

Austria

Chamber of commerce:

Wirtschaftskammern Österreichs
Wiedner Hauptstrasse 63
1045 Vienna
Austria
Tel: +43 1 501 05 37 01
Fax: +43 1 501 05 37 01
Email: wkoe@wko.at
Web: www.wko.at

Professional body:

Österreichischer Rechtsanwaltskammertag
Tuchlauben 12
1010 Vienna
Austria
Tel: +43 1 53 51 27 50
Fax: +43 1 53 51 27 513
Email: rechtsanwaelte@oerak.at
Web: www.oerak.or.at

Debtor-in-possession proposal for Austria

Stefan Tiefenthaler and Uwe Rautner
Binder Grösswang
Vienna

In January 2009, the Austrian Minister of Justice stated in an interview published in an Austrian legal periodical that Austrian insolvency laws would be reformed. According to the Minister of Justice, the proposed reform will be aimed at streamlining bankruptcy proceedings and facilitating corporate reorganisation. This may, according to a proposal currently under review, be achieved by amending the provisions on forced composition (*Zwangsausgleich*) and by allowing, subject to the fulfilment of certain conditions, for a debtor-in-possession system for corporate insolvencies in formal bankruptcy proceedings. The Austrian Ministry of Justice is currently working on a draft amendment to the Austrian Bankruptcy Code.

Forced composition (*Zwangsausgleich*)

Briefly, Austrian insolvency law comprises two different court procedures established in two separate pieces of legislation – the Austrian Bankruptcy Code and the Austrian Composition Code. In addition, Austrian law provides for reorganisation proceedings under the Austrian Reorganisation Act. The first of these three types is traditionally described as a liquidation-type procedure, and the second and third as reconstruction-type procedures.

However, corporate reorganisations are, if carried out in formal proceedings, most likely achieved by a so-called forced composition (*Zwangsausgleich*) in bankruptcy proceedings (as opposed to composition proceedings). The reconstruction-type procedures are rarely used in Austria.

In the course of bankruptcy proceedings, the debtor may apply for the proceeding to be converted into a so-called forced composition. For this purpose, the debtor must submit a proposal that provides for a settlement of at

least 20% of the debtor's obligations within two years. The proposal is subject to approval at the creditors' hearing by both a simple majority in number and 75% majority by value of claim. The debtor will be discharged of all past debts if the terms of the agreement reached with the creditors are fulfilled.

In more than one third of all bankruptcy proceedings, the debtor applies for forced composition in order to reach agreement with its creditors and to be able to carry on operating its business. On average 87% of such proposals are approved by creditors and 83% of all agreements reached with creditors are honored by debtors. In contrast, composition proceedings play a relatively insignificant role in Austria. In 2006, only 3.4% of all insolvency proceedings opened were composition ones.

For this reason, the concept of forced composition appears to be a relatively effective way of reorganising businesses in formal bankruptcy proceedings under Austrian law.

Debtor-in-possession

Chief among the reforms to be introduced is legislation to facilitate corporate reorganisation within the forced composition system by, among other things, extending the concept of debtor-in-possession to corporate insolvencies. Furthermore, periods for decisions on creditor applications for the opening of bankruptcy proceedings shall be reduced. The overall aim of the reform is to ensure that corporate restructuring through insolvency proceedings takes place where appropriate.

At present, the court-appointed receiver takes possession of the estate in bankruptcy proceedings and is entitled to dispose of it after the proceedings have been opened. According to the proposed reform, the debtor shall remain in possession of all assets and shall not be prevented from carrying on business, if: (i) he can present a reorganisation plan that complies with the requirements stipulated in the Austrian Composition Code (e.g. the debtor has to present a correct and complete description of his financial status, a proposal stating the percentage of the debts

that the debtor is willing to settle, the period within which such debts are to be settled, and the way in which he will be able to raise the necessary funds); (ii) he offers to pay at least 30% of the creditors' claims; and (iii) creditors cannot be disadvantaged in any way. A comparable procedure exists under the US model of debtor-in-possession. In addition, a self-management procedure has been introduced in Germany by sections 270 and following of the German Insolvency Code.

Arguments for reform

Several arguments have been put forward in favour of the adoption of a streamlined debtor in possession-style reorganisation procedure. The knowledge and experience of the existing management could be used (assuming that most corporate insolvencies are not caused by poor business decisions but by external factors) and the need for the court-appointed receiver, who has to familiarise himself with the business (which can result in additional costs being incurred), could be avoided. In particular, it is important for companies in financial difficulties to continue operating in order not to lose customers, suppliers and employees. In large and medium-sized companies the management is often replaced by new management that the majority of the creditors, investors and employees trust. Consequently, the adoption of a debtor-in-possession system could make reorganising businesses easier and less costly in Austria.

