Insolvency and Restructuring in Germany

Yearbook **2022**

Schultze & Braun

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Preface

In our first article, we again take a look across the pond to the United States and the latest changes to US insolvency and restructuring law. *Prof. Jason J. Kilborn* explains the unique position of the USA in relation to restructuring of small and medium-sized enterprises (SMEs).

Next, *Patrick Ehret* takes stock of how implementation of the EU Restructuring Directive is progressing. Alongside Germany, only two other EU Member States – Austria and Greece – have transposed the directive into national law. Our article explains how they have chosen to do this and looks at the state of play in the other Member States.

Another European legislative project is the focus of the article by *Prof. Urs Peter Gruber* and former *Prof. Jean-Luc Vallens*, who take a look at the German-French project to create a European Business Code.

The COVID-19 pandemic was the biggest challenge to face the German economy in decades. Especially hard hit were companies that were digital stragglers even before the pandemic. These companies were slow to develop the digital competences needed to sell products online or implement digital productivity measures to enable staff to work effectively from home, for example. How a company's digitalisation status influences its ability to recover from financial crisis is examined by *Matthias Müller, Volker Riedel* and *Dr Michael Rozijn*.

In this year's industry report, *Christian Alpers* and *Rüdiger Bauch* look at property companies. Compliance with sustainability criteria is an indicator in addition to financial performance and will in future be a competitive factor that shapes markets.

In the service section, you will find a continuation of the glossary of English, French, and Italian terms used in insolvency law, as well as the latest insolvency statistics. As ever, the Yearbook also contains the text of current legislation, notably the two sections of the Reconstruction Assistance Act 2021 (*Aufbauhilfegesetz 2021,* AufbhG) (Federal Gazette I 2021, p. 4149 f.) which introduced amendments to the Insolvency Code (*Insolvenzordnung*, InsO).

Achern, December 2021

Dr Annerose Tashiro
Attorney-at-Law in Germany
Registered Foreign Lawyer (London)

Contents

Part One

United States Exceptionalism in SME Restructuring: The Small Business Reorganization Act of 2019

By Jason J. Kilborn, Professor of Law, University of Illinois Chicago School of Law, USA

Introduction

Like many other countries, the United States has long struggled with accommodating small and medium enterprises (SMEs) within the expensive and complex procedure of corporate reorganization. The relatively low asset values involved in these cases generally fail to attract significant attention from creditors, and cumbersome and costly traditional procedures tend to absorb all or most of that available value.[1] It has thus been neither cost-effective nor especially productive to apply the world-famous provisions of Chapter 11 of the US Bankruptcy Code to such SME debtors.

After experimenting with several different approaches in earlier years, in August 2019, the US adopted a watershed new reorganization procedure tailor made for SMEs. Effective 19 February 2020, the Small Business Reorganization Act[2] introduced a new subchapter V within Chapter 11 of the Bankruptcy Code, radically simplifying the rules otherwise applicable in ordinary corporate reorganization cases involving SMEs.

While this new law responds to international calls for less burdensome and more supportive treatment of financially distressed SMEs, it takes a bold approach that deviates from evolving international norms. While international standard-setting organizations continue to prefer fully creditor-controlled procedures, with a reorganization plan adopted only by the affirmative vote of a majority of participating creditors,[3] the new US law takes a significant step further. It empowers courts to impose ("cram down") reorganization plans over creditor dissent so long as several statutory guidelines are satisfied. For both entirely domestic entities and US subsidiaries of foreign companies, the SBRA offers a much more accessible and powerful pathway to reorganization than most other world models, and certainly more so than a traditional full-blown Chapter 11 reorganization.

Eligibility

The new, streamlined reorganization procedure is available only to "small business debtors" who elect to engage it. Debtors who qualify are not compelled to use it. The traditional full-blown Chapter 11 process remains the default business reorganization mechanism, but a company that qualifies as a "small business debtor" may elect to pursue the faster track of subchapter V of Chapter 11 if the company satisfies two tests of "smallness."

"Small business" = small debts

Because the procedure is available to both natural and juridical persons, the first part of the qualifying test requires that the person be "engaged in commercial or

1 For a discussion of the unique challenges of applying traditional reorganization procedures to SMEs, see World Bank Group, *Report on the Treatment of MSME Insolvency* (2017). For a discussion of approaches by other countries to overcome these challenges, see World Bank Group, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency* 13-15, 22-24, 31-33 (2019).

2 Pub. L. 116-54, codified at 11 United States Code [USC] §§ 1181-1195.

3 World Bank Group, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency* 18-19 (2019); see also UNCITRAL, Working Group V (Insolvency Law) (2020), *Draft text on a simplified insolvency regime*, Doc. No. A/CN.9/WG.V/WP.170.

business activities" (as opposed to just non-business consumption, like the overwhelming majority of debtors in US bankruptcy, dominated by consumers) and at least half of the person's indebtedness must arise from business activities.[4] For business entities, this part of the test goes without saying, so the real focus is on size, but it is not the size of the debtor or even the business that matters. Rather, it is the size of the company's *debts* that determines "smallness" and therefore a business debtor's qualification for the subchapter V procedure.

A "small business debtor" is one whose aggregate noncontingent liquidated secured and unsecured debts total no more than a defined limit. In the original 2019 law, that limit was US$ 2,725,625 (to be indexed every three years for inflation).[5] This figure would narrow the field of qualifiers very substantially. The proper threshold for identifying "small business debtors" has been the subject of academic and industry study and debate for many years, and commentators have consistently concluded that the limiting figure should be much higher to encompass the target group. The National Bankruptcy Review Commission chose US$ 5 million in total debt as the proper dividing line (more than 20 years ago, which would equal US$ 8.5 million today, adjusted for inflation),[6] while the American Bankruptcy Institute Chapter 11 Commission chose US$ 10 million in either total liabilities or total assets.[7]

A silver lining behind the cloud of the COVID-19 pandemic was a substantial increase in the "small business" qualification threshold, though only for a limited time. Recognizing that the pandemic posed special challenges for small and medium businesses, Congress in 2020 passed, and then in 2021 renewed, a provision of the so-called CARES Act that doubled the small business criterion to US$ 7.5 million in total debt. The higher threshold is set to expire and revert to the lower, original level on 27 March 2022, though it will at that time be ready for its triennial increase for inflation indexing, and many have suggested that the higher figure should be maintained permanently. Time will tell.

"Small business" = small filing group and securities distribution

For non-US entities with US subsidiaries, another aspect of the "small business debtor" limiting definition is particularly relevant. It excludes business entities that otherwise meet the definition but are considered "not small" for other reasons, including a relationship with other, presumably larger debtors. Three factors potentially exclude an otherwise qualifying debtor from subchapter V.

For the first of these three exclusions, the key is proper statutory reading. The debt limit is aggregated for any "group of affiliated debtors,"[8] so if the total debt of all of these affiliated "debtors" together exceeds the ceiling, every member of the group is excluded, even the otherwise "small" members. But the word "debtor" here is not a generic reference to any member of a group of companies that owes debts; rather, it is a defined term in the Bankruptcy Code. A "debtor" for purposes of the

4 11 USC §§ 101(51D), 1182. Debts to affiliates and insiders are excluded from the calculation of this ceiling, and the "business" in which the debtor is engaged must be something beyond merely operating a single immovable property or project. 11 USC § 101(51B).

5 11 USC §§ 101(51D), 1182.

6 National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* 618 (1997).

7 American Bankruptcy Institute Commission to Study the Reform of Chapter 11, *Final Report and Recommendation* 279 (2014).

8 11 USC § 101(51D)(B)(i).

Code is a person "concerning which a case under this title has been commenced."[9] Thus, only considered are the debts of the group members who have sought (or, much less likely, been pushed into) a bankruptcy case *in the US*; the debts of other affiliates, including a non-US parent or sibling entity, are not included in the calculation, even if they are in insolvency proceedings in their own countries.

The second and third exclusions coordinate with US securities trading laws. While it is virtually inconceivable that a company with such significant market capitalization would otherwise qualify as "small," public companies with reporting requirements under the Securities Exchange Act of 1934 are excluded from subchapter V.[10] If the equity securities of a US subsidiary of a non-US company are listed on a public exchange, that clearly disqualifies the subsidiary from subchapter V treatment, but again, one would hardly expect such a company to qualify as a "small business" debtor. Even if the equity securities of such a company are not listed, however, the company might nonetheless become subject to reporting requirements if its assets exceed US$ 10 million and its equity is held by "the public," meaning 500 or more persons who are not "accredited investors" or 2000 persons in any case. The intricacies of the securities trading laws are well beyond the scope of this contribution, but suffice it to say that distribution of equity securities substantially beyond a non-US parent company might subject a US subsidiary to burdensome regulatory compliance duties, which would commensurately exclude such a company from reorganization under subchapter V. Potentially more troublesome is a final, seemingly capacious exclusion of any affiliate of an "issuer" as defined in section 3 of that same Exchange Act. As one prominent commentator has noted, "Congress could not have intended" to exclude any affiliate of any company that has issued any security; rather, the right interpretation is that the exclusion applies only to "an affiliate of an issuer that is subject to the reporting requirements" of the Exchange Act, just previously discussed (i.e., issuers of US-listed "public" securities).[11]

Consensual Reorganization – Reducing Complexity, Adding Support

For those debtors who qualify, subchapter V proceedings differ from ordinary Chapter 11 business reorganizations in two major sets of ways, both designed to entice debtors into the system and to facilitate reorganization plans – either with or without creditor approval. As an initial enticement for debtors to engage the process, subchapter V carries through the tradition of "debtors in possession" in this new context. Small business debtors remain in possession and control of their property and businesses until and unless fraud or gross mismanagement leads to the appointment of a trustee, which is extremely rare in the US.[12]

Further enticements to enter and remain in subchapter V concentrate on reducing complexity and greatly simplifying the negotiation and confirmation of consensual reorganization plans. Much of the expense of a traditional Chapter 11 reorganization effort stems from debtors' obligations to interact (that is, fight) with the official committee of unsecured creditors and to provide elaborate and detailed information to creditors on the past, present, and future of the company

9 11 USC § 101(13).

10 11 USC § 101(51D)(B)(ii).

11 Hon. Paul W. Bonapfel, *SBRA: A Guide to Subchapter V of the U.S. Bankruptcy Code* 34 (2021).

12 11 USC §§ 1184-1186.

and its reorganization effort. Subchapter V sweeps away these cumbersome institutions and their associated expense.

Creditors have shown very little interest in small business cases in the past, so in subchapter V cases, an appointed committee of unsecured creditors is the rare exception rather than the rule.[13] Debtors are left to communicate directly with the body of creditors as a whole, and given the low debt figures involved, the presumption is that this communication should be simple and straightforward. Traditional Chapter 11 plan negotiations require a court-approved Disclosure Statement, which is in many cases so voluminous and intricate that it resembles a prospectus for an initial public offering of securities – with all of the attendant expense for auditors, advisors, and other experts to gather and present both backward- and forward-looking data and analysis. Subchapter V does away with this burdensome formalism. Instead, the debtor must simply present to creditors a report detailing vastly simplified core information about its business dealings and future turnaround plans, presumably with far less, if any, need for outside expert input.[14] The timing rules for developing and presenting turnaround plans pose both a blessing and a curse for small business debtors. Only the debtor may propose a plan, but this plan must be presented within 90 days of case initiation.[15] The timeline is thus mercifully yet brutally short. Subchapter V is not designed to delay the inevitable demise of zombie companies, but to give viable companies a reasonable chance, and the accelerated timeline further reduces the burden of professional expenses dragging down struggling small businesses.

