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Austria

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FORMS OF SECURITY

1. What are the most common forms of security granted over immovable and movable property? Are there formalities that the security documents, the secured creditor or the debtor must comply with? What is the effect of non-compliance with these formalities?

Immovable property

The most common forms of security over immovable property are:

- **Mortgage (*Hypothek*).** A mortgage is the transfer of an interest in property to a creditor as a security for a debt. The debtor has a right of redemption if the terms of the mortgage are satisfied or performed.
- **Transfer of title in property (*Sicherungsübereignung*).** Ownership is transferred from the transferor (debtor) to the transferee (creditor). However, the transferee holds the property as trustee for the transferor. Full ownership reverts to the transferor when it fulfils its obligations.

Both types of security can be enforced by either of the following means:

- Auctioning the property.
- Putting the property under forced administration.

If the creditor wants to recover its claims in the form of income from rental or lease fees, it must choose forced administration.

Movable property

The most common forms of security over movable property are:

- **Pledge (*Pfand*).** A pledge is a way of creating security by delivering an asset to a creditor to hold until an obligation is performed. The creditor takes possession of the asset while the debtor retains ownership. The creditor can sell the pledged asset if the obligation is not performed. Claims can also be pledged. Since no physical possession of a claim is possible, they are pledged by notifying the third party debtor.
- **Security transfer (*Sicherungsübereignung*).** In a security transfer, ownership is transferred from the debtor as transferor to the creditor as transferee, while the object remains in the transferor's possession. The advantage over the pledge is that the object remains usable by the debtor.
- **Assignment (*Sicherungsabtretung*).** A debtor can assign claims it has against a third party. The assignment is usually not disclosed to the third party. If the debtor defaults, the creditor can disclose the assignment and seek payment directly from the third party.

Formalities and failure to comply

The relevant formalities are:

- **Mortgages and transfers of title in property.** These must be notarised and registered with the Land Registry (*Grundbuch*). Failure to comply with these formalities renders the security invalid.
- **Pledges.** A claim can only be pledged if the third party debtor is sufficiently notified of the pledge. If a physical asset is being pledged it either must be transferred to the pledgee or held by a person on the pledgee's behalf. Failure to comply with these formalities renders the security invalid.
- **Security transfers and assignments.** There are no specific formalities for assignments and security transfers.

CREDITOR AND SHAREHOLDER RANKING

2. Where do creditors and shareholders rank on a company's insolvency?

Claims already in existence at the start of insolvency proceedings are treated equally.

However, the following claims must first be satisfied in full:

- The costs of the insolvency proceedings.
- The costs of administration of the assets in insolvency and related taxes.
- Employee claims originating after the start of insolvency proceedings.

Payments to all other creditors are made in the following order of priority:

- **Secured creditors.** These fall into two categories:
  - **Separation of property (*Aussonderungsrecht*).** Property of third parties caught in the insolvency proceedings must be returned to those third parties;
  - **Separate satisfaction (*Absonderungsrecht*).** Separate satisfaction is granted to creditors whose claims are secured by a lien or otherwise either by law or agreement. An insolvency administrator can initiate auctions or forced administration of the insolvency estate's immovable assets even if the asset is subject to a right of separate satisfaction.
- **Post-insolvency claims.** These relate to creditors whose claims originate after the start of insolvency proceedings.

- **Unsecured creditors.**
- **Shareholder loans.** Shareholders with a controlling interest of more than 25% who make payments to a company or provide security for third party loans to the benefit of a company fall within this category where the company is in crisis (*Act on Equity Replacement (Eigenkaptitalersetzende Gesellschafterdarlehen 2004)*).

The shareholders are only repaid their equity after all creditors are satisfied.

