INSOL INTERNATIONAL

ESG IN RESTRUCTURING

INSOL International, 6-7 Queen Street, London, EC4N 1SP
Tel: +44 (0) 20 7248 3333 Fax: +44 (0) 20 7248 3384

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CONTRIBUTORS

Argentina	Sebastian Borthwick Richards, Cardinal, Tutzer, Zabala & Zaefferer
Australia	Stewart Maiden KC, INSOL Fellow List G Barristers
Bermuda	Kyer Cooper Edward Willmott Deloitte
Brazil	Flávia Cristina M. De C. Andrade, INSOL Fellow Diana Freire De Queiroz Barros Adriana Mathias Baptista Gabriela Lima Marcus Fonseca Tozzini, Freire, Teixeira E Silva Advogados
British Virgin Islands	Marcia Mcfarlane Jhneil Stewart Peter Ferrer Harney Westwood & Riegels
Canada	Vicki Tickle Jared Enns Forrest Finn Stephanie Fernandes and Layne Hellrung Cassels Brock & Blackwell LLP
France	Nicolas Partouche, INSOL Fellow Julie Cavelier Peltier Juvigny Marpeau & Associes
Germany	Thorben Schmidt, INSOL Fellow Winkler Rechtsanwaltsgesellschaft Mbh
Guernsey	Ben Rhodes, INSOL Fellow Dipak Vashi Grant Thornton
Hong Kong	Alexander Tang, INSOL Fellow Stephenson Harwood
India	Ashwin Bishnoi Khaitan & Co
Indonesia	Dr. Julius Singara Maramis, Purba, Santi, Singara Law Firm

CONTRIBUTORS

Japan	Hajime Ueno, INSOL Fellow Tatsuaki Murakami Yuki Yasumoto Nishimura & Asahi
Kenya	Mungai James Njenga Anjarwalla & Khanna LLP
Malaysia	To' Puan Janet Looi Selvamalar Alagaratnam Sharon Chong Tze Ying Shannon Rajan Sharifah Shafika Alsagoff Janice Ooi Skrine
Mexico	Zulima González Pérez Correa, González Y Asociados, S.C.
New Zealand	Bryan Williams, INSOL Fellow Bwa Insolvency Ltd
Nigeria	Okorie Kalu Esq, INSOL Fellow Punuka Attorneys & Solicitors
People's Republic of China	Lingqi Wang Yi Su Juehan (Sylvia) Zhang Yuanyuan (Morgan) Huang Fangda Partners
Poland	Lech Giliciński Joanna Gąsowski Agnieszka Nowak-Błaszczak Wolf Theiss
Russia	Pavel Novikov, INSOL Fellow Roman Ishmukhametov Semen Kitikov Melling, Voitishkin and Partners
Singapore	Clayton Chong WongPartnership LLP
South Africa	Ricky Klopper Klopper Attorneys Inc. Christopher Rey BDO

CONTRIBUTORS

Spain	José Carles Delgado, INSOL Fellow Carles Cuesta Abogados Y Economistas SLP
Switzerland	Dr. Roger Bischof, INSOL Fellow Lenz & Staehelin Georg Wohl Baur Hürlimann AG
Thailand	Pathorn Towongchuen Nantinee Sunthonpimol TTT and Partners Thanawan Kirdsinsap Weerawong C&P
The Netherlands	Prof. Dr. Omar Salah Tamara Ubink Norton Rose Fulbright LLP
Uganda	Andrew K Munanura, INSOL Fellow S&L Advocates
United Arab Emirate	Adam Banks, INSOL Fellow Abdelhak El Kinany Paridhi Poddar Linda El Halabi Allen & Overy LLP
United Kingdom	Andrew Probert ERM Sarah Rayment William Innes Haroon Ansary Mark Blackman Matthew Mills Sarah College Kroll Richard Hughes Rupert Cheetham Kevin Mulligan John Houghton Megan Gray Hannah Blom-Cooper Tim Dolan Halimah Sattar Naomi Feinstein Greenberg Traurig
United States of America	Stephen Astringer Kobre & Kim LLP

PRESIDENT'S INTRODUCTION

Environmental, social and governance (ESG) issues are rapidly changing the way that business is conducted across the world. We are witnessing new regulations on climate change, biodiversity and environmental conservation, modern slavery and workers' rights and board accountability, conflicts and stakeholder engagement.

