

Prof. Dr. iur Jens Lowitzsch

Insolvency and Restructuring in Transition Countries and in the Financial Crisis / Part III –

Legal and macroeconomic perspectives of system transformation in CEE and Financial Crisis

Seminar: Zentralbereich Wirtschaft, Zentralbereich Politik, Zentralbereich Recht,
Wahlpflichtmodul 1, Wahlpflichtmodul 6

Termin: Dienstag 11-13 Uhr

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This course is the continuation of the Seminar in English language (Summer 2011).

In the transition economies of Central, Eastern and South Eastern Europe, a fundamental social economic change has occurred simultaneously to the process of political and constitutional modernisation: *the transformation of property ownership*. Here, "the revolutionary establishment of an entrepreneurial class" – as a category of agents which was alien to the socialist planned economy and which is now participating in the free competition on the basis of property ownership titles – leads to entirely new demands on the concept of system transformation. The transformation of property as a (re-)introduction of private property is seen as being crucial in reaching a "point of no return" in the process of privatisation of the legal and economic organisations of former socialist states.

The position of insolvency law in the transformation of property ownership

Hand in hand with the establishment of private entrepreneurship, a private law system is being introduced, in which the economy and the state exist as separate entities and the basic conditions for the participation of the new agents in the common market are created. For this to succeed, an unequivocal allocation of risks and responsibilities – especially in the field of commercial law – is absolutely necessary. The insolvency law, complementing the juridical institutions of private property and private entrepreneurship, is a core element here and in order to correctly fulfill its mission, it must, like all laws, include all subjects involved in economic exchange – both public and private.

However, the basic difference in the role of the insolvency law in the transformation of property ownership is that unlike in the developed West European economies, it is not a matter of a well-functioning economic system searching for an instrument for self-adjustment, but that this order is only currently emerging in the context of the denationalisation process.

Exit processes as a market-driven process of optimal asset re-allocation

From a macroeconomic point of view, insolvency can be seen as one of many possibilities through which productive capacity can be assigned to a better and more efficient use. The characteristic of this process of resource re-allocation is the temporary withdrawal of productive capacity from the market at the early stages of this process. Consequently – beside the optimal re-allocation of the assets – the duration until the re-entrance of the resources into the market is decisive for the success of the whole process.

Beside the "classic" mechanisms of insolvency law (in particular bankruptcy and reorganisation), the "non-classic" procedures covered by the general rules of civil, company and commercial law (downsizing/restructuring/asset sale) should also be mentioned. They are of great importance in transition economies, due to their flexibility, rapidity, and most importantly because unlike classic methods, which are usually conducted by the creditors, they are conducted by the debtors (owners) and therefore have a lower level of conflict potential.

Focus Financial Crisis

As the events of September 2008 demonstrated, the social costs of bank failure may well exceed private costs, triggering drastic government intervention in the banking system. To avert bank runs governments immediately employed *deposit insurance* and unprecedented *state guarantees*. Although the meltdown of the banking system was thereby staved off, major bank failures still seem inevitable.

Nevertheless governments have been reluctant to apply insolvency law, which legally assures creditors and potential investors that even in case of dire financial distress, there will be legal processes in place to prevent a rush on the assets of the failed firm and to reorganise it or at least to regulate the distribution of its estate. This raises the question of whether the regulators have dealt properly with the crisis and how to deal with the current sovereign debt crisis.

Literatur – register for dropbox (<http://www.intercentar.de/de/forschung/schwerpunkt-insolvenzrecht/>):

‡ Jens Lowitzsch (Hrsg.) The Insolvency Law of Central and Eastern Europe - Twelve Country Screenings of the New Member and Candidate Countries of the European Union and Russia: a Comparative Analysis, INSOL Europe 2007, 496 S.

‡ Jens Lowitzsch (Hrsg.) Das Insolvenzrecht Mittel- und Osteuropas, Berlin 2004, 334 S.

‡ Herwig Roggemann/Jens Lowitzsch Privatisierungsinstitutionen in Mittel- und Osteuropa - Systematische Bestandsaufnahme und vergleichende Analyse, Berlin 2002, 428 S.

‡ Jens Lowitzsch Privatisierung und Beteiligung in Mittel- und Osteuropa, Berlin 2002

Hinweise zur Veranstaltung: Anmeldung unter lowitzsch@europa-uni.de /

Leistungsnachweis: 6/9 ECTS: Regelmäßige Teilnahme; Seminararbeit; kurze mündliche Präsentation (10 min.) des Konzeptes der Seminararbeit bis Mitte des Seminars; erste Fassung der Seminararbeit bis 20.12.2011, ausformulierter Fassung bis Semesterende.