UNPAID DEBTS AND RECOVERY

3. Do trade creditors use any mechanisms to secure unpaid debts?

Unpaid debts can be secured by:

- **Retention of title (*Eigentumsvorbehalt*).** Retention of title allows the seller to retain ownership over the goods supplied until certain contractually defined conditions are met, therefore providing the seller with a form of security against the buyer's default or insolvency.
- **Extended retention of title (*erweiterter Eigentumsvorbehalt*).** In an extended retention of title, a seller grants the buyer the power to transfer ownership in the goods and the buyer assigns its claims towards its customers arising out of the ownership transfer to the seller as security.
- **Statutory liens (*gesetzliche Pfandrechte*).** Statutory liens are granted by law to certain types of creditors (for example, craftsmen) over a debtor's goods in their possession. These creditors can seek satisfaction of their claims from these goods.

4. Can creditors invoke any procedures (other than the formal rescue or insolvency procedures described in *Question 6*) to recover their debt? Is there a mandatory set-off of mutual debts on insolvency?

An unpaid creditor can bring court proceedings against a debtor to seek a judgment for the unpaid debt. If the debt is undisputed, the judgment can be sought on a summary basis. If certain requirements are met, transactions entered into by the debtor can be declared null and void (*see Question 9*).

There is no mandatory set-off of mutual debts on insolvency.

STATE SUPPORT

5. Is state support for distressed businesses available?

Special rescue measures for banks and insurance companies

Providing support to banks was a central component of the legislative measures that the government adopted to stabilise the financial markets in late October 2008.

The core aims of the legislative measures are to:

- Stimulate the interbank market.
- Provide equity support measures to individual banks.
- Restore depositor confidence in financial markets.
- Strengthen the supervision of banks.

Under these measures, a maximum of EUR90 billion (as at 1 February 2011, EUR1 was about US$1.42) became available to support the Austrian financial market. However, most of this amount was not required or used.

Strengthening the equity of individual banks

Support mechanisms. As part of its financial market stabilisation package, the government passed the Financial Market Stabilisation Act (*Finanzmarktstabilitätsgesetz*) (FMSA) in late October 2008, to provide the parameters for recapitalising the banks in need of financial assistance.

For this purpose, Austria established the Financial Market Holding Stock Corporation of the Federal Government (*Finanzmarketbeteiligung AG des Bundes*) (Fimbag) in November 2008 to implement recapitalisation measures in line with the Austrian Banking Act.

Fimbag's key tasks are to:

- Acquire shares under the FMSA on behalf of the Federal Republic of Austria (state).
- Monitor the banks' compliance with the requirements imposed by the state when acquiring shares.
- Ensure an orderly divestment of the state's shares at the appropriate later point in time.

The main mechanism for funding used by Austrian banks is participation capital (*Partizipationskapital*). Participation capital is a special category of shares under Austrian law, which is between share capital and debt. For banks that issue participation capital properly, the main advantage is that this form of capital is clearly recognised as core Tier I capital (that is, the most secure form of capital). This mechanism strengthens the capital basis of banks when risk provisions are being increased and the banks' assets devalued. If participation capital is issued to the state, a key benefit is that the participation capital does not give the state any voting rights.

As well as the state subscribing to participation capital, the FMSA also provides other methods to support the recapitalisation of banks and insurance companies. These include:

- State guarantees for bank liabilities.
- State guarantees for liabilities owing to the bank.
- Granting loans and supplying funds.
- Acquiring shares in connection with capital increases.
- Acquiring shares outright.
- Taking over assets by way of merger.

European Commission (Commission) limitation of support of individual banks. The Commission limited the methods for supporting recapitalisation provided by the FMSA, by limiting the amount made available to individual credit institutions.

The limitations on support for individual Austrian credit institutions was imposed by the Commission decision of 9 December 2008, C(2008) 8408 final and only applies to support measures covered by the FMSA and the Interbank Market Strengthening Act (*Interbankmarktstärkungsgesetz*) (IMSA) (*see below, Interbank market measures*). Apart from the FMSA, there is no other Austrian legislation in force providing for support measures aimed at strengthening the equity of Austrian credit institutions.

Since the Austrian state has not requested the Commission to further extend the period for which support measures under the FSMA are available, such measures are no longer available for Austrian credit institutions. However, any state guarantees issued or other measures to strengthen the equity of individual credit institutions, such as the subscription of participation capital, before 31 December 2010, will remain in place.