More broadly, we are also seeing a change in social attitudes, and a growing expectation from financiers, insurers, investors and customers that the businesses they deal with must behave in a responsible and ethical manner.

These dynamic regulatory, social and economic changes will inevitably drive future restructuring activity, as companies seek to align their operational structures and business models with improved governance, labour protection, social justice goals and the reality of a net zero emissions economy and the necessity of a greener footprint.

At the same time, however, the evolution of social and economic settings – and the dominant focus on ESG – raises the question as to whether existing restructuring and insolvency laws adequately protect and uphold environmental obligations, employee entitlements and workplace health and safety obligations, and hold directors and other officers to account in relation to their responsibilities to the company and its stakeholders.

There is a delicate balancing act between the protection of these interests and the underlying assumption that restructuring and insolvency processes ought to maximise value for the collective body of creditors – and in some cases, the respective policy concerns of ESG issues and restructuring and insolvency law and practice may conflict.

This has been apparent in the controversial "Texas Two-Step" option canvassed in recent United States case law (under which it has been proposed for tort liabilities to be spun off to a new corporate entity that undergoes a restructure), as well as non-consensual third party releases and, in some jurisdictions, the potential for an insolvent entity to disclaim or otherwise evade liability for its environmental obligations.

This new publication from INSOL International – *ESG in Restructuring* – therefore comes at an important time. Project Leaders Clayton Chong and Smitha Menon, from WongPartnership, canvass the policy motivations of ESG and insolvency and restructuring law and practice, and consider the regulatory standards, soft law frameworks and practices concerning key ESG issues outlined by esteemed practitioners and academics in 31 jurisdictions.

The Project Leaders consider the manner in which restructuring law and practice may be shaped to deal with incredibly complex and emerging ESG issues – particularly environmental responsibilities, labour protection and board accountability – that can have far-reaching impacts on vulnerable claimants and broader society. They provide a "roadmap" of issues that regulators and policy makers may consider in shaping future law reform.

This book is an invaluable contribution to law reform and regulatory and policy development as we strive to ensure that restructuring and insolvency laws are modern, progressive and "fit for purpose" in relation to the underlying economic and social circumstances in which they operate.

PRESIDENT'S INTRODUCTION cont.

The book also highlights important practical issues for our members to be aware of in addressing a multitude of ESG issues in the course of an insolvency appointment. Uniquely, the book also analyses recent market developments and trends in the ESG refinancing sphere, with the aim of serving as a useful "one stop" resource for financial institutions considering the provision of finance to entities (in good times and in the event of financial distress) in the context of complex and evolving ESG obligations and liabilities.

I express my sincere thank you to the Project Leaders, and each of the jurisdictional contributors, for their significant expertise, time and commitment in completing this project over the last 12 months, as well as to our team of INSOL International technical and administrative staff for their efforts in bringing the project to fruition.

I hope you enjoy reading this publication and will find it useful in your future pursuits.

Scott Atkins
President & INSOL Fellow
INSOL International

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SWITZERLAND

1. General overview of the restructuring regime

1.1 Formal restructuring procedures

The main procedure for restructuring debts in Switzerland is the composition procedure (also called the debt restructuring procedure) according to article 293 et seq of the Swiss Federal Code on Debt Enforcement and Bankruptcy (DEBA).

The debt moratorium is a tool that allows companies to undertake restructuring and reorganisation measures under a court-supervised procedure, with the aim of increasing the prospects of recovery and protecting stakeholder value by avoiding often more value-destructive bankruptcy liquidations. Alternatively, a settlement can be achieved between the debtor (company in distress) and all pre-filing creditors – a so-called "composition agreement" (haircut). Any pecuniary claims against a company may be restructured; there are no restrictions on the types of debt which may be restructured under such an agreement. In particular, there are generally no special restrictions or conditions when restructuring environmental or health and safety-related liabilities owed to the respective creditors. However, some types of claims have a legal privilege, as for example claims based on an employment contract or pension fund scheme. Such claims can only be restructured with the consent of the respective creditors – otherwise, they must be paid in full.

