CRISIS COMPETENCE IN THE COMPANY:

Management between Restructuring and Insolvency

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EXECUTIVE INTERIM PARTNERS

WHEN FAILURE IS NOT AN OPTION

CRISIS COMPETENCE IN THE COMPANY:

Management between restructuring and insolvency

The number of corporate insolvencies in Germany has risen sharply again over the past three years[1]. According to Creditreform, 11,900 companies had already filed for insolvency in the first half of 2025[2]. This shows that the downward trend in insolvency cases observed since 2003 has definitely come to an end. Since 2003, the number of cases fell continuously from a peak of over 39,000 to around 18,800 cases[3] in 2019, reaching a historic low during the COVID-19 pandemic in 2021. The latter was primarily due to extensive government support measures and the suspension of the obligation to file for insolvency during the COVID years. Since then, insolvencies have been rising again, already reaching a worrying level of 22,400 in 2024. A further increase is expected for the full year 2025.

"Structural problems at Germany's business location are driving the

number of corporate insolvencies"

This development is not predominantly due to cyclical economic causes, nor is it mainly caused by the numerous international crises. Rather, it must be assumed that this is a structural crisis of Germany as a business location. High energy prices as well as heavy tax and social security burdens, declining education standards, poor infrastructure, stagnating productivity, and high labor costs are all weighing on competitiveness. Even if the government's debt-financed spending programs worth trillions currently in preparation will create temporary stimulus effects, no fundamental improvement in location conditions can be expected in the coming years, and further "waves of bankruptcies" are therefore likely.

Against this background, insolvency prevention and management should be part of the standard competence repertoire of executive boards and management teams. Especially in times of crisis, the goal must be to preserve value, secure jobs, and protect the claims of creditors.

But what are the special skills and competencies that a management team needs during a crisis? First, it must be noted that corporate crises are often detected too late. Necessary countermeasures can then no longer take effect in time. This can be due to a lack of crisis experience within the management team or an analysis of the situation influenced by wishful thinking and misinformation.

Often, it is internal company failures that amplify external factors[4]—such as a sudden drop in demand—and thus accelerate the corporate crisis. For example, inadequate controlling or poor receivables management can hinder timely collection of outstanding payments. In addition, insufficient insurance coverage, poorly drafted terms and conditions, lack of market monitoring, and failure to reduce costs in times of declining revenues are frequent issues.

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1 Creditreform Economic Research: Insolvencies in Germany, November 16, 2024, page 2

2 Creditreform: Insolvencies in Germany, June 26, 2025, p. 1, available online at https://www.creditreform.de/fileadmin/user_upload/central_files/News/News_Wirtschaftsforschung/2025/Insolvenzen_in_Deutschland/2025-06-26_PM_OE_presseinfo_UE1-halbjahr-2025.pdf

3 Allianz Research: Global Insolvency Outlook, October 19, 2024, page 23

4 PLUTA Insolvency Administration: Identifying insolvency risks, responsible handling of insolvency risks: Acting during the pre-insolvency phase, April 20, 2024.

"Pre-insolvency crisis management requires specific competencies in the management team: legal expertise, strategic negotiation skills, and operational execution capability."

When a company slides into distress or faces imminent insolvency, special competencies are required in the management team. Knowledge of both court-supervised and out-of-court crisis resolution procedures—from out-of-court settlements and preventive restructuring (StaRUG) to formal insolvency proceedings—is indispensable. Management must first conduct a thorough analysis of the company's situation. Based on this, it prepares a detailed restructuring concept, for example in the form of an IDW S6 expert opinion. Management will also engage in complex negotiations with capital providers, banks, and key customers and suppliers, aiming to avoid insolvency if possible. This typically requires calculating various scenarios and deriving negotiation positions accordingly. In fact, pre-insolvency crisis management is largely about orchestrating, preparing, and professionally conducting negotiations. When over-indebtedness or illiquidity is imminent, company directors act under the shadow of personal liability risk[5], making continuous insolvency law advice essential at this stage. Both a preventive out-of-court solution involving contributions from capital providers and other stakeholders, and the StaRUG procedure, require creativity and the ability to develop tailor-made restructuring solutions.

"Creditors often request the appointment of an experienced Chief Restructuring Officer (CRO)."