Interbank market measures

Under the IMSA, a clearing bank (*Österreichische Clearingbank*) was established to assist the refinancing of banks on the interbank market. The clearing bank's primary function is to borrow and lend short to medium-term funds to banks and insurance companies.

The fees and lending rates charged by the clearing bank must:

- Be in line with market conditions.
- Take into account the state guarantee charge that banks using the clearing bank must pay. The state guarantee charge is set by the government as a guarantee fee. It must comply with the arm's length principle. In total, the state guarantee charge is limited to EUR19.1 million of the fees in aggregate by all banks and insurance companies using the clearing back.

This essentially means that borrowing and lending must take place on arm's-length terms.

The IMSA was repealed on 31 December 2010. Therefore, after that date support measures under the IMSA are not available for Austrian credit institutions. However, the support measures entered into before 31 December 2010 remain in force.

State guaranteed bond issuances

The purpose of the IMSA is to allow banks to refinance at favourable terms. An important function of the IMSA is to support individual banks by requiring the state to guarantee the bonds that are issued by individual banks.

To qualify, both:

- Banks must be licensed to issue fixed-rate bonds for the purpose of investing income from other banking transactions (*section 1(1), paragraph 10, Austrian Bank Act*). The issued bonds:
  - can have a maximum maturity of five years;
  - can take the form of:
    - single bond issues;
    - bond issues under a debt issuance programme; or
    - bond issues under a medium-term note programme.
- Banks must agree to a set of conditions with the state in relation to recapitalisation measures.

This instrument proved to be more popular than using the clearing bank because larger amounts can be accessed via state guarantee bond issues than under the clearing bank system.

Enterprise liquidity strengthening

The Act on Strengthening Company Liquidity (*Unternehmensliquiditäts-Stärkungsgesetz*) (ULSG) came into effect on 25 August 2009. The purpose of the ULSG is to support companies by granting state guarantees, therefore enabling the companies to access loans and other means of financing more readily. A maximum of EUR10 billion was made available. The deadline for the submission of applications was 12 November 2010. Although the ULSG has now expired, financing provided by banks under the ULSG remain in effect according to their terms.

RESCUE AND INSOLVENCY PROCEDURES

6. In relation to each available rescue and insolvency procedure:

- **What is its objective and, where relevant, what are the prospects for recovery?**
- **How is it initiated, when, by whom and which companies can it be applied to?**
- **Can the company obtain any protection from its creditors during the procedure?**
- **What substantive tests apply?**
- **How long does it take?**
- **What consents and approvals are required?**
- **Who supervises the procedure and controls the company's affairs (for example, an independent accountant or the court)?**
- **How does it affect the company, shareholders, employees, trading partners and creditors?**
- **How is the procedure formally concluded and what happens to the company on conclusion?**

Bankruptcy proceedings (*Konkursverfahren*)

Objective. This is the most common form of insolvency proceedings in Austria and usually lead to the winding-up of the debtor's business. Bankruptcy proceedings are regulated by the Insolvency Act (*Insolvenzordnung*).

The main objectives of the Insolvency Act are to improve the debtor's ability to:

- Continue as a going concern.
- Enjoy the protection mechanisms against creditors during insolvency proceedings.

Initiation. Bankruptcy proceedings can be initiated by either:

- Any creditor.
- A debtor, if the debtor files for insolvency proceedings but does not provide a reorganisation plan. The reorganisation plan contains the time schedule and the quota for repayment of the debt.

If the debtor fails to provide a reorganisation plan, it can be filed subsequently, but will only pause liquidation of the debtor's assets if it is approved by both:

- A liquidator.
- The board of creditors (*see Question 10*).

Proceedings must be filed when the company becomes illiquid or over-indebted. Directors may be subject to criminal proceedings if they fail to file bankruptcy proceedings in time (*see Question 8*).

Protection from creditors. See below, *Effect*.

