

# Austria

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## Reform of the Insolvency Law 2010

Andreas Zahradnik  
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Vienna

Due to the effects of the recent economic crisis, the need arose to make it easier for insolvent companies to continue their business through a restructuring. Up until now there has been the Bankruptcy Act (*Konkursordnung* – KO) alongside with the Composition Act (*Ausgleichsordnung* – AO) in Austria.

The Reform of the Insolvency Law 2010 (*Insolvenzrechtsänderungsgesetz 2010 - IRÄG 2010*) has brought a uniform Insolvency Act (*Insolvenzordnung* – IO). The Composition Act that governed composition proceedings aiming at a settlement between the insolvent debtor and its creditors was repealed.

The compulsory settlement (*Zwangsausgleich*) that made such a settlement also possible in the course of a bankruptcy proceeding will disappear. Instead new restructuring proceedings are implemented into the IO. The amendment entered into force on July 1 2010.

Besides that, one will have to get used to numerous new terms: the trustee (*Masseverwalter*) is now called the insolvency administrator (*Insolvenzverwalter*), the creditors of a bankrupt estate (*Konkursgläubiger*) will be called the creditors of an insolvent estate (*Insolvenzgläubiger*), and so forth.

### New restructuring instruments

The composition proceedings under the old Composition Act enabled the restructuring of the company by self-administration of the debtor. However, the debtor had to provide for a minimum quota of 40% payable within the next two years. Therefore, composition proceedings under the Composition Act had fallen in a sleeping beauty slumber.

In 2009 there had been only 39 judicial compositions overall – as opposed to several thousand bankruptcy proceedings. Hence, in

general insolvent companies were restructured by way of compulsory settlement (minimum quota required being 20% payable within two years). This had the disadvantage that no self-administration was possible, which was a hindrance to restructuring. The IO now provides the following new restructuring instruments.

### Self-administration by the debtor

A diligently elaborated restructuring plan has to be filed together with the application to open insolvency proceedings. The minimum quota is 30% payable within two years. The debtor keeps the self-administration only being supervised by a restructuring administrator appointed by the court.

### Administrator appointed by court

If the Debtor is not able to provide the minimum quota of 30% (but of 20%) payable within the two years time, he is still allowed to file a restructuring plan together with the opening application. In this case the court appoints an insolvency administrator and the restructuring proceedings will be processed without self-administration of the debtor.

### Settlement in bankruptcy proceedings (formerly the compulsory settlement)

The debtor will still be able to attain the restructuring of the company in the course of bankruptcy proceedings and even upon the application of a creditor by offering the creditors a restructuring plan. For this purpose the debtor also has to pay at least 20% of the debts within two years and the creditors have to approve the restructuring plan in the restructuring hearing by simple majority.

### Restrictions on the termination of contracts

A further important alteration introduced by the IRÄG 2010 is the restriction of the creditors' rights to terminate contracts with the debtor when insolvency proceedings are opened. Up until now many of the creditors exercised this right. However, in particular the termination of lease contracts, energy supply

and telephone contracts may hinder the restructuring of the company considerably.

The IRÄG 2010 shall facilitate the continuation of insolvent companies and their restructuring. If the termination of a contract may harm the continuation of the company, henceforth the creditor may only terminate the contract within six months after the opening of the insolvency proceedings upon good cause shown. The deterioration of the debtor's financial situation and the non-fulfilment of a claim that became due before the opening of the insolvency proceedings are not to be considered as a good cause.

These restrictions do not apply on the termination of employment contracts, on the entitlement to the disbursement of a credit (which is important for banks) and when the termination of the contract is essential for the avoidance of severe personal or economical detriments of the contractual partner. Such a severe personal or economic detriment will be given in any case where the creditor is also threatened with insolvency. This leaves scope for interpretation that does not add to legal certainty.

### Restrictions on eviction executions

On continuation of the company an eviction execution due to outstanding arrears of rent of the time before the opening of the insolvency proceedings is inadmissible, if the administrator makes a corresponding application.

### Advance of costs by majority shareholders

A total of 864 company insolvencies were opened in the first quarter of 2010. In 740 cases the courts rejected the opening due to lack of assets. In order to reduce the number of such rejections, majority shareholders that hold more than 50% of the company are in the future obliged to provide an advance of costs.

### Conclusion

The IRÄG 2010 causes significant changes with regard to the restructuring of insolvent companies. The legislator had given preferen-

tial consideration to the interests of the debtors. This leads to a deterioration of the creditors' position. The adoption of the new restructuring instruments in practice remains to be seen.

Please note that the information provided above only summarises the main aspects of the issues addressed and is not complete, nor is it necessarily up to date. It cannot replace advice on individual cases.

