# A failed reorganisation – the SIGNA Prime case in Austria

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In the history of Austria's economy, few insolvency cases have caused as much uproar as the insolvency of the SIGNA Real Estate Group. With approximately €12bn of debt, the insolvency is the largest the country has ever witnessed.
The insolvency of SIGNA Prime Selection AG, a major subsidiary of SIGNA, is in itself one of the largest of all time in Austria. While the restructuring plan that the company offered to its creditors was initially approved by the creditors, it was later abolished in a much awaited and partly criticised landmark decision by the Austrian Supreme Court. These are all reasons enough to take a closer look at the key issues of this case.

In the history of Austria's economy, few insolvency cases have caused as much uproar as the insolvency of the Austrian SIGNA Real Estate Group ('SIGNA').

SIGNA Prime Selection AG ('SIGNA Prime') is the key subsidiary of SIGNA and owner of high-profile properties in Austria and abroad (eg, the Park Hyatt in Vienna, Austria; the Elbtower in Hamburg, Germany; and the Chrysler Building in New York). Its insolvency ranks amongst the largest insolvency cases in Austria's history with registered claims over €12bn.[1]

Between late 2023 and early 2024, many SIGNA companies including SIGNA Prime filed for insolvency as the group was no longer able to meet its financial obligations, mainly due to rising interest rates and the inability to repay large-scale loans financing its heavily debt-financed real estate portfolio. Further, pursuant to an examination by the European Central Bank in mid-2023, which resulted in a warning to European banks regarding the provision of loans to SIGNA, it became increasingly difficult for SIGNA to finance or refinance its projects.

SIGNA Prime had originally intended to conduct reorganisation proceedings by self-administration under the Austrian Insolvency Act. However, this plan fell apart after a dramatic legal dispute, which ended before the Austrian Supreme Court only a few months ago. The case attained widespread public attention in Austria and across Europe, also involving SIGNA's founder and majority shareholder, Mr. René Benko, whose notably luxurious lifestyle continued to draw scrutiny even after the opening of the insolvency proceedings against SIGNA companies.

## Reorganisation proceedings – an Austrian success story

A reorganisation proceeding (*Sanierungsverfahren*) is a special type of court-run insolvency proceeding under the Austrian Insolvency Act. It requires the debtor to submit an admissible reorganisation plan, along with ancillary documentation such as a financial plan and a list of assets and liabilities, together with the well-reasoned application for the opening of insolvency proceedings. In contrast to a traditional bankruptcy, a reorganisation proceeding aims to avoid liquidation: ie, the sale of all assets to satisfy creditors. It allows the debtor to continue business activity and benefit from a 'fresh start' with its creditors. With the introduction of reorganisation proceedings in their current form in 2010, the legislator aimed to establish low-threshold judicial access to company reorganisation (similar to a Chapter 11 proceeding of the United States Bankruptcy Code) rather than defaulting to liquidation.

With this reform, the legislator also sought to ensure that distressed debtors file an application as early as possible, particularly in cases of imminent insolvency, in order to improve the prospects of reorganisation and prevent liquidation, which may be inefficient.

In contrast to traditional bankruptcy, reorganisation proceedings can therefore be initiated at an earlier stage.[2] This type of proceeding has proven to be to be a widely used and relatively effective tool for many companies in Austria.

Generally, reorganisation proceedings under the Insolvency Act may be conducted either under the debtor's own administration (debtor-in-possession) or under third-party administration by an appointed administrator. In case of self-administration, the restructuring plan must provide for a minimum debt repayment quota of 30 per cent to the unsecured creditors, which must be fulfilled within two years. In contrast, where reorganisation proceedings are conducted without self-administration, the statutory minimum quota to unsecured creditors is reduced to 20 per cent, also payable within two years.

## Reorganisation plan – minimum debt repayment quotas

In the reorganisation plan, the debtor must offer unsecured creditors at least the statutory minimum debt repayment quota of 20 or 30 per cent. If economically feasible, the plan may offer a higher quota, thus incentivising creditors to accept the haircut and to vote for the plan's adoption. However, the quota must always be paid in its entirety within the two-year payment period.[3] For example, if the debtor offers a higher repayment quota than required by law (eg, 40 per cent), they are obliged to pay such higher sum within two years. In general, this limit is intended to facilitate the company's prompt debt relief, which could be undermined by longer payment periods.