Protection of creditors' interests

A debtor-in-possession system may, however, increase the risk of possible misuse of management powers. For instance, the Austrian Composition Code provides for a court-appointed receiver who has a right of veto over the day-to-day transactions of the debtor. In addition, the receiver must give his explicit consent to transactions outside the ordinary course of business. Additionally, the German Insolvency Code limits the powers of management by appointing a receiver with certain

supervisory functions in the self-management procedure.

In addition, the arguments for a debtor-in-possession system only apply to management duties relating to the continuation of the business and, therefore, the debtor-in-possession system may not be extended, for instance, to the enforcement of claims against shareholders or the challenge of legal transactions undertaken by the debtor prior to opening of proceedings that may have disadvantaged the creditors. Such duties should remain with a court-appointed receiver.

An official draft of the proposed amendments has not yet been released by the Ministry of Justice. However, the proposed reform may provide an improved way of reorganising business through insolvency proceedings in Austria.

Capital markets

Recommended firms	
Tier 1	Cerha Hempel Spiegelfeld Hlawati Dorda Brugger Jordis
Tier 2	Freshfields Bruckhaus Deringer Weber Maxl & Partner Wolf Theiss
Tier 3	Binder Grösswang Schoenherr
Tier 4	Baker & McKenzie in association with Diwok Hermann Petsche Hausmaninger Kletter Herbst Vavrovsky Kinsky

Equity capital markets activity was incredibly low in 2009. In Q2, partners at some of the leading firms commented that the last big deal happened in May 2008 and there was no sense of when the next might come along.

However, the debt markets showed some encouraging signs of growth. For example, Cerha Hempel Spiegelfeld Hlawati advised Bawag on the 2008 update of its €10 billion debt issuance programme, and also counselled Strabag on its €75 million bond. Another notable debt mandate, albeit one that serves to indicate trouble in the markets, saw Freshfields Bruckhaus Deringer advise Morgan Stanley on Immofinanz's €1.5 billion exchange offer to holders of its existing convertible bonds for new convertible bonds. The latter is a clear example of just how flexible

firms have had to be over the last year, drawing on all of their technical expertise.

Bank bailout measures extended by the Republic of Austria have also been generating some work. For instance, Wolf Theiss's capital markets team was called on by Erste Bank for advice on the first of the bailouts, which involved the state acting as guarantor on its €6 billion debt programme.

Cerha Hempel Spiegelfeld Hlawati

Cerha Hempel's capital markets team has seen some change over the last year, with the departure of Philipp Spatz to join Baker & McKenzie's capital markets practice.

Department head Edith Hlawati led the firm's lead counsel mandate for ÖIAG and Austrian Airlines in the privatisation of ÖIAG's shareholding in Austrian Airlines in the form of a structured tender procedure. This was the largest privatisation of 2008 and, because of the difficulties faced by the Austrian airline industry and the onset of the global financial crisis, involved the team creating some truly innovative solutions.

The firm's reputation in Vienna as specialists in equity deals left some wondering what would happen to its capital markets practice during the global downturn, with the equity market being particularly badly affected. However, the firm has been acting in some notable debt issuance programmes.

Johannes Buchinger and Thomas Zivny advised Bawag on the 2008 update of its €10 billion debt issuance programme, and Volker Glas advised Strabag on its €75 million bond, which was offered to institutional and retail investors in Austria and placed at an interest rate of 5.75%.

In January 2009, Glas advised Telekom Austria Group on the issue of a bond with a benchmark volume of €750 million – the first successful placement of a corporate bond in 2009.

Leading lawyers

Volker Glas
Edith Hlawati

Dorda Brugger Jordis

Despite the slowdown in capital markets transactions, Dorda Brugger Jordis's capital markets team, which centres on partners Andreas Mayr and Christoph Brogyányi, was involved in some of the key transactions in Austria in 2008. The firm has been advising a number of listed companies and several investment banks on highly-sophisticated derivatives instruments and alternative investment products, including put/call structures,

swaps, repurchases of securities and treasury stock structures.

One high-profile client praises the team in these terms: "We have the highest regard for them, on both a personal and institutional level. They think and work hard, and talk straight in solid, commercial terms."

The firm's deep capital markets expertise, equal strength in M&A, and its standing as one of the big Austrian players focusing almost solely on the domestic market, means it is ideally placed to thrive in the conditions created by the financial crisis.

