

Challenges for Preventive Restructurings of SMEs

Main Challenges and Trends, in
Insolvency Proceedings, Restructuring
and Debt Discharge

May 18, 2018

The German view

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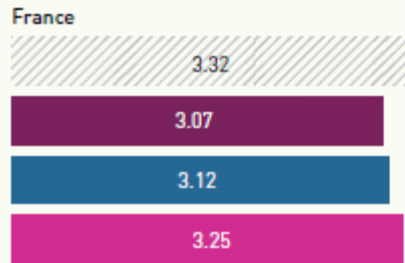
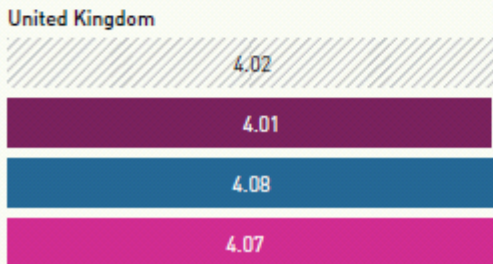
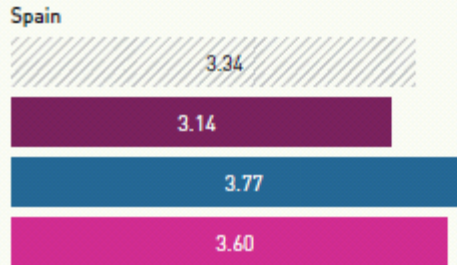
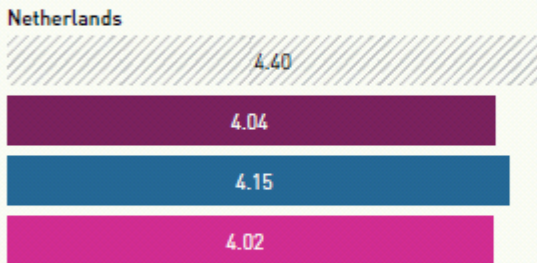
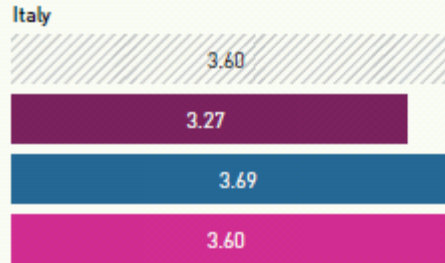
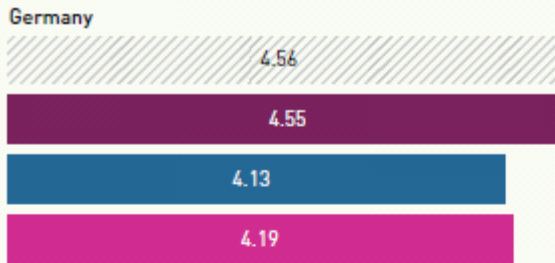
In Court Restructuring

Q Rate the following bankruptcy jurisdictions on a scale from 1 to 5. (1=avoid at any cost, 2=avoid if possible, 3=average but not ideal, 4=acceptable, 5=1st rate)

Key:

▨ Range of available options
 ■ Efficacy

■ Outcome
 ■ Speed



DEBTWIRE

EUROPEAN
 DISTRESSED
 DEBT MARKET
 OUTLOOK 2016

JANUARY 2016

Yes, but ...