Substantive tests. Bankruptcy proceedings can be commenced on either of the following grounds:

- The debtor's inability to pay its debts as they fall due.
- The debtor's over-indebtedness. This is not simply liability exceeding assets, but is a negative continuation prognosis (*negative Fortbestehensprognose*) showing that the company's business will generate loss instead of profit.

Length of procedure. The procedure can take several years.

Consents and approvals. After commencing bankruptcy proceedings, the court must schedule a creditors' meeting for 60 to 90 days later. During this time, the bankruptcy trustee (*Masseverwalter*) can accept or reject each creditor's claim. If a claim is rejected, a creditor can file for examination proceedings (*Prüfungsprozess*). Examination proceedings are based on civil proceedings and are used to examine whether or not the claim is legitimate.

In larger cases, the creditors can elect a board of creditors. At the creditors' meeting, the bankruptcy trustee informs the creditors about whether continuation or liquidation of the debtor's business is preferable. If the debtor submits a valid reorganisation plan, the court (after hearing the bankruptcy trustee and board of directors) can suspend liquidation of the debtor's assets until the creditors' meeting has passed a resolution (by simple majority of the claims represented in the meeting).

Supervision and control. The bankruptcy trustee is responsible for administering the debtor's assets and assumes control of the business, under the supervision of the:

- Court.
- Board of creditors (in larger cases).

The bankruptcy trustee is appointed by the Insolvency Court.

Effect. Once bankruptcy proceedings are commenced, creditors can only enforce their claims using the rules provided for in the proceedings. Litigation against the debtor cannot be commenced or continued and any current claims are suspended. Creditors are also prohibited from obtaining a court-ordered security.

The bankruptcy assets are sold and the proceeds distributed among the creditors.

Conclusion. The bankruptcy proceedings are closed when:

- The debtor's assets are sold in their entirety.
- All proceeds are distributed to the creditors.

Reorganisation proceedings without debtor in possession (*Sanierungsverfahren ohne Eigenverwaltung*)

Objective. These proceedings are usually sought to reorganise the debtor's business, but can be converted into bankruptcy proceedings if there is either a:

- Lack of assets.
- Withdrawal of the reorganisation plan by the debtor.
- Rejection of the reorganisation at the creditors' meeting.

Initiation. In the case of actual or pending insolvency, the debtor can file for proceedings by providing the court with a valid reorganisation plan. Proceedings filed without a valid reorganisation plan lead to the commencement of bankruptcy proceedings. Proceedings must be filed when the company becomes illiquid or over-indebted. Managing directors can be subject to criminal sanctions if they fail to file on time (*see Question 8*).

Protection from creditors. If a creditor is granted a right of separation of property or separate satisfaction (*see Question 2*), it is unable to exercise these rights for six months after the commencement of proceedings. This is to protect the debtor's business against these rights if the business is set to continue during the insolvency. However, these rights can be exercised within this period if their use is necessary to avoid the beneficiary facing severe personal or economic disadvantages.

If the debtor's business continues during the proceedings, agreements with third parties that are essential for the continuation of the debtor's business can only be terminated for cause. However, creditors may only terminate the agreement with the debtor during the six months from the date bankruptcy proceedings have commenced (*section 25(a), Insolvency Act*).

This rule does not extend to:

- Credit facility agreements.
- Employment contracts.

However, an agreement can be terminated for cause during the six month-period if it is necessary to avoid severe personal or economic disadvantages of the contracting party (not including the debtor's financial standing).

Agreements entered into before the insolvency of a contracting party that trigger a right of termination on insolvency are void (*section 25(b), Insolvency Act*). Creditor claims are stayed until the end of insolvency proceedings.

Substantive tests. The reorganisation plan must provide for a satisfaction quota of at least 20% of the debt that must be paid within two years.

Length of procedure. The procedure can take up to two years.

Consents and approvals. When insolvency proceedings are commenced, a reorganisation hearing must be convened for 60 to 90 days after. During this time, no liquidation can be undertaken, even if this would be in the creditors' interests. At the hearing, a resolution to determine whether or not to allow the reorganisation must be passed (representing a simple majority of the claims represented in the meeting).