Recent work includes public-private transactions and complex regulatory mandates regarding, for instance, private equity firms that need to change their investment guidelines. One deal involved Mayr, Brogyányi and Jürgen Kittel advising TMB Tourismus-und Medien Beteiligungs and its shareholders on structuring the acquisition of shares in Feratel Media Technologies. This included advice on performing the squeeze-out of the minority shareholders of Feratel and the de-listing of shares in the company from the Vienna Stock Exchange.

Leading lawyers

Christoph Brogyányi
Andreas Mayr

Freshfields Bruckhaus Deringer

Though the Austrian capital markets, especially on the equity side, have suffered as a result of the global financial crisis, Freshfields Bruckhaus Deringer has continued to pick up solid mandates, particularly in the debt market, which started to show new signs of life in early 2009.

In terms of equity deals, Maria-Theresia Pflügl and Stephan Pachinger advised Morgan Stanley as sole dealer-manager on Immofinanz's €1.5 billion exchange offer to holders of its existing convertible bonds for new convertible bonds. Pachinger and Friedrich Jergitsch also advised UniCredit on the proposed issue of participation capital by UniCredit Bank Austria.

The firm has handled some truly exceptional debt work over the past year. One instruction saw Pachinger and Jergitsch advise Barclays Bank, BNP Paribas, Merrill Lynch and Morgan Stanley on Kommunalkredit Austria's €1.5 billion government-guaranteed bond issue.

Another notable debt deal, also handled by Pachinger and Jergitsch, involved advising Deutsche Bank, HSBC and Citi on Raiffeisen Zentralbank Österreich's €1.5 billion government-guaranteed bond.

Other clients who have recently turned to Freshfields for assistance in large debt pro-

grammes have included Credit Suisse, Société Générale, JPMorgan and ABN Amro.

Leading lawyers

Friedrich Jergitsch
Maria-Theresia Pflügl

Weber Maxl & Partner

Weber Maxl & Partner is described by those in the market as a niche capital markets practice. "Stefan Weber is a hugely experienced banking and capital markets lawyer – we always like to see him on the other side of a deal," says one competitor.

The equity market has been very slow in Austria over the last 12 months, but there has been some debt activity. In one mandate, the firm represented Austrian Railways in its €10 billion plain vanilla debt programme, which was issued in several tranches.

Leading lawyers

Stefan Weber

Wolf Theiss

Wolf Theiss' capital markets department, led by Richard Wolf, has been involved in business created by the effects of the global financial crisis on the Austrian banking sector. In connection with the bank rescue measures undertaken by the Republic of Austria, Erste Group Bank received a state guarantee for a €6 billion debt issuance programme.

The firm advised Erste on the deal, which was the first debt issuance programme relating to bank rescue measures in Austria. Claus Schneider, who handled the matter, has been singled out for praise by both competitors and clients.

At the end of 2008, Markus Heidinger advised Hypo Alpe-Adria Bank International when it received €900 million in Austrian government funds by way of participation shares to strengthen its capital base.

The firm also counselled Österreichische Volksbanken on its negotiations with the government in relation to bank rescue measures by the Republic of Austria. This was another structure involving participation shares, and was handled by Richard Wolf and Claus Schneider.

On the equity side, Schneider advised Erste Group Bank on the €2.7 billion public offering of participation shares in Austria, the Czech Republic and Romania. As with the previous matters mentioned, the aim of this deal was to strengthen the bank's capital base in the wake of the financial crisis.

Leading lawyers

Markus Heidinger
Claus Schneider
Richard Wolf

Other ranked firms

Baker & McKenzie in association with Diwok Hermann Petsche has seen some changes over the last year. For the capital markets team, this comes in the shape of new partners Philipp Spatz, who came over from Cerha Hempel in January 2009, and Eva-Maria Segur-Cabanac, who joined from Sullivan & Cromwell in April.

This twin recruitment can only be seen as a strategic move on the firm's part. The plan appears to be working: in a depressed market, the firm reported acting in some notable deals in Q1 of 2009, including advice to Dexia Crédit Local on the sale of 99.9% of the shares in Kommunalkredit Austria to the Republic of Austria.

Binder Grösswang has continued to act in matters (especially in debt) for a range of high-profile clients including Dresdner Bank, JPMorgan Securities, Raiffeisen Wohnbaubank and Voestalpine.

The Voestalpine advice, led by Florian Khol and Tibor Fabian, involved the public offer of senior bonds worth €400 million. This was preceded by a transaction that was the first voluntary public offer in Austria following implementation of the EU Takeovers Directive.

