



# Restructuring

**Return to safe waters?  
We are breaking the ice.**



Heuking Kühn Lüer Wojtek is a large, independent German law firm, with eight offices in Germany. National and international clients trust the competence and experience of our lawyers, tax advisors and notaries.

## Corporate restructuring

Our restructuring practice group includes lawyers with special experience and qualifications in insolvency law and restructuring. We advise and represent clients in all matters involving corporate crises/restructuring/insolvency. In addition to first-class legal services, you can also expect profound understanding of the economic aspects of your situation and of alternative courses of action available to you. We will reliably assist you by proposing specific solutions and recommending appropriate courses of action, and we will work closely together with you to help you make the right decisions.

Ideally, our clients will ask for our restructuring advice as early as possible. Together with you, we will develop a comprehensive strategy for successful restructuring. If requested, we will also gladly work together with your other consultants. Once the causes for the corporate crisis have been identified, we will, together with you, develop, coordinate, and implement steps to be taken in order to achieve a successful turnaround.

Based on our reliable network of accountants, business consultants, interim managers, chief restructuring officers (CRO), financiers (factoring, leasing, prefinancing of wages during insolvency, debt trading), banks, private equity houses, distressed M&A investors, turnaround and hedge funds, escrow agents, insolvency administrators, custodians, and specialized law firms in other countries, we are in a position to prepare and manage restructuring transactions even beyond providing legal expertise. In many cases, our network helps with the procurement of new equity capital and with finding suitable investors, such as turnaround funds.

Since delayed filing of insolvency is, according to German law, a criminal offense, we also advise how to avoid such liability. We equally advise how to avoid liability of managing directors and board members for insolvent trading by company, tax liability, and other liability. We will show you strategies for minimizing these and other risks, and propose appropriate insurance solutions (D&O insurance).

If there is a duty for filing insolvency, we can also assist filing a petition for insolvency. In appropriate cases, we will prepare a protective shield proceeding, or a strategic insolvency with debt relief and restructuring as part of preliminary insolvency debtor-in-possession proceedings and subsequent insolvency plan proceedings.





## **Distressed M&A – The right time to join**

Companies in crises do not only bear risks, but also offer investment opportunities. We will gladly advise you on such investments. In addition, we will show you investment opportunities offered by our network.

We are experts in mergers & acquisitions law (asset deals, share deals, management buyouts, leveraged buyouts), and we are well familiar with the special problems arising in connection with crises and insolvencies. In distressed M&A situations, you will not only benefit from our legal expertise, experience, and knowledge about common practice, but also from our well-established contacts to many reputable insolvency administrators.

From trade confirmation until exit, we are a reliable partner in all legal and tax matters, both for distressed M&A investors as well as for sellers and insolvency administrators. We plan all legal aspects of restructuring transactions, perform legal due diligence reviews, negotiate investment or purchase agreements, shareholder agreements, and any other necessary agreements, including financing agreements and management participation agreements.





We also have extensive expertise advising in the acquisition of non-performing loans. By purchasing a company's debt, especially senior and secured debt, an investor will often get in a strong position for negotiating with the company and other stakeholders. We can also advise on all following steps, including resale, conversion into equity (debt/equity swaps), also in connection with insolvency plan proceedings, or any other type of restructuring.





## **Protection against crises of customers or business partners**

An insolvency of a customer or business partner can affect any company. Loss of receivables can, however, be prevented or at least reduced by drafting insolvency-resistant contracts and by performing them in an insolvency-resistant way.

We will provide you with comprehensive solutions how to avoid loss of receivables and how to avoid clawback / setting aside pre-insolvency payments / transactions. We will assist you with effectively negotiating loan collateral, such as standard, advanced, or extended retention of title clauses, security assignments, guarantees, letters of comfort, liens, insurance policies, and assist with implementing a cash transaction exemption.

If you are forced to rely on a vendor or customer whose business is in crisis, we will show you how to continue and maintain your relationship with the vendor without suffering exposure to avoidable risks.



## **Employment law in crises and insolvency**

Restructuring measures often have far-reaching consequences under employment law. We will assist you during this difficult process. We will design and negotiate interest reconciliations, social compensation plans and corporate labor agreements with works councils and trade unions, and we will prepare layoffs. We will also represent your company in wrongful termination proceedings. We also provide advice on setting up transfer companies. We will gladly assist in restructuring working conditions, terminating old and executing new bargaining agreements, or establishing a legal framework for temporary employees.

In insolvency proceedings, we will support insolvency administrators in instituting labor law actions that are subject to special rules in insolvency proceedings.

We will also advise clients in structuring the transfer of employment agreements in a transfer of business.



### **Enforcement of claims in insolvency for creditors (banks, suppliers, other creditors)**

We will represent you as a creditor and enforce your claims and security interests towards an insolvency administrator. Our work goes far beyond registering your claims in the schedule of claims. We will enforce your loan collateral and rights for the release of your property. We will advise on managing and maintaining contractual relationships and vendor relationships and represent your interests at creditor meetings and in creditor committees. In addition, we will review and enforce claims for damages against other parties involved.





## Defending against claims of insolvency administrators...

### **... against recipients of payments (suppliers, banks, other parties involved)**

Recipients of payments (or services, or products or other assets) from insolvent companies are often faced with a claim of an insolvency administrator to restitution. There are provisions of law allowing for clawback / setting aside pre-insolvency payments / transactions, under certain circumstances, e.g. congruent coverage, incongruent coverage, gratuitous benefits, willful disadvantage. We will be glad to advise and represent you in defending against such claims.

### **... against managing directors or board members**

We often advise and represent managing directors and board members in disputes with insolvency administrators, defending against claims made by insolvency administrators in and out of court such as liability claims for payments made after illiquidity or over-indebtedness of

the company. In addition, we defend managing directors and board members against criminal charges brought by the prosecutor's office (delayed insolvency filing, criminal offenses during insolvency, etc.). In many cases, we achieve termination of such criminal proceedings.

### **... against shareholders**

In a financial crisis of a company, shareholders are exposed to financial risks which should not be underestimated. Shareholders are often threatened with claims by insolvency administrators, creditors or third parties, such as clawback / setting aside pre-insolvency payments for repaid shareholder loans. We will gladly assist in defending against such claims.



## **Advising and representing insolvency administrators**

We advise insolvency administrators selling the business in insolvency proceedings, and in any other insolvency-related complex legal issues such as reviewing the validity and enforceability of security interests.

With our profound insolvency litigation experience, we often advise and represent reputable insolvency administrators enforcing claims such as clawback / setting aside pre-insolvency payments, or claims for insolvent trading by company, or indemnity claims, both in and out of court.



For further information,  
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