If over-indebtedness can be eliminated within eight months (during the provisional moratorium) and the company is solvent, the moratorium will be lifted and the company is viable again (under certain conditions this procedure is not public, so it is called a silent moratorium). If this is not possible, the company could try to enter into a definitive moratorium to organise for a composition agreement with its creditors. Such a proceeding is public and all creditors have to file their claims with the administrator. The definitive moratorium is limited to a maximum of 24 months (in complex cases). If no solution is found until then, the company will undergo bankruptcy proceedings.

The composition procedure involves four stages.

First, the moratorium can be initiated by a petition to the composition court: (i) by the debtor together with a current balance sheet, a profit and loss statement and a liquidity plan or equivalent documents showing the debtor's current and future assets and income situation, as well as a provisional reorganisation plan; or (ii) by a creditor who would be entitled to file a bankruptcy petition. The court has to approve the moratorium, unless there is obviously no prospect at all of reorganisation or confirmation of a composition agreement (approval stage).

A composition moratorium will normally not be published at first if the company can continue its operations under the supervision of a court-appointed administrator (so called debtor in possession). After a certain time, however, the company will have to disclose the moratorium to all its stakeholders in order to retain control over communication. In any case, provided there is sufficient liquidity, the company is still fully operational as the debtor remains in principle in control of the ongoing business.

However, a court-appointed administrator supervises day-to-day management and may release binding instructions to the executive bodies. In certain cases, the administrator can apply to the court to replace the management. Certain material transactions, including the disposal of fixed assets, accepting pledges or raising debt capital, will require the approval of the court. Furthermore, the moratorium might have an impact on the structuring of workstreams with clients and suppliers and the respective contractual terms.

The court-appointed administrator is generally a lawyer and not a restructuring officer as he / she is only supervising the management and not taking any strategic decisions. The debtor company has the possibility to make suggestions to the court about the identity of the administrator and could organise for a sort of "beauty contest" among potential administrators.

After a provisional stage of a maximum of eight months, the court has to decide whether it approves the definite moratorium. It will do so if the debtor and the administrator prove that there are prospects for a reorganisation or confirmation of a composition agreement.

Once the definite moratorium is confirmed, the administrator takes an inventory of all the debtor's assets and asks the creditors by public notice to submit their claims. The administrator convenes a creditors' meeting as soon as a draft agreement ready for negotiation is available.

Second, consent of the creditors to the debtor's settlement offer, and thereby passing the restructuring plan (consent stage), requires meeting the following thresholds: (i) approval by the majority of the creditors representing at the same time at least two thirds of the total amount of the claims; or (ii) approval of one quarter of the creditors representing at least three quarters of the total amount of the claims.

Not included in the threshold calculation are creditors privileged under bankruptcy law (their claims must be guaranteed in order for the agreement to be confirmed at all), as well as creditors of secured claims insofar as they are covered by the pledge (to this extent they are not subject to the agreement at all).

Third, the composition agreement is subject to the approval of the composition court (confirmation stage), whereby the following conditions must be satisfied:

- the value of debtor's offer must be in proper proportion to its possibilities, which generally means that the composition dividend must be higher than the potential liquidation dividend in a bankruptcy;
- the full satisfaction of the registered privileged creditors as well as the fulfilment of the liabilities entered into during the moratorium with the consent of the administrator (so called post-filing claims) must be adequately secured; and
- in the case of an ordinary composition agreement, the shareholders must make an appropriate restructuring contribution.

Fourth, the confirmed composition agreement must be implemented according to its content (implementation stage).

As an alternative to the above, a company may also conduct a "pre-pack" restructuring. In the absence of an explicit legal basis, several district courts have approved the transfer of business units of a debtor in a pre-pack transaction simultaneously with the grant of a provisional debt restructuring moratorium, in certain cases even without appointing a provisional administrator. However, this should be an exception in cases where the transaction is obviously in the best interests of the creditors.[1]

In a more recent leading case on Swiss pre-pack restructurings, the Swiss Federal Supreme Court[2] has confirmed the previous legal practice of privately pre-negotiated, confidential pre-pack restructurings in Switzerland and thus provided legal certainty under Swiss law, in particular regarding:

- the general admissibility of pre-packs;
- the approval of pre-packs by the competent composition court without a hearing of the creditors; and
- the (largely excluded) rights to appeal by creditors, which provide substantial deal security for potential buyers since the court-authorised transaction is protected against claw-back and avoidance claims.