## Capital markets

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

The debt market has shown encouraging signs for a while now, but until recently this was driven by government support measures. The state's offer in October 2008 to guarantee banks' bond programmes was accepted with open arms by the country's leading financial institutions. But "people are sick of 2% government-backed bonds," says one partner. "Their appetite is growing."

For would-be borrowers, this newfound confidence couldn't have come at a better time. Finance is expensive and companies have started to replace bank loans with small bond programmes. So far the majority of these have been straightforward vanilla issues backed by guarantees, and aside from a few debut offerings, none of these are particularly noteworthy. But lawyers see better prospects for the coming year. Clients express increasing interest in convertibles, often with a view to attract institutional investors which will eventually boost their capital.

Elsewhere on the debt side, banks have offered hybrid securities to increase their regulatory capital while other issuers have restructured by exchanging higher coupons with longer maturities, or swapping secured for unsecured bonds.

On the equity side, Austria's glimmer of hope is that capital markets are regionally driven. Its last IPO was in 2007 and unless the

country follows in the footsteps of Germany and its recent listings, the outlook for the Vienna Stock Exchange (VSE) is rather bleak. As for capital increases, lawyers have seen a handful of private placements, some rights issues, and the government subscribing to participation capital in banks. The biggest increase, and the year's capital markets highlight, was Erste Group Bank's €1.65 billion rights issue. Wolf Theiss advised the bank on its offering of 60 million shares - the fourth largest capital increase in the history of the VSE.

### Cerha Hempel Spiegelfeld Hlawati

The market's unanimous opinion is that Cerha Hempel Spiegelfeld Hlawati is one of the country's leading capital markets firms. There were some concerns that its equity-gear practice may have suffered in the stock market downturn, but any drop-off was more than compensated for by its recent debt work.

From June to December last year the team assisted Bawag with its debt strategy, updating its €10 billion bond programme and launching its €400 million convertible bonds offering. In a parallel transaction it helped the bank set up a €1 billion options programme, which required it to prepare the prospectus and associated documents plus obtain regulatory approval.

In September 2009 it worked on a €110 million private placement of convertibles for Nomura International. The bank subscribed to A-TEC's offering of 8.75% bonds with a conditional conversion right. The team also advised Raiffeisen on its €500 million participation capital placement which, when it closed in June 2009, was oversubscribed.

Banks aside, the firm took care of all Wienerberger's capital needs last year. The brick producer mandated the team on its €336 million share placement, structured to give buyers a 30% discount to account for market conditions. Later the firm created its €500 million EMTN programme and helped the company issue a standalone €250 million bond.

Name partner Edith Hlawati is consistently pointed out as a leading lawyer and Volker Glas also draws praise, particularly from clients. "He's been around a long time and at the same firm which is important," says a property client. "Plus he's a pleasant person to work with. He's not pretentious and there are no unnecessary attitudes."

But the draw card for many clients is that Hlawati and Glas are not the team's only go-to people. "They have depth. It's not just the headline partners," says one client. "They have the necessary experience the whole way down

to do the transaction." Another client names Thomas Zivny as the team's bonds specialist.

#### Leading lawyers

Volker Glas  
Edith Hlawati

### Dorda Brugger Jordis

Dorda Brugger Jordis's equity team reports a slight drop-off in instructions, but it has completed some tricky work lately. In one deal the firm was mandated by listed building company Porr to prepare a capital increase which sidestepped the normal regulatory requirement to prepare a prospectus. The €83.5 million share increase consisted of a rights issue and private placement, and required the team to work within a rarely used transaction structure.

Another deal saw it advise Conwert Immobilien Invest on its €135 million convertible bond sale. The private placement was complicated by the company's simultaneous repurchase of its shares.

Another noteworthy mandate was acting for the underwriters in Erste Group Bank's landmark capital increase. Working for Goldman Sachs International and JPMorgan, the firm dealt with the bank's €1.74 billion issue which included a rights issue, public offering and private placement across central and eastern Europe and into the US.

Competitors respect the capital markets team as one of the country's best, with each of its partners respected for different reasons: "Andreas Mayr is more the smooth operator who can get nasty if needed. Tibor Varga is very detail oriented and Mr Brogyányi is very reliable, knowledgeable and approachable. His work is highly regarded in the market. He is probably my favourite co-counsel," says a peer.

Clients are also pleased, although some say the domestic practice lacks some of the ability and sophistication displayed by the international firms and which is needed in large equity capital markets transactions.

#### Leading lawyers

Christoph Brogyányi  
Andreas Mayr

### Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer's Vienna office is noted for corporate bonds work, and has benefited from the improving debt market. Competitors say the office, headed by leading capital markets lawyer Friedrich Jergitsch, is well integrated into the firm's international network, and while some say that it relies too heavily on the bigger offices for work, no one

disputes that Freshfields has one of the best performing capital markets teams in Austria.