Herbst Vavrovsky Kinsky has been working on a variety of mandates over the last 12 months, including structuring of a €60 million private-equity fund for Lead Equities, the marketing and sale of a Luxembourg fund in Austria for Brüll Kallmus Bank, and a €14.1 million Series B financing for Atlas Venture and SR One.

Schoenherr, despite the downturn in the capital markets, has continued to land some important and groundbreaking instructions. Martin Ebner and Peter Feyl led a team in deals that included advising Raiffeisen Zentralbank on its first-ever asset-backed securities transactions, Uniqa insurance group on its €184 million rights issue and Immofinanz on the structuring and launch of its exchange offer to the holders of its €1.5 billion of convertible bonds – which was a pioneering transaction on the Austrian market, being the first debt-for-debt swap relating to convertible bonds.

Other notable firms

Graf & Pitkowitz has been busy, especially with regulatory advice, over the last year, and has recruited two new partners from other local firms. One mandate involved advising a large institutional investor on Austria's biggest

potential insider and market manipulation matter so far regarding public offerings.

Saxinger Chalupsky & Partner's capital markets team has been enhanced by the addition of three partners, and has been involved in some particularly large deals on both the equity and debt markets. One deal on the equity side involved the €667 million privatisation and private placement of shares of Energie Oberösterreich. On the debt side, the firm represented Voestalpine in its €333 million public offer of corporate bonds.

Skadden Arps Slate Meagher & Flom's Austrian office has been involved in some large deals on the capital markets over the last year. Rainer Wachter and Markus Haberfellner advised Atrium European Real Estate on a proposed €300 million public rights offering in Austria, and a Bulgarian mining company on its proposed €200 million public offering and listing on the Vienna and Frankfurt exchanges.

Banking

Recommended firms

Tier 1

Binder Grösswang
Wolf Theiss

Tier 2

Cerha Hempel Spiegelfeld Hlawati
Dorda Brugger Jordis
Freshfields Bruckhaus Deringer
Schoenherr

Tier 3

CMS Reich-Rohrwig Hainz
DLA Piper Weiss-Tessbach
Doralt Seist Csoklich

Austrian banks saw hard times during 2009, with some, such as Erste Bank, requiring government bailouts. The trickle-down to law firms has been an ebbing-away of lending mandates and a marked increase in re-financings, debt restructurings and tricky regulatory work. As was the case with the capital markets, 2009 was the year when the firms prospering were those with the capacity to handle highly-complex mandates in flexible and innovative ways.

Syndicated lending dropped to an all-time low in 2009, meaning that some firms found themselves having to create the documentation for some innovative club structures, adjusting agreements for understandably cautious lenders. As for acquisition finance, the uncertainty surrounding loans meant that the creation of get-out-free arrangements for potential buyers became an important consideration.

All in all, the deal-flow for most firms (that is, the ones that did not rely too heavily over

the past two years on real-estate financing work) has been steady because of the way the downturn has forced large-scale re-financings, restructurings and the bailout of banks across the market. As with all times of crisis, it has pushed market participants to develop skills that are less called for in more buoyant times, the legal community being a case in point.

Binder Grösswang

Binder Grösswang's banking department, co-headed by Tibor Fabian and Stefan Tiefenthaler, has a mighty reputation in Austria's banking and finance market. The firm has been extremely busy, especially with real-estate and structured finance deals, as well as with the restructuring of existing transactions.

Associate Emanuel Welten was promoted to partner in January 2008, and worked with Fabian on a large cross-border acquisition finance deal, and an even larger cross-border LBO.

Tiefenthaler led the firm when it advised the city of Vienna on the restructuring and termination of cross-border leasing transactions. He also acted for ABN Amro on the financing of the acquisition of Stork Prints, and advised on the related Austrian security package.

Leading lawyers

Michael Binder
Tibor Fabian
Stefan Tiefenthaler
Emanuel Welten

Wolf Theiss

The Wolf Theiss banking and project finance team is continuing to grow, projecting a dependable yet dynamic image. Though some of the team's high-profile work over the past 12 months must remain confidential, two notable instructions can be mentioned.

Nikolaus Paul led when the team advised Raiffeisenlandesbank on refinancing of the debt of Gradski Centar, a Croatian company operating a large shopping centre in Zagreb. Paul also advised on new financings to the company and some of its shareholders for extension of the retail project. This was a complex €175 million deal involving the drafting and negotiation of four Austrian law facilities in addition to other agreements and documents.

