



MARTINI·MOGG·VOGT

RECHTSANWÄLTE · WIRTSCHAFTSPRÜFER · STEUERBERATER

# THE NÜRBURGRING

myth and fresh start



Dr. Arne Löser

# overview

- 1. initial position**
  - a) insolvent company
  - b) organisation of the liquidation / insolvency administration
- 2. Milestone**
  - a) guarantee of race events
  - b) abolition of the company lease
  - c) construction defects
  - d) permission
  - e) public relations
- 3. EU-conformable selling process**
  - a) background
  - b) agreement with European Commission
  - c) outline of the progress of the selling process
- 4. essential basic points of the act of sale of the business**

# chronicle

- 1925 \_\_\_\_\_ construction of the Nordschleife
- 1927 \_\_\_\_\_ opening of the Nordschleife
- 1951 \_\_\_\_\_ first Formula One race event
- 1970 \_\_\_\_\_ first 24h-race event
- 1976 \_\_\_\_\_ accident of Niki Lauda
- 1984 \_\_\_\_\_ opening of the new Grand-Prix course
- 1985 \_\_\_\_\_ for the first time Rock am Ring
- 2009 \_\_\_\_\_ „Nürburgring 2009“ – upgrading the  
leisure time infrastructure, ca. 300 Mio. €

# chronicle

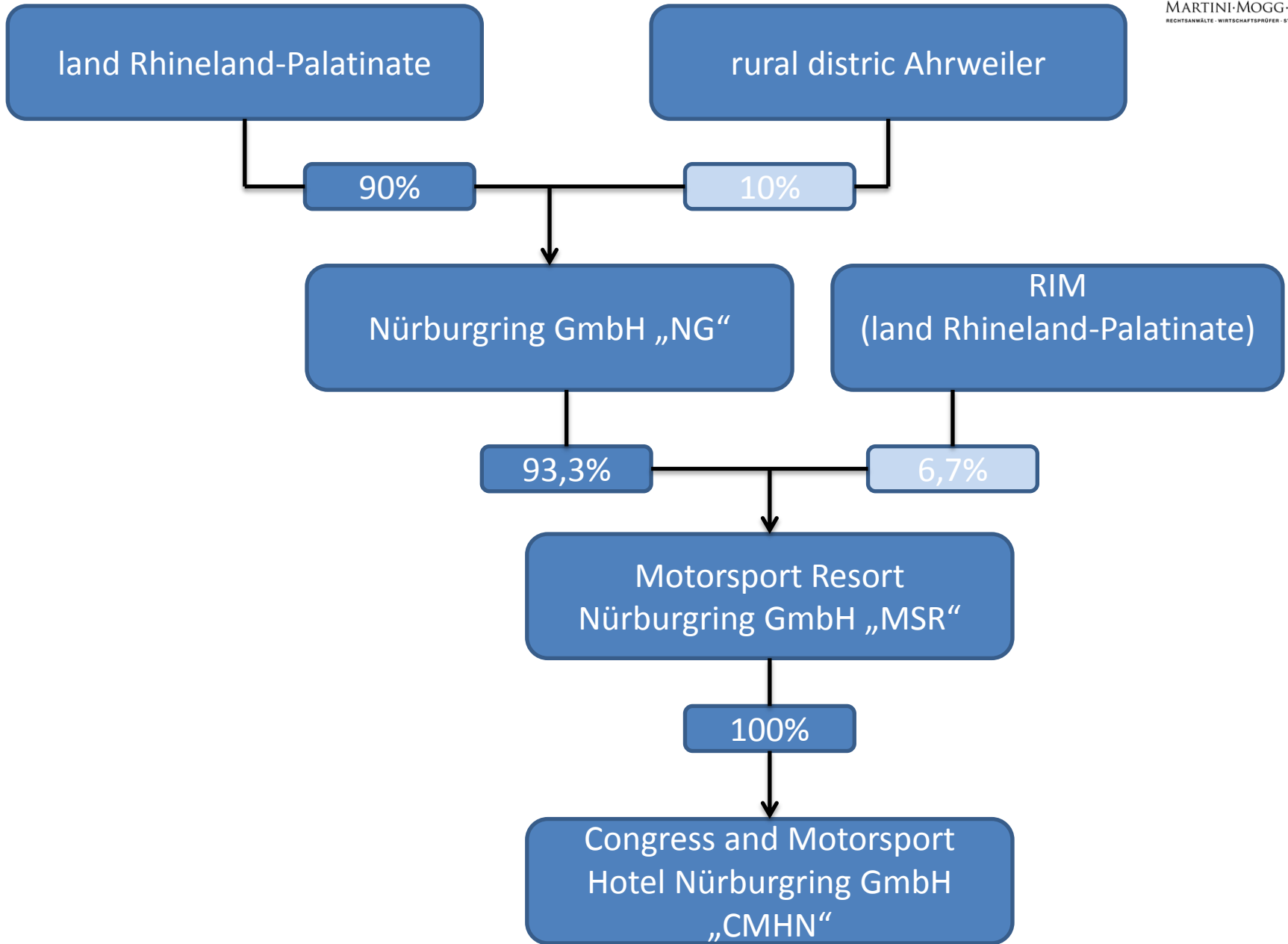
2010\_\_\_\_\_lease to a private operator-company