While professional advice can be expensive, it is also very often desperately needed by small business debtors. An important additional measure thus concerns the nature of the official overseer of small business reorganization cases. As noted above, trustees are appointed in only the rarest of cases where aggressive intervention is necessary to thwart debtor wrongdoing and protect creditor interests. In subchapter V, in contrast, a unique and novel kind of trustee is appointed in every case, but not to intervene in an antagonistic situation. Rather, the subchapter V trustee's express remit is to support and advise the debtor-in-possession and, in particular, to "facilitate the development of a consensual plan of reorganization."[16] These subchapter V trustees are experienced business professionals and dealmakers who know how to bring creditors onboard in support of a viable plan (or tell debtors the frank truth about non-viable plans). This expert assistance comes at a price, reducing the value available for distribution to creditors under the plan, but this financial burden is far less than in a traditional Chapter 11 restructuring,[17] and the input is more likely to redound to the benefit of debtors and creditors alike.

In other respects, the plan adoption and confirmation rules for subchapter V are the same as in a traditional Chapter 11 case. All classes of creditors must approve the plan by affirmative vote of a majority of creditors actually participating in the voting, and those creditors' claims must equal at least two-thirds of the dollar

13 11 USC § 1181(b).

14 11 USC §§ 1181(b), 1187-88.

15 11 USC § 1189.

16 11 USC § 1183(b)(7).

17 Of particular note, debtors in subchapter V proceedings are not required to make quarterly payments to the United States Trustee System, otherwise required in Chapter 11 cases. 28 USC § 1930(a)(6).

value of all of the claims of voting creditors in that class.[18] A creditor-approved plan must be additionally confirmed by the court as meeting a number of statutory requirements. Most notable among these are (1) that the plan is practically feasible, (2) that the plan offers creditors at least the same financial benefits as an immediate liquidation and distribution of the debtor's available asset value, and (3) that the debtor is proceeding in good faith.[19] These assessments place both great responsibility and great trust in judges, but for subchapter V cases as in ordinary Chapter 11 proceedings, US Bankruptcy Judges are appointed after significant careers in bankruptcy law and finance. While some judges have tended to favor reorganization to a degree unwelcome by some, they have generally shown a willingness to scrutinize small business plans in particular and to conclude that the time has come to move on to the next venture.

Non-Negotiated Cramdown of "Disposable Income" Plans

The most radical and, in international terms, exceptional innovation of subchapter V is a new procedure for "cramdown" of reorganization plans over creditor dissent. Even if the requisite majorities of creditors reject a proffered plan, the court may nonetheless confirm the plan and impose it (a process informally but universally referred to as "cramdown") so long as its terms are objectively reasonable as defined by law. This alternative, statutory alternative produces important backward pressure on the negotiation process, establishing the presumptive outer boundaries of a plan and encouraging creditors and debtors voluntarily to seek reasonable compromises within these boundaries. Defining these limits has produced tremendous debate over the years.

While the traditional Chapter 11 process also allows for court imposition of plans, the "absolute priority rule" has long stood as a guardian of creditors' rights and a check on debtors' efforts to retain ownership at creditors' expense. The rule most commonly prohibits imposition of a plan that allows former owners to retain any stake in the reorganized company unless creditors are paid in full. This rule is not applicable in subchapter V cases. It thus does not inhibit the confirmation (cramdown) of a non-consensual plan that allows the owner(s) of a small business debtor to maintain an equity interest in the post-reorganization company (likely 100%), despite leaving creditors with less than full payment.[20] If the court finds that the simple prerequisites discussed below are fulfilled, the plan can be confirmed regardless of creditor opposition.

In this and other respects, subchapter V resembles the procedure used for decades, not for reorganizing corporate businesses in Chapter 11, but for unencumbering individual "wage earners" via payment plans in Chapter 13.[21] Developed in the 1930s, the far less well-known Chapter 13 was designed to allow individuals with predictable future income from stable employment to avoid the stigma of bankruptcy and asset liquidation by using that employment income to pay off at least a portion of their debts over time. With the revision of the Bankruptcy Code in the late 1970s, lawmakers recognized that such debtors had little if any negotiating leverage to entice creditors to support a consensual plan, so all payment

18 11 USC §§ 1191(a), 1126(c), 1129(a)(8).

19 11 USC §§ 1191(a), 1129(a)(3), (7), (11).

20 11 USC § 1181(a) (suspending application of section 1129(b)).

21 11 USC §§ 1301-1330.

arrangements in Chapter 13 were subjected to court "cramdown" applying statutory standards. That is, so long as the statutory terms regarding amount and timing of payment are observed, an individual debtor's Chapter 13 plan is confirmed by court decree, without creditor voting. This is the functional equivalent of what many countries throughout Europe have developed over the past 30 years in a wave of new "debt adjustment" or "consumer insolvency" laws, usually conferring a debt discharge on individuals in exchange for a non-negotiated series of some number of years of payments to creditors from the debtor's income in excess of that necessary to support debtors' and their families' reasonable domestic needs. Such court-approved, non-negotiated payment plans have been available in the US until now only to individual debtors (not business entities) with relatively limited debts (e.g., unsecured debt below US$ 420,000).[22]

Subchapter V essentially adopted this non-negotiated alternative for small business debtors, including artificial business entities, subject only to the much higher debt limits for qualification for subchapter V itself. The payment terms and timing in subchapter V mirror those in Chapter 13: A "cramdown" plan must promise *pari passu* payment to unsecured[23] creditors of all of the debtor's "projected disposable income" anticipated to be received by the debtor over the next following three to five years. This amount may be paid either in one immediate lump sum or in installments over this 36- to 60-month period, though if Chapter 13 practice is any guide, the standard plan term will be 60 months unless creditors are to be paid in full within a shorter period.

The pivotal notion of "disposable income" is defined as net income that is "not reasonably necessary to be expended for … the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor."[24] This definition leaves tremendous discretion in the court to assess "necessity" and "reasonableness" of business expenditures, not to mention prediction of the likelihood of the actual realization of future income by the business. It is one thing to project the receipt of future income by the average earner of fixed wages; it is quite another to project the production of future income by a small company with unpredictable – indeed, uncertain – and likely highly contingent business prospects. Different courts are likely to come to quite different conclusions on these points, but again, US Bankruptcy Judges are selected for their specialized knowledge and experience with such financial assessments in the specific context of distressed businesses.

Initial Empirical Results and Concluding Tentative Evaluation

The ultimate goal of subchapter V was to increase the number of confirmed reorganization plans in small business cases and, one hopes, consequently the number of successfully saved businesses. The timeline for assessing ultimate success is thus quite extended, and insufficient time has passed to render a final verdict on the new procedure. Nonetheless, initial empirical results are quite positive in numerous respects.

22 11 USC § 109(e).

23 Secured creditor are entitled to the full value of their secured claims. 11 USC § 1129(b)(2)(A).

24 11 USC § 1191(b)-(d).

The only notable aggregate study of the first results of subchapter V cases is a January 2021 report by the director of the Executive Office for United States Trustees.[25] The EOUST is the government supervisor of the US bankruptcy system, with a uniquely insightful vantage point and access to more fine-grained data. In the first seven months of the new procedure, from 19 February through 30 September 2020, about 1100 small business debtors – more than two-thirds of which were business entities, rather than natural individuals – elected to proceed under subchapter V. The EOUST reported on an analysis of a subset of 625 of these cases that had had sufficient time to have progressed through the entire procedure.

The headline result is that the percentage of subchapter V cases with a confirmed plan was six times the number in small business cases that had proceeded under the ordinary Chapter 11 process. This observation is difficult to evaluate, in large part because of the brief segment of time analyzed. An ordinary Chapter 11 small business case offers debtors six months to prepare a plan, followed by a noticed confirmation hearing up to a month-and-a-half later.[26] In the seven months of the EOUST study, it is surprising that *any* ordinary Chapter 11 case could manage to complete the plan development and confirmation process, so however many more plans emerged from subchapter V proceedings, this would have been entirely unsurprising. That being said, perhaps the comparison is simply unfair. It is a remarkable accomplishment that 100 of these 625 small business cases produced a confirmed plan within no more than seven months, and probably far less time than that. Beyond these successful cases, about 40 were found to be ineligible for subchapter V, and another about 80 were either dismissed or converted to a liquidation, though reportedly some substantial number of these left the formal process thanks to the subchapter V trustee's facilitation of a consensual, out-of-court resolution between debtors and creditors.

The 100 cases with confirmed reorganization plans included a group of about 20 related entities with a non-consensual (cramdown) plan, so a fair assessment of the denominator of total independent plans confirmed is 80. A remarkable 80% of these plans were consensual, approved by all classes of creditors. One hesitates to make rosy predictions on the basis of such small numbers from such a thin slice of the early period of subchapter V, but these figures seem to indicate that the new procedure is working as desired. In particular, some significant portion of these 80% consensual plans must have achieved confirmation as creditors considered the alternative: Refusal to approve the debtor's proposed plan would likely result in court-imposed cramdown of a "projected disposable income" plan, anyway, so why not accept the debtor's proposal so long as it was remotely reasonable. This, it seems, is the real success story of subchapter V – encouraging creditors to behave in a much more conciliatory, reality-acknowledging, compromise-friendly way in light of the cramdown alternative. The presence of the subchapter V trustee to serve as neutral intermediary doubtless has helped considerably, as well, in convincing creditors to accept reasonable compromise arrangements.[27] These points

25 Clifford J. White III, "Small Business Reorganization Act: Implementation and Trends," *American Bankruptcy Institute Journal*, Jan. 2021, p. 54.

26 11 USC §§ 1121(e), 1129(e).

27 See Jason J. Kilborn, "Determinants of Failure … and Success in Personal Debt Mediation," *Transnational Dispute Management* 14(4) (Winter 2017), available online https://ssrn.com/abstract=3015419 (suggesting the presence of a neutral intermediary is one of two keys to successful mediation).

represent the primary American exceptionalism in the subchapter V process, and they seem to have had an exceptionally positive impact.

In the year following the period examined in the EOUST study, another 1340 debtors have elected subchapter V proceedings, for a total of 2440 in the 19 months from mid-February 2020 to mid-September 2021.[28] As more empirical reporting is undertaken on the latest cases, time will tell if this US success story is sustainable and at what cost/benefit trade-off for creditors, entrepreneurship, and society. For non-US entities confronting the labyrinth of Chapter 11, however, subchapter V offers a potentially much more efficient and effective path to rescuing and reorganizing US operations conducted through "small business debtors."