Such approval may generally be granted if the sale is, based on the court's reasonable discretion, to the creditors' advantage in comparison with bankruptcy proceedings and an urgent sale is essential to the success of a restructuring.

1 *Bzger Bülach*, EC200010-C/Z1.
2 BGer 5A 827/2019.

Hence, a swift restructuring by way of a pre-negotiated sale of certain assets or an entire business during a (silent) composition moratorium is not only possible under Swiss law but may minimise the loss of value and negative publicity which is normally associated with public bankruptcy proceedings in Switzerland.

1.2 Informal restructuring procedures

Informal out of court restructurings are conducted primarily on a consensual basis and are not specifically governed by any legislation (so called debt workouts). The statutory framework for such consensual restructurings is provided in articles 725 to 725c of the Swiss Code of Obligations (CO). They may include various measures such as standstill agreements and subordination agreements with creditors, debt-equity swaps, capital injections and transfers of (parts of) businesses to another existing or newly established company (hive-off vehicle) by way of an asset deal.

Since such proceedings always take place close to insolvency, there is a risk of subsequent avoidance or clawback claims. In addition, out of court restructuring procedures must be implemented under great time pressure, as the law obliges the management to quickly apply for a debt restructuring moratorium – otherwise the directors face the risk of civil and criminal liability due to delay in bankruptcy.

Swiss banks have their own non-statutory framework for debt workouts but do not always abide by that industry standard.

Out of court workouts through consent solicitation exercises are also commonplace for bond restructurings, where an issuer seeks the consent of holders of debt securities to amend and / or waive breaches of the terms of those debt securities.

2. Restructuring of ESG-related liabilities

2.1 Environmental (E): restructuring environmental liabilities

Generally, environmental liabilities can be restructured under a composition agreement in the same way as ordinary liabilities of a company. As mentioned above, any pecuniary debt claims against a company may be restructured under a composition agreement, including contingent, unproven or unliquidated claims. There are no special restrictions or conditions that apply when restructuring environmental liabilities. However, if the creditor is a state authority, depending on the relevant law, additional procedural steps must be observed on the basis of which the authority must make its decision to participate in a restructuring (e.g., a decision to accept a haircut). Based on the principle of federalism in Switzerland, it may therefore be that different cantonal laws are applicable in each case, insofar as the application of federal law is not involved.

2.1.1 Types of environmental liabilities

For background, environmental liabilities under Swiss law can encompass:

- civil claims, such as claims in tort (article 41 et seq of the CO and article 679 of the Swiss Civil Code (CC))[3] and claims in contract; and
- statutory liabilities, such as:
  - fines. For example, under the Federal Act on the Protection of the Environment (EPA),[4] fines may be imposed for various statutory offences, such as exceeding certain emission

[3] According to the said provision of the Swiss Civil Code, a party may be liable if it caused damage or pollution to another party's land.

[4] Apart from the EPA, there are various other pieces of environmental legislation, including but not limited to the Federal Act on the Protection of Waters (WPA), Federal Act on the Protection of Nature and Cultural Heritage (NCHA), Federal Act on Forest (ForA), Federal Act on Protection Against Dangerous Substances and Preparations (ChemA), Ordinance on the Avoidance and the Disposal of Waste

limits,[5] the failure to maintain air pollution control and the failure to use or deal with hazardous substances in such a manner as not to cause pollution to the environment;[6] and

- remediation / clean-up costs. For example, under the EPA, the Federal Office for the Environment (FOEN) or the cantonal authorities may direct the owner or occupier of premises to take certain remedial actions if they have reason to believe that the emission of air impurities, or the emission or discharge of any hazardous substance or toxic substance from any premises is likely to cause pollution of the environment or be injurious to public health or safety.

There is generally no distinction as to how the various types of environmental liabilities are treated under a composition agreement. Statutory liabilities are susceptible to be restructured under a composition agreement and, unlike some jurisdictions, there is no express prohibition against restructuring fines under a scheme.