Another highlight saw Marcus Benes act as lead counsel for the target, Bulgarian company Mall Varna, in a €93 million acquisition finance transaction. This was another highly-detailed mandate, covering an acquisition facility agreement, a subordination agree-

ment, local law security documents, the issuing of legal opinions and the co-ordination of lawyers.

Leading lawyers

Markus Heidinger
Andreas Schmid
Richard Wolf

Cerha Hempel Spiegelfeld Hlawati

Cerha Hempel's reputation for banking mandates has increased, with the firm acting in some outstanding deals. One client, when asked why they chose Cerha Hempel for a large and complex financing deal, says: "This is what their reputation is based upon, their ability to perform in this tricky world. I'd worked with them before, so I knew that."

Members of Cerha Hempel's finance team are well known on the market. Edith Hlawati led a team advising Commerzbank on its €5.1 billion purchase of, and merger with, Dresdner Bank, which involved dealing with Austrian, Hungarian and Bulgarian banking and competition law aspects.

Peter Knobl advised Iceland's Kaupthing Bank in its founding of an Austrian branch in the summer of 2008. Soon after finalising the registration details, the Icelandic bank fell bankrupt, asking Cerha Hempel to stay on-side to assist in liquidation of the branch.

Volker Glas advised Telekom Austria/Mobilkom Austria on a series of cross-border financings, including the re-allocation of posted collateral and the negotiation of termination agreements.

Albert Birkner and Peter Knobl also represented Alon Israel Oil Company in its efforts to finance the requisition of all shares in a large specialist Austrian bank.

Leading lawyers

Peter Feyl
Volker Glas
Peter Knobl

Dorda Brugger Jordis

Dorda Brugger Jordis' banking and finance department, led by Andreas Zahradnik and Tibor Varga, is maintaining its reputation as a banking powerhouse, working on some deals notable for their volume and the innovation required.

One recent client has this to say about Zahradnik: "He's a really versatile lawyer and a real relationship man. He runs an excellent team that we depend upon fully."

Though the past year has seen an overall decrease in the number of transactions, the firm has managed to stay busy with clients

including JPMorgan Chase, BNP Paribas and Merrill Lynch.

One competitor speaks of Varga in these terms: "He's not one of those loud, show-off lawyers, like some of the transaction guys – he puts his energy into getting things done. He's totally solid."

One deal notable for the innovation and flexibility required saw the firm advise the co-ordinators BNP Paribas, Calyon and Nordea on an amendment, re-statement and extension of facilities totalling €200 million for a telecoms company. The transaction was particularly complex because of the presence of both senior and junior lenders, as well as high-yield and floating-rate noteholders.

Another deal demonstrates the team's ability to act on very large instructions under high pressure. The advice was to UniCredit Bank Austria on several financing transactions totalling €450 million, and involved loans for a Polish real-estate project, acquisition finance for an IT investor and financing for an Italian client – all of which had to be drafted, negotiated and implemented within five working days.

Leading lawyers

Tibor Varga
Andreas Zahradnik

Freshfields Bruckhaus Deringer

The Freshfields banking team, which works for both Austrian and international banks, has had a busy year, acting on a variety of high-profile mandates over the past 12 months. "They did an excellent job and to be honest they always do," says one client. "They have an excellent network, as well as being friendly guys who are quick to act."

Maria-Theresia Pflügl and Attila Csongrady advised the arrangers on a €500 million syndicated financing to a leading south-eastern European oil and gas producer, and advised Erste Bank on an €85 million standby facility for a large Ukrainian group.

Another instruction saw Pflügl and Florian Klimscha advise UniCredit Bank Austria and Raiffeisenlandesbank on the €650 million financing of the purchase of participation rights by UniCredit from B&C Holding.

Leading lawyers

Maria-Theresia Pflügl

Schoenherr

Schoenherr's banking and finance team has been given a fresh lift with the addition of junior partner Walter Gapp. The firm's reputation as one of the market leaders was strengthened by its role on the first sale of an

Austrian bank to the federal government since the government announced a financial industry rescue package at the end of 2008.

This distressed transaction, led by partners Peter Feyl and Sascha Hödl, saw Österreichische Volksbanken sell its majority share in Kommunalkredit Austria to the government, and was successfully completed on a particularly tight and challenging schedule.

Martin Ebner led a team advising the private-equity arms of Goldman Sachs, Cerberus and Credit Suisse on a tax-driven €120 million refinancing and debt push-down structure for their portfolio company Wittur Group.