Supervision and control. The debtor's business is carried on by an insolvency trustee. The insolvency trustee's control of the debtor's business is supervised by the:

- Court.
- Board of creditors (in larger cases).

Effect. The debtor's assets are administered by the insolvency trustee and the creditors are repaid according to the reorganisation plan.

Conclusion. Proceedings end with either:

- Confirmation of the reorganisation plan.
- Conversion into bankruptcy proceedings.

Reorganisation proceedings with debtor in possession (*Sanierengsverfahren mit Eigenverwaltung*)

Objective. These proceedings are usually sought to reorganise the debtor's business.

Initiation. The debtor can file for proceedings in the case of actual or pending insolvency. After filing for insolvency, the debtor is legally entitled to remain in control of the business assets if it provides the court with a:

- Reorganisation plan that includes a minimum settlement quota of 30% of the debt, payable within two years.
- Detailed list of assets and information concerning the financial status of the business.
- Financial plan for the first 90 days of the reorganisation proceedings.

Proceedings must be filed as soon as the company becomes illiquid or over-indebted. Managing directors may be subject to criminal sanctions if they fail to file on time (*see Question 8*).

Protection from creditors. This is the same as for reorganisation proceedings without debtor in possession (*see above, Reorganisation proceedings without debtor in possession: Protection from creditors*).

Substantive tests. See above, *Initiation.*

Length of procedure The procedure can take up to two years.

Consents and approvals. Three weeks after proceedings are commenced, a reorganisation hearing must be convened to make a timely evaluation of the debtor's self-administration.

If the reorganisation plan is not approved by the creditors within 90 days of commencing proceedings by a simple majority of the claims represented in the meeting:

- Self-administration can be revoked.
- Proceedings can be converted into reorganisation proceedings without debtor in possession.

If the reorganisation plan does not meet the legal requirements listed above, it will be invalid. This will mean:

- Self-administration can be revoked.
- Proceedings can be converted into bankruptcy proceedings.

See also below, *Supervision and control.*

Supervision and control. The reorganisation administrator is appointed by the Insolvency Court and supervises all business activities of the debtor. The debtor is entitled to continue ordinary business activities, but extraordinary business activities require the reorganisation administrator's approval. In some cases, the reorganisation administrator has the power to prohibit ordinary business measures (*see Question 10*).

Effect. The company's assets are administered by the debtor. Unless the reorganisation plan provides otherwise, the debtor retains unrestricted ownership of its assets after the reorganisation plan has been confirmed.

Conclusion. Reorganisation proceedings without debtor in possession end with confirmation of the reorganisation plan.

Voluntary liquidation

Objective. Voluntary liquidation is the standard method for winding up a business. The debtor's assets are sold and the proceeds are distributed to the creditors. If the proceeds do not meet the full extent of the creditors' claims, the debtor must either:

- File for insolvency.
- Attempt to persuade major creditors to waive or subordinate their claims.

Initiation. A voluntary liquidation is commenced by a shareholders' resolution. A liquidator is appointed to organise the sale of assets and distribute the proceeds.

Protection from creditors. Once proceedings have commenced, there is no stay on creditors' claims outside of liquidation proceedings.

Substantive tests. There are no substantive tests.

Length of procedure. Once an announcement of liquidation has been made, a minimum period of one year is required before both the:

- Liquidation can be concluded.
- Shareholders can be paid any of the remaining proceeds.

Consents and approvals. A shareholders' resolution is necessary to start a voluntary liquidation. The necessary voting requirements for the resolution depend on the type of company that is being wound up.

Supervision and control. The procedure is supervised by the Commercial Court, which ensures the liquidation is implemented according to law.

Effect. The company is wound up. If the creditors' claims are not repaid or waivered, the debtor must file for insolvency proceedings.

Conclusion. The debtor must inform the court that the company has been wound up. The company is then removed from the commercial register.

STAKEHOLDERS' ROLES

7. Which stakeholders have the most significant role in the outcome of a restructuring or insolvency procedure?

Austrian insolvency law generally favours major creditors. This is because the size of a creditor's claim against the debtor determines the number of votes that the creditor has at the creditors' meeting. Banks usually have the largest claims against a debtor and their votes are often decisive for the approval of a restructuring plan.