2.1.2 *Priority given to environmental liabilities*

As mentioned in section 1 above, the approval of a composition agreement by the composition court requires that privileged claims are satisfied in full. Environmental liabilities do not fall within any of the statutorily-prescribed categories of preferential debts which receive priority in a bankruptcy liquidation. However, there are exceptions where environmental liabilities could be classified as secured debts, for example if the liabilities are secured by a security interest (for example, in a financing transaction where a lender takes a mortgage over a borrower's land).

2.1.3 *Disclaimer of environmental obligations*

While a composition agreement can in principle restructure environmental liabilities, it does not relieve a company of its ongoing or subsisting statutory or contractual obligations post-restructuring. For example, a company that continues to emit pollutants or hazardous substances after it emerges from a restructuring could be liable to new offences that attract additional fines. In practice, this means that a company that intends to continue operating its plant or factory (as opposed to selling it) would need to ensure it has the resources post-restructuring to be able to meet its environmental obligations.

Unlike other jurisdictions, such as Singapore and the United Kingdom, the company and its administrator have no power to disclaim onerous property (i.e. property such as a plant or a factory which is subject to continuing and onerous environmental obligations that are to be performed over a substantial period of time and which will involve expenditure that may not be recovered). Hence, no power of disclaimer may be used to relieve a company of its statutory environmental obligations. In other words, the Swiss legislator is of the opinion that the interest in protecting the environment in Switzerland should take precedence over the interest in ensuring a fair and orderly insolvency proceeding which may lead to the opening of bankruptcy proceedings if the environmental burden of a distressed company is too high.

2.2 Social (S): restructuring health or safety-related liabilities

Similar to the restructuring of environmental liabilities, health or safety-related liabilities can be restructured under a composition agreement in the same way as ordinary liabilities of a company. As mentioned above, any pecuniary claims against a company may be restructured under a composition agreement, including contingent, unproven or unliquidated claims. There are no special restrictions or conditions that apply when restructuring health or safety-related liabilities. However, the composition agreement does not relieve a company of its ongoing or subsisting statutory or contractual obligations post-restructuring.

(ADWO), Federal Act on the Reduction of CO2 Emissions (CO2 Act), Ordinance on Air Pollution Control (OAPC), Noise Abatement Ordinance (NAO), Ordinance on the Remediation of Contaminated Sites (CSO), Radiological Protection Act (RPA), and Federal Law on Protection Against Hazards by Non-Ionising Radiation and Sound (NISSG).

[5] EPA, art 61.

[6] ChemA, art 49 et seq.

2.2.1 *Types of health and safety-related liabilities*

For background, health or safety-related liabilities under Swiss law can encompass:

- civil claims, such as claims in tort[7] and claims in contract;[8] and
- statutory liabilities, such as:
  - fines. For example, selling faulty products or unsafe food are offences under article 16 et seq of the Federal Law on Product Safety (PrSG) and article 63 et seq of the Federal Act on Foodstuffs and Utility Articles (FSA), and failing to take the necessary measures to ensure the safety and health of employees at work is an offence under article 112 of the Federal Law on Accident Insurance (UVG); and
  - remediation costs. Safety authorities may serve a remedial order directing a person to remedy any danger that is affecting the safety, health and welfare of persons. Where the person fails to comply with the order, the authorities may take appropriate measures to prevent unauthorised entry or access to the area or the equipment or plant affected and may recover the costs and expenses incurred from the person served with the order.

2.2.2 *Treatment of health and safety-related liabilities*

There is generally no distinction as to how the various types of health or safety-related liabilities are treated under a composition agreement. Statutory liabilities are susceptible to be restructured under a composition agreement and, unlike some jurisdictions, there is no express prohibition against restructuring fines under a composition agreement.

However, as mentioned in section 1 above, certain liabilities may be given priority treatment under a proposed composition agreement if they would have priority in a bankruptcy liquidation. Apart from claims based on an employment contract or a pension fund scheme, some examples of health or safety-related liabilities that may have preference or priority in liquidation are:

- all amounts due in respect of work injury compensation under the UVG, which is a preferential debt in a winding up pursuant to article 219(4), 1st Class B of the DEBA; and
- liabilities secured by a security interest (for example, in a financing transaction where a lender takes a mortgage over a borrower's land).

