Until we meet again | A more coordinated approach to out-of-court restructurings ?

Experiences from Austria

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Zagreb, 22 November 2016

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Agenda

The next 45 minutes

- Background and starting point
- Goals of stakeholders
- Need for coordination
- Similar problems faced in almost all restructurings
- The approaches in AT and CRO
- The results AT and CRO
- The AT principles and the CRO guidelines – a comparison
- Case studies

Starting point : Austria and elsewhere

Issues are not at all unique to Austria

- Number of larger multi-creditor restructurings in the years 2009 - 2015
- Well-established work-out units in all major banks
- Well-established best practice (at least in some cases)
- Similar problems faced in almost all restructurings
- No common (Austrian) rulebook to give guidance on recurring questions
- No or only little knowledge of international rules such as INSOL Principles leading to no application of such international rules in practice

The goal

Austria, Croatia, elsewhere

- Avoid value destruction that often is caused by
  - Creditors working against each other rather than coordinating and collaborating
  - Debtors in distress approaching their creditors selectively – and, in particular in some jurisdictions, at times very late (or too late)
- Preserve value for all stakeholders (financial and trade creditors, management and also owners) in coordinated fashion
- Combat / disincentivize “first come – first serve” and hold-out strategies

Need for coordination ?

You always meet twice

- Cross-border cases, e.g. benchmark restructuring of Mercator where we advised the coordination committee of creditors
- Large purely domestic financial restructurings, e.g. AT timber company
- Implementation of INSOL Principles or London Rules as guiding principles?
- Local restructuring communities and banking associations to decide whether additionally local rule books are desirable
- Some – very welcome – national initiatives for rules on restructuring, e.g. as promoted by Vienna Initiative 2.0

The approach

Austria 2012/2013 vs Croatia 2015/2016

- Austria: Bottom up, i.e.
  - Major Austrian banking groups and Schoenherr teamed up to draft rulebook for restructurings
  - Rules build on practical experiences and look to international standards while at the same time taking into account local features
  - Rules deal with common issues arising in restructuring situations
  - Discuss and decide issues calmly and rationally, without any particular case in mind
- Croatia: Top down, i.e.
  - Guidelines developed by the Ministry of Justice

The outcome

The results in Austria and Croatia

- Restructuring Guidelines for Austria
  - Eight principles based on INSOL Principles but with reference to the Austrian market more detailed, thus giving more guidance
  - Guidelines developed in a very inclusive, cooperative process involving all major players, including credit insurers and leasing companies as well as debt(or) advisors
  - Non-binding but wide acceptance due to strong ownership feeling of individuals and involved financing institutions
  - Imminent acceptance and application by Austrian market participants
- Guidelines enacted by Government of Republic of Croatia
  - Non-binding, principles based recommendation

The principles and guidelines

Comparing the substantive points

- Standstill (AT principle 1 ←→ CRO guideline 3.3)
- Pari passu (AT principle 2 ←→ CRO guideline 3.2.1)
- No adverse action by debtor (AT principle 3 ←→ CRO guideline 3.2.2)
- Coordinating body (AT principle 4 ←→ CRO guideline 3.2)
- Information (AT principle 5 ←→ CRO guideline 3.4)
- Applicable law and relative positions (AT principle 6 ←→ several CRO guidelines)
- Confidentiality (AT principle 7 ←→ CRO guideline 3.5)
- New money (AT principle 8 ←→ CRO guideline 3.6)

The principles and guidelines

Common and distinctive features

- Common features
  - Substance is very similar
- Distinctive features
  - Process was different
  - Top down vs. bottom up
- Complement top down guidance by bottom up behaviour?
- What does it take for that?
  - Effective and efficient legal enforcement
  - Trust and loyalty among market participants

Case study I

Mercator

- The setting
  - EUR 1+bn of financial debt, 60+ creditor banks, 6 jurisdictions
- The keys to successfully restructuring Mercator
  - Operationally ‘healthy’ business
  - Cooperation amongst company and CoCom
  - Cooperation with and amongst advisors
  - Fears of this being ‘too big to fail’ created cooperation amongst financial creditors

