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Practical example: Insolvency of a major construction company in Austria

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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.
ALPINE Insolvency

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
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
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
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)
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
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
1. Termination of Agreements

- **Processing of branches abroad:**
  - Public notices, entries in public register, such as commercial register (Council Regulation on insolvency proceedings, *EuInsVO*)
  - Appointment of a special liquidator

- **Termination of agreements relating to the holding function of ALPINE Bau GmbH** (*Holdingfunktion*)
  - Insurance, IT-infrastructure, telephony, tax (group of companies)
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
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
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
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
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*)
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
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%.
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