If insolvency cannot be avoided, management can apply to the competent insolvency court for so-called "self-administration." The prerequisites for this are a sound financial plan covering the next six months and a restructuring concept outlining the causes of the crisis, the objectives of self-administration, and the planned measures. In self-administration, management retains administrative and disposal powers, i.e., the existing management team remains in office. The insolvency court appoints a trustee who supervises management and takes on certain procedural tasks. Continuity in management helps avoid unnecessary destruction of value through preventable disruptions, thereby increasing the chances of successful restructuring. However, this requires that the management team is even capable of preparing self-administration proceedings in a timely and high-quality manner. These tasks must often be completed under significant stress. It is advisable to bring in an experienced restructuring professional to ensure compliance with insolvency law requirements. Creditors frequently wish to see an experienced Chief Restructuring Officer (CRO) appointed. The self-administration team must conduct the proceedings in alignment with the interests of the creditors and liquidate available collateral to satisfy their claims.

If the prerequisites for insolvency under self-administration are not met, a standard insolvency procedure becomes almost unavoidable. Once such proceedings are opened, the power of management and disposition is transferred to the insolvency administrator. The company's management is no longer authorized to make decisions. Although insolvency administrators may, in some cases, accept support from the existing management, they often take over the operational organization independently.

[5] Civil and tax liability of the managing director may arise in the event of delayed filing, particularly under Section 15b of the Insolvency Code (InsO, new version; formerly Section 64 of the GmbH Act), Section 823 of the German Civil Code (BGB), and Sections 34, 69 of the Fiscal Code (AO). Criminal liability may result under Section 15a (4) InsO and Sections 263, 266a, 283c of the German Criminal Code (StGB) (insolvency delay, fraudulent intent when entering into obligations).

"Best-practice standards have emerged for pre-insolvency and out-of-court crisis management."

Once insolvency proceedings are opened, the insolvent company is entitled to three months of insolvency benefits (Insolvenzgeld) from the Federal Employment Agency. Additionally, employment and civil law contracts can be terminated under simplified conditions, and liabilities incurred before the insolvency filing date are effectively "disconnected." These relief measures can be used by the self-administration team—or by the insolvency administrator in regular proceedings—to enable successful restructuring. The time gained can help to sell the business in whole or in part.

The demands on management quality during a crisis are high: it must master the often highly complex legal and operational elements, structure them specifically for the company under extreme time pressure, and implement the resulting measures with precision and speed. Over time, a range of proven approaches—best-practice standards—has emerged in pre- and out-of-court crisis management:

- **Early crisis detection**
  The earlier a crisis is identified, the better the chances of overcoming it. Management requires effective tools for early crisis detection to ensure high transparency both internally (e.g., through controlling) and externally (e.g., through market monitoring). Only a correct diagnosis—identifying the true causes of the crisis—allows the later "treatment," in the form of a restructuring strategy, to be effective.

- **Reliable liquidity forecasting**
  An ongoing liquidity forecast that meets the requirements of insolvency law is essential to recognize payment bottlenecks in time. Reporting cycles should be kept short.

- **Strategic planning**
  Even during a crisis, management must have a clear target vision and will usually define and calculate multiple scenarios. Ideally, this is done using integrated financial planning.

- **Proactive organizational restructuring**
  Crisis and insolvency situations require the company's organization to be adapted quickly and systematically. Such measures should be planned and calculated with a lead time of around three months. Expected liquidity and cost effects must be precisely determined and formalized in a binding financial plan.

  This allows for continuous monitoring during the implementation phase to determine whether objectives are being achieved. This is especially relevant in self-administered insolvency proceedings, where the insolvency plan submitted to the court must be adhered to.

- **Complex coordination**
  Crisis situations necessitate overlapping planning and implementation processes to coordinate a large number of stakeholders simultaneously. The resulting tasks must be properly anchored within the company's organization or managed through a dedicated project organization.

- **Operational excellence and speed**
  Restructuring plans and measures are meaningless if management cannot ensure their precise execution. Time proves to be a critical success factor in any form of crisis management. Meeting deadlines and maintaining speed are of utmost importance. The same applies to the quality of implementation, for example when business units are closed or assets are liquidated.

- **Structured M&A processes**
  As part of legally regulated restructuring and insolvency proceedings, companies or parts of companies are frequently sold. It is therefore crucial to adhere to the principles of successful M&A processes, which include the timely selection of M&A advisors or support, careful M&A planning, targeted approach to potential buyers, and professional negotiation and contractual execution.

- **Compliance**
  During insolvency, strict attention must be paid to compliance with legal requirements and regulations. For example, in cases of impending insolvency or self-administration, payment transactions must be strictly regulated to comply with all statutory payment prohibitions. It is advisable to define the permissibility and approval of payments in a detailed work instruction.