Case study II

Austrian TimberCo

- The setting
  - EUR 250+mn of financial debt,
  - Number of creditor banks at various positions in capital structure (OpCo and HoldCo creditors, some secured others rather not)
- The keys to successfully restructuring TimberCo
  - Operationally ‘healthy’ business
  - Strong element of trust (and transparency) amongst stakeholders and advisors
  - Cooperation amongst financial creditors

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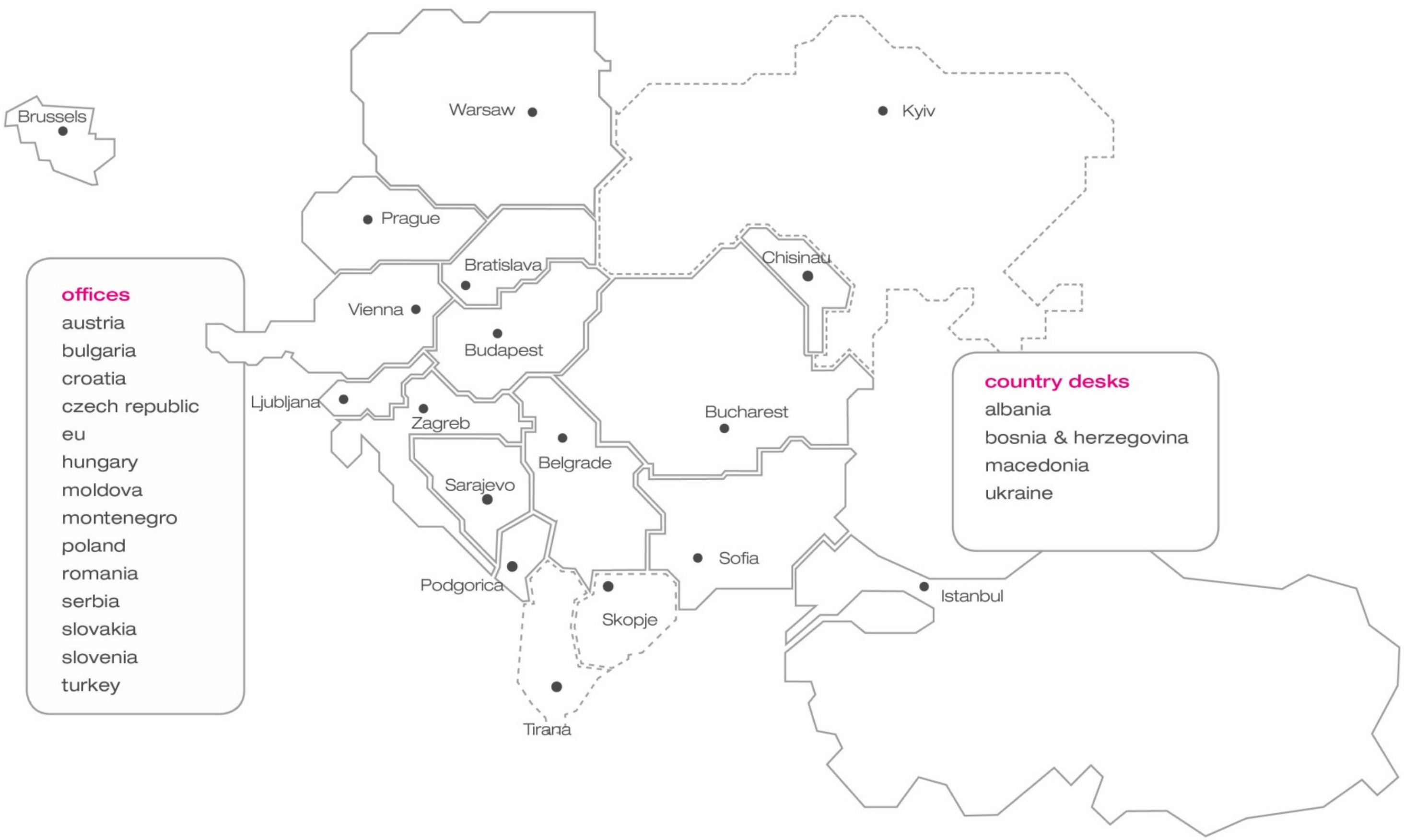

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