Professor Jason Kilborn is a leading authority on the comparative law of personal and small business insolvency. He chaired the drafting group for the World Bank's landmark 2013 *Report on the Treatment of the Insolvency of Natural Persons* and has served as a short-term consultant on numerous other World Bank Group personal insolvency projects. He has advised several national governments on personal insolvency reforms and was appointed as an Advisory Commissioner of the Seoul (Korea) Bankruptcy Court's Administrative Committee. He most recently drafted and presented the World Bank Group's 2018 report, *Saving Entrepreneurs, Saving Enterprises: Proposals for the Treatment of MSME Insolvency*. In addition to his work on personal and small business bankruptcy, Professor Kilborn co-authored a book on international cooperation in cross-border business reorganization, and he is among the authors and editors of a comparative series on corporate liquidation and restructuring, both published by Oxford University Press. Professor Kilborn is an elected member of the International Insolvency Institute
Email: *jkilborn@uic.edu*

28 Statistics and other resources on subchapter V are available on a dedicated website hosted by the American Bankruptcy Institute, https://www.abi.org/sbra.

Implementation of the Restructuring Directive in Europe: What is the state of play?

By Patrick Ehret, Attorney-at-Law in Germany and Attorney-at-Law in France (AMCO), Certified Specialist in International Law and European Law in France

Implementation deadline met by just three Member States

The EU Restructuring Directive,[1] adopted as part of the European Union's programme to create a Capital Markets Union, was meant to be transposed into national law of the Member States by 17 July 2021. As readers will be aware, the European requirements regarding establishment of a preventive restructuring framework were implemented in Germany with effect from 1 January 2021 by the Act on the Advancement of Restructuring and Insolvency Law (*Sanierungs- und Insolvenzfortentwicklungsgesetz*, SanInsFoG) and the Act on the Stabilisation and Restructuring Framework for Businesses (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*, StaRUG) contained in the SanInsFoG. Alongside Germany, Greece[2] and Austria[3] also transposed the Directive on time.[4] Also on 1 January 2021, the Netherlands enacted the Act on the Confirmation of Out-of-Court Plans *(Wet Homologatie Onderhands Akkoord*, or WHOA for short), which was widely acclaimed and also mentioned during the German legislative procedure, and thereby introduced a procedure for private composition agreements outside insolvency proceedings *(akkoordprocedure buiten faillissement)*.[5] The WHOA is not actually a transposition law, however. While it introduces preventive proceedings which are largely compliant with the Directive, it was initiated before the Directive was adopted.[6]

Extension

To avoid infringement proceedings, many Member States made use of the option to extend the implementation period provided for in Article 34(2) of the Directive. This permits Member States that "encounter particular difficulties in implementing this Directive" to delay implementation by up to a year. Unsurprisingly, Member States generally cited the pandemic as the reason for using the extension. As well as the additional work involved in enacting ad hoc coronavirus legislation, Member States also encountered organisational problems connected with absences due to illness and changes to work processes in response to the pandemic.[7] By 17 July 2022, all Member States should have reached their "new normal" and must bring their domestic legislation into line with the Directive by then.

1 Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

2 ΝΟΜΟΣ 4738/2020 (Κωδικοποιημένος) – ΦΕΚ A 207/27.10.2020 (kodiko.gr), entered into force on 1 June 2021, can be viewed at https://www.kodiko.gr/nomologia/document_navigation/647304/nomos-4738-2020.

3 Federal Code on the Restructuring of Companies (*Restrukturierungsordnung*, ReO), Federal Gazette (BGBl.) I No. 147/2021 of 26 July 2021.

4 As of 1 October 2021; for the current transposition status see.: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L1023&qid=1629727249224.

5 See also https://www.schultze-braun.de/newsroom/newsletter-archiv/internationales-recht/woah-niederlande-haben-praeventiven-restrukturierungsrahmen-mit-vertragsbeendigungsoption-eingefuehrt/

6 The text of the legislation (in Dutch) can be viewed at https://zoek.officielebekendmakingen.nl/stb-2020-414.html.

7 *Bork, Adopting the Directive: Member States "in particular difficulties",* Eurofenix, *Summer* 2021, 18 et seq.

How are the other Member States doing?

Efforts to transpose the Directive in the Member States are at various stages. While in Luxembourg,[8] Romania[9] and Lithuania,[10] for example, bills are ready and in some cases the legislative procedure is already under way, meaning that enactment during 2021 appears likely, other countries, such as Croatia, Slovenia, the Czech Republic and Slovakia, are still preparing or holding consultations on ministerial draft bills. In Poland, a bill is expected to be presented to parliament before the end of 2021. By contrast, the French legislator was authorised by parliament to transpose the Directive by statutory order back in 2019.[11] Although the French preventive restructuring proceedings were categorised as largely compliant with the Directive and the limited regulatory work required raised hopes of speedy transposition, integrating those proceedings into the existing legal system proved more difficult than expected. This was due on the one hand to the reform of French law governing security interests, which was happening in parallel, and on the other to the introduction of creditor classes, previously entirely unknown in French law, and of the *cross-class cram-down*. Regulation N° 2021-1193 of 15 September 2021 and implementing decree N° 2021-1218 of 23 September 2021 entered into force on 1 October 2021. In Italy, the Directive was transposed as part of a major reform of insolvency law which was initiated in 2015 and provisionally completed with the adoption of the *codice della crisi d'impresa e dell'insolvenza* on 12 January 2019.[12] Despite some initial improvements in August 2021,[13] in particular the creation of the *composizione negoziata per la soluzione della crisi d'impresa,* which is comparable in some respects with the German rehabilitation mediation procedure, further amendment is still required, and this will need to be finished by July 2022.

Multimodal implementation

The flexibility of the Directive's requirements[14] has enabled Member States to provide preventive restructuring tools in various procedural configurations, which may be complementary and perhaps used in sequence, or present alternatives to one another. The German tool of rehabilitation moderation, like the French *conciliation* on which it was based, can be understood and used as a stepping stone towards use of the restructuring framework or insolvency proceedings. By contrast, Greece's new restructuring law provides for two strictly separate proceedings. The first is a fully online procedure for restructuring financial liabilities without court involvement, which can be initiated by the debtor or a creditor (excluding banks, public bodies or social security authorities) and which cannot exceed a total duration following extension of two and a half months. The consent of 60% of financial creditors (at least 40% of which must be secured creditors) – the consent of government creditors is given automatically under certain conditions – is binding on the non-consenting minority. The second is a new type of proceedings enabling debtors to restructure their liabilities – with or without disposing of parts of their business – by way of plan confirmation by the court, as long as 50% of secured creditors and 50% of affected creditors (or 60% of all creditors) consent and subject

8 Projet de loi 7849.

9 Bill of 19 May 2021.

10 Bill No. XiVP-362.

11 Art. 196 of the PACTE Law, N° 2019-486 of 22 May 2019.

12 By means of *decreto legislativo N° 14*; entry into force delayed until 16 May 2022 due to the pandemic, early warning proceedings deferred even longer, until 31 December 2023.

13 See: https://www.schultze-braun.de/newsroom/newsletter-archiv/internationales-recht/italien-juengste-entwicklungen-des-insolvenzrechts/.

14 Art. 4(5) of the Directive.

to a best interest test. The long duration of these proceedings – the period between the court hearing and the decision is six to nine months – is accompanied by a prohibition on enforcement for six months before and up to twelve months after the application is filed, as well as privileged treatment for new financing obtained in order to permit the business to continue to trade.

The Austrian legislator has added two new sub-types of restructuring proceedings: In "European restructuring proceedings", unlike in regular restructuring proceedings, the enforcement prohibition, which can last up to six months, can cover all creditors. Those creditors can also be requested to file their claims, and the officially privileged creditor protection associations have a right to inspect the records. In "simplified" proceedings, a dissenting minority of financial creditors can – without a vote in court – be bound by court confirmation if a 75% majority of claims is achieved. Unlike in restructuring proceedings, debtors retain full control of the business, and appointment of a restructuring practitioner is not required. No prohibition on enforcement is ordered.

Special proceedings for SMEs struggling due to the pandemic

If the proliferation of national preventive proceedings does not exactly make for clarity as to which kinds of proceedings are available to businesses, the confusion has been compounded by the fact that before implementing the Directive several Member States introduced special and sometimes time-limited procedures to help SMEs deal with the consequences of the pandemic. In France, reorganisation proceedings aimed at illiquid or partially illiquid SMEs (fewer than 20 employees and liabilities of less than EUR 3 million) were introduced in May 2021.[15] To access these proceedings, debtors must show in their application that

– a plan to secure the continued existence of the undertaking can be presented within three months of commencement of proceedings and

– employee claims have been and will continue to be paid.[16]

Following a simplified claims verification step, the court can impose a debt settlement plan on creditors under which their claims will be satisfied over ten years.

On 13 July 2021, the Irish legislator approved the *Small Company Administrative Rescue Process (SCARP) Bill*, which will offer 98% of Irish companies a quick and inexpensive alternative to *examinership*. Assisted by an insolvency professional acting as a "process advisor", an SME which is illiquid or will become so imminently but has reasonable prospect of survival can present a restructuring plan to a meeting of its creditors for a vote. The plan is accepted if at least one class of affected creditors holding more than 50% of claims by value votes in favour of the plan. Unless a creditor files an objection to the plan, proceedings can be completed within seven weeks without court involvement. Only if an objection is filed or the plan does not achieve a majority and an application is filed by the Irish restructuring practitioner will the court decide on the plan.

15 See also https://www.schultze-braun.de/newsroom/newsletter-archiv/internationales-recht/frankreich-fuehrt-uebergangsweise-ein-covid-insolvenzverfahren-zur-schnellen-entschuldung-von-kleinunternehmen-ein/.

16 Insolvency pay cannot be used.

When is insolvency likely?

The Directive does not define the term “likelihood of insolvency”, and explicitly[17] leaves it to Member States to determine the threshold for access to their preventive restructuring frameworks. The solutions introduced in the individual Member States are correspondingly diverse: In the Netherlands, access is based on whether it can reasonably be assumed that the undertaking will be unable to meet its liabilities when due.[18] Under the Austrian Restructuring Code (*Restrukturierungsordnung*, ReO), insolvency is likely if the continued existence of the undertaking would be under threat without restructuring, as is the case with imminent illiquidity in particular.[19] An undertaking’s existence is also presumed to be under threat if its equity ratio falls below 8% and the theoretical period needed to repay its debts exceeds 15 years. A legal entity which is overindebted but not illiquid can choose between restructuring and insolvency proceedings.[20] Under previous French law, preventive restructuring procedures were available if an undertaking was experiencing legal, economic or financial difficulties or such difficulties were foreseeable, and the regulation transposing the Directive did not change this.[21] Waiting periods before proceedings can be accessed again likewise vary widely: While a Dutch company must wait for three years following failure of its plan before it can try again,[22] there is no such limitation in Austria, provided that the undertaking concerned is not factually insolvent and therefore obligated to file an application for insolvency. By contrast, an Austrian company which has successfully completed restructuring proceedings cannot undergo further proceedings for seven years.[23]

Contract termination as restructuring measure?

The aim of a restructuring plan is to ensure the viability of the distressed company over the long term. This can be achieved in particular by changing the composition, terms or structure of the debtor’s assets and liabilities.[24] Traditionally, a plan will provide for the deferment or reduction of liabilities or the conversion of creditor claims into share or membership rights. However, debt-to-equity swaps may, as in Austria, be dependent on the amendment of company law to accommodate them.[25] The German legislation as initially conceived permitted reciprocal contracts which have not been fully performed by both parties to be terminated,[26] but the corresponding provisions were removed at the committee stage. The Dutch proceedings still provide this possibility,[27] which is regarded as beneficial for the bricks-and-mortar retail and hospitality sectors. However, this is subject to confirmation of the plan by the court and a reasonable notice period; a period of three months from confirmation is explicitly classed as adequate in every case. The Irish *SCARP* proceedings also allow contracts to be terminated during plan proceedings. Termination is subject to approval by the court, which

17 Art. 2(2b).

18 Art. 370 (1) WHOA.

19 Section 6 (2) ReO.

20 *Mohr*, ZIK 2021, p. 82.