The group is well connected in banking circles and acts for the region's most dominant financial institutions. Recently Jergitsch led work for two banks on their government guaranteed bond issues - one for €1.25 billion and the other for €1 billion - under the state's rescue package. As part of the Immofinanz restructure, the firm advised Morgan Stanley as deal manager in the property group's €1.5 million exchange offer to convertible bond holders. In January 2010 the firm launched a €500 million MTN programme for gaming giant Novomatic in connection with Erste Group Bank and UniCredit Bank Austria.

Along with Jergitsch, Maria-Theresia Pflügl is highly regarded by peers. Some say she is more focussed on banking and that "her heart and blood isn't in capital markets", but the consensus is that this gives her diversity of knowledge which helps on debt work.

#### Leading lawyers

Friedrich Jergitsch  
Maria-Theresia Pflügl

#### Weber Maxl & Partner

For competitors, the name Weber Maxl & Partner is synonymous with its head partner Stefan Weber. The capital markets practice of the single-office firm is its strongest, and under the guidance of Weber, has become highly regarded in the field. "They are a boutique firm. They don't have the manpower to do the bigger deals in short periods of time but they are ranked correctly," says a leading lawyer.

The firm is known for its equity work in particular and was mandated with several rights issues over the past 12 months. Some competitors say Weber's academic commitments seem to be growing and that this may interfere with his practice, but none suggest it has done yet.

#### Leading lawyers

Stefan Weber

#### Wolf Theiss

Wolf Theiss played an integral role in the year's biggest capital markets transaction, advising Erste Group Bank on its €1.65 billion rights issue. The combined offering raised €1.74 billion for the bank and was one of the region's biggest capital raisings since the onset of the financial crisis. The three-partner team was led by Richard Wolf and spanned three of the firm's offices.

Elsewhere the firm worked on the recapitalisation of nationalised bank Hypo Group Alpe-Adria. This included the listing and

repurchase of €30 million in supplementary capital, plus the sale of new participation capital exceeding €200 million.

Other work sees it advise on the first debt programme to be launched by a private foundation - a €500 million set-up for a body affiliated with Erste Group Bank - and act for the joint managers on plastic producer Borealis's debut bond issue. The firm also took a large chunk of the country's government-backed bond issues, advising on two-thirds of the bank offerings.

Competitors like the firm, especially Wolf: "If we have the opportunity to work with him it's a privilege as he has a straightforward and very practical approach." Partner Nikolaus Paul is a favourite with clients, who say he is particularly good on structured equity transactions. "An excellent lawyer, can't say anything bad about him. What I like about him is that he's able to understand the economics of a deal and draft it into the document, I don't have to explain much of it to him," says one client, adding: "He's proactive in coming up with ideas. He doesn't just say 'It doesn't work, it doesn't work.' He'll come up with an idea as to how it works."

#### Leading lawyers

Markus Heidinger  
Claus Schneider  
Richard Wolf

#### Other ranked firms

**Binder Grösswang** is known for its leading corporate and banking practices, but the firm also has a very capable capital markets group. Last year partner Florian Khol led advice to related banks Oberbank and BKS on their capital raisings worth €60 million and €75 million respectively. The firm also acted for Hypo Tirol Bank on a private placement of participation capital and advised JPMorgan on the use of hybrid instruments to meet Tier I capital requirements.

Reinhard Uhl and Thomas Patrick Berghammer were recently appointed as junior partners.

Lawyers are hesitant about **Schoenherr's** capital markets practice, saying it lacks visibility and may struggle for work. Some suggest this is because it is focussed on regulatory issues rather than matters involving other firms. While this does form a strong component of its practice, it has also worked on some notable security issues.

In August 2009 it closed Immofinanz's €1.5 billion convertible bond exchange offer, the country's first debt-for-debt swap using convertibles. In pure equity work it represented insurance group Uniqa Versicherungen on its €150 million capital raising, and

Renaissance Group as the only non-existing shareholder to take a stake of Porr's €83.5 million combined offer.

In terms of the team, Peter Feyl is the lead partner and Ursula Rath was appointed to the partnership in August last year. A client involved in a multi-jurisdictional deal describes partner Martin Ebner as "really good, very commercial, very thorough and always available," adding: "He knows the impact of the Austrian law."

**Baker & McKenzie in association with Diwok Hermann Petsche** is a firm trying to build its capital markets team. Commentators say its efforts have been dampened somewhat by the timing, but the firm has picked up some notable work in the equity markets. For instance in May 2010 it advised the underwriters on Warimpex's €29 million combined offering which involved a backstop commitment by a leading property investor.

**Herbst Vavrovsky Kinsky** is a young up-and-coming firm which some competitors hold high hopes for. Its small numbers, and capital markets credentials, were boosted in September last year with the hire of partner Christof Strasser from US firm Cravath Swaine & Moore. Partner Philipp Kinsky is recommended for equity capital markets work.

