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## **Rights and Duties of the Kurator**

### **Proceedings at the Bondholders' Assembly on 15 April 2011**

The Kurator (Trustee) acting for the holders of bonds is appointed in order to represent such holders' rights. The Kurator's rights and duties are limited and determined by the responsibility which the Kurator has been appointed to undertake. In this specific case, the Kurator is charged with performing all representative activities within the scope and on the occasion of the insolvency proceedings instituted against VCH Private Equity Opportunities GmbH., at the Vienna Commercial Court under 4 S 42/11w. Such rights and duties are governed by the provisions of the "Kuratorenengesetz" (Act Governing Trustees) (RGBl 49/1874) and the "Kuratorenenergänzungsgesetz" (Act Providing Supplementary Rules for Trustees) (RGBl 111/1877), as well as the general regulations governing Kuratel (guardianship) (Sections 268ff of the Austrian Civil Code ABGB).

The Kurator is obliged to provide bondholders represented by him/her with prompt information on the essential facts affecting their rights.

The holders themselves are not allowed to assert their rights by themselves.

If a Kurator takes any legal action that requires the approval of the Guardianship Court, the Court needs to convene an assembly which has the following objects:

1. interrogating the represented bondholders
2. election of three liaison officers
3. election of three substitute liaison officers

For this purpose, the Guardianship Court has to convene a hearing. The bondholders must be invited by way of an Edikt (notification). Bondholders may be present through authorised representatives. They need to prove their legal position as holders of affected bonds (a power of attorney may have to be furnished).

At this hearing, the Kurator starts out by presenting the facts of the case. Bondholders'

representatives are entitled to comment these. If no agreement is reached, a vote is taken on the issue as worded by the Court. All this must be noted in the protocol.

Next, the liaison officers are elected, followed by the election of their substitute liaison officers. Eligible are all persons who are resident at or near the location of the Guardianship Court; they need not hold any affected bonds themselves. A person is deemed to be elected if s/he gets the absolute majority of votes. The majority of votes is calculated from the nominal amount of the bonds. The election result cannot be contested. A substitute liaison officer replaces a liaison officer if the latter is unable to serve or prevented from serving.

The liaison officers' remit is to obtain information on an ongoing basis of the business to be carried out by the joint Kurator and to support the latter.

The joint Kurator is obliged to consult the liaison officers for all important business. If the Kurator applies for an approval by the Guardianship Court, s/he has to consult the liaison officers and to present their comments to the Court together with the application, unless they have anyway co-signed such application. The Court's ruling must also be served to the liaison officers who are entitled to appeal.

If the liaison officers are not agreed in their opinions, they need to exercise their rights and duties on their own. The term of office of both the liaison officers and their substitutes ends upon termination of the guardianship.

Rulings by the Guardianship Court which grant approvals in whole or in part must be published by notification. Such rulings may be appealed against by any of the bondholders represented by the joint Kurator.