2011\_\_\_\_\_face-off between tenant/region/policy

02.2012\_\_\_\_\_termination of the lease contract

03.2012\_\_\_\_\_opening of the EU State aid proceedings

20.07.2012\_\_filed for insolvency by the three holding companies



# The insolvent companies

## holding companies

### NG

- circuits + associated infrastructure
- administration of the real estate  
(1 employee)

### MSR

- holiday park Drees
- catering facilities  
„Grüne Hölle“
- staff house Adenau

### CMHN

- 4-star hotel

## tenant

- operation of the entire Nürburgring inkl. hotels
- hotels are managed by a hotel group
- ca. 300 employees

## head of restructuring management

**Prof. Dr. Dr. Thomas B. Schmidt**

- **20.07.2012 appointment to managing all three companies**
- **removal of the remaining managers on 31.07.2012**

## trustee

Jens Lieser

- temporary by order of the Local Court Bad Neuenahr-Ahrweiler on 24.07.2012 and trustee of all three companies by order on the 01.11.2012

## committee of creditors

5 members

- 2 representatives of the local congregatio
- 1 representative of the job agency
- 1 representative of the employees
- 1 representative of the bank of structure and investment land Rhineland-Palatinate

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## a) **guarantee of race events**

- commitment resumption to the organisers
- guarantee of the major events
  - Rock am Ring
  - ADAC motorsport events
    - 24h race
    - Truck-Grand-Prix
  - Formula 1 2013
- industry pool
- amateur sport events

## b) abolition of the company lease

- Since 05/2010 leasing of all assets to a private operating company
- contract of lease with annually increasing rent/lease payment (2011: 5 Mio. €, 2012 10 Mio. €, as of 2013: 15 Mio. € p.a.).
- interpretation of the contract was controversial
- 02/2012: extraordinary termination of the contract
- legal effectiveness of the termination was controversial
- settlement negotiations

## b) abolition of the company lease

- problem area after the insolvency application
  - in case of ongoing possession of the tenant the utilization was complicated up to excluded:
    - missing access to key performance indicators
    - no short-term possibility of granting the possession to the investors
- court settlement, 27.11.2012
- operation since then through newly established operation company

## c) construction defects

- due to the dispute with the tenants ca. 2.000 construction defects weren't worked off since the beginning the lease
- example: toilet facilities of the event center wasn't usable because of mould
- impairment of the selling process due to defects
- result: essential deficiencies are remedied from now on, incidentally the defects are worked off and the actions are pending in court

## d) permission

- just a temporary operating license for the essential buildings (such as: ring°boulevard / ring°werk)
- backdrop was the incomplete built fire protection
- ring°Kartbahn could be approved only when the changeover to electric-karts was done
- more difficulties consist in the reconditioning of the necessarily permissions for the operation of the race tracks
- all of these permissions are available or are meanwhile granted for an unlimited period

racing myth

political issue



region

criminal trial

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# a) background

- opening of the EU State aid proceedings by the EU Commission 03/2012, extension 08/2012
- reclaim of the aid proceedings in the amount of up to 480 Mio. €
- utilization obstacles
- implementation of an Europe-wide unconditional and open bidding procedure



## b) agreement with European Commission

- preliminary discussion of the selling process at the working level of the EU Commission
- confirmation of this approach by correspondence with Competition Commissioner
- three goals could be achieved
  1. sale of the utilization units
  2. maximising of the total price
  3. guarantee of the handed down use of the Nürburgring
- separating the circuits from the selling process was explicitly excluded

## **b) agreement with European Commission**

### **1. sale of the utilization units**

- State aid rule-principle: all utilization units are offered separately
- problem: separation is constructional impossible
- solution: creation of utilization units

## b) agreement with European Commission

### 2. maximising of the total price

- State aid rule-principle: utilization for the best price
- problem: the utilization units are interdependently
- solution: maximising of the total price

even if a bidder offers much more than others, but this leads to a lower total proceeds, he does not get the bid acceptance

## **b) agreement with European Commission**

### **3. guarantee of the handed down use**

- State aid rule-principle: unconditional nature
- problem: handed down use
- solution: Nürburgring-law

## c) outline of the progress of the selling process

**05/2013** \_\_ start of the selling process through placing advertisements in the Handelsblatt (trade journal), Financial Times and in the internet

**06/2013** \_\_ expressions of interest by potentially interested parties

**07/2013** \_\_ sending of the information memorandum, a real estate Fact Books and a temporally staggered Financial Fact Books

**09/2013** \_\_ invitation of indicative bids/offers

**10/2013** \_\_ Due Dilligence

**02/2014** \_\_ invitation of binding bids/offers

**03/2014** \_\_ contract negotiations

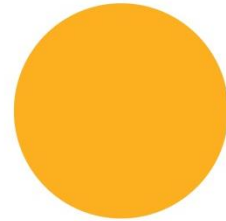
**result: 11.03.2014: acceptance the offer of Capricorn after assent by the committee of creditors**

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## 4. essential basic points of the act of sale of the business

- execution only after a decree of State aid ruling by the EU Commission with the content, that the purchaser does not bear liability for reclaim of the State aid
- lease of all assets to operative companies by the purchaser as from 01.01.2015 in case of none decree of State aid ruling
- Output through the current tenant companies of the season 2014
- implementation of restructuring arrangements in 2014



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