On the lending side, Ebner also led a team acting for Raiffeisen Zentralbank Österreich and Erste Bank on a €480 million syndicated loan financing, which was one of the largest syndicated facilities recorded under Austrian law.

Peter Feyl led the firm when it advised B&C Holding, a group of several Austrian listed and private firms, in the repurchase from UniCredit Bank Austria of the *genussrechte* (jouissance rights) issued by B&C Holding. The matter also involved Schoenherr's M&A department, represented on this deal by Peter Konwitschka and Monika Wildner.

One client says of Feyl: "He's an excellent lawyer. As well as being able to get into the fine detail, he really has a broad practice and you can go to him with all kinds of financial matters."

Schoenherr's banking team has also been advising on transactional, legal and regulatory matters flowing from the Austrian legislation designed to prevent bank failures in the wake of the global downturn. This work has included counselling a leading Austrian bank in its negotiations with the Republic of Austria regarding the issue of participation capital.

Leading lawyers

Martin Ebner
Peter Feyl

Other notable firms

Baker & McKenzie in association with Diwok Hermann Petsche's banking and finance department, led by Georg Diwok, has a reputation for being a highly-integrated team with a knack for finding opportunities as the market evolves and new products emerge. One notable deal involved representing Kuperstein as investor in bonds backed by indirect synthetic credit-linked notes, to a total value of €1.2 billion.

Enwc's Vienna banking and finance team, led by Claudia Steegmüller, has been acting for banks on a variety of matters. The firm

advised the Vienna branch of Banca Intesa Sanpaolo on a cross-border syndicated loan to a Serbian borrower, and Mizuho Corporate Bank on cross-border issues. It also handled the restructuring of two Austrian savings banks.

Over the past year, **Graf & Pitkowitz** has been providing advice on a number of refinancings and debt restructurings. Though the team started out with a focus on project financings, clients have been requesting the firm's services for a wide range of banking and finance matters. One innovative deal involved advising the public export credit agency EDC on transactional regulatory issues and the structuring of security packages in Austria.

Herbst Vavrovsky Kinsky's banking and finance practice has had a strong year. The team acted on two large mandates for Hypo Investmentbank, including a €935 million refinancing granted by Hypo as lead arranger to a holding company for Austrian blue chips. It also acted for Uniqa Versicherungen on a €460 million refinancing from a consortium led by Raiffeisen and granted to Oleg Deripaska's Rasperia Trading.

Saxinger Chalupsky & Partner's finance department has recently benefited from the arrival of four new partners and has been active in a variety of big-ticket matters over the past year. One particular highlight was the structuring of a €500 million Tier I capital structure using an offshore vehicle, which issued minority shares to an international investment bank.

Skadden Arps Slate Meagher & Flom's banking and finance department, led by Markus Haberfellner, has continued to grow and enhance its reputation, representing both lenders and borrowers, as well as engaging in banking regulatory work. One deal involved advising Doughty Hanson on the financing of its €750 million acquisition of TMF Group.

Weber Maxl & Partner's banking and finance group has been active in two main areas over the last 12 months: restructuring work for banks and the organisation of special financings under state programmes. The team is also known for its participation in some of the big PPP deals.

Mergers and acquisitions

Recommended firms

Tier 1

Freshfields Bruckhaus Deringer
Schoenherr
Wolf Theiss

Tier 2

Binder Grösswang
Cerha Hempel Spiegelfeld Hlawati
Dorda Brugger Jordis

Tier 3

CMS Reich-Rohrwig Hainz
Fiebinger Polak Leon & Partners
Graf & Pitkowitz

Tier 4

Baker & McKenzie in association with Diwok
Hermann Petsche
DLA Piper Weiss-Tessbach
enwc
Saxinger Chalupsky & Partner
Skadden Arps Slate Meagher & Flom
Weber Maxl & Partner

Pure M&A activity fell dramatically in Austria during 2009, with some agencies reporting a 70% drop in deal-flow across Europe. Deals that did come to light in the first part of the year were either put on indefinite hold or fell away entirely in the face of a lack of lenders willing to enter into highly-leveraged acquisition financings.

However, law firms have reported good levels of M&A work driven by restructurings, including distressed auctions, with some that had made pessimistic predictions for Q1 2009 being pleasantly surprised by the availability of a different kind of work.

Restructuring mandates for banks and other financial institutions made up a good part of this activity. For instance, Schoenherr advised on the €1.5 billion sale of Immoaustria to Immoeast as part of the restructuring of Immofinanz, and Wolf Theiss advised on the disposal of GE Money Bank Österreich to Santander.