- **Insolvency Governance**
  In self-administered insolvency proceedings, the interaction between corporate bodies and stakeholders changes fundamentally. Insolvency advisors often appointed as general agents, managing directors or board members, shareholders, and creditor representatives (or the creditors' committee) must cooperate seamlessly. Additional functions, such as insolvency accounting and creditor claims management, are introduced. To ensure smooth cooperation among participants, it is sensible to establish routine meetings and communication formats. The same applies to integrating the court-appointed trustee into the company's governance structure and coordinating operationally with their team at the working level—particularly important in managing payment transactions.

"Only those who plan precisely, act quickly, and deliver the highest implementation quality create real restructuring prospects."

- **Stability and communication**
  To enable a company to act in a planned and orderly manner even during a crisis, stability-preserving measures are essential. Two examples stand out: First, management should promptly identify key personnel critical to the success of crisis management and retain them in the company through appropriate HR measures, such as personal discussions or special payments. Second, it is advisable to cooperate closely with employee representatives—or, in co-determined companies, with worker representatives on the supervisory board—during the crisis. To maintain stability and avoid reputational damage, honest communication with internal and external audiences is essential. Management should adopt a factual and transparent communication style, even when sharing uncomfortable information, in order to retain control over the narrative of the crisis resolution process.

FAZIT

Corporate management faces especially high demands—legal, organizational, and human—in times of crisis and insolvency. The rising number of insolvencies in Germany is less a cyclical economic phenomenon than a reflection of structural weaknesses in the business environment. This makes it all the more important for executives and boards to identify the specific causes of crises within their companies precisely and address them with methodological expertise and mental resilience.

Successful crisis management is built on early problem identification, precise liquidity planning, clear strategic goals, and consistent implementation of measures. Particularly in self-administered insolvency, it becomes evident that leaders are required who can act lawfully, purposefully, and communicatively under pressure. Beyond legal and business knowledge, social competence is crucial—especially in dealings with employees, creditors, and the public.

Future-ready management in times of crisis means acting proactively, negotiating professionally, organizing systematically, and communicating transparently. Only those who can create stability under pressure, provide clear guidance, and develop creative restructuring solutions will be able to not only save their company in an emergency but also secure the trust of their stakeholders.

ABOUT THE AUTHOR

Dr. Ulrich Bergmoser is a Partner at Executive Interim Partners. His professional profile combines extensive experience in finance and strategy consulting with many years of work as a managing director, board member, and supervisory or advisory board member in restructuring and transformation situations.

Since 2023, Dr. Bergmoser has served as CFO/CRO and Managing Director of the self-service retail group meinreal, which was successfully restructured and partially wound down through self-administration insolvency proceedings.

Previously, as one of two managing directors of the APCOA UK Group in London, he played a key role in the widely noted restructuring, refinancing, and strategic realignment of the parking group. His responsibilities included various strategy and organizational changes as well as group-wide "smart" cost-reduction programs, which ultimately led to the sale of the entire group to an institutional investor and a fundamental restructuring of the liabilities side.

As a member of the management team at the strategy consulting firm Booz Allen Hamilton / Booz & Company, Dr. Bergmoser acquired and led complex consulting projects for both private and public sector clients. His main focus areas included turnaround management, procurement/supply chain, and strategy and organizational development.

Other key stages of his professional career include serving as CEO of the Reimann Investors Group, where he led the transformation and repositioning of the company, as well as working at the German Football Association (DFB), where he drove the internal modernization of the organization as Director of Finance, HR, and IT, consolidating all commercial activities within the DFB GmbH, where he also served as Managing Director. Additionally, Dr. Bergmoser has led several other companies in various industries.

Dr. Bergmoser began his career at the auditing firm Ernst & Young, where he worked as an audit manager, supervising clients from various industries in annual and special audits as well as in M&A projects.

As a long-standing member of supervisory and advisory boards, Dr. Bergmoser is well-acquainted with the diverse demands of corporate governance.

Dr. Ulrich Bergmoser studied business administration at the Otto-Friedrich University of Bamberg (earning a Diplom-Kaufmann degree) and earned his doctorate (Dr. rer. pol.) with honors at the University of Hamburg. He regularly teaches at universities and speaks at professional conferences.

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DR. ULRICH BERGMOSER
Partner
bergmoser@eip.de

OFFICE ADDRESS
Residenzstraße 27
Preysing Palais
80333 Munich
Tel: +49 89 552 7979 20

COMPANY ADDRESS
Herzog-Sigmund-Straße 13
82031 Grünwald

www.eip.de

Executive Interim Partners GmbH
Munich, HRB 155322
Managing Director: Michael Hengstmann, Ullrich Weirauch