The competent insolvency court must schedule a reorganisation plan hearing within 60–90 days of accepting the plan. At the hearing, unsecured creditors vote on whether to accept or reject the submitted plan. The voting requires a so-called 'double majority', made up of a 'head majority' and a 'capital majority'. The 'head majority' requires the approval of the majority of the creditors present and entitled to vote. In addition, the creditors in favour must also achieve a capital majority, meaning their claims collectively represent more than half of the claims of all creditors present. These two majority requirements serve distinct purposes: while the head majority serves to protect small creditors (including the debtor's staff and employees), the capital majority ensures the protection of large creditors, often financial institutions and banks. The overall aim is to achieve a balance of interests between the various creditor groups.[4]

Upon acceptance of the reorganisation plan by the creditors, the insolvency court initiates confirmation proceedings *ex officio*. These proceedings are subject to the principle of investigation, under which the court has an active duty of enquiry.[5] As part of these proceedings, the insolvency court examines whether the reorganisation plan has been drawn up properly and in accordance with the laws. The court review is primarily formal and, from a commercial perspective, limited to a plausibility check, with relatively low thresholds for confirmation compared to many other jurisdictions, such as Germany.

The court's decision to confirm or reject the reorganisation plan is made by formal order and may be appealed within 14 days of its publication in the Austrian insolvency register.[6]

In principle, all parties who did not support the decision in the reorganisation plan hearing are entitled to lodge an appeal.[7] Thus, under Austrian law, it is entirely possible to challenge a reorganisation plan, even after it is accepted by creditors and confirmed by the court. This may seem surprising at first glance but, as demonstrated by the SIGNA Prime case, it can have significant practical consequences.

## The SIGNA Prime restructuring plan

SIGNA Prime submitted its restructuring plan to creditors for approval, which – despite the significant scale of the insolvency – was average in both detail and length. Therefore, a substantial majority of the company's creditors approved the restructuring plan, as did the Commercial Court of Vienna as the competent insolvency court. In its restructuring plan, the company basically proposed a repayment quota of 30 per cent on the insolvency creditors' claims, payable within a period of two years after adoption. Creditors anticipated higher recoveries than in a bankruptcy scenario, through the appointment of a so-called trustee tasked with managing a gradual sale of assets (primarily real estate) allowing for potentially better proceeds through a slower, more orderly sale process.

Nonetheless, the Republic of Austria, which had registered tax claims against SIGNA Prime, filed an appeal against the first instance court's confirmation of the restructuring plan shortly afterwards. In summary, the Republic of Austria argued that the restructuring plan failed to meet certain formal requirements and was generally not 'feasible', contending that it was unlikely to succeed from a commercial perspective, and should thus be rejected. In addition, the Republic of Austria sought greater transparency in the proceedings, which it believed would be better achieved through bankruptcy than reorganisation proceedings involving a trustee.

## The Second Instance Court decision

The court of second instance, the Vienna High Court, accepted the Republic of Austria's arguments and on 5 July 2024, ruled that the restructuring plan was indeed unfeasible, mainly due to the company lack of funding to satisfy the proposed 30 per cent repayment quota. Furthermore, the court confirmed that the Republic of Austria was eligible to appeal, despite the fact that it had effectively become a debtor rather than a creditor, as a result of the tax benefits granted to the company in the interim.

## The decision of the Austrian Supreme Court

In response to the appellate decision, SIGNA Prime, as the debtor, filed a final appeal with the Austrian Supreme Court.

In its decision dated 31 October 2024, the Supreme Court confirmed that the Republic of Austria was indeed entitled to appeal the restructuring plan, despite being a debtor rather than a creditor at the time of the Supreme Court ruling. First, the court reiterated that all insolvency creditors have the right to appeal against such a plan, particularly if they registered their claim in time, as the Republic of Austria had done. Second, the Court clarified that a claim is deemed registered in insolvency proceedings once it has been recognised by the administrator and remains undisputed by other insolvency creditors. These criteria were satisfied in the case of the Republic of Austria's tax claims.