21 Art. L611-4 Commercial Code.

22 Applications by creditors are still permitted, however.

23 Three years pursuant to section 33 (2) No. 4 StaRUG.

24 Art. 2(1) No. 1 of the Directive.

25 *Mohr,* ZIK 2021, p. 82.

26 Section 49 et seq. of the ministerial draft of the StaRUG bill (StaRUG-RefE) and section 51 et seq. of the government StaRUG bill (StaRUG-RegE).

27 Art. 373 WHOA.

is granted only if it is necessary for successful restructuring and the survival of the company. The Austrian Restructuring Code – following the German example – sees no need to depart from the principle of consent.

Restructuring plan: majorities and cross-class cram-down

Like the StaRUG, the Austrian implementing legislation makes acceptance of the plan subject to a majority of 75% of the total amount of claims, the maximum permitted under the Directive. The Austrian legislation also requires a per capita majority. Majorities are calculated by reference to creditors in attendance for each group or, if there are no creditor groups in the proceedings – as can be the case with SMEs – by reference to all affected creditors in attendance.[28] In France[29] and the Netherlands,[30] by contrast, a 66% majority of total claims is sufficient, and an additional per capita majority is not required. In line with the Directive, the transposition laws in Germany, Austria and France and the WHOA in the Netherlands provide the possibility of the *cross-class cram-down,* meaning that a dissenting group of creditors can be voted down. To protect the interests of outvoted creditor groups, Member States must ensure that they are treated at least as favourably as other groups of equal ranking and more favourably than any more junior group. In Austria, this "relative priority rule" is transposed in Article 36 of the Restructuring Code. By contrast, the German, French and Dutch laws apply the "absolute priority rule" which requires dissenting groups to be satisfied in full before a more junior group receives any distribution under the restructuring plan. This provides greater protection, but exceptions are expressly permitted.

Fresh money

The Directive requires Member States to protect new or interim financing against avoidance risks in particular. Safe harbour provisions of this kind are contained in the Dutch WHOA law, the Austrian Restructuring Code and the German StaRUG. Even before the Directive entered into force, the French legislator had incorporated a fresh money privilege into the *conciliation* proceedings, meaning that no amendments were required in this regard. Then during transposition of the Directive, an additional "post-money privilege" – which accords preferential treatment to funds provided to the company following commencement of insolvency proceedings – was also introduced. This prevents the deferral or reduction of such liabilities under a plan. This solution was introduced permanently for the standard proceedings provided for in the sixth book of the French Commercial Code and applies to funds provided

- for continued operation of the debtor's business, following approval by the judge supervising the proceedings,
- in connection with a plan confirmed by the court in standard proceedings or
- in connection with a plan amendment confirmed by the court.

28 Section 33 ReO.

29 Art. L626-30-2 Commercial Code.

30 Art. 381 lit. 7 WHOA.

Only public proceedings are compliant with the EU Insolvency Regulation

To be recognised Europe-wide, national preventive insolvency proceedings and insolvency practitioners must be included in the Annexes to the EU Insolvency Regulation. However, according to the definition in Article 1 of the Insolvency Regulation, this is only possible for public proceedings. Because section 84 et seq. (the provisions of the StaRUG governing publication) do not enter into force until 22 July 2022, the German proceedings cannot be included yet. In Austria, only the European restructuring proceedings are suitable for inclusion. The European Commission's Proposal[31] for a regulation of the European Parliament and of the Council replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings, which was published in May 2021, therefore does not affect any proceedings which originated from the Directive. In fact, the notifications submitted by Italy, Lithuania, Cyprus and Poland relate to national reform acts which contain proceedings which have not yet entered into force.

Race to Annex A … and the winner is …

By contrast, the Netherlands notified the public version of its preventive insolvency proceedings *(openbare akkoordprocedure buiten faillissement)* for inclusion in Annex A while its legislative procedure was ongoing. As in the German StaRUG, debtors in the Netherlands can opt for the public or confidential variant of the *akkoordprocedure* at the start of the proceedings. So for a long time, it looked as though these Dutch proceedings would be the first to enjoy automatic recognition across Europe, putting the Netherlands ahead in the race to be Europe's most attractive restructuring location. This was reckoning without the French legislator, however. When transposing the Directive, the French chose not to introduce new proceedings or even pass a new law. Instead, they merged the existing accelerated preventive restructuring proceedings, *sauvegarde accélérée*, with the semi-collective proceedings *sauvegarde financière accélérée*, which are limited to financial obligations, and brought the result into line with the Directive. The resulting restructuring framework, *sauvegarde accélérée,* was listed in Annex A to the EU Insolvency Regulation even before the reform, meaning that the proceedings as amended are now automatically recognised across Europe with no need for changes to the Annexes to the Insolvency Regulation – unlike with the Dutch WHOA or the German StaRUG.

Forum shopping redux?

Whether the inclusion of national proceedings in Annex A to the EU Insolvency Regulation will lead to a new age of forum shopping remains to be seen. For instance, the German and Austrian legislators have gone ahead and shortened the period of protection against enforcement for companies which relocate their head office less than three months before using StaRUG tools or applying for a prohibition on enforcement. Whether this was necessary, given the attractiveness of other restructuring jurisdictions, and whether this will prevent forum shopping, is questionable.

Patrick Ehret, Attorney-at-Law in Germany and France, heads the French Desk at Schultze & Braun. He advises companies on issues of German-French commercial and insolvency law.
Email: *PEhret@schultze-braun.de*

31 COM(2021) 231 final.

The Restructuring Practitioner

The restructuring practitioner (RP) sect. 73 – 79 StaRUG

Appointment by the restructuring court sect. 34 et seq.

Required/ex officio, sect. 73 to 76

- **Monitors** and **manages** the restructuring process to protect creditors

Optional/on application, sect. 77 to 79

- **Mediates** in and facilitates negotiations between the parties (liaison)

Attributes of the person, sect. 74 (1) (in conj. with sect. 78 (1))

- **natural** person
- **independent** of the creditors and the debtor
- **suitable** in respect of the individual case
- experienced tax advisor, certified public accountant, lawyer or other comparably qualified person
- chosen from among all those persons willing to undertake the office

Requirements, sect. 73

- Plan modifies or suspends enforcement of rights of **creditors meriting protection** (subs. (1) No. 1)
- Stabilisation order pursuant to sect. 49 applied for (subsect. (1) No. 2)
- Fulfilment of creditors' claims is to be monitored (subsect. (1) No. 3)
- Parties oppose the restructuring objective (subsect. (2))
- Appointment as an **expert** (subsect. (3))

Debtor, creditors and persons holding an interest in the debtor have a right of proposal, proposal is binding in some cases (sect. 74 (2))

Requirements, sect. 77

- Application by the **debtor**
- Application by a **group of creditors** holding 25% of the voting rights in a group pursuant to sect. 9 + declaration of assumption of costs

Debtor or a creditor representing all creditor groups have a right of proposal, proposal is binding in some cases (sect. 78 (2))

Duties, sect. 76

- **Duty to notify the court** of circumstances under sect. 33 (termination of restructuring case)
- **Managerial function** if appointed for creditor protection (subsect. (2)) regarding voting on the restructuring plan; verification of claims and working towards clarification regarding voting rights (No. 1)
- May be assigned specific powers to **review** the debtor's economic position and monitor its management (No. 2a); receive + make payments (No. 2b)
- If stabilisation order issued, ongoing **obligation to review** requirements for continuation of order and grounds for terminating (subsect. (3) No. 1) + assert grounds for termination (subs. (3) No. 2)
- Comment on declaration pursuant to sect. 14 (1) for plan confirmation purposes (subsect. (4))

Duty of optional RP pursuant to sect. 79

- **Assist** in drafting and negotiating the restructuring concept and the plan based on it

If requested, the court **can** also assign the optional RP duties under sect. 76 in conj. with sect. 77 (2).

- **Supervision** by the court sect. 75 (1)
- **Remuneration** sect. 80 to 83
- Removal sect. 75 (2) for good cause; **remedy**: immediate appeal
- **Liability** sect. 75 (4) in case of breach of duties pursuant to sect. 76; perform duties with required care and diligence of an RP

- **Supervised** by the court sect. 78 (3) in conj. with sect. 75 (1)
- **Remuneration** sect. 80 to 83, NB: appointed only after advance payment against expenses sect. 81 (5)
- **Dismissal** sect. 78 (3) in conj with sect. 75 (2); remedy: immediate appeal
- **Liability** sect. 75 (4), if duties pursuant to sect. 76 assumed

Rehabilitation Mediation

Rehabilitation mediation sect. 94 – 100 StaRUG

Appointment by the restructuring court sect. 34 et seq.

Requirements for appointment, sect. 94

- Debtor must not be **illiquid/overindebted**; imminent illiquidity permitted
- **Application by the debtor** with the information set out in sect. 94 (2)
  - object of the business
  - nature of the economic and financial difficulties
  - list of creditors
  - list of assets
  - debtor's declaration that it is not illiquid/overindebted

Attributes of individual appointed as rehabilitation mediator, sect. 94 (1)

- **natural** person
- **suitable**
- in particular, **experienced in business matters**
- **independent** of the creditors and the debtor
- not required, but advisable: experienced tax advisor, certified public accountant, lawyer or other comparably qualified person, as may subsequently be appointed as restructuring practitioner or administrator in insolvency proceedings

Debtor has right to propose a rehabilitation mediator, proposal has binding effect provided that the above requirements are satisfied

Duties, sect. 96

- **Facilitate** rehabilitation by **liaising** between the parties (subsect. 1)
  as a neutral intermediary (no representation of interests) based on a **relationship of trust** with the parties
- **Obligation to report monthly** to the court (subsect. (3)); at least the following information:
  - nature and causes of the economic and financial difficulties
  - group of creditors and other participants involved in the negotiations
  - subject and objective of the negotiations
  - likely progress of the negotiatio
- **Duty to notify the court** (but no duty to review) if rehabilitation mediator becomes aware that debtor is **illiquid/overindebted** (subsect. (4))

Confirmation of rehabilitation settlement, sect. 97

- **Application** by debtor for confirmation by the court (certification, content not reviewed)
- Confirmation **refused** (subsect. (1)) if
  - underlying rehabilitation concept is not coherent **or**
  - not based on actual circumstances **or**
  - has no reasonable prospect of success
- **Duty** of rehabilitation mediator (subsect. (2)): Comment on prerequisites/grounds for refusal
- **Avoidance** of settlement post-confirmation (subsect. (3)) **only under the conditions specified in sect. 90,** i.e. if
  - confirmation was based on incorrect/incomplete information provided by debtor **and**
  - the other party was aware of this

Miscellaneous

- **Supervision** by court, sect. 96 (5) sent. 1
- **Removal**, sect. 96 (5) sent. 2, for good cause; court must hear rehabilitation mediator before decision; no appeal
- **Remuneration**, sect. 98 (1), based on expenditure of time and materials; otherwise sect. 98 (2) in conj. with sect. 80 to 83
- **Dismissal**, sect. 99, on application (by rehabilitation mediator/debtor) or ex officio
- Transition to **tools of the stabilisation and restructuring framework**, sect. 100 (1), if used by the debtor
- Mandate terminated by **expiry of time**, sect. 95 (1)
- Appointment is **not published**, sect. 95 (2) – to protect the proceedings
- **No liability** for rehabilitation intermediary under the Act

The Franco-German draft European Business Code

By Urs Peter Gruber, professor at the University of Mainz and Jean-Luc Vallens, honorary judge, former associate professor at the University of Strasbourg

I. Introduction

1. The 2019 Aachen Treaty on Franco-German cooperation and integration

Further to a joint resolution adopted by the German Bundestag and the French Assemblée nationale on 22 January 2018 and a treaty on Franco-German cooperation and integration signed on 22 January 2019, a draft "European Business Code" was launched and overseen in France by the Henri Capitant association, chaired by Professor Dupichot (http://www.codeeuropeendesaffaires.eu).

