



## **INSIDE STORY – FEBRUARY 2017**

### **Paymill GmbH: Reorganisation by Transfer**

#### **Munich start-up sold to new investor three months after provisional debtor-in-possession insolvency is ordered**

Following successful provisional debtor-in-possession insolvency proceedings led by attorney Vincenz von Braun and a team from anchor Rechtsanwälte working in close collaboration with the provisional insolvency monitor, attorney Dr. Christian Gerloff (Gerloff Liebler Rechtsanwälte), Munich financial technology start-up Paymill GmbH has been transferred to the Swiss investor, Klick & Pay, in what is known as a reorganisation by transfer. Under the terms of the reorganisation, the company's management had to make only 18 of the original 65-strong workforce redundant.

##### **1. Initial situation**

Founded in 2012, Paymill GmbH is a financial technology start-up with 65 staff that acts as an online payment service provider (PSP) processing credit cards, SEPA (Germany only) and PayPal used for payment. The software solution developed by Paymill GmbH allows online traders and service providers from throughout Europe to receive payments on websites and mobile applications (apps) using these payment methods in more than 100 currencies. The service provided by Paymill GmbH meets the highest security standards (it has its own risk & fraud management system) and complies with the common industrial standards. The sales processed by online traders using the interface provided by Paymill GmbH were collected by the banks and paid directly to the traders after deducting fees for the debtor and the banks.

As Paymill GmbH lacked a banking licence, it was not allowed to manage customers' money. That set significant limits on growth and margins, and the bank charges payable were among the reasons why Paymill GmbH was unable to cover its costs when offering its services on the market. The management had therefore already been seeking a banking licence for the company soon after it was founded. However, all attempts foundered on a failure to satisfy the strict requirements of the supervisory authority, BaFin.

In December 2015, following discussions with various strategic investors that continued to make progress into April 2016, it seemed likely that Paymill GmbH would bring an investor process to a successful conclusion. The interested party was a German banking subsidiary specialising in payment transactions. However, the proposed deal collapsed shortly before confirmation due to a board decision taken by the potential investor immediately before the appointed notarisation date. To enable further sales negotiations with potential investors to continue, the partners of the sole shareholder provided further financial

resources at the start of 2016. Again, however, negotiations with another investor came to nothing because of the risks of a share purchase.

With the sole shareholder not granting any further bridging loans, on 22 April 2016 the management decided to file a petition for insolvency, already prepared under the guidance of attorney Vincenz von Braun of anchor Rechtsanwälte, with Munich local court (insolvency court). The petition requested that (provisional) debtor-in-possession management be ordered pursuant to sections 270 et seq. of the German Insolvency Code (InsO). The management also proposed that insolvency expert Dr. Christian Gerloff be appointed insolvency monitor. Mr Vincenz von Braun joined the management team of the company in order to ensure that the specific requirements of insolvency law were met. Munich local court (insolvency court) ordered provisional debtor-in-possession insolvency in a ruling of 26 April 2016.

## **2. Initial measures**

Together with a team from anchor Rechtsanwälte, the management team – now strengthened by Mr Vincenz von Braun – informed all staff, customers and service providers, ensured the preliminary financing of the insolvency benefits and held intensive negotiations with the largest (assignee) creditors, which ultimately guaranteed the financial resources to continue the business as a going concern. The intense efforts of several anchor partners and lawyers, particularly in the first few days of the proceedings, helped to stabilise business operations swiftly and engender new trust among the workforce, service providers and customers. This enabled the company to continue business operations without any outwardly apparent changes despite the insolvency situation and persuade both customers and service providers to continue working with Paymill GmbH. In fact, the company even achieved some of the best results in its history in the month after filing the petition. In parallel, the management team prepared an M&A process in partnership with anchor Rechtsanwälte and the management consultants KPMG. Despite the very tight timetable, this structured process resulted in approaches to 57 potential investors, 28 of whom signed non-disclosure agreements. These 28 investors were given access to an already prepared data room and an opportunity to find out more about the particular characteristics of Paymill GmbH in a number of discussions with the management and KPMG. Five potential investors ultimately submitted indicative offers. Concrete negotiations were held with 3 investors from France, England and Switzerland.

## **3. Particular challenges**

It was clear to everyone involved that a reorganisation was only possible by way of a sale of all assets to an investor (known as a reorganisation by transfer). There were no options for an insolvency plan. Given the expected negative operating result, continuation after the three-month insolvency benefits period came to an end on 30 June 2016 was out of the question. The assets therefore had to be sold by 1 July 2016.

It was critical for the success of the proceedings that the trust of the employees and customers be regained as quickly as possible. The workforce consists to an overwhelming extent of young, well-trained staff. Highly sought after on the labour market, they found themselves the subject of intense interest from competitors as soon as the insolvency became known. On the customer side, the problem was that a loss of the technical solution could have resulted in a significant decline in revenue, particularly among key accounts, and the contractual ties were essentially meaningless, since payment flows could be diverted to other suppliers within a very short space of time. If they had had any doubts concerning the reorganisation efforts, therefore, these customers could have terminated their business relationship with Paymill GmbH very quickly and moved to a different supplier. It also became apparent that a service provider and also competitor of Paymill GmbH was attempting to exploit the uncertainty caused by the insolvency situation to solicit customers unfairly. Negative consequences for the reorganisation were only avoided through a successful application to Munich regional court for a temporary injunction, enabling negotiations to be held on equal terms.

## **4. The sale**

The sale process involved all-day negotiations with the French and the Swiss investors – both of whom already had the absolutely essential banking licence – in the offices of anchor Rechtsanwälte. A verbal

agreement was first achieved with the French investor. Despite the considerable pressure on time and the verbal agreement, the management and anchor Rechtsanwälte continued negotiations with the Swiss investor. During these negotiations this investor improved its initial offer significantly. This ultimately enabled the creditors to achieve the best possible resolution proceeds. The sale of the assets was executed on 1 July 2016 immediately following the opening of insolvency proceedings and the consent of the provisional creditors' committee and the insolvency monitor. Vincenz von Braun and the team from anchor Rechtsanwälte will continue debtor-in-possession insolvency after the transfer of the business operations in order to wind up the remaining shell of Paymill GmbH and ensure the satisfaction of the secured and unsecured creditors as soon as possible in coordination with the insolvency monitor, Dr. Christian Gerloff.

## **5. Conclusion**

The proceedings show that (provisional) insolvency proceedings in debtor-in-possession cases can be an appropriate strategic means of reorganising young companies especially. Negative operational developments and obstacles to growth can be eliminated in particular with the help of an experienced investor, allowing the focus to be directed back to the core products and the future business strategy. The greatest advantage of debtor-in-possession insolvency is the positive signal it sends to customers, suppliers and employees that business operations are to be maintained and that the insolvency court is persuaded of the suitability and competence of the existing management team. This is aided by the speed with which an investor process can be driven forward because the existing management team remains in place. For investors, it offers a unique opportunity to explore new product ideas and tap into growth markets while at the same time having the confidence of a functioning business operation without the risk of hidden legacy burdens. Nevertheless, the critical key to success is close, professional collaboration geared towards the interests of the creditors and other stakeholders between the existing management, reorganisation experts and the supervising insolvency monitor as well as consistent transparency vis-à-vis the insolvency court.

*This Inside Story is written by [Florian Pfoser](#) and [Vincenz von Braun](#) of anchor Rechtsanwälte Partnerschaftsgesellschaft mbB, Mannheim (Germany)*

*Previous editions are archived on the INSOL Europe website:*

<http://www.insol-europe.org/news/inside-stories>