## Banking

Recommended firms	
<b>Tier 1</b>	Binder Grösswang Wolf Theiss
<b>Tier 2</b>	Cerha Hempel Spiegelfeld Hlawati Dorda Brugger Jordis Freshfields Bruckhaus Deringer Schoenherr
<b>Tier 3</b>	CMS Reich-Rohrwig Hainz DLA Piper Weiss-Tessbach Doralt Seist Csoklich

Austrian banks fall clearly into two camps: there are the top three which have marched on almost unaffected by the financial crisis, and then there are the others. Small and mid-tier banks are paying the price for their aggressive lending strategies and overexposure in central and eastern Europe (CEE), with Hypo Group Alpe-Adria the latest to be nationalised, and whispers of another being bought out by Bawag bank.

Despite the rescues, the small country is still overbanked and finance lawyers are grateful that the workflow is still there, saying: "Frankly, we did expect worse." Commentators say lending picked up in the

last quarter of 2009, albeit in a new form. Banks now expect cross-collateralisation, higher margins, more penalties, and more equity; 50% for acquisition finance and 30% for mortgages.

Material adverse change clauses are also nowhere to be seen. Basically, banks have ditched the checklist approach in favour of risk management, which for lawyers is a plus. "Before 2008 no one would have taken outside advice on documentation for loans we've seen," says a partner from one leading firm. "They would have done it in-house." Syndicated lending is still low, with club deals involving three lenders being the largest type of work. But this is expected to gradually pick up, especially as the uncertainty surrounding Basel III declines.

The market likes talking about fresh finance, but for the majority of the year it was preoccupied with restructuring. Initially some banks were reluctant to waver from their enforcement rights, but this was short-lived. Backstop facilities are now more popular than ever and banks are calling less events of default than many expected. Lawyers put this down to balance sheet concerns and, of course, low property values, asking: "Where would you find a buyer in this market?"

Austria's notoriously stable profession was jolted awake in February this year when four banking partners left DLA Piper Weiss-Tessbach to join a boutique firm. The group included joint office head and former CEE head Stefan Eder and though peers say it is too early to assess the spin-off or its impact on the firm it left behind, the general feeling is that DLA Piper Weiss-Tessbach's finance team has effectively moved on.

### **Binder Grösswang**

Binder Grösswang's depth of talent keeps it performing at the top level. Senior partner Michael Binder is rated highly for his regulatory work, Tibor Fabian is known for property finance and Emanuel Welten is one of the field's most promising talents. "He's a rising star," says one competitor. "He's good at structured finance and is on top of market conditions."

The firm often acts on the lender's side representing the region's leading banks. Last year it worked on one of the country's few property finance deals, with Tiefenthaler advising German bank Landesbank Hessen-Thüringen on its €140 million loan for the construction of a shopping centre in west Austria. More recently it advised the local branch of Commerzbank on its €100 million facility to national railway company ÖBB-Infrastruktur.

It has also picked up fresh finance work for borrowers, helping Abu Dhabi-based Aabar

Investments source acquisition finance in a difficult market. The €1.95 billion facility allowed the global investment group to buy a 9% stake in luxury car make Daimler.

Client feedback is good with one giving the following reference: "Perfect customer orientation, always on stand-by seven days a week, excellent personal integrity, highly professional in all areas, and they anticipate our needs and business."

### **Leading lawyers**

Michael Binder  
Tibor Fabian  
Stefan Tiefenthaler  
Emanuel Welten

### **Wolf Theiss**

At a regional level, Wolf Theiss is regarded as a strong, big and capable firm. From its hub in Vienna, the perception is no different. The firm is well connected in banking circles and was involved in some of the year's most significant growth-finance work.

Clients see the firm as resolution-focused, with one saying: "Problems can be created or solutions provided, and they created solutions." Heidinger is regarded as the firm's best finance lawyer, while Richard Wolf is considered more of the rainmaker.

Partners aside, one client is particularly impressed with lawyer Ingrid Riedlmayer: "She's very client focussed and sees the business needs from the point of view of the client."

For instance it advised Hypo Investmentbank on its €16.3 million financing of a shopping centre to be built in Hungary, a deal which was complicated by the borrower's need for the facility to be compliant with *shariah* law.

Elsewhere it is helping an Austrian e-money payment services provider expand throughout central and eastern Europe (CEE). Its client, called Paysafecard.com Wertkarten, sells prepaid vouchers which can be used for online purchases, and its plan to operate regionally is worth €200 million. The mandate requires the team to ensure compliance with each jurisdiction's law plus the EU's 2007 payment services directive which was only recently been implemented into Austrian law.