This ambitious project covers all areas of business law (such as the law on security interests, competition, transport law and trademarks). Insolvency law is one area where harmonisation is feasible and helpful.

The European Directive as a driver of harmonisation

European legislators themselves would also like the laws to converge: in 2019, the European Union adopted a Directive on prevention and insolvency which requires Member States to adopt numerous common rules (Directive (EU) 2019/1023 of 20 June 2019). The countries have therefore amended (or are in the process of amending) their insolvency law: Germany, with the Act on the Stabilisation and Restructuring Framework for Businesses of 22 December 2020 (known as "StaRUG") and France with the Order of 15 September 2021.

It is therefore not only a question of harmonising two sets of laws but also of incorporating the guidelines imposed by the European legislator. To this end, the draft European code comprises a body of rules that extend beyond the binational context and may be proposed to other Member States. Practitioners in other countries (Spain, Italy and Luxembourg) have also been consulted. The 2019 European Directive has been an effective driver towards genuine harmonisation of domestic laws. Lastly, we must mention a recent European Commission initiative, proposing that Member States seek ever-closer harmonisation in various specific areas of insolvency law, with the purpose of improving foreseeability, reducing the risks of forum shopping and encouraging cross-border credit.

2. The structure of the draft

The draft code incorporates the traditional elements of insolvency legislation, using a structure that is compatible with the different domestic laws, although the rules on procedure and jurisdiction or sanctions may sometimes be dealt with in other texts. The draft code offers principles, but also gives each State's legislators a margin for assessment and adaptation. In fact, there are significant points of divergence (with regard to the respective powers of the courts and of creditors, priority, privileges and rights of creditors holding security). Insolvency proceedings are more closely linked in terms of procedural rules (the parties' participation in hearings, notice, right of appeal and deadlines).

Shared principles and room for manoeuvre given to States

To achieve a body of rules likely to win sufficient consensus, it was decided that several issues should be excluded: the rules applicable to corporate groups and very small businesses, the professional and criminal sanctions and also the rules of judicial organisation (while mentioning the creditors' meeting, determination by a competent judicial authority and the role of supervisory bodies), the rules of party representation and the specific rules for consumers or even the publicity methods.

Finally, wherever it can, the draft draws as far as possible on the provisions of the European Regulation on insolvency proceedings (EU) 2015/848 of 20 May 2015, together with the rules of territorial jurisdiction, individual notice to known creditors and the methods for filing claims.

3. Contributions from domestic law

The draft code proposes four different types of proceedings. At first glance, this may seem excessive to German legal practitioners, who have long been wedded to the unitary system of the insolvency code. However, it should be noted that, with the transposition of the 2019 directive by the aforementioned StaRUG introducing pre-insolvency proceedings, this unitary system of the insolvency code was finally abandoned in Germany. The structure of the draft code is not, therefore, as different from current German law as it first appears.

Four types of proceedings offered to distressed businesses

The following four types of proceedings are proposed:

– preventive out-of-court proceedings, inspired by conciliation proceedings and regulated in detail by book VI of the French Commercial Code and Title II of the European Directive of 20 June 2019 on prevention and insolvency law. From a German perspective, it is the equivalent of the "Sanierungsmoderation" (rehabilitation moderation) procedure that was recently introduced into German law through the StaRUG.

– court-supervised restructuring proceedings for distressed debtors, in the first instance mirroring safeguard proceedings in the event of financial difficulties, but now comparable to the "stabilisation and restructuring framework" in part 2 of the StaRUG.

– court-supervised rescue proceedings, similar to the proceedings governed by the French Commercial Code. From a German perspective, this can be compared to the process known as "direct management", accompanied by a draft insolvency plan contained in the eighth part of the German Insolvency Code.

– court-supervised liquidation proceedings, which apply to insolvent debtors where rescue does not appear to be possible.

It is envisaged that it will be possible to move from one set of proceedings to another at the initiative of the debtor, the supervisory body or the practitioner.

Preventive "out of court" proceedings

In addition to these proceedings, the draft code provides for the ability for distressed debtors to resort to amicable, preventive out-of-court proceedings. This is subject to the debtor notifying the court with jurisdiction that it is taking this step and applying to the court to obtain a stay of individual proceedings or the approval of a business restructuring agreement. This option is inspired by one of the provisions introduced into German law by the StaRUG.

II. General principles

1. The insolvency criterion

In the draft code, insolvency is defined as the debtor's inability to pay any undisputed debts that have fallen due. Insolvency determines whether a claim is admissible: if the debtor is already insolvent, court-supervised rescue proceedings apply. Where such a rescue does not seem possible, court-supervised liquidation proceedings apply. If, on the contrary, the debtor is not yet insolvent, it may choose between preventive out-of-court proceedings and court-supervised restructuring proceedings.

A single insolvency criterion

Unlike under current German law, debtors who are not yet insolvent are unable to place themselves directly in proceedings requiring insolvency, at their sole discretion. In the draft code, such an option seems superfluous because preventive out-of-court proceedings and, in fact, court-supervised restructuring proceedings already contain all the necessary tools to safeguard the business.

The insolvency criterion has been adopted because it is known in all legal systems (including France and Germany) and is relatively easy to define and apply. Nevertheless, the draft code does not use the (complex and controversial) criterion of the over-indebtedness of the business.

2. The debtor's powers during the insolvency proceedings

Supervised management by the debtor

One major distinction between contemporary insolvency laws concerns the rights of an insolvent debtor during the proceedings: it is a matter of supervising its powers as part of a rescue, for which the debtor is best able to prepare itself. Inspired both by the "debtor in possession" concept from the US Bankruptcy Code and self-administration under the German Insolvency Code, the draft therefore adopts the principle of a debtor's right to continue to manage its business. This concerns court-supervised restructuring and court-supervised rescue proceedings, as regards day-to-day management of the business. This management is overseen by a practitioner appointed by the judicial authority. The judicial authority can only appoint the insolvency practitioner as a "joint manager" as part of a court-supervised rescue, which the French code categorises as "assistance".

3. Management and termination of existing contracts

As a general rule, the commencement of collective proceedings has no direct impact on existing contracts. These will remain in effect by operation of law.

However, on certain conditions, debtors or even insolvency practitioners have the option to terminate a bilateral contract that has been performed only partially or not at all. In preventive restructuring or court-supervised rescue proceedings, this option is subject to the condition that the contract does not further the pursuit of the activity of the business or that its performance constitutes an imminent risk to the business and that it does not excessively damage the contracting partner's interests. The purpose of this rule is to seek to strike a fair balance between the interests of the creditor and the contracting partner.

However, the ability to unilaterally terminate certain contracts would be incompatible with the contracting partner's interests. In such cases, the termination right is removed and such contracts remain in effect by operation of law. This affects employment contracts and licensing agreements. Furthermore, the draft code provides for a specific rule for leases.

4. Verification of liabilities

Methods of notifying creditors and filing claims, inspired by the European Regulation on insolvency proceedings

An essential stage in insolvency proceedings, the verification of liabilities enables us to establish how indebted the debtor is and to prepare a restructuring plan. It is addressed in the draft code as part of court-supervised restructuring, rescue or liquidation proceedings. Notice to creditors is governed by reference to the corresponding provisions in the European Regulation on insolvency proceedings: notice in a legal publication and through an entry in an insolvency register and individual notice to known creditors. Each State is responsible for making regulations regarding the formalities and deadlines to be observed. The insolvency practitioner is exclusively responsible for notifying the creditors accordingly. It is proposed that the verification and acceptance of debts be entrusted to the insolvency practitioner, and that provision be made for its decisions to be appealed before the judicial authorities. Furthermore, as part of a court-supervised liquidation, the verification would only concern claims filed that are likely to be paid having regard to the estimate of the liabilities. The objective is to lighten the workload of the practitioner and judicial authority. The sanction for failing to file a claim is set by the domestic law of each State. This may also be the case for the requirement or dispensation from filing a claim, from which certain creditors, such as those owed maintenance or salaries, benefit under French law.

5. The realisation of assets

The insolvency practitioner is responsible for selling the debtor's assets and movable and immovable property rights under the supervision of the judicial authority or, if domestic law so provides, a creditors' committee. The insolvency practitioner may, with the authorisation of the judicial authority, sell the whole business or shares of the debtor company at any point in the proceedings.

III. Restructuring and rescue plans

1. Class formation

Restructuring and rescue plans play a key role. The draft code makes class formation compulsory where the distressed business has turnover and employee numbers greater than the thresholds set by domestic law.

Classes of creditors inspired by German law

The rules regarding class formation voting on a plan have been inspired by German law. Under the draft code, a distinction needs to be drawn between various categories of creditors: at least one class of preferential creditors (if preference is provided for by domestic law), a class of creditors holding security over assets and a class of non-preferential creditors. There may be another class consisting of public creditors and social bodies. Domestic law can provide for additional classes. Creditors in each class must receive equal treatment in proportion to their claims.

If classes of creditors are not put in place (below the thresholds set by domestic law) the insolvency practitioner will consult the creditors on the proposed restructuring plan. The judicial authority or, if domestic law so provides, the creditors' meeting, will rule on the draft plan. The intention behind this rule is to help small businesses to make use of a plan.

2. The required majorities; cross-class cram down

In the event of class formation, the judicial authority will approve the plan when the majority of classes have approved it by a majority representing two-thirds of the claims in question.

Where the required majorities have not been reached, a cross-class cram down may take place under the code. The agreement of a class of voting creditors is deemed to have been obtained if the following three conditions are met:

- the treatment reserved by the plan for members of this class does not appear to be less favourable than that from which they would benefit in the absence of the plan;
- the members of the relevant class will share equitably in the division of the financial value under the plan; and
- at least one of the classes, other than a class of holders of capital or any other class which, after the value of the business as a going concern has been determined, would have no right to any payment.

In the context of equitable sharing in the division of the financial value of the business according to the provisions of the plan, the absolute rule of priority applies: the agreement of a class of creditors that is not entirely satisfied by the plan may be replaced only where the plan would not provide for any payment for the members of the subordinated classes.