In addition, and most importantly, the Supreme Court confirmed that under Section 152a of the Insolvency Code, the approval of a restructuring plan requires (1) the determination and at least the assurance (ie, the securing) of the insolvency administrator's and creditor unions' compensation and (2) the fulfilment of certain agreed conditions in the restructuring plan.

The Supreme Court held that, pursuant to Section 125 Paragraph 5 of the Insolvency Code, any agreement between the insolvency administrator and the debtor regarding the compensation of the insolvency administrator would be void. A deferral of payment by the insolvency administrator, which the administrator had suggested in view of the company's lack of funds to pay their fees, would constitute an illegal arrangement under the law. Hence, offering a mere deferral of the administrator's fees to the company would not satisfy the legal requirement that the compensation needs to be at least assured (ie, secured).

Consequently, there would be no legal basis for SIGNA Prime as debtor to first generate sufficient funds during the insolvency proceedings, and only thereafter pay the insolvency administrator's and the creditor unions' compensation.

Given the company's failure to comply with these formal requirements, the Supreme Court rejected the appeal and declared the restructuring plan to be null and void, without the need to further examine or assess the plan's 'feasibility'. Consequently, the company has now been placed into bankruptcy proceedings and will be liquidated in the coming years.

## Lessons and takeaways from the SIGNA Prime case in Austria

Much has been, and will continue to be, said and written about this landmark Supreme Court decision in Austria. While many argue that the Supreme Court took an approach that was (too) strict and formalistic, the court's line of legal analysis and argumentation was solid, stringent and in compliance with the laws. It turns out that both the administrator and the insolvency court could probably have done a better job in fulfilling the quite clear statutory guidelines for approving a restructuring plan. Some critics argue that the Supreme Court overlooked the longstanding practice of courts and administrators deferring their own compensation, as well as that of creditor unions, to support financially distressed companies. While this may be true, it could also be argued that it is now for the Austrian legislator to consider amending the law to explicitly recognise and codify this longstanding practice.

Clearly, the insolvency law community in Austria had also hoped for further clarification and analysis from the Supreme Court as regards the 'feasibility' requirement for restructuring plans, which had been addressed by the appellate court at second instance. Understandably, however, the Supreme Court saw no need to expound on this issue, given the formal deficiencies in SIGNA Prime's restructuring proceedings. Nonetheless, many had hoped the Court might have offered guidance on this point, at least by way of *obiter dictum*.

From the SIGNA Prime creditors' perspective, it is regrettable that the restructuring plan previously approved by the creditors by double majority was ultimately annulled, rendering the significant time, effort and costs invested in the process largely futile. Moreover, Austrian insolvency law currently provides no mechanism to reinstate or remedy a restructuring plan that is subsequently found to be deficient – an apparent legal gap. It may also come as a surprise to many in the international insolvency community that,

even in Austrian insolvency cases, large creditor groups have no right to a seat on the creditors' committee. This committee, typically established in large insolvencies, is vested with important veto and approval rights intended to safeguard unsecured creditors. Notably, in the SIGNA Prime case, the insolvency court rejected all requests to appoint one of the large creditors to the committee – an outcome that has drawn particular attention. Needless to say, a creditor-friendly regime like the Austrian insolvency regime should provide key creditors with access to proceedings.

Overall, the SIGNA Prime case highlights several important lessons and potential areas for reform, both for the Austrian legislator and the insolvency law community. The SIGNA bankruptcy case will likely continue for many years, and warrants close observation going forward.

**Notes**

1 Götze, Insolvency Statistics 2024 for Austria, ZIK 2025/11, 26 (28).
2 Lentsch in Koller/Lovrek/Spitzer, IO - Insolvency Code2 (2022) s 166 IO para 1.
3 Explanatory memorandum 612, BlgNR 24. GP 21.
4 Nunner-Krautgasser/Anzenberger in Koller/Lovrek/Spitzer, IO² s 145 IO para 3.
5 However, the insolvency court is not obliged to conduct an endless investigation (see OLG Vienna, 9 September 2005, 28 R 132/05w).
6 edikte.justiz.gv.at.
7 Nunner-Krautgasser/Anzenberger in Koller/Lovrek/Spitzer, IO² s 155 IO para 4 ff.

**About the author**

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