

Austrian associations for creditor protection

Susanne Fruhstorfer and Andreas Howadt explain an Austrian particularity: the existence of creditor protection associations (*Gläubigerschutzverbände*)



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Associations for creditor protection are a central component of the Austrian insolvency landscape.

As “privileged associations for creditor protection” legally anchored and equipped with so-called “preferential rights”, they are an inseparable part of all insolvency proceedings conducted in Austria, providing services to creditors, insolvency practitioners and insolvency courts alike.



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Origins

While there have been associations for creditor protection in Austria for about 150 years now, the first iteration of the current system was codified in February 1925.

At that time the legislator added a provision to the so called “*Ausgleichsordnung*”¹, granting associations for creditor protection designated by the chancellor’s office a right for cost reimbursement for expenses incurred by identifying and safeguarding assets to the benefit of all creditors.

Shortly thereafter, on 10 March 1925, the first associations received the so-called “preferential right”.

While the legal basis has changed over the years and further preferential rights have been added, the main idea has remained the same.

The central purpose of the “privileged” associations for creditor protection and the statutory “preferential rights” was, and still is, to protect the interests of all creditors involved in the insolvency proceedings and to support the courts and insolvency

practitioners in order to maximise the recovered funds.

Today there are four “privileged” creditor protection associations in Austria:

1. Alpenländischer Kreditorenverband (AKV)
2. Kreditschutzverband von 1870 (KSV)
3. Österreichischer Verband Creditreform
4. Insolvenzschutzverband für ArbeitnehmerInnen (ISA)

Legal basis

After quite a few iterations, the requirements for becoming a “privileged” association, as well as the “preferential rights” granted to those “privileged” associations, are now codified in the Austrian Insolvency code.

According to section 266 of the insolvency code, only registered associations (*Vereine*)² can apply for the status of a privileged (*bevorrechtete*) creditor protection association.

Apart from the fact that the applicant must be a registered association, the following additional prerequisites must also be fulfilled cumulatively:

- (i) there must be a need for a (further) creditor protection association;
- (ii) the activities of the association must be “reliably” oriented towards the whole of Austria. This essentially bars all associations which either lack the resources, or are unwilling, to participate in all insolvency proceedings in Austria, for becoming a “privileged” association;
- (iii) the association must not be profit-oriented - which, in view of the Austrian

understanding of a registered association, is rather redundant;

- (iv) the registered association must have “numerous members” or “numerous members who are non-profit making and represent the interests of a large number of creditors”.

“Preferential rights”

Once an association is granted the status of a “privileged” association, the Austrian Insolvency Code provides for two special rights, enabling its participation in all insolvency proceedings.

The right to represent creditors

“Privileged” associations are entitled (as an exception to the Austrian principle that representation in court proceedings is generally reserved to lawyers) to represent creditors in insolvency proceedings and to exercise their rights. This includes not only the registration of claims and participation in meetings but also the exercise of voting rights.

The right to access all insolvency files

Even if the “privileged” associations do not represent creditors, they have the right (in principle only granted to creditors) to access the court file of the insolvency proceedings and (even if not expressly codified) to participate in all court hearings during the insolvency proceedings.

Practical consequences

These aforementioned rights grant these “privileged”

associations a unique position in the Austrian insolvency landscape.

A noticeable majority of creditors are represented by “privileged” associations:

By having access to all insolvency files (and being informed of the opening of proceedings by the courts), the associations know (often even before the appointed administrator) about the opening of all insolvency proceedings in Austria. Since most insolvency applications by debtors contain lists with creditors (including their addresses), the “privileged” associations usually know which creditors (should) have claims against the debtor (at least in the opinion of the debtor or his accounting department).

This information is then often used to inform the (potential) creditors of the opening of the insolvency proceedings and at the same time offer services to the creditor.

As a result, the majority of creditors involved in insolvency proceedings are often represented by the insolvency creditor-protection associations.

Restructuring proceedings are often dependent on the opinion of the “privileged” associations

In restructuring proceedings in particular, the “privileged” associations become central figures with major influence on whether the reorganisation efforts succeed or all company assets are liquidated.

The importance of the “privileged” associations lies in the fact that the restructuring plan offered by the debtor company (i.e. a quota with certain payment periods) must be accepted by the creditors (or their representatives) both with a capital majority (more than 50% of the unsecured claims registered) and with a head majority (more than 50% of the creditors present at the restructuring plan hearing).

In practice this often means that, at least as far as the head majority is concerned, without the approval of the creditors represented by the “privileged” associations, all reorganisation

efforts are doomed to fail.

From a practical viewpoint the “bundling” of creditors does have some advantages for the debtor company and its representatives. From a logistical standpoint it is far easier to negotiate with fewer parties involved, which, additionally, are familiar with judging the feasibility of restructuring measures and the adequacy of the proposed recovery rate.

Abundant information - effective monitoring

Apart from the importance of “privileged” associations as representatives of creditors, participating in all insolvency proceedings conducted in Austria also means that the individual associations gather experience from thousands of proceedings each year (16,566 last year).

This means that the “privileged” associations are in the (rather unique) position to offer their help to judges and administrators with numerous best practice examples and to monitor the performance of the various administrators, appraisers, auctioneers and other parties involved across all proceedings in Austria.

Financing

By definition, creditor protection associations are non-profitable. However, the requirements that the law places on the “privileged” protective associations (activity throughout Austria, maintenance of the infrastructure necessary for the effective protection of creditor interests) result in extensive expenditure. To finance these expenses, the Austrian creditor protection associations obtain funds, in essence, from three sources.

- (i) **Membership fees:** with the exception of the ISA which is the Association of the Austrian Chamber of Labour (the creditor protection associations offer memberships for which annual fees are payable).
- (ii) **The services:** both the representation in insolvency

proceedings and various other services, such as the services typical for credit agencies - are provided against payment.

- (iii) **The statutory reward:** According to the Insolvency Act, creditor protection associations are entitled to a reward plus value-added tax “for their activities in support of the court and for the preparation of a restructuring plan or for the determination and safeguarding of assets for the benefit of all creditors”.

This reward corresponds to a fixed percentage of the insolvency administrator's net remuneration. Depending on the type of proceedings, all associations together receive a net remuneration of 10% (in “normal” insolvency proceedings) or 15% (in restructuring proceedings) of the net remuneration of the liquidator. This total amount is then divided among the individual associations as follows: 30% is divided equally among all associations (which participated in the proceedings); the remaining 70 % shall be distributed among the associations other than the ISA proportionally to the number of creditors represented. This reward may be increased or reduced by the court, but experience has shown that this is extremely rare. ■

Footnotes:

- 1 A predecessor of the Austrian insolvency act.
- 2 According to the Austrian associations act (*Vereinsgesetz*), associations may only serve non-material (i.e. not profit-oriented) purposes.



“PRIVILEGED” ASSOCIATIONS ARE ENTITLED TO REPRESENT CREDITORS IN INSOLVENCY PROCEEDINGS AND TO EXERCISE THEIR RIGHTS