Restructurings often involve negotiations between major creditors and the company outside of statutory insolvency procedures.

LIABILITY

8. Can a director, parent company (domestic or foreign) or other party be held liable for an insolvent company's debts?

Managing directors

In an insolvency, the debtor or the debtor's managing directors can be held criminally liable for failing to observe the equal treatment of equal ranking creditors. After the debtor has become illiquid or over-indebted, the preferential treatment of some creditors over others may trigger criminal sanctions. Managing directors may be held liable not only for intentional or fraudulent conduct, but also for prejudicing creditors' interests in a grossly negligent manner.

Managing directors may be held liable to the company for any failure to perform their function with diligence. This may lead to the managing director's civil liability for the company's debts. This is especially the case concerning creditors' losses due to the managing director's failure to file for insolvency proceedings in a timely manner. In relation to new creditors, managing directors are also liable for damages arising from actions they have taken which have misled any new creditors as to the company's insolvency status.

Managing directors are personally liable (up to EUR100,000 per individual) if they fail to file for reorganisation proceedings (*Reorganisationsverfahren*), having been informed by the company's auditor that the company needed reorganisation (*Business Reorganisation Act*). Indicators are an equity ratio of less than 8% and settlement of debts period exceeding 15 years.

Parent companies

Parent companies generally have no liability. However, liability may arise in extreme cases of interference with the subsidiary's business. In addition, the bankruptcy trustee often tries to set aside payments made by a subsidiary in favour of its parent company.

Supervisory board

There has been much discussion in legal literature about the scope of liability of supervisory board members. There has been a trend in case law towards increased exposure of supervisory board members to liability.

SETTING ASIDE TRANSACTIONS

9. Can an insolvent company's pre-insolvency transactions be set aside? If so:

- **Who can challenge these transactions, when and in what circumstances?**
- **Are third parties' rights affected?**

Challenging transactions

If contracts are not mutually fulfilled on or before the date insolvency proceedings are commenced, the bankruptcy trustee can choose between performance or non-performance of the contract. There are special rules for leases and employment contracts.

Certain transactions can be declared void as regards the creditors where a successful challenge is made by the bankruptcy trustee, either by legal challenge or defence (*Insolvency Act*). The grounds for voidability are:

- **Discriminatory intent (*Benachteiligungsabsicht*).** This applies if the debtor intended to create a disadvantage for its creditors, and the transaction partner either:
  - knew of the debtor's intent (up to ten years preceding the initiation of insolvency proceedings);
  - should have known of the debtor's intent (up to two years preceding the initiation of insolvency proceedings).
- **Squandering of assets (*Vermögensverschleuderung*).** A transaction can be challenged if it is seen as squandering the company's assets. The other party to the transaction must have known or should have known that this was the case (up to one year preceding the initiation of insolvency proceedings).
- **Gifts made by the company (*Schenkung*).** Gifts made by the company can be challenged if made in the two years before the start of insolvency proceedings.
- **Preferential treatment of creditors (*Begünstigungsabsicht*).** Acts that favour one creditor over another can be set aside if they occurred in the 60 days before insolvency or after the start of insolvency proceedings.
- **Post-insolvency transaction.** Transactions taking place after insolvency can be declared void if the creditor knew or should have known about the insolvency (*Kenntnis der Zahlungsunfähigkeit*).

Any disposition of the company's property by the debtor after insolvency proceedings have started is void. This is because only the bankruptcy trustee is authorised to represent the company during insolvency proceedings.

Whatever has been divested of the debtor's property by one of the void transfers listed above must be repaid to the company and added to the insolvency estate. If this is not possible, damages must be paid.

Third parties' rights

If a third party has become the owner of recoverable property, the person or undertaking that conducted the sale to the third party must pay damages to the insolvency estate.

A third party transferee that gratuitously acquires a recoverable property in good faith is only required to restore the recoverable property to the extent it is enriched by this acquisition. However, if the third party's acquisition is contestable itself, the value of the asset must be returned to the insolvency estate in full.