2.3 Governance (G): third party releases in favour of directors and officers of the company

There is no statutory provision or case law in Switzerland as to whether third party releases of debts can be granted in favour of directors and officers of the company (for example in relation to their actions taken in connection with the restructuring of the company), related party guarantors, banks, liquidators and debts of other group companies. Regarding the latter, Swiss law does not provide for any group restructuring rules. Instead, each and any legal entity within a corporate group is considered and treated separately for restructuring purposes.

3. Protection of stakeholders' interests

3.1 Environmental (E): influence by environmental protection authorities or environmental advocacy groups in a restructuring

[7] For example, a party may be liable for the negligent manufacture, distribution or supply of goods under Swiss tort law (CO, art 42, 55; Federal law on product liability (PrHG)).

[8] For example, a party that supplies defective or unsafe goods may be liable for breach of an express term of the contract or the implied term of satisfactory quality imposed by virtue of CO, art 197.

3.1.1 Approving a restructuring plan

There is no requirement for a composition agreement to be approved by environmental protection authorities or environmental advocacy groups. A composition agreement only needs to be approved by creditors and the court. However, as mentioned in section 2 above, authorities will have to abide by their own procedural laws with respect to whether they may approve a restructuring plan.

3.1.2 Discretion to consider wider public interest concerns

There is no statutory provision or case law in Switzerland concerning the extent to which the court may consider environmental issues in deciding whether to approve a composition agreement. The criteria to be met at the agreement confirmation stage (as described in section 1 above) primarily focus on the rights and interests of the creditors and do not incorporate a wider public interest assessment, not even the preservation of jobs. However, in practice it can be witnessed that some courts also take the public interest into consideration even though there is no legal basis for that. In most cases, it is argued that the preservation of jobs (e.g. in a court approved hive off or pre-pack transaction) reduces the priority liabilities of the subsequent bankruptcy estate.

3.1.3 Influence by environmental protection authorities or environmental advocacy groups in a restructuring

There are no statutory provisions in Switzerland which grant environmental protection authorities or environmental advocacy groups standing to air their views or concerns in a restructuring. There are also no other formal ways in which these parties may be indirectly involved in a restructuring process to safeguard environmental interests (e.g. by reviewing environmental licences or taking part in plan formulation or negotiations). However, they may have an impact on the court's decision by shaping the public opinion through media and other informal channels. In addition, in certain areas, the approval of a moratorium may lead to the withdrawal of a license or concession.

3.2 Social (S): influence by labour authorities, unions or employee / worker advocacy groups in a restructuring

3.2.1 Approving a restructuring plan

There is no requirement for a composition agreement to be approved by labour authorities, unions or employee / worker advocacy groups. A composition agreement only needs to be approved by creditors and the court.

3.2.2 Discretion to consider wider public interest concerns

There is no statutory provision or case law in Switzerland concerning the extent to which the court may consider labour issues in deciding whether to confirm a composition agreement. The criteria to be met at the agreement confirmation stage (as described in section 1 above) primarily focus on the rights and interests of creditors and do not incorporate a wider assessment of employees' interests, except for their pecuniary claims that might be privileged to a certain extent and therefore have to be paid in full. However, in practice courts may nevertheless take the public interest into consideration.

3.2.3 Protection of employee rights

Generally, there are no statutory provisions in Switzerland which grant labour authorities, unions or employee / worker advocacy groups direct involvement in an in court restructuring. In contrast, out of court restructurings are subject to wider participation rights of employee groups or unions.

In any case, the company will have to grant its employees or any unions or labour protection authorities the right to be heard before starting a mass layoff. Otherwise, the company risks damages claims from its employees. Such claims might be privileged to a certain extent and therefore increase the financing requirements of a composition agreement. The same applies to claims due to unfair dismissal by the employer.

There are also no other formal ways in which these parties may be indirectly involved in a restructuring process to safeguard employees' interests, for example by monitoring the protection of employee rights or taking part in plan formulation or negotiations. However, they may have an impact on the court's decision by shaping the public opinion through media and other informal channels.

3.3 Governance (G): board / management conflicts addressed in a restructuring

Board / management conflicts are largely addressed in a restructuring through the disclosure requirements under the moratorium regime, as well as the conditions for deciding whether to confirm the composition agreement in the confirmation stage. If the directors or management personnel are receiving shares or options pursuant to an incentive plan as part of the restructuring, such matters would likely have to be disclosed in the explanations regarding the draft agreement to enable the creditors to assess what is in their commercial interests.