3. Conversion of debts into capital

Under the draft code, a plan may allow creditors to convert their claims into shares or corporate interests in the debtor company. In such cases, the shareholders form a class to vote on the restructuring or rescue plan. Where the vote rejects the plan, a cross-class cram down as described above would still be possible (III.2.).

4. Approval of the plan by the judicial authority

Approval of the plan may only be rejected in certain circumstances, particularly if the dissenting creditors are disadvantaged by the plan in terms of what they would receive in the event of a court-ordered liquidation, if these creditors suffer excessive, disproportionate or unjustified harm or if the plan does not respect the absolute order of priority unless the disadvantaged class voted in favour of the plan.

Approval of the plan by the judicial authority means that it is enforceable against everyone.

IV. Specific issues

1. Claims

The draft code is restricted to setting out general principles in accordance with which suppliers of goods may exercise a right to make a claim if they have not been paid when insolvency proceedings are commenced, where their right is based on a rental agreement, leasing agreement or sales contract with retention of title. The supplier must apply to the insolvency practitioner within the deadline for filing claims and the practitioner's decision may be appealed before the judicial authority.

However, the French Commercial Code limits the right to claim to assets that have not been paid for and to the resale price not yet paid by the subsequent purchaser, whilst German law allows suppliers to claim for unpaid goods in the hands of the subsequent purchaser. In light of the differences noted, the draft does not provide any more detail regarding the terms of a claim for the goods in respect of which claims may be made.

2. Actions to set aside

A compromise between the French and German approaches to actions to set aside an act

The regulations in relation to actions to set aside is based on striking a reasonable balance between diverging interests: on the one hand, the collective interest of creditors who seek to safeguard and increase the assets and on the other hand the protection of good faith and legal security. As a general rule, an act may be set aside if the debtor was insolvent at the date of the act and if, on that date, the creditor knew, or should have known, or if a claim to commence insolvency proceedings had been submitted.

The application to set aside is made by the insolvency practitioner even where the debtor or the manager has retained its authority over its assets and management of the business. The burden of proof lies with the practitioner. However, if the third party was a person who had preferential access to the debtor's financial information, it is presumed to have known about the debtor's insolvency. The act may only be challenged if it was made in the twelve months before the application to commence the proceedings.

In addition, in certain circumstances, it is envisaged under the draft code that there may be additional claims to set aside, particularly if the debtor intentionally caused detriment to its creditors or if the third-party beneficiary knew, or should have known, the debtor's intention (actions by creditors to have certain transactions by their debtors declared void as prejudicial to their interests). Furthermore, it is proposed that specific rules should be laid down for the debtor's free services or acts having procured a payment or security in relation to repayment of a loan from a shareholder.

3. The ranking of claims

The creditors' ranking varies depending on the domestic legal system. At present, the conditions for full harmonisation are not met. Drawing on the United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide, the draft code offers a general ranking which reflects most domestic systems, without taking a stance on the rankings provided for in each system of domestic law in more detail.

4. Employees' rights

Employee representatives' involvement in the proceedings

Under the draft code, proposed restructuring or rescue plans must be notified to the body representing employees. In France, this is the Social and Economic Committee. In particular, this body must be informed of offers relating to employment contracts and must be able to present its observations to the body governing the proceedings or the judicial authority. The detail is, of course, left to domestic law. It is also specified, following the example of the two domestic legal systems, that amounts owed to employees are unaffected by a plan and that the employees are, therefore, not part of the classes or groups of creditors called upon to vote on this plan.

The question of unpaid wage guarantees, in respect of which there are considerable differences between the domestic systems, is not addressed.

V. Closure of proceedings

1. Execution of the plan

The judicial authority gives the insolvency practitioner responsibility for taking the necessary action to implement the plan and to monitor its execution. The judicial authority will end the plan if the debtor does not comply with its obligations.

2. Discharge of debts

Discharge of debts aligned with the Directive with exceptions left in part to domestic law

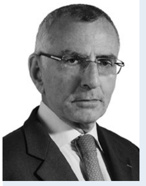
The discharge of debt mechanism has been introduced into several European legal systems, being influenced by English and US law. It operates at the end of liquidation proceedings relating to an individual entrepreneur. The discharge of debt mechanism has been part of domestic law for around 30 years. In France, it takes the form of a prohibition on creditors from pursuing individual proceedings and, in Germany, of releasing debtors from residual unpaid debts. The two legal systems differed regarding the procedure for the grant of such discharge. In France, it takes place automatically when the proceedings are closed and in Germany it follows a court decision at the end of a longer period during which the debtor has had to agree to transfer its revenue to its creditors. Under the Directive of 20 June 2019, alignment of these mechanisms is required within a maximum period of three years. The draft code naturally incorporates the European legislator's desired change. Exceptions are provided for, to take account of the debtor's behaviour (such as management failings and conviction for fraud) or the nature of the debts (such as maintenance claims). The draft code nevertheless chooses to give the States room for manoeuvre to tailor the exceptions applied to the general forgiveness of unpaid debts. Here, it is simply drawing from the European Directive and the US Bankruptcy Code, which allow each State to adapt exemptions to the discharge.

VI. Conclusions

The authors of the draft code are fully aware that there may be other conceivable solutions to the issues addressed and that the proposals will be subject to comment and criticism. This is natural and, indeed, desirable. This draft at least shows that Franco-German, or indeed European, harmonisation of insolvency law is possible.

This Franco-German draft is part of a recent strategy undertaken by the European Commission, known as Insolvency III, with the aim of identifying the areas of insolvency law where closer harmonisation is practicable.

Urs Peter Gruber is a professor at the University of Mainz. He teaches courses including private international law, procedural law and the law relating to distressed businesses. In private international law, he is a member of Deutscher Rat, an advisory group to the German Ministry of Justice. Within the Faculty of Law at the University of Mainz, he is responsible for international relations and directs integrated courses with partner universities in Dijon, Nantes and Paris Est Créteil Val de Marne. He has built up considerable teaching experience abroad, including in the USA, China, Japan, Turkey and France. In 2017, he was a visiting professor at Sciences Po (Nancy Campus) under the Alfred Grosser Chair programme.
Email: *gruberu@uni-mainz.de*



Jean-Luc Vallens holds a doctorate in law and is an honorary judge, specialising in commercial law and collective insolvency proceedings. He has been an Associate Professor (with accreditation to supervise research) at the University of Strasbourg. He has taught European law and international private law on the Master's course on distressed businesses, in Paris. He also teaches at the École Nationale de la Magistrature. He is a member of the Society of Comparative Legislation and INSOL Europe. A French expert advising the European Union, he was involved in drafting the EU Insolvency Regulation and in the drafting work on the European Directive on prevention and insolvency. He was France's representative to UNCITRAL in relation to the drafting of the Model Law on Cross-Border Insolvency and the Legislative Guide on Insolvency Law. He was a co-editor of Lamy Droit commercial.
Email: *vallensjl@ymail.com*

Prospects for recovery and digitalisation status

By Matthias Müller, MSc Finance and Information Management, BSc Economics, Volker Riedel, Graduate Degree in Economics, Tax and Accounting, and Dr Michael Rozijn, Attorney-at-Law in Germany and Certified Specialist in IT Law

Introduction

Over the last year, the German economy has faced one of its biggest challenges in decades. Studies show[1] that innovative companies are significantly more resilient to economic crises than non-innovative companies. The coronavirus has only confirmed this. Especially negatively affected were companies that were digital stragglers even before the pandemic. These companies were slow to develop the digital competences needed to sell products online or implement digital productivity measures such as those enabling staff to work effectively from home. The "German *Mittelstand* Digitalisation Index" survey[2] for 2020/2021 found that 80% of digital pioneers have weathered the coronavirus crisis well because their processes and business models were already extensively digitalised before the pandemic. By contrast, only 36% of other companies achieved comparable results.

Despite some initial "digital euphoria" early on in the pandemic, it seems that not all companies have moved forward with their digital transformation in the same way. A survey carried out by KfW in January 2021 found that while 33% of SMEs questioned had increased/initiated/resumed their digitalisation activities, another 33% had undertaken no activities at all, and 5% had reduced them.[3] Among companies existentially threatened by the crisis, a full 15% had reduced their digitalisation efforts or ceased them altogether. This may have been due to lack of funds.

But there is some hope: With speedy and modern restructuring, companies can treat the current situation as an opportunity and use digital transformation as a solid foundation for a successful turnaround. CFOs in particular are suited to the role of "digital transformer", because they are best placed to set growth incentives for innovation. In this article, we will show what factors need to be considered and how digital transformation affects commercial success over the medium to long term.

What does digital transformation involve?

Although digital transformation, through technology, is shaping change processes across entire industries and societies, it begins within companies. The fundamental requirement is for data to be converted from analogue to digital. This is followed by digital transformation of company processes. The data generated as a result can be analysed using business analytics methods and tools. Business analytics is defined as a process for determining facts based on data and algorithms. Business decisions can then be taken on the basis of those facts. It is important to note that digital transformation is a continuous process. There will always be new technologies which can be put to profitable use.

1 Leibniz Centre for European Economic Research (ZEW), "Innovative Companies are Resilient to Crises", 15 April 2020, https://www.zew.de/en/press/latest-press-releases/innovative-companies-are-more-resilient-to-crises.

2 Deutsche Telekom AG, "Digitalisierungsindex Mittelstand 2020/2021", December 2020 https://www.digitalisierungsindex.de/wp-content/uploads/2020/12/Telekom_Digitalisierungsindex_2020_GESAMTBERICHT.pdf.

3 KfW Research, "KfW-Digitalisierungsbericht Mittelstand 2020", March 2021 https://www.kfw.de/PDF/Download-Center/Konzernthemen/Research/PDF-Dokumente-Digitalisierungsbericht-Mittelstand/KfW-Digitalisierungsbericht-2020.pdf.

The benefit of data

Some economists now think of data as a third relevant factor of production alongside capital and labour. Many of today's most innovative companies, such as Netflix and Google, have data – used to create intelligent products and processes – to thank for their decisive competitive edge. Targeted measures to leverage a company's digital "data trove" offer management an opportunity to move away from heuristic-based decision-making, which is subjective and vulnerable to error, towards an objective, evidence-based approach. Business analytics methods can be used throughout the entire management cycle, from objective-setting through to steering the company.

On the financial side, the ability to tap new markets, launch innovative products and better satisfy customer requirements offer potential for top-line growth. Focussed data analysis allows weaknesses in process quality, reliability and speed to be identified, producing cost savings through to the bottom line.

Digitalisation matrix

Today, then, digital transformation is increasingly data-driven. But it takes more than data alone to steer a company to sustainable success. The following digitalisation matrix breaks down the most important factors.

