

**„Don't hit the wall: How to deal with (and prevent) default in real
estate projects“
Real Estate and Insolvency Commissions**

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Working Session 2

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Agenda

Part 1: Introduction & presentation of national reports

Part 2: Practical experience

- 1. Juraj Alexander (Dentons Europe CS LLP,)**
Continuation of large construction projects upon insolvency
- 2. Alex Fox (Penningtons Manches LLP, UK)**
Cross-border Insolvency Regulations vs Jurisdiction Clauses /Arbitration clauses vs Insolvency Proceedings
- 3. Jean-Rodolphe Fiechter (Kellerhals, Switzerland)**
Avoid paying twice the price – How to deal with subcontractors' claims
- 4. Martin Förster (Graf & Pitkowitz, Vienna):**
Practical example: Insolvency of a major construction company in Austria
- 5. Anna Wyrzykowska (KWB, Warsaw):**
Working out a failed real estate development project with numerous parties and disputes
- 6. Vincent van Emstede (Höcker, Amsterdam)**
Insolvency of a major bookstore company in the Netherlands
- 7. Ondrej Rathousky (Giese & Partner, Prague):**
Recodification of the Czech civil law as of January 1, 2014 and its impact on commercial leases

Part 3: Questions

Part 1: Presentation of national reports

How to deal with a default situation in a key construction project or in a strategic long-term lease?

How to cope with the most sensitive issues arising therefrom?

Which clauses should you contemplate using?

What precautions would you advise your client or company to take?



National Reports from 12 different countries

Scenario 1: Defending Employer's interests

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Key findings:

- **Commercial registers etc. available in many countries to check financial standing**
- **standard conditions for construction
-> in most countries not codified**
- **Payments in instalments -> most typical security**

Scenario 1: Defending Employer's interests

- **employer's alternatives in case of contractor's insolvency:**
 - 1) **terminate the contract if possible and engage a new contractor**
 - 2) **continue with the insolvent contractor if he is able to continue business activities**
- **Transfer of title clauses generally accepted and used in many countries**
- **Provisions for the financier to take over the project and the construction contract not typical**

Scenario 2: Defending Contractor's interests

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Key findings:

- **Securities quite similar internationally
most common: bank guarantees**
- **Effects of insolvency:**
 - **No immediate affection of contract (exemptions e.g. Turkey)**
 - **Contractual right to terminate contract null and void
(exemptions e.g. Sweden, Switzerland)**
 - **Decision over termination of contract: trustee**

Scenario 2: Defending Contractor's interests

- **Performance of contract : privileged claims against the estate**
- **Termination of contract: unprivileged claims**
 - ➔ **Performance more advantageous for contractor**
- **Special risk: subcontractors**

Scenario 3: Lease contracts

Scenario 3: Lease Contracts

Key findings:

- New landlord either entitled or prohibited to terminate the lease
- Tenants can register the lease with the real estate registry

➡ additional protection

➡ ensure lease is binding on the new landlord

Scenario 3: Lease Contracts

- **validity of insolvency clauses:
either enforceable or not (even when common in practice)**
- **Most common securities:
➔ bank guarantees and deposits**
- **Deposits troublesome to collect in case of insolvency**

Thank you for your attention!

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