Outside the restructuring context, listed companies in Switzerland are also subject to article 732 et seq of the CO and the Stock Exchange Listing Rules, which help to address conflict of interest concerns regarding the remuneration of directors and key management personnel. According to these rules, the listed company must disclose such renumeration and obtain the approval of the General Assembly.

SIX Swiss Exchange (SIX) listed companies are also required to comply with the Directive on Information relating to Corporate Governance (Corporate Governance Directive), which includes disclosure requirements with respect to board renumeration, failing which they must explain the reason for any variation from the provisions of the Directive.

4. "Soft law" framework

4.1 Environmental (E): industry guidelines and / or best practices that are prescribed for the protection of the environment in a restructuring

We have not identified any industry guidelines and / or best practices prescribed for the protection of the environment in a restructuring in Switzerland.

4.2 Social (S): industry guidelines and / or best practices that are prescribed for the protection of employee rights in a restructuring

There are no "soft law" instruments (such as industry guidelines, best practices, recommendations, codes of conduct and standards) in Switzerland which are not legally binding but serve to guide or influence a company to take actions or decisions that protect employees' interests specifically in a restructuring context.

4.3 Governance (G): industry guidelines or codes of conduct relating to the avoidance of conflicts of interests that restructuring professionals are subject to

There are no specific regulations concerning insolvency practitioners (IPs) in Switzerland. The responsibility for monitoring IPs lies with the relevant cantonal Supervisory Commissions for Attorneys-at-Law. Accountants are generally overseen by EXPERTsuisse, the specialist association for auditing, taxes and fiduciary experts, as well the Federal Audit Oversight Authority (FAOA). Certain cantons in Switzerland require an administrator patent (Sachwalterpatent).

The Swiss Federal Law on Lawyers' Free Circulation (commonly known as the Swiss Attorney Act), the rules of professional conduct of the Swiss National Bar Association and the cantonal bar associations as well as the Code of Conduct and Professional Ethics of EXPERTsuisse prescribe general guidelines as to how insolvency professionals should deal with potential conflicts of interest, without specific reference to restructuring scenarios.

5. ESG in financing

5.1 ESG-linked loans, bonds or investments

The number of ESG-linked finance transactions is constantly increasing in the Swiss financial market. The sustainable bond market is particularly active. The SIX is responsible for the listing of such bonds. It categorises the bonds according to the International Capital Market Association (ICMA) principles and differentiates between green bonds, social bonds, sustainability bonds and sustainability-linked bonds, with green bonds being the most prevalent type. Switzerland's Federal Government actively issues sustainable bonds and facilitates industry growth.[9]

Banks in Switzerland have also issued sustainability-linked loans which peg loan costs to a company's ESG performance (as calculated by various ESG metrics).[10] However, compared to the sustainable bond market, ESG-linked credit financing is not yet as developed in Switzerland.

5.2 Financial institutions (banks and funds) and their commitment to achieve ESG targets

Considering Switzerland's position as a global wealth management hub, sustainable investing (SI) has become a key aspect of Swiss banks' ESG efforts. Swiss banks commonly divide their SI strategy into subcategories, including research, transparency, impact assessment, ESG-risk management, process integration, proxy engagement and systematic exclusion of investment recipients.[11] Furthermore, the Swiss Banking Association (SBA) mandates asset managers to examine and adequately consider clients' ESG preferences.[12]

UBS and Credit Suisse are founding members of the United Nations Environment Programme's Net-Zero Banking Alliance (NZBA), which requires its members to commit to various efforts aimed at reducing the greenhouse gas emissions of their lending and investment portfolios to sustainable levels, such as transitioning their portfolios, setting targets for emissions reduction, publishing emissions data and reporting progress of their transition strategy and actions.[13] Most major Swiss banks are signatories of the UNEP FI's Principles for Responsible Banking (PRB). Around 200 financial service providers active in the Swiss market are Swiss Sustainable Finance (SSF) members. The SSF is a non-profit organisation that focuses on impact investments, ESG education, market studies and SI in wealth and asset management.[14]

Furthermore, some banks have launched autonomous foundations that promote social and environmental values, namely by partnering up with and funding suitable organisations and projects.[15]

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9 The Federal Government sees a functional sustainable bond framework as a means to adopt the 2030 Sustainable Development Strategy (2030 SDS): see https://www.newsd.admin.ch/newsd/message/attachments/72632.pdf.

