

## Insolvency & Restructuring - Austria

Court revokes abolition of free legal aid for insolvency estates without assets

Contributed by [Graf & Pitkowitz Rechtsanwälte GmbH](#)

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In 2009 the Austrian legislature abolished free legal aid for legal entities, and thus also for insolvency estates without assets, although free legal aid had previously been granted only under very restricted conditions (for further details please see "[Legislature impedes assertion of claims of bankruptcy estates without assets](#)"). As a consequence, trustees in bankruptcy could no longer assert claims of the insolvency estate if the relevant insolvency estate had no assets.

A recent ruling of the Constitutional Court held that the abolition of the entitlement to free legal aid for legal entities (ie, also for insolvency estates) was incompatible with constitutional law. The ruling was based on a case in which the trustee in bankruptcy wanted to assert a claim for an estate without assets. Relying on the new provision, the civil court refused to grant free legal aid. Due to the trustee in bankruptcy's appeal, the Graz Regional Court of Appeals filed an application that the Constitutional Court review the provision. Despite the principle of equality, the Constitutional Court considers it justifiable in principle to distinguish between legal entities and natural persons in connection with procedural claims, since the creation of a legal entity does not depend on the existence of sufficient property or income. However, the court held that a total exclusion is in violation of Article 7 of the Constitution (on the principle of equality), provided that the legal entities' justified interest in obtaining free legal aid is similar to such interest of natural persons or that the lawsuit serves the public interest.

By virtue of the Constitutional Court ruling, the former legislation will again enter into force, with effect from January 1 2013. As of that date, the economic condition of the parties economically involved in a case (eg, creditors) will again be relevant in respect of legal entities (eg, particularly insolvency estates). The courts will thus grant free legal aid only if creditors turn out to be economically indigent or unable to finance the proceedings. As a consequence, it will be possible to deny free legal aid if one of the creditors is economically able to advance the costs of proceedings.

It remains to be seen how the legislature will react to the Constitutional Court's ruling, but a complete revision of the free legal aid system is likely in order to prevent the previous provision from entering into force.

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