The team has also been active in distress work generated by the financial downturn, and in most cases acting for the borrower. Its advice to Heidelberger Druckmaschinen on its debt restructure is a case in point. Led by partner Markus Heidinger, the work involved a syndicated revolving facility, a state-guaranteed revolving security, plus a secured credit facility, all for a deal value of €1.4 billion.

In December 2009 the firm advised private-equity owned French company Monier on its debt restructuring which included the taking of a new Austrian security. The deal was worth €1.7 billion and was one of the CEE's first successful restructures of a private-equity acquisition.

### **Leading lawyers**

Markus Heidinger  
Andreas Schmid  
Richard Wolf

### **Cerha Hempel Spiegelfeld Hlawati**

The banking work of Cerha Hempel Spiegelfeld Hlawati is slightly overshadowed by its leading capital markets practice. But the market does not deny its ability to attract and perform in complex mandates. A case in point is it helping Telekom Austria rework €930 million worth of financing and collateral agreements with BNP Paribas. This formed part of the corporate restructure of the client's parent company and required the team to renegotiate cross-border financings settled nearly ten years ago.

The firm also seems to have picked up a large chunk of the banks' debt restructurings. Since April 2010 it has advised Austrian banks on four debt restructurings covering seven central and eastern European countries, with values ranging up to €105 million. Elsewhere the firm advised Germany's Commerzbank on the regional regulatory requirements of its merger with Dresdner Bank, and its launch in Austria. The new branch was opened in June 2009 and the deal value totalled €5.12 billion.

As for the team, partner Peter Knobl is regarded by peers as an excellent regulatory lawyer, Volker Glas is valued for his oversight and direction, and senior associate Johannes Buchinger was praised by clients.

### **Leading lawyers**

Volker Glas  
Peter Knobl

### **Dorda Brugger Jordis**

Dorda Brugger Jordis has led the way on work generated by the financial crisis. The Austrian firm has been busy with distressed finance transactions, including the restructure of syndicated loans worth up to €450 million, and files relating to the consolidation of the financial services sector. For this latter type of work, the firm advises not only on financing issues, but also the government's rescue package and complex regulatory requirements.

Its finance team is boosted by the firm's capital markets abilities, as shown by its work

on a €5.4 billion refinancing which closed in April 2009. Dorda Brugger Jordis acted as local counsel for Morgan Stanley and JPMorgan as joint dealer manager, and Morgan Stanley Senior Funding as collateral agent, in the deal which included the renegotiation of junior and senior secured debt along with exchange offers for notes.

The finance team typically represents the banks, but it has started advising a group of Austrian investors on the financing of its €230 million shopping centre development in Croatia. Aside from sourcing new money in a tough market, this transaction is notable because of the lender's demands. Partner Tibor Varga led the finance team on the satisfaction of these terms, which included a tailor made collateral construction, proof of equity and unusual arrangements among the sponsors.

#### Leading lawyers

Tibor Varga  
Andreas Zahradnik

### Freshfields Bruckhaus Deringer

Finance lawyers at Freshfields Bruckhaus Deringer could be forgiven for thinking the financial crisis was a non-event. Its recent banking highlights consist almost entirely of fresh finance, including a handful used for mid-cap acquisitions.

It finished the year on a high after its December closing of one of the region's biggest new money transactions. The firm acted for lead arranger Erste Group Bank on the €500 million financing for Romanian oil company Petrom. The banking team warmed up for this deal by completing a smaller version in July; acting for the lender in a €100 million secured finance deal with Romania's A&D Pharma.

On the borrowers side it advised Alpine Bau on its €200 million facility agreement signed off by Erste Group Bank and UniCredit Bank Austria. The construction company's loan was one of the few guaranteed by the government under its programme to strengthen Austrian companies' liquidity.

The only refinancing that deserves mention was for paper producer Sappi Papier Holding. The Vienna office was involved in the billion euro deal which was structured along three financing streams, including a €209 million revolving credit facility and a €400 million term loan.

Friedrich Jergitsch is listed as a leading lawyer for the first time after numerous recommendations by competitors.

#### Leading lawyers

Friedrich Jergitsch  
Maria-Theresia Pflügl

### Schoenherr

Schoenherr is regarded as a strong banking firm which is a preferred choice for borrowers. It represented Immofinanz in negotiations over its debt as part of the property group's restructure, and more recently advised environmental technology supplier Austrian Energy & Environment group on a €700 million letter of credit.

The firm picked up instructions from the struggling automotive sector, acting as Austrian counsel on some regional deals. A case in point was its advice on the taking of security over Opel's Austrian assets as part of General Motor's aborted sale of its stake in the German car company.

Last year Schoenherr's banking & finance team continued to work with Österreichische Volksbanken on the regulatory aspects of its disposals. This year the bank sold stakes in Volksbank Wien, Ärztebank and ImmoBank for a total of €210 million. Partner Sascha Hödl led the advice.