10 One example is the Basel Cantonal Bank (BKB): see https://www.bkb.ch/de/geschaeftskunden/finanzierungen/nachhaltige-finanzierungen/sustainability-linked-loans.

11 For example, Credit Suisse (https://am.credit-suisse.com/international/en/asset-management/esg.html), Vontobel (https://am.vontobel.com/en/esg-investing), and Pictet (https://am.pictet/en/globalwebsite/global-articles/company/responsible-investment/tab/ResponsibleEconomics/5PillarsOfResponsibleInvestment).

12 https://www.swissbanking.ch/_Resources/Persistent/a/5/e/0/a5e0845f065a60699df88910ae675b7082e69411/SBA_Guidelines_investment_advice_and_portfolio_management_EN.pdf.

13 Members of the Net-Zero Banking Alliance are required to sign a Commitment Statement as a pre-requisite for joining the organisation. The Commitment Statement is accessible at: https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/UNEP-FI-NZBA-Commitment-Statement.pdf.

14 https://www.sustainablefinance.ch/en/workgroups-_content---1--3036.html.

15 Prominent examples include the UBS Optimus Foundation (https://www.ubs.com/global/en/ubs-society/philanthropy/optimus-foundation.html) and the Julius Baer Foundation (https://www.juliusbaer.com/en/julius-baer-foundation).

5.3 Promoting ESG by the central bank and regulators

The Swiss National Bank (SNB), which is the central bank of Switzerland, has undertaken various efforts to promote ESG financing. The SNB's annual sustainability report[16] sets out how it puts the principles of sustainability into practice in its operational activities, with regard to its employees, society and the environment. Since 1996, the SNB had been pursuing an environmental management policy centred on an annual eco-performance assessment and aimed at reducing resource consumption. Since 2018, the previously published environmental report evolved into a sustainability report with the addition of two further key areas: employees and society. However, due to the fact that the SNB's mandate is statutorily limited,[17] ESG-related interventionism is only foreseen if ESG-risks have an impact on price stability or financial stability or trigger financial risks for the SNB.[18]

The SNB as well as the FINMA (Swiss Financial Market Supervisory Authority) are members of the Network of Central Banks and Supervisors for Greening the Financial System (NGFS).

SIX allows listed companies to notify the SIX Exchange Regulation (SER) that they issue a sustainability report in line with an internationally recognised standard.[19] These reports are then published by SIX for the purpose of informing market participants.[20]

Pursuant to article 964a et seq of the Swiss Code of Obligations, certain companies of public interest that are subject to an ordinary audit also have statutory non-financial reporting requirements that can roughly be divided into four categories:

- reporting on corporate social responsibility as a whole;
- reporting on metals and minerals business;
- reporting on child labour; and
- reporting on payments to government agencies.

These rules provide for the duty to report on areas such as the environment, social issues, labour issues, human rights aspects and the fight against corruption. If the company controls other domestic or foreign companies, the report must also include these companies.

As of 2024, Switzerland will refine these reporting requirements in accordance with the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations.[21]

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16 https://www.snb.ch/en/iabout/snb/org/id/snb_org_eco.
17 See art 99 of the Swiss Federal Constitution (https://www.fedlex.admin.ch/eli/cc/1999/404/en) and Federal Act on the Swiss National Bank (https://www.fedlex.admin.ch/eli/cc/2004/221/en).
18 See recent Report of the Swiss Federal Council, Switzerland's highest executive authority: https://www.newsd.admin.ch/newsd/message/attachments/73603.pdf.
19 https://www.six-group.com/en/products-services/the-swiss-stock-exchange/market-data/shares/sustainability-reporting.html.
20 Almost all issuers apply the Global Reporting Initiative (GRI) standard, e.g. UBS and Vontobel. At present, (January 2023), the only exception is Credit Suisse which applies the Sustainability Accounting Standards Board (SASB) standard.
21 https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-91859.html.

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INSOL International, 6-7 Queen Street, London, EC4N 1SP
Tel: +44 (0) 20 7248 3333 Fax: +44 (0) 20 7248 3384

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