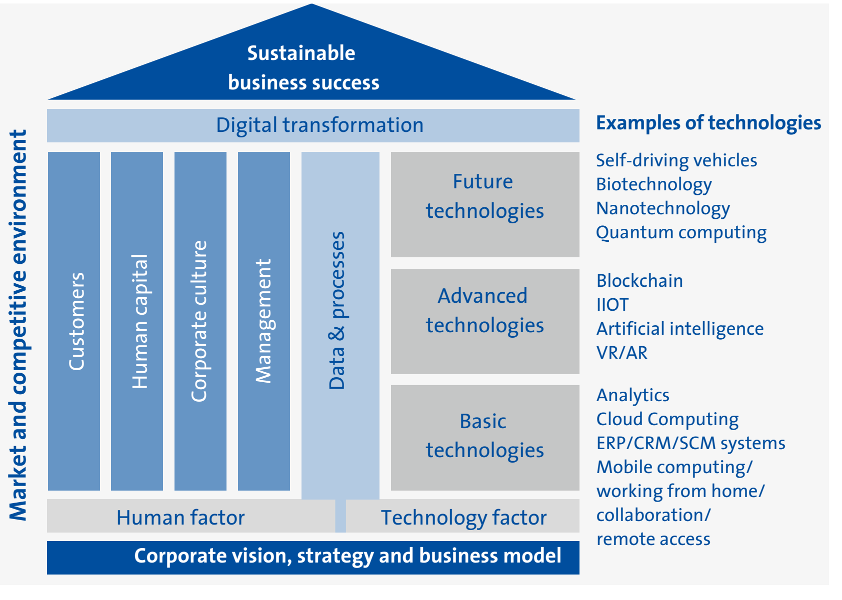


Figure 1: W&P digitalisation matrix

The cornerstone of any company is its business model, which is aligned with its vision and implemented via its strategy. The company will also be in a market-specific competitive environment. To achieve sustainable success, it must, alongside internal factors, keep a constant eye on current market dynamics and technological developments within that market. Within the company, the well-coordinated interplay between humans and machines (technology) is a key determiner of success.

Without a doubt, technology is the “enabler” of digital transformation. The right-hand side of the matrix, dealing with technologies, is divided into three sections. The most vital technologies – the basic technologies – take priority to begin with. To deploy advanced and future technologies profitably requires experience. To use artificial intelligence (AI), for example, lots of suitable, high-quality data[4] is needed. This requires modern enterprise resource planning (ERP) and storage systems, without which the data cannot be provided in the first place.

On the left-hand side are the people: the company’s employees and customers. It cannot be emphasised enough here that people, and not technology, always come first.

- The management are the starting point: they provide the incentives for innovative digitalisation and define and implement the strategy. A digital mindset, careful change management and a commitment to seeing the transformation through are essential.

- Next is a corporate culture that fosters innovation, where achievement is rewarded, risks can be taken and mistakes are allowed. The importance of culture in digital transformation cannot be stressed enough. Unfortunately it is frequently underestimated. The digital organisation of today is oriented towards creative entrepreneurship, and not just at management level. It is agile and characterised by flat hierarchies. Interdisciplinary collaboration and accountability are valued.

- The culture is shaped, lived and upheld by an organisation’s employees. They are the engine that keeps a company moving, and as such are the key to success. While the recruitment of “digital natives” (an attractive corporate culture is essential here) plays a major role, loyal, experienced employees must also be given the opportunity to learn and develop.

- Finally, alongside all of this, it is essential to take the customer experience as the starting point and work backwards to the technology from there. Not the other way round.

Data and processes form the central pillar of the matrix and are the element that connects people and technology.

- If a company’s employees are its engine, in the digital age, data is its fuel. Data provides facts which can be used to make profitable decisions. To use data effectively requires both the right technologies to generate, gather and store the data and the people to analyse, interpret and model it, again using technology.

4 “Lots” means “big data” or “bulk data”.

– Efficient, effective and precisely controlled processes form the second component of this pillar. Operational excellence, again at the interface between people and technology, is the name of the game here. Modern digital process analysis, using process mining and analytics, for example, enables data-related weaknesses in end-to-end processes to be identified and remedied.

Digital transformation in business recovery

How is digital transformation of benefit in business recovery? In general, the purpose of recovery efforts is to ensure that a company can remain in the market profitably for the long term. In preparation, it must be determined whether the organisation is capable of recovery and whether recovery is worthwhile. For these to be the case, it must be possible for the company to return to competitiveness and profitability in the relevant market.

Stages of a crisis

Experience has shown that many companies are in need of recovery because they failed to embark on the process of digital transformation early enough. In a stakeholder/strategy crisis, such companies will have neglected to define a (coherent) digitalisation strategy and make investments. In a product and sales crisis, their competitors will be closer to the market and the needs of customers. The shortcomings become even more apparent when an "earnings crisis" arises, because analogue processes will be ineffective and inefficient and cost structures uncompetitive.

At the liquidity crisis stage, it is almost too late to embark on the transformation that is so urgently needed. Inadequate cashflows and lack of trust on the part of shareholders and creditors make it more difficult to find the liquid funds needed to make investments.

The more advanced the crisis is, the more complex the turnaround process will be and the more challenging it will be to incorporate digital transformation into that process. It is imperative to do so, however, in the interests of long-term competitiveness in particular. Otherwise, the company will once again be at risk of being left behind by the market post-recovery. Additionally, modern business analytics tools with sufficient data to work with will provide companies with rapid insight into the situation they are facing and enable them to develop a robust response. Speed, transparency and reliability create trust.

Digitalisation score and financing score

A modern recovery process geared towards long-term success will, alongside the "traditional" aspects of financing and restructuring, also take into account digitalisation of a company from both a strategic market perspective and an operational, value-creation perspective. The aim is to restore competitiveness while also gaining the trust of all stakeholders in the recovery effort, which will significantly improve the chances of success.

The scoring model shown below can be used to shed light on a company's financial strength and digitalisation status. The "digital transformation score" analyses and assesses the current situation and any untapped potential in detail against criteria taken from the digitalisation matrix. At the same time, the "financing score" rates the company's financial strengths. It evaluates earning power and identifies the potential of possible forms of financing required for investment.

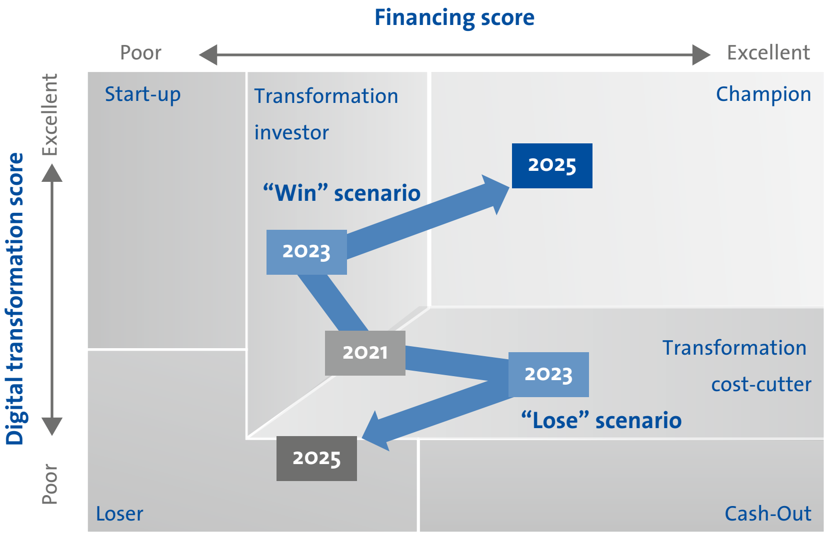


Figure 2: Digitalisation scenarios and W&P scoring model

The scoring model shows the trade-off between the short-term cost of investments and the medium-to-long-term competitiveness that digital transformation of a company's business model brings. In the "win" scenario, a company's financial strength may dip in the short term due to necessary investments and the resulting reduced net financial flows, increased debt and/or reduced debt-to-equity ratio, but the longer term outlook is more promising. In the "lose" scenario, the company's financial strength is stabler in the short term. But this security is deceptive, as over the long term a less innovative company will have weaknesses on the sales and cost sides, which will result in a downward spiral of crises and, in the worst case, insolvency.

Legal position of recovery/ transformation

Over the years, the courts have outlined the requirements that recovery reports and concepts must satisfy in order to stand up in court and so protect management and lenders in particular from liability and avoidance claims and prevent regulatory breaches or criminal insolvency offences. Recovery concepts, and therefore recovery reports, will increasingly address the subject of digitalisation in future. Given the importance of digitalisation for a company's future viability, our interpretation of the requirements of the courts regarding recovery concepts leads us to believe not only that digitalisation-related aspects can contribute to successful recovery, but also that failing to take account of such issues at all, or paying them short shrift, may today already lead to a recovery concept being found to be inadequate or lacking in coherence.

While recovery concepts only become relevant when a company enters a crisis situation, the Act on the Stabilisation and Restructuring Framework for Businesses (*Unternehmensstabilisierungs- und restrukturierungsgesetz*, StaRUG), which transposes the EU Preventive Restructuring Directive and entered into force on 1 January 2021, introduced a general obligation to detect crises at an early stage. Section 1 (1) StaRUG requires the management of entities with limited liability to put in place a system for risk monitoring and early identification of crises, and to continuously keep track of developments that may jeopardise the continued existence of the undertaking. The term "early warning system" is not defined in the StaRUG or in the EU Directive. However, once a company is above a certain size, a system ensuring continuous, rolling monitoring is almost inconceivable without digital support.[5]

Legal requirements applicable to recovery concepts

If insufficient digitalisation is the direct cause, or an important cause, of the crisis that a company finds itself in, this must be specified when analysing the situation and identifying the causes of the crisis. The Federal Court of Justice (*Bundesgerichtshof*) views an analysis of the company's financial position in relation to the relevant industry and the identification of any performance-related causes of the crisis as indispensable components of a recovery concept.[6] If insufficient digitalisation is a direct cause of the crisis, therefore, the recovery concept must set out measures to remedy it. Insufficient digitalisation can be expected to be an increasingly frequent driver of crises necessitating recovery efforts.

But even if insufficient digitalisation is not (yet) a direct cause of a company's crisis and the analysis of the company's financial position as required by the courts determines that other performance-related or purely financial factors are to blame, it is still normally the case that greater attention needs to be paid to digitalisation. The Federal Court of Justice not only requires a recovery concept to contain a positive going-concern forecast; the measures envisaged must also be capable of achieving a sustainable recovery and restoring the company to profitability.[7] Taken as a whole, the measures set out in the recovery concept must be objectively capable of producing a thorough recovery within a reasonable period.[8] A level of digitalisation which no longer meets the requirements of the sector concerned will increasingly be a significant hindrance to sustainable recovery after the immediate crisis is dealt with. This is all the more true in light of the accelerating pace of transformation that the coronavirus pandemic has triggered in some sectors. Paralleling the tension between digitalisation and finances illustrated by the scoring model discussed above, it is possible for a choice not to invest in digitalisation to positively affect a company's short-term financial and liquidity position, and thus the going-concern forecast, while also undermining competitiveness and thus prospects for sustainable recovery over the medium term.

Digitalisation and IDW S 6

Recovery reports and concepts are frequently prepared in accordance with the standard Requirements for Recovery Concepts (IDW S 6 – 2018) (*Anforderungen an Sanierungskonzepte (IDW S 6* – 2018)) of the Institute of Public Auditors in

5 *Schwintowski*, Das neue Frühwarnsytem nach § 1 StaRUG, NZG 2021, 901 (905).

6 See Federal Court of Justice (BGH), judgment of 4 December 1997 – IX ZR 47/97, ZIP 1998, 248 (251); BGH; judgment of 12 May 2016 – IX ZR 65/14, ZIP 2016, 1235 (1236).