Martin Ebner and Peter Feyl are both highly recommended by the market, with Ebner being more visible over the past year. However clients say a key strength of the firm is its talent at all levels. "They are an excellent team. They have often advised us on complicated international and national transactions," says one client. "They are fast and the advice they give is very reliable."

#### Leading lawyers

Martin Ebner  
Peter Feyl

### Other ranked firms

**CMS Reich-Rohrwig Hainz** has shown its diversity over the past 12 months, securing a broad range of mandates. One saw it advise Austrian bank Bawag on a €400 million forward start facility, an instrument born from the financial crisis and designed for borrowers which are particularly susceptible to another downturn. Another saw it work on one of the year's few private-equity deals, helping BC Partners secure acquisition financing for its takeover of international laboratory network Futurelab. Elsewhere the firm provided regulatory advice to Liechtensteinische Landesbank regarding its entrance into the Austrian market.

The firm's most active finance partners are Armin Dallmann and department head Günther Hanslik.

The market's biggest shock last year was the break-away of five partners from **DLA Piper Weiss-Tessbach**, three of whom were part of the banking team. Former managing partner and finance head Stefan Eder, along with Martin Geiger and Peter Solt resigned in

February 2010 to join forces with boutique firm Benn-Ibler Rechtsanwälte. One of the other partners to leave, Ivo Deskovic, was a regulatory partner who also advised on finance matters.

The general feeling among competitors is that the firm will struggle to maintain its market share. But a number also pointed out that Eder was increasingly focussed on work outside of Austria, that it was the older rather than the younger partners that left, and that it is too early to tell the impact. "They were looking for a different strategy," says DLA Piper Weiss-Tessbach partner Christian Temmel, who says the team has made a smooth transition under new finance head Wolfgang Lafite.

Work has carried as normal since the departures, with the team working on some new-finance transactions and several regional deals. One saw it advise UniCredit Bank Austria on a €45.6 million real-estate transaction in Hungary.

## 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

#### Tier 4

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

Lawyers describe M&A over the past 12 months as a "slightly recovered market", with workflows proving better than they feared. Transactions put on hold in the height of the crisis started again and growth M&A, although limited to small and mid values, came in steady volumes. Venture work was out of the question but renewable energy and healthcare companies were some of the best performers. As one partner predicts: "If you're in a growth sector and it's a good product then there are good signs for you."

There is also excitement about Porsche's merger with Volkswagen. Some of the car

companies' core assets are located in Austria and the deal is creating work for the leading trio of Schoenherr, Freshfields Bruckhaus Deringer and Wolf Theiss.

Activity was dampened, however, by hesitations over the right price. It seems everyone was stumped by valuations, unsure how the market would move. It also seems everyone has their own strategy to overcome the problem: some opted for longer documentation and tougher negotiations, many rushed the transaction through, and others chose to do black-box deals with minimal due diligence.

Newfound confidence aside, the market was still driven by distress-work with the biggest and most-talked of deals being rescue sales. Lufthansa finally received regulatory approval to takeover the long struggling Austrian Airlines, the Immofinanz saga is close to being untangled, and there was regional consolidation in the automotive sector. Bank restructurings kept corporate teams afloat along with due diligences for big-cap transactions which, unfortunately, usually failed to get off the ground.

A good measure of the market is its participants, and the past 12 months was all about strategic investors. Equity-ready investors which didn't want to pay the prices of 2006/2007 are now striking. There was some public-to-private activity with squeeze-outs and delistings: "a sort of clearing of the market" says one lawyer. But a lack of leveraging means private-equity funds are still a while away. "I expect we'll have to wait until the middle of 2011 before they come along again."

### **Freshfields Bruckhaus Deringer**

The Vienna office of Freshfields Bruckhaus Deringer continually advises on the market's big-cap deals, often working closely with its German counterparts. Maybe too closely, according to one lawyer, who says its Austrian corporate practice would not be a leader if not for its northern neighbours. Either way, clients and competitors do not dispute its tier one status. Both its ranking and affiliation with its German offices are also evident from its recent work.

In a transaction covering four jurisdictions, senior partner Thomas Zottl advised on the €1.24 billion acquisition by Germany's UniCredit Bank of the investment banking services of its Austrian counterpart. Zottl was assisted by respected associate Farid Sigari-Majd on the regulation-heavy transaction which, at the time of publication, was scheduled to close in Q3 2010.

Another market-recommended partner, Konrad Gröller, was a principal advisor on one of the region's biggest and most eagerly anticipated deals - the planned merger of Porsche

and Volkswagen. Together with its German practice, the firm advised the shareholders of three Porsche companies on the €15.7 billion agreements with Volkswagen.