No preventive restructuring frameworks in Germany



Reasons for Insolvency

voluntary

imminent Illiq. / **Overindebtedness**

mandatory filing

Illiquidity

Restructuring

- financial difficulties
- operational issues

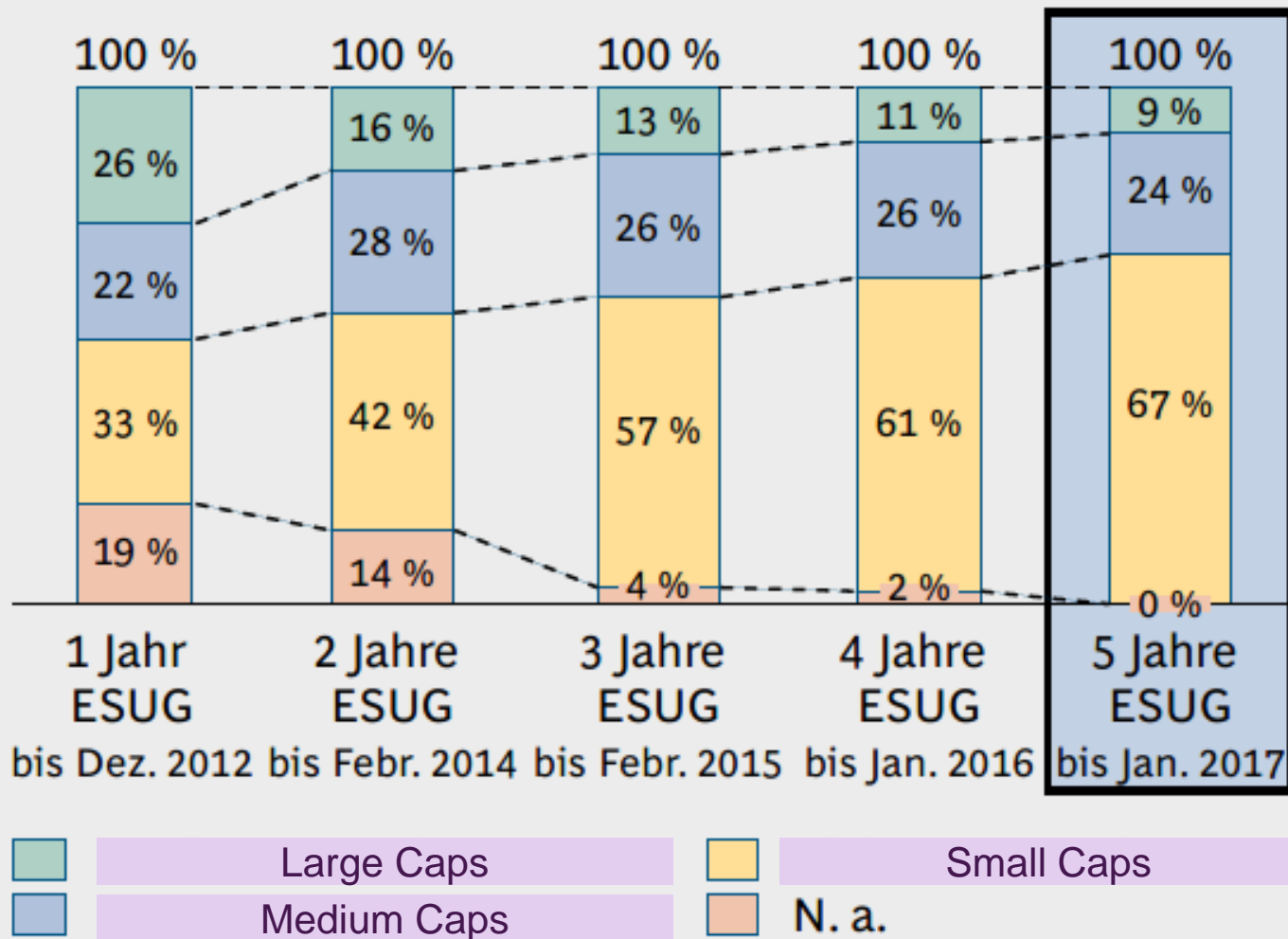
Preventive Proceedings

- resolving imminent financial difficulties
- balance sheet restructuring

Formal Proceedings

- resolving financial difficulties
- operational restructuring
- balance sheet restructuring

Five Years of ESUG . Fünf Jahre ESUG



Source: BCG Evaluation, 2018



Yes, but...

