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Memorandum

To	Clients & Friends
From	Mark-Oliver Baumgarten, Thiemo Sturny, Staiger, Schwald & Partner
Date	June 19, 2009
Re	**Debt Restructuring under Swiss Law**

A company in serious financial difficulties has, generally speaking, three options to solve its problems:

(i) private restructuring arrangement with all or some of its creditors;
(ii) formal restructuring proceedings in accordance with the Federal Debt Enforcement and Bankruptcy Act of April 11, 1889, as amended, ("**DEBA**"); or
(iii) bankruptcy proceedings.

Formal debt restructuring proceedings were not very attractive in Switzerland under the old legislation effective until 1996. Since the revision of the relevant provisions effective January 1, 1997, actual economic needs are much better taken care of in formal debt restructuring proceedings and, hence, such proceedings have become more attractive. The liquidation of a number of companies of the former Swissair group by way of a debt restructuring with assignment of assets is the "landmark" case in Switzerland so far.

The main purpose of debt restructuring proceedings is the restoration of a sound financial position of the debtor. In recent times, debt restructuring proceedings have also been used to liquidate the debtor. Because these proceedings allow for a limited continuation of the business activities and for more flexibility in the realization of the debtor's assets, such proceedings often bring higher returns to creditors than debt collection, i.e. bankruptcy, proceedings.

Debt restructuring proceedings are governed by articles 293 – 350 DEBA and usually comprise two steps: (i) debt restructuring moratorium, and (ii) debt restructuring agreement.

The debt restructuring moratorium can be applied for with the competent court by the debtor or any creditor who has completed the first stage of enforcement proceedings under Swiss law. The competent court may grant a moratorium if there is a prospect of a debt restructuring agreement. This means, *inter alia*, that the debtor must have sufficient assets to cover all privileged claims as well as the costs and claims incurred during the moratorium. If the debt restructuring moratorium is granted, the court will appoint an administrator, whose tasks include, *inter alia*, supervising the debtor's management, informing the creditors, taking an inventory of assets, calling for the filing of claims and preparing and holding a creditors' meeting. The court may also order that some management decisions must be approved by the administrator or that the administrator completely takes over the management of the debtor.

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A debt restructuring moratorium may be granted for a period of four to six months. If considered appropriate, the court may also grant a provisional moratorium for up to two months before taking the final decision regarding a moratorium.

Apart from a limited number of exceptions, no enforcement proceedings may be initiated or continued against the debtor during such debt restructuring moratorium.

A debt restructuring moratorium may lead to the entering into of a debt restructuring agreement which exists in two forms:

– In an *ordinary debt restructuring agreement*, existing creditors usually renounce to a certain percentage of their claim and agree with the debtor on a repayment schedule and – potentially – the provision of collateral for their claims. In general, the debtor resumes full authority to dispose of its assets and to take all management decisions without the intervention of any third party as from the effective date of the agreement. It is possible, however, to assign certain supervision, management or liquidation duties to the administrator or another third party.

– In a *debt restructuring agreement with assignment of assets* the debtor assigns its assets to its creditors for realization by a creditor-elected and court-appointed liquidator. The proceedings are similar to bankruptcy proceedings but give the creditors more rights and allow for a more flexible realization of the debtor's assets. In contrast to bankruptcy proceedings, Swiss law explicitly sets forth that the liquidator in debt restructuring proceedings also has to defend the interests of the creditors and not only those of the debtor.

  Upon realization of the debtor's assets, the proceeds are distributed proportionally to the creditors, privileged and secured claims being paid before "ordinary" claims. At the end of the restructuring proceedings the debtor will be dissolved and liquidated.

For both types of debt restructuring agreements Swiss law requires the approval of a majority of creditors (either a majority of creditors representing at least two thirds of outstanding claims or one fourth of creditors representing at least three fourths of the claims) and the confirmation of the agreement by the competent judge. Upon approval of the agreement by the majority of creditors required and confirmation by the judge, the debt restructuring agreement becomes binding for all creditors.