7 Federal Court of Justice (BGH), judgment of 12 May 2016 – IX ZR 65/14, ZIP 2016, 1235 (1236).

8 Federal Court of Justice (BGH), judgment of 21 November 2005 – II ZR 277/03, ZIP 2006, 279 (281).

Germany (IDW). Standard IDW S 6 seeks to reflect all requirements relating to recovery concepts found in the rulings of the Federal Court of Justice and the lower courts and provide specific information for businesses.[9]

In response to the Federal Court of Justice's requirement that a recovery concept must be aimed at and geared towards a thorough recovery of the undertaking concerned, standard IDW S 6 provides for a two-stage approach to determining whether a company is capable of recovery.[10] The first step involves determining whether the forecast regarding a company's prospects for survival as a going concern is positive, and in the second step, ascertaining the prospects for long-term continuation or competitiveness on the basis of that forecast. For the purposes of the standard, an undertaking is competitive if it has a viable business model, marketable products or services, capable employees, qualified management, functioning processes and the ability to change and adapt.[11]

In light of the particular – and growing – importance that digitalisation already has in many industries, the most recent version of standard IDW S 6, which dates from 2018, explicitly refers to the challenges of digitalisation, albeit only as an example depending on the company's business model. Regarding the internal and external analysis of the company's position, for example, IDW S 6 requires an estimate of the extent to which the company is likely to be able to adapt to the challenges of digitalisation within a reasonable timeframe.[12] Elsewhere in IDW S 6, digitalisation is also mentioned in connection with the criterion of competitiveness. It states that alongside employee potential, competitiveness is also frequently founded on *"the company's ability to change and adapt to external developments (in connection with the challenges of digitalisation, for example)*".[13]

Where the situation is not clear in a particular case, it would appear advisable to at least state in the recovery concept whether digitalisation is a key factor in the undertaking's business model. If it is, further explanations regarding the degree of dependency on digitalisation, the current status and the prospects for achievement of an adequate level of digitalisation will be expected. To ensure a systematic and robust basis for these statements, it is advisable to use structured methods to analyse digitalisation status. Various methodologies and services are available, including online self-assessments and benchmarking approaches.[14] As long as the method selected is not unsuitable, generally or in the specific case at hand, it will have no bearing on the legal assessment under insolvency law. The scope of the description and the level of detail it provides will vary from case to case, depending on the size of the company concerned and the importance of digitalisation for the relevant industry and business model.

9 F&A zu IDW S 6, 16 May 2018, point 2.6, with a synopsis of requirements of the courts and the corresponding rulings and how they are reflected in IDW S 6.

10 IDW S 6, 2.2., para. 24.

11 IDW S 6, 2.2 para. 25; F&A zu IDW S 6, 16 May 2018, point 5.1.

12 IDW S 6, 3.3. para. 60.

13 IDW S 6, 2.2. para. 25.

14 *Exler,* "Vierte industrielle Revolution" im Mittelstand: Der Digitalisierungscheck im Sanierungsgutachten, EXISTENZ Magazin 2019, 17, 19-20.

Justiciability of failure to take adequate account of digital aspects

This raises a question: at what point can failure to take account of a company's digital positioning, or doing so inadequately or inaccurately, result in a recovery concept being considered to lack coherence, and to what extent can this question be examined in court? As far as we can determine, there are no court rulings relating to consideration of digitalisation status in a recovery programme. This is surely partly due to the fact that a failure to assess an organisation's digitalisation status in a recovery concept, or a flawed assessment, must be blatant in order for a party entitled to make an application (insolvency administrator, creditor) to use it as the basis for a compensation claim and grounds for an action to that effect. Evidence of this will generally be unavailable, due partly to the lack of unified standards.

Regarding recognition of the starting position and forecasts regarding feasibility, the Federal Court of Justice applies the standard of the "impartial industry expert".[15] For example, it requires poor prospects for the relevant industry to be taken into account when developing a recovery concept.[16] The perspective of an impartial industry expert can also be applied when assessing digitalisation status, which will normally mean commissioning reports from court-appointed experts. As the choice of recovery measures and trends in the competitive environment are based on forecasts, the expert will often need to assess only whether the description, analysis and forecast are sufficiently well founded and coherent in terms of the facts, and whether the planned digital equipment and orientation measures and associated estimates are clear and justifiable. Other than in cases where digitalisation is addressed on an incorrect factual basis or ignored altogether, or cases in which the subject is addressed using means which are clearly unsuitable or inadequate, the procedural hurdles to showing a flaw in the recovery concept in relation to digitalisation status would probably be relatively high. Accordingly, it can be assumed that despite its major importance for successful and sustainable recovery, digitalisation will, for the time being, play a secondary role as far as the courts are concerned.

Conclusion

The rulings of the courts, standard IDW S 6, and the legislation all reflect a clear trend: a company's digitalisation status is becoming increasingly important for both avoiding and overcoming business difficulties. Obligations relating to a minimum standard of digitalisation depending on a company's size, legal form and industry can be drawn both from the rulings of the courts regarding recovery concepts and from the latest version of standard IDW S 6. In requiring the establishment of early warning systems, the EU Restructuring and Insolvency Directive and the German StaRUG also establish requirements which will often demand digital support. But no specific conclusions regarding any yardstick for digitalisation can be drawn from these, which will make it extremely difficult to test these obligations and requirements in court.

Even so, an in-depth digitalisation-focussed analysis of a company's business model and processes from a business perspective is already essential for ensuring a robust recovery concept. A forward-looking digitalisation strategy will not

15 Federal Court of Justice (BGH), judgment of 4 December 1997, op. cit. page 251.

16 Federal Court of Justice (BGH), judgment of 4 December 1997, op. cit. page 252.

only impact a company's success over the medium to long term; it will also significantly influence the immediate outcome of a recovery programme. Only robust business models can generate the vital trust on the part of the relevant stakeholders, namely creditors, banks, and investors.

Matthias Müller, MSc Finance and Information Management, BSc Economics, supports clients with projects on all aspects of recovery, restructuring, financing and insolvency. His area of specific focus is on issues arising at the interface between law and business.
Email: *Mueller.Matthias@wieselhuber.de*

Volker Riedel, holder of a graduate degree in economics, tax and accounting, is Managing Partner at Dr. Wieselhuber & Partner GmbH and advises family-run businesses, investors and insolvency administrators on challenging financing issues, restructuring and commercial solutions in insolvency-related situations.
Email: *Riedel@wieselhuber.de*

Dr Michael Rozijn, Attorney-at-Law in Germany and Certified Specialist in IT law, heads the Schultze & Braun Dutch Desk and works in the commercial law and restructuring field. He specialises in IT law, particularly software and licence agreements, insolvency and restructuring law, and company and contract law.
Email: *MRozijn@schultze-braun.de*

Self-administration proceedings following the legislative reform – practical impacts for self-administration and supervision

By Dr Jürgen Erbe, MBA, Attorney-at-Law in Germany and Certified Specialist in Insolvency Law, and Christoph Wehr, Bachelor of Arts (BA) in Business Administration and Master of Arts in Finance, Accounting, Corporate Law and Taxation

Access to the "new" self-administration proceedings

Among the changes introduced by the Act on the Advancement of Restructuring and Insolvency Law (*Sanierungs- und Insolvenzfortentwicklungsgesetz*, SanInsFoG) were a number of amendments to the Insolvency Code (*Insolvenzordnung*, InsO). This article focusses on the amendments to the Insolvency Code which affect self-administration, and looks in particular at select challenges relating to the practical application of these provisions.

Self-administration "merit"

The conditions for access to self-administration, which relate to the debtor's past conduct, are set out in section 270b (2) Nos. 1 to 3 InsO:

– No. 1: There must be no known circumstances indicating that there are substantial payment arrears owed to employees or other creditors specified in section 270a (2) No. 1.

– No. 2: During the last three years prior to the application for commencement of insolvency proceedings, no enforcement or realisation prohibitions pursuant to the InsO or the Act on the Stabilisation and Restructuring Framework for Businesses (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*, StaRUG) must have been ordered for the benefit of the debtor.

– No. 3: The debtor must have complied with its disclosure obligations under commercial law in the last three years prior to the application for commencement of insolvency proceedings.

Based on this information, the court will draw conclusions as to whether successful self-administration is possible.

Failure to fulfil one or more of these criteria will not immediately result in refusal of the debtor's application. A preliminary supervisor can still be appointed if the debtor is expected to be willing and able to align its management with the interests of creditors.

Involvement/ consultation of the creditors' committee

Much will depend on the position taken by the preliminary creditors' committee, if one is appointed, regarding the application for self-administration. The fact that the wording of section 270b (3) InsO limits the involvement of the preliminary creditors' committee to the situation set out in section 270b (2) has attracted criticism and is viewed in some quarters as a systematic error on the part of the legislator.[1] Rather, it is argued, the creditors' committee should always be involved in the decision to order self-administration, in line with the legislator's aim of strengthening creditor involvement. Limiting participation to the cases set out in subsection (2) means that the preliminary creditors' committee can give its view only in contentious cases. This restricts participation in comparison with the previous law – even though the intention was to extend it.

A decision pursuant to section 270b (2) InsO can be rendered without hearing the preliminary creditors' committee only if two business days have elapsed since the application was lodged or if a decision is needed urgently because prejudicial changes in the debtor's financial position are likely.

If the creditors' committee is unanimously in favour of self-administration, the court will be bound by the application for self-administration in spite of any "defects" in the application as set out in section 270b (2) InsO. Self-administration may not be ordered if the creditors' committee is unanimously opposed to the self-administration. This is new: Prior to the reform, a resolution to reject self-administration was not regarded as binding, but frequently served as an important guide to the court in its decision.

Pursuant to section 270b (3) sentences 3 and 4 InsO, a unanimous vote (per capita majority) by the preliminary creditors' committee is binding on the court. However, this raises the question of what criteria the creditors' committee can base such a decision on.[2] In the short time available, not all creditors' committee members will be able to examine the application requirements, notably the self-administration strategy, and reach a decision for or against self-administration accordingly. However, according to the strict wording of the provision, the court has no scope for review and discretion. So it remains to be seen how frequently preliminary creditors' committees will reach unanimous decisions if these are not entirely free of liability risks for them.

From a practical perspective, the two-day limit is certainly ambitious.[3] Because it begins to run when the application is lodged, it also encompasses the time available for the preliminary creditors' committee to form in the case of self-administration.

Application for self-administration: new requirements

The core of the application for self-administration is the self-administration strategy. This has a number of components: the financial plan, the implementation concept, an account of the status of negotiations, a description of arrangements put in place by the debtor, and the cost comparison.

Financial plan

Detailed requirements regarding the content of the financial plan, which must cover a period of six months and must be submitted with the application, are not provided for in statute.[4] Instead, generally accepted standards of business

1 *Blankenburg*, ZInsO 2021, p. 753 (758); *Frind*, NZI 2020, p. 865 (870).

2 *Frind*, NZI 2020, p. 865 (870).

3 See *Frind*, NZI 2020, p. 865 (868), who says that this is "impractical"; alternative opinion: *Schluck-Amend*, NZI Beilage 1/2021, p. 88 (89).

4 Braun/*Riggert*, InsO, s. 270b para. 6.

management apply, with due regard for the specific demands of insolvency. Accordingly, a month-by-month financial plan will