2012 to 2016: Only 2.6% of all proceedings were DiP Proceedings

2016: 58% of the Big50 Insolvencies were handled as DiP Proceedings

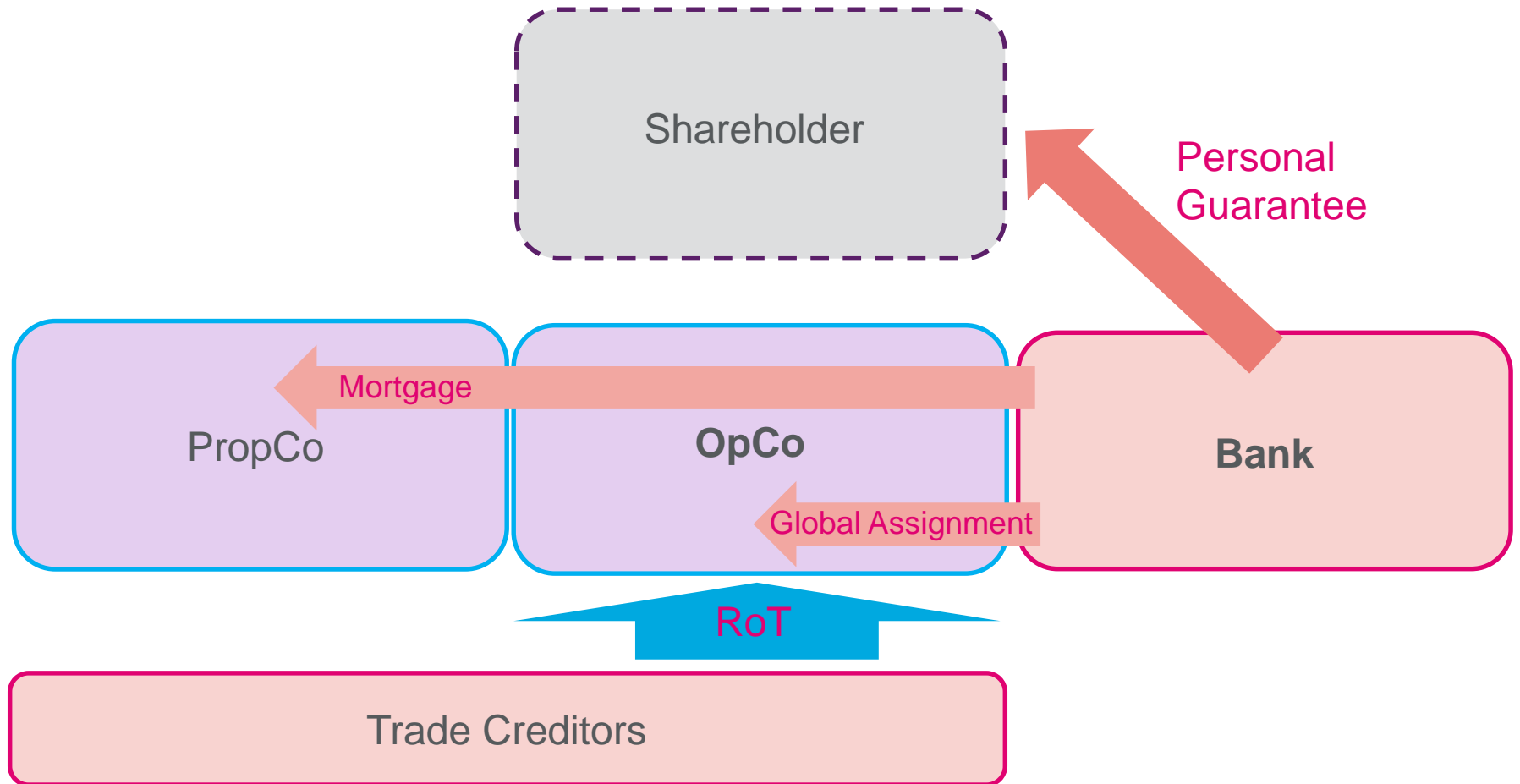
Source: BCG Evaluation, 2018

Out of Court Restructuring

Challenges for Restructuring of SMEs



Typical setup in SME cases



Legal Risks

Management

- No clear legal guidance for early warning systems of SME
- Violation of duty to file for insolvency (in case of overindebtedness)
- No clear rule w/ payments necessary for continuation of the business (within an „earnest“ restructuring scenario)