Private equity investors were notably absent from the market, but many partners predict possible renewal of activity in Q4 of 2009, depending on market opinion concerning whether or not prices have bottomed-out. In the meantime, many firms' corporate teams are busy helping private-equity funds with issues such as adjusting their investment guidelines.

Freshfields Bruckhaus Deringer

Freshfields' Vienna corporate team is headed by Stefan Köck, and includes the renowned duo of Willibald Plesser and Thomas Zottl.

The firm has been acting on some truly impressive mandates over the last 12 months. For instance, Zottl, Thomas Kustor and Konrad Gröller advised UniCredit on the €1 billion squeeze-out of minority shareholders of the formerly-listed Bank Austria.

Plesser, Igor Gerber and Axel Reidlinger acted in a notable cross-border transaction when they advised Gazprom Neft, the listed subsidiary of Gazprom, on the €400 million acquisition of a 51% stake in Serbian state-owned oil and gas company NIS.

At the end of 2008, Zottl, Plesser and Claus Staringer were involved in another landmark deal when they advised UniCredit Bank Austria on the €1.1 billion sale of the profit participation rights in B&C Holding.

Leading lawyers

Willibald Plesser
Thomas Zottl

Schoenherr

Schoenherr's corporate/M&A practice has continued to grow over the last 12 months. In February 2009, the team was expanded by the addition of partners Florian Cvak, Gudrun Stangl and Alexander Popp. At the end of 2008, the firm set up two specialised teams within the group: one specialising in distressed M&A and the other in energy deals. The distressed M&A team includes members from various practice groups, and quickly established a reputation in the market by advising on headline transactions.

In November 2008 the firm advised Volksbank – the majority shareholder and, with Dexia Crédit Local, co-owner of Kommunalkredit – on the first bank nationalisation sale following the Austrian government's announcement of a financial industry rescue package. The transaction was conducted under new Austrian legislation, without precedent, and was completed within a tight and challenging timeframe.

The Kommunalkredit mandate set the stage for the firm to advise on the €1.5 billion sale of Immoaustria to Immoeast as part of the restructuring of Immofinanz, Europe's fifth-largest real-estate group. Around the same time Schoenherr advised on the restructuring of multinational automotive supplier Eybl Group, representing Germany's Prevent Group in the successful acquisition of Eybl Austria and various central and eastern European (CEE) subsidiaries.

The firm also represented one of the bidders in the privatisation of Austrian Airlines;

Vienna Insurance Group in the €1.4 billion acquisition of Erste Bank's CEE life insurance business; and B&C on the €1.1 billion acquisition of profit participation rights from UniCredit Bank Austria.

Leading lawyers

Stephan Frotz
Christian Herbst
Sascha Hödl
Christoph Lindinger

Wolf Theiss

The WolfTheiss M&A team has continued to grow, and remains active on some of the biggest deals in the region.

One notable matter involved a large team from the firm advising Bristol-Myers Squibb on the \$4 billion sale of its Austrian ConvaTec business to Nordic Capital. This transaction ran partly as an asset deal and partly as a share deal.

Another deal, in the hands of Markus Heidinger and Judith Szabo, involved advising GE Money Bank EMEA on the sale of GE Money Bank Austria to Santander. This transaction, which took some time due to its complexity, spanned various jurisdictions and business divisions and totalled €1 billion.

On the buy side, Christian Hoenig and Laura Struc advised Iomai Corporation, a US-listed biopharmaceutical firm, and its main shareholders, on its acquisition of Intercell – particularly on relevant aspects of Austrian law.

Leading lawyers

Horst Ehardt
Markus Heidinger
Claus Schneider
Richard Wolf

Binder Grösswang

Despite the global financial crisis, Binder Grösswang has maintained a good stream of M&A activity, and continued to develop its participation in high-profile deals in central and eastern Europe, the United Arab Emirates (UAE) and Iran.

Three notable matters in the UAE were advising Aabar Investments (of Abu Dhabi) on the €2 billion acquisition and financing of 9.1% of Daimler and the €250 million acquisition and financing of a 3.3% participation in Atlantia. The firm also advised the International Petroleum Investment Company on its acquisition of Man Ferrostaal.

Thomas Schirmer is singled out for praise by one recent client, who describes him as "quick, practical and communicative. He's

just a good lawyer and a really personable guy".

Leading lawyers

Michael Kutschera
Thomas Schirmer
Emanuel Welten

Cerha Hempel Spiegelfeld Hlawati

Cerha Hempel's corporate department has a formidable reputation among peers and clients, particularly for its public M&A work. The firm has had a busy year, advising a range of buyers and sellers across a variety of sectors.

