
- **Realisation of investments held in other companies**
(*Beteiligungen*)
 - Short-term decisions were necessary to prevent follow-up-insolvencies
 - The realisation process regarding investment was done by way of private sales (*freihändige Veräußerung*)



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14

2. Realisation Procedure

- **Realisation of preproduction business**
(Vorproduktionsbetrieb) and **holdings regarding preproductions companies**
(Vorproduktionsgesellschaften)
 - ▣ **Asphalting plants** *(Asphaltmischanlagen)*, which had been owned by ALPINE were sold by way of auctions



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15

3. Estimated Duration of the Proceeding

- Because of the dimension and complexity of this insolvency proceeding it is not possible to seriously estimate the duration of the proceeding.
- It is also difficult to estimate the prospect of paying off the creditors (*Befriedigungsaussicht der Gläubiger*).
 - ▣ Trustee estimate the quota of about 2% to 3.5%.



Contact

16

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