Banks

- Liability w/ to assisting in case of fraudulent trading (violation of duty to file for insolvency)
- Liability based on „selfish“ restructuring loans
- No privileges and/or protection of fresh money

Advisors

- Liability w/ to assisting in case of fraudulent trading (violation of duty to file for insolvency)
- Clawback risk for remuneration/fees in case of subsequent insolvency

Out of court restructuring process

Negotiations
between debtor and
creditors

Preparation of
restructuring
concept and its
validation („IDW S6“)

Implementation of
the validated
restructuring
concept (IDW S6)

Standstill

Restructuring professionals: E.g. permanent liquidity monitoring 13 WFC

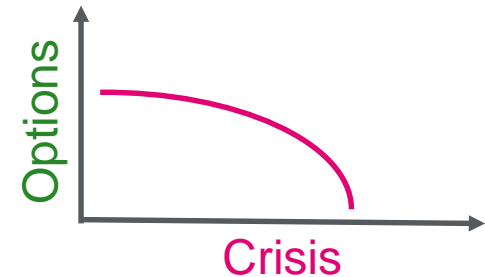
Bridge Loan

Restructuring Loan

Business/Management Issues

Loss of Control

- Acceptance of independent advisors
- Trusteeship
- No control in insolvency case



Costs

- Cost of Advisors (including creditors' counsels)
- Cost of liquidity monitoring
- Costs of experts / IDW S6 / CRO et al.

Management

- Restructuring vs. day to day business
- Change of mindset
- Acceptance of multi-angle management

Restructuring with preventive frameworks ?



How will preventive restructuring frameworks work?

Out of court restructuring process

Negotiations
between debtor and
creditors

Preparation of
restructuring
plan

**Voting on
restructuring
plan**

Court involvement

Moratorium

Restructuring professional

**Homologation:
approval of
restructuring plan**

Relevance for insolvency proceedings

Duty for filing
suspended /
proceedings
blocked

Safe Harbour:
Transactions
protected

Safe Harbour:
Fresh Money

Thank you!

Dentons global

70+

languages

73

countries

11,500+

timekeepers



167

locations

Your Contact



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Daniel Friedemann Fritz is a partner in Dentons' Frankfurt office. He is a member of the Restructuring practice and focuses on restructuring and insolvency law related matters, incl. European and international insolvency law. Daniel has extensive experience in insolvency administration and representing enterprises, management and creditors in restructuring, debtor-in-possession and regular insolvency proceedings. Daniel regularly advises in (distressed) M&A transactions. He represents his clients in and out of court in commercial and insolvency matters related to the resolutions or defense of claims by negotiation and litigation and arbitration. Daniel's industrial focus includes the automotive, retail and healthcare sectors.

Daniel F. Fritz serves as Private Expert to the European Commission in relation to the introduction of a preventive restructuring framework and as speaker of the Working Group Europe of the German Bar Association's (DAV) restructuring and insolvency wing. He regularly publishes and comments on German and European insolvency law.

Recognition

The Legal500, 2017 yearbook highlights Daniel F. Fritz as recommended for restructuring and insolvency law and acclaims his "pragmatic approach." The restructuring section of the JUVE Handbook German Commercial Law Firms 2014/2015 lists Daniel as a frequently recommended lawyer for restructuring and as a "practicable corrective in insolvency situations with respect to impractical solutions of others."

Your Contact

Experience

- **Paracelsus-Kliniken Group (GER/CH)**, acting as general proxy holder in the DIP-proceedings of one of Germany's biggest, privately held group of hospitals and rehabilitation clinics (40 clinics and 5,300 employees).
- **The Royal Bank of Scotland, PLC**: Representing and advising the bank in relation to the restructuring and then insolvency of German DIY groups Praktiker and Max Bahr. Member of all of the groups creditors' committees.
- **Various subsidiaries of insolvent entities**: Advising on the solvent liquidation and serving as liquidator.
- **International and German companies**: Defending clients against avoidance and claw back actions and general representation of creditors in insolvency proceedings.
- **Trusteeship**: Acting as a trustee for suppliers and OEMs (e.g. Volkswagen, Daimler, BMW) as customers affected by insolvency proceedings of their suppliers and for sellers and purchasers in distressed M&A situations.
- **Confidential client**: Defending the managing director following a failed debtor-in-possession insolvency of an international solar energy group against damage claims raised by the insolvency administrator.
- **Healthcare**: Advising on restructuring matters and on distressed M&A transactions in relation to small and large cap companies.
- **German machine builder (part of an international group)**: Advising the management in a restructuring situation and in relation to the drafting and successful implementation of a restructuring plan.
- **Companies and Management**: Counselling in crisis situations and protection from personal liability and in relation to the assessment and resolution of an insolvency situation or with regard to a structured insolvency proceeding or debtor-in-possession proceeding.
- **Anton Schlecker**: Advising an international investor as bidder in insolvency proceedings.
- **Alkor Venilia Group**: Acting as counsel to the major creditor and member in the creditors committee.
- **DuraTufting**: Coordinating creditors' committees and providing legal advice in relation to the continuation of the business under insolvency conditions in one of the first landmark proceedings under the new German insolvency law "ESUG."

Your Contact

Experience

- **National and international investors:** Advising the buy side with regard to the acquisition of insolvent targets (legal due diligence, legal documentation and negotiations with the insolvency administrators).
- **Slovakian insolvency administrator:** Successfully representing the administrator of a Slovakian plant manufacturer in a damage claim compensation case against a US corporate giant.
- **Wilhelm Karmann group:** Representing the insolvency administrator in the administration and sale of the insolvent entities subsidiaries in the USA, Mexico and Poland; sale of the main plant in Osnabrück to Volkswagen.
- **Woolworth Germany:** Providing conception, preparation and lead counsel for the disposal of nearly all of the insolvent entities shops to the acquirer of the NewCo and of additional stores to competitors including Schlecker, dm and Rossmann.
- **Boeder group:** Representing the insolvency administrator with the administration, disposal and liquidation of subsidiaries in Poland, France and Hong Kong.
- **Georg von Opel group:** Advising in relation to the continuation of the business of this car dealership group under insolvency conditions and lead counsel for the continuation agreements with OEMs and suppliers; comprehensive representation of the insolvency administrator and leading the sales process of the car dealerships.
- **Japanese group (labelling hardware):** Advising on the world-wide spin-off, resp. the sale of operating facilities in a restructuring situation as lead counsel Europe and supervising local counsels for other jurisdictions.
- **EganaGoldpfeil Europe:** Acting as lead counsel for the disposal of the insolvent groups solvent subsidiaries (including luxury brands licensees), including the sale of all the European activities of Salamander (shoe retail) group; coordination of creditors' committees.
- **Philipp Holzmann:** Assisting the insolvency administrator with the administration, disposal and liquidation of subsidiaries (including major infrastructure projects, e.g. runway extensions and railway tunneling) in England, the Netherlands, the USA and BVI; coordination of various matters including creditors' committees; amicable settlement of an insolvency filing in excess of 500 million DM; amicable settlement of US government antitrust claims and lifting the penal pledge on US subsidiaries of the German group; leading the legal team to assess and settle insolvency law related claims.

Representative Experience: Continental Europe

HYUNDAI MOTOR COMPANY

Advising in connection with its creditor claim in the context of LLC Taganrog Automobile Plant (LLC TagAZ) bankruptcy.

LEAR CORPORATION

Advising on restructuring of a substantial trade debt of an affiliate of GAZ, the large Russian automobile manufacturer.

GIENANTH GmbH

Advising on the sale to Deutsche Beteiligungs AG (DBAG) and DBAG Fund VI (advised by DBAG) in the context of a double-sided trusteeship.

BFW BLECHFORMWERKE BERNSBACH GmbH

Advising on protective shield proceeding during the acquisition by Melegny & Cie. Automotive GmbH.

AKT GARDELEGEN

Advising a German Bank syndicate as collateral pool manager in connection with the insolvent automotive supplier AKT Gardelegen.

SCHEFENACKER AG

Advising major shareholder of Schefenacker AG within a cross-border restructuring concept in the framework of an English Company Voluntary Arrangement (CVA) connected with a debt-to-equity swap

GERMAN DIESEL ENGINE MANUFACTURER

Advising on the transfer to a double-sided trusteeship and advising the trustee on the search for financing partners or on the sale of the group in connection with a structured M&A process.

MOTORPAL

Advising a global player in the field of fuel injection systems for diesel engines in connection with the preparation and implementation of the pre-packed reorganization, and representation in insolvency proceedings, negotiations with creditors, and representation in proceedings before the Constitutional court.

Representative Experience: Continental Europe

AUTOMOTIVE PARTS MANUFACTURER

Advising on an acquisition of the business of Plastal Poland in bankruptcy proceedings.

AUTOMOTIVE SUPPLIER AND PARTNER TO AUTOMAKERS WORLDWIDE

Advising in connection with its creditor claim in the context of LLC Taganrog Automobile Plant (LLC TagAZ) bankruptcy.

AUTOMOTIVE SUPPLIER AND PARTNER TO AUTOMAKERS WORLDWIDE

Advising the client in connection with insolvency and bankruptcy of its automotive parts supplier (Maflow Poland). This involved general advice on bankruptcy risks, bankruptcy-proof payment structure (including financing of sub-suppliers) and ways to secure continued product deliveries by a bankrupt supplier, representing the client vis-à-vis the Polish administrator.

BOGDAN CORPORATION

A leading Ukrainian automobile-manufacturing group

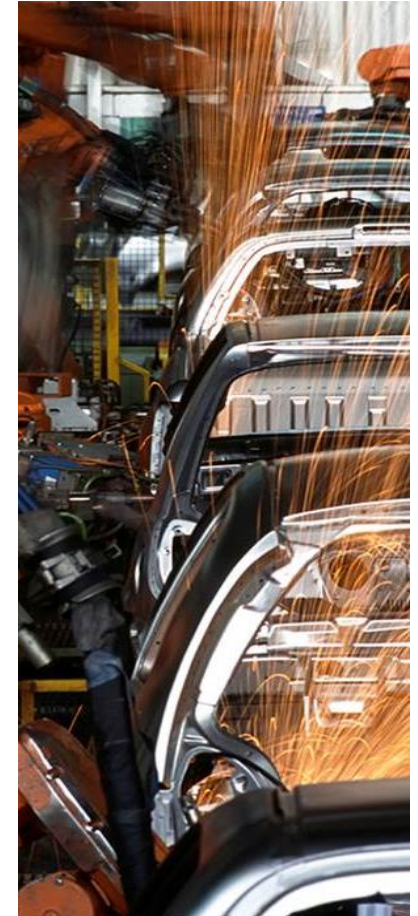
Advising with regard to debt restructuring.

AUTOMOTIVE SUPPLIER AND PARTNER TO AUTOMAKERS WORLDWIDE

Assisting the client with respect to restructuring of one of its suppliers. The client had to provide financial support to the supplier and take other steps in order to secure continuity of productions and supplies.

BANK POLKA KASA OPIEKI, BANK HANDLOWY W WARSZAWIE, MBANK AND ING BANK ŚLĄSKI

Advising on the restructuring and increase of the amount of the circa US\$147 million / PLN 495 million multipurpose financing provided to Inter Cars, the biggest automotive spare parts distributor for passenger cars, commercial vehicles and trucks in Middle-Eastern Europe. The transaction was complex due to its legal structure, multijurisdictional character and the number of parties involved.



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