Edith Hlawati and Thomas Trettnak advised Strabag in the acquisition from private-equity investors and management of a controlling share in leading toll service provider Efkon, utilising a complex three-tier acquisition structure.

Hlawati and managing partner Albert Birkner also advised Hygiene Holding as shareholder in takeover proceedings by the AVW Group of Vienna-listed S&T. The €200 million transaction involved enforcement action by the Austrian takeover panel against AVW.

At the end of Q1 2009, Clemens Hasenauer, Johannes Prinz and Peter Hiller advised OMV on the sale of its 21.2% stake in the Hungarian oil and gas company MOL to Surgutneftegas, one of the biggest producers in Russia. This was one of the largest deals of its kind in the oil and gas sector in Europe in recent times.

Hasenauer and Prinz have also been advising OMV on its joint venture with Gazprom, Centrex Europe Energy & Gas and Wiener Börse, the operator of the Vienna Stock Exchange. This innovative deal involves the development of Central European Gas Hub, an Austrian hub operator, into a leading hub in continental Europe and the establishment of a central-European gas exchange for the trading of gas products on the spots and futures market.

Leading lawyers

Albert Birkner
Clemens Hasenauer
Edith Hlawati

Dorda Brugger Jordis

The M&A market obviously slowed in 2009, but there was still some movement, and Dorda Brugger Jordis's M&A team was busy with strategically-driven acquisitions and financially-driven sales, as well as responding to an increasing market demand for assistance in distressed M&A matters.

One big-ticket client says of the firm: “They’re very responsive, highly knowledgeable and always come up with workable solutions. There are plenty of other firms we could work with, but the simple fact that we continue to choose them says it all.”

The team, under leader Martin Brodey and name partner Christian Dorda, advised on several large transactions over the past year. The highlight was Paul Doralt’s representation of AES Corporation, one of the world’s largest power companies, in the \$1.48 billion sale of a Kazakh power plant and coal mine.

The firm was also instructed for several M&A deals in the banking and financial sector, which it is well placed to handle with Andreas Zahradnik and Martin Brodey as leading partners. At the end of 2008, Brodey and Zahradnik advised the Swiss Valartis Group on its acquisition of Anglo Irish Bank’s Austrian subsidiary.

One recent client singles Brodey out for praise: “He’s calm, efficient and friendly. He always gets straight to the point.”

The firm’s second M&A team, led by Andreas Mayr and new equity partner Jürgen Kittel, evolved from its strong capital markets team and advised on a number of M&A and private-equity transactions. These included listed companies in particular, such as the global real-estate company Conwert, and Arques Industries, a German restructuring fund.

Another mandate saw the team act for Immoeast on its several-billion-euro restructuring and reorganisation, including asset sales. The firm was instructed to advise the new management to clear up problems relating to past management practices and to defend Immoeast against immediate shareholder lawsuits.

Leading lawyers

Martin Brodey
Christian Dorda
Andreas Zahradnik

Other ranked firms

Baker & McKenzie in association with Diwok Hermann Petsche has had a busy year representing, on the sell side, Cemex, Bewag, Kuoni Reisen Holding and Constantia Packaging on big-ticket deals. The firm also participated in a nationalisation when it represented Dexia Crédit Local in the sale of shares in Kommunalkredit.

Enwc’s M&A practice, led by Raimund Cancola, has a strong track record when it comes to handling high-profile deals for both the buy and sell sides. Two recent matters were a deal involving the acquisition of 80% of shares in Eternit-Werke Ludwig Hatschek

from Cross Industries and Unternehmens Invest, and assisting Adeg in the sale of its assets after being taken over by Rewe/Billa.

Graf & Pitkowitz has been had an industrious year, representing a variety of clients on both the buy and sell sides. Deals included advising Coca-Cola Hellenic on a merger clearance and representing MV Holding in its acquisition of a minority interest in Nanoldent.

Saxinger Chalupsky & Partner’s M&A team has been active on some big-ticket deals on both buy and sell sides. The firm represented Strabag on the €310 million acquisition of Cemex in both Austria and Hungary, and was mandated by the Kaufmann Group in the €186 million sale of a shopping centre in Croatia.

Skadden Arps Slate Meagher & Flom has a strong reputation for advising in European cross-border M&A. The firm’s Vienna team serves clients including industrial companies and financial institutions as both buyers and sellers, with particular expertise in the energy sector. Other sectors where the team has experience include the automotive industry, insurance and reinsurance, banking, IT, real estate and pharmaceutical industries.