CARRYING ON BUSINESS DURING INSOLVENCY

10. In what circumstances can a company continue to carry on business during insolvency or rescue proceedings? In particular:

- **Who has the authority to supervise or carry on the company's business?**
- **What restrictions apply?**

Bankruptcy proceedings

The debtor's business is carried on by a bankruptcy trustee appointed by the court. Despite having no executive powers during the proceedings, the debtor's management must support the bankruptcy trustee.

In major bankruptcy proceedings, the creditors can request the appointment of a board of creditors (*Gläubigerausschuss*) to supervise the carrying on of the debtor's business. There is no exact threshold that determines when it is necessary to appoint a board of creditors; it is decided by the court on a case-by-case basis.

The board of creditors consist of three to seven members and has the authority to supervise the bankruptcy trustee. Transactions with a value exceeding EUR35,000 must be approved by the board of creditors (as well as certain other legal actions).

Reorganisation proceedings with debtor in possession

During reorganisation proceedings with debtor in possession, the debtor is entitled to continue ordinary business activities, but the approval of the reorganisation administrator is required for extraordinary business measures. The reorganisation administrator also has discretion to prohibit ordinary business measures in some cases.

ADDITIONAL FINANCE

11. Can a company that is subject to insolvency proceedings obtain additional finance (for example, debtor-in-possession financing or equivalent)? Is special priority given to the repayment of this finance?

A company facing insolvency proceedings can obtain additional finance. The priority of repayment for additional financing depends on who grants the additional finance:

- **Third party financing.** By granting additional financing to the creditor after commencing insolvency proceedings, third parties acquire post-insolvency claims, which are settled after secured creditors, but before all other creditors (*see Question 2*).
- **Shareholder loans.** Payments from shareholders with a controlling interest of more than 25% of the voting rights can only be repaid after proceedings are concluded.

MULTINATIONAL CASES

12. In relation to multinational cases:

- **Do local courts recognise insolvency and rescue procedures in other jurisdictions, and court judgments made during these procedures? Is recognition given under specific legislation or under case law (for example, principles of comity)?**
- **Do courts co-operate where there are concurrent proceedings in other jurisdictions?**
- **Is your jurisdiction party to any international treaties, model laws or EU legislation (if applicable)?**
- **Are there any special procedures that foreign creditors must comply with when submitting claims in local insolvency proceedings?**

Recognition

Austria is bound by Regulation (EC) 1346/2000 on insolvency proceedings (Insolvency Regulation) and must recognise any insolvency proceedings started in other member states except Denmark. Therefore, various treaties with Germany, France, Italy and Belgium are no longer applicable. Insolvency proceedings in other countries are recognised on an individual basis under section 63 of the Insolvency Act.

Concurrent proceedings

The Insolvency Regulation requires Austrian courts to automatically recognise insolvency proceedings started in other EU member states and contains detailed provisions on concurrent proceedings in different member states. Proceedings in other countries are not automatically recognised and do not hinder Austrian courts from opening separate insolvency proceedings.

International treaties

Austria is not a party to the UNCITRAL Model Law on Cross-Border Insolvency.

Special procedures for foreign creditors

There are no special procedures for foreign creditors.

REFORM

13. Are there any proposals for reform?

The Bankruptcy Act was amended and renamed the Insolvency Act in 2010. No further reforms are currently planned.

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Qualified. Austria, 1998

Areas of practice. Restructuring and insolvency; M&A; banking and finance; private equity; real estate.

Recent transactions

- Recently advised one of the largest Austrian banks on the insolvency of A-TEC, Austria's third largest bankruptcy ever.
- Advised Austrian banks on obtaining state aid under the Austrian Financial Market Stabilisation Act.
- Led a strategy for the comprehensive restructuring and sale of Constantia Privatbank, which experienced liquidity problems in the wake of the financial market crisis.
- Advised on the refinancing and restructuring of IMMOFINANZ AG und Immoeast AG, two of the largest real estate players in Austria and the CEE area.