In the reorganisation of the financial sector, the firm acted for BayernLB on the sale of its 67% shareholding in nationalised bank Hypo Group Alpe-Adria. Leading lawyer Willibald Plessner worked on the sale worth over €1 billion, which was pushed through on a tight timeframe.

#### **Leading lawyers**

Willibald Plessner  
Thomas Zottl

### **Schoenherr**

Schoenherr had more headline deals than any other firm over the past 12 months. As if this wasn't enough of a reason to gloat, the work was spread across a variety of sectors showing the corporate team's flexibility and depth of talent.

In the property market, it acted for long-standing client Immofinanz on its €7.9 billion deal with Immoeast. Highly respected partner Stephan Frotz led the deal which sees Schoenherr's client absorb its related entity as part of the group reshuffle. The transaction received regulatory approval in January 2010 and closed three months later.

In a cross-border deal the firm represented Italian oil and gas giant ENI on its takeover of a portfolio of ExxonMobil's downstream operations in Austria. The €130 million package includes 171 service stations, plus businesses at a number of airports including Vienna and Salzburg.

A deal which may generate some significant follow-on instructions is the 2011 merger of Volkswagen and Porsche. Already Schoenherr has advised Volkswagen on the Austrian aspects of the proposed deal, which will see its client takeover the trading business of Porsche Holding Salzburg.

In terms of leading lawyers, competitors say Christoph Lindinger, as managing partner, has taken a step back from client work. But they confirm he is still a very good corporate lawyer and credit him with building up the office. Clients say Christian Herbst is the go-to-guy for M&A.

#### **Leading lawyers**

Stephan Frotz  
Christian Herbst  
Sascha Hödl  
Christoph Lindinger

### **Wolf Theiss**

What is striking about Wolf Theiss's corporate team is the depth and versatility of its talent. Of the firm's leading lawyers, Heidinger regularly works on finance transactions, Wolf is considered an exceptional capital markets lawyer, and Ebhardt maintains his reputation despite focussing on his managing partner duties. Other partners highly recommended by the market are Claus Schneider and Dieter Spranz.

This reputation has undoubtedly benefited the firm, helping it secure instructions on two of the year's biggest deals. Firstly, it works for the seller in Italian ENI's acquisition of ExxonMobil's downstream assets in Austria. Another partner, Andreas Schmid, leads the advice.

The other sees it advise Porsche on the Austrian elements of its proposed merger with Volkswagen.

In terms of deals the firm has closed, its most notable is for longstanding client Futurelab. Wolf Theiss advised the laboratory group's shareholders on its sale to UK-based private-equity firm BC Partners. The target controls 40 diagnostic laboratories around Austria and commentators hope the deal sparks the interest of other private-equity firms working in the region.

#### **Leading lawyers**

Horst Ebhardt  
Markus Heidinger  
Richard Wolf

### **Binder Grösswang**

Clients say Binder Grösswang is pragmatic, efficient, and down-to-earth. Competitors simply say it has good lawyers. Michael Kutschera is described as "clearly the M&A guy here" by a peer who also says Thomas Schirmer is the firm's rainmaker. Banking partner Emanuel Welten also does some notable corporate work.

The healthcare sector proved one of the country's most resilient throughout the crisis, and Binder Grösswang picked up the area's most prominent deal. It advised Novartis Group on its takeover of local generics company Ebewe Pharma Group, creating €925 million in inbound investment.

The firm worked for a number of other international buyers, including SIX Group on its takeover of First Data's local businesses, China's Xi'an Aircraft Industrial Corporation's acquisition of a 90% stake in aircraft parts manufacturer FACC, and listed company Lenzing on its €50 million purchase of a controlling stake in Czech company Biocel Paskov.

Its leadership ranks received a boost this year when Gottfried Gassner joined the part-

nership, and Thomas Berghammer and Julia Kusternigg were appointed junior partners. However clients think there's little room for improvement: "Never change a winning team, so we will always go back to them."

#### Leading lawyers

Michael Kutschera

Thomas Schirmer

### Cerha Hempel Spiegelfeld Hlawati

Both clients and competitors have picked up on the team approach of Cerha Hempel Spiegelfeld Hlawati. Albert Birkner drives the corporate practice, Edith Hlawati is the rain-maker and Volker Glas is the integrative figure. "He's often the mediator," says one peer, "resolving certain aspects of the work."

A bottom-heavy practice can cause problems for clients, and the corporate team has been structured to ensure this doesn't happen. "They have a team, unlike some firms where you get one unique lawyer that covers all areas," says one bank client.

Ten months after its signing, the firm closed the privatisation of Austrian Airlines. It acted for the target and the vendor, the government's ÖIAG, in the €1.8 billion disposal to German carrier Lufthansa. The sale is viewed as a rescue-sale with the buyer asking the government to inject €500 million prior to the transfer. The sale was by structured tender and it finished with a squeeze-out of minority shareholders.

Another notable deal saw the firm represent OMV in the €1.4 billion sale of its stake in Hungarian oil company MOL to Russian oil producer Surgutneftegas.

Edith Hlawati was praised as "an excellent lawyer and very dedicated," adding: "She's reachable 24 hours, seven days a week."

#### Leading lawyers

Albert Birkner

Clemens Hasenauer

Edith Hlawati

### Dorda Brugger Jordis

"This is the sort of firm you'd want your business to be working with," says one UK-based client of Dorda Brugger Jordis. The client was impressed with the firm's responsiveness and pragmatism. Its recent work might have the same effect.

In a slumped market the firm managed to close listed AVMA's acquisition of Austrian regional bank Privatbank. The deal completed in November 2009 and the deal was structured to accommodate uncertainty over the movement of the market. The firm also acted as

local counsel to the buyer in Magna International's planned takeover of Opel from General Motors Company. The aborted deal would have been worth €4.8 billion.

The firm's three leading lawyers received recommendations from the market, but with Christian Dorda taking a stronger leadership role and Andreas Zahradnik being a relatively young partner, Martin Brodey is considered the practice's driving force. Clients are also impressed, with one saying: "I have to admit that often lawyers from central Europe tend to be very black-letter and legalistic, but Martin Brodey offered very pragmatic solutions."

#### Leading lawyers

Martin Brodey

Christian Dorda

Andreas Zahradnik

### Other ranked firms

Competitors say **Fiebinger Polak Leon & Partners** lacks visibility and is only involved in smaller deals. However the firm receives positive client feedback and has done some notable work over the past 12 months. For instance in October 2009 it advised Scandinavian investment company Constantia Packaging on the sale of its majority shareholding of its Austrian subsidiary. The target was bought by private-equity firm One Equity Partners for €450 million.

**Baker & McKenzie in association with Diwok Hermann Petsche** receives positive client feedback with one describing it as "always oriented on solutions with a pro-business approach and deep knowledge and understanding of the matter and customer needs".

Recent work on the sell side saw it act for energy supplier Bewag in its sale of a wind power subsidiary active across central and eastern Europe (CEE). The deal was led by Vienna partners Gerhard Hermann, Eva-Maria Ségur-Cabanac and Stefan Riegler, and involved five other Baker & McKenzie offices.

It also worked on one of the year's few private-equity deals, advising listed Brain Force Holding on the €6 million sale of subsidiary SolveDirect to CEE fund 3TS Capital Partners.

**DLA Piper Weiss-Tessbach** lost its lead corporate lawyer, Wieland Schmid-Schmidfelden, in the firm's five-partner departure to boutique Benn-Ibler. While some commentators believe its practice will suffer, others say the remaining team is good enough to carry on largely unaffected.

The firm has been active in cross-border work lately, advising TÜV Austria Holding on its investment in two Turkish companies and the subsequent establishment of a joint venture. Also on the buy side it acted for Teich

Aktiengesellschaft in its taking of a majority stake in a joint venture with Swiss company Alupak.

The firm is acting in one of the year's biggest deals, representing Gibraltar-based Partygaming on its merger with Austria's BWIN Interactive Entertainment. The merged company will be a Societas Europaea (public company) and have a market capitalisation of €3.3 billion.

The new corporate head is Christoph Mager.

**enwc Natlacen Walderdorff Cancola's** transaction highlight came in mid-2010 when it advised Strabag on its joint venture with global cement producer Lafarge. The firm acted for the European construction group on the €300 million project which will be headquartered in Vienna. Its other work included the MBO of Schoeller Spinning Group and Schoeller Real Estate Branch.

Despite the difficult market, **Graf & Pitkowitz** has picked up a number of cross-border mandates. One sees it advise British Trust on its takeover of an Austrian hotel chain, and another involves advice to a Swiss investment group on its acquisition of a stake in Austria's railway operator. On the sell side it works on the disposal of an Austrian steel company to a German industrial group.

Ferdinand Graf is the principal M&A partner.

In addition to Vienna, **Saxinger Chalupsky & Partner** has an office in Linz and has developed a reputation as a firm with a strong west-Austrian practice. A case in point is its work for Upper Austrian company HEKA Holdings Beteiligungs in its €15 million investment in two local recycling companies. The deal was closed in April 2010 by Wolfgang Lauss. Gerald Schmidberger is also active in M&A.

**Skadden Arps Slate Meagher & Flom's** Vienna office is small, but in cooperation with its other offices it works on some high profile cross-border transactions. This approach has seen it recently advise Global Asset Capital on its proposed acquisition of an Australian real-estate trust with holdings in Europe, and act for electrical engineering group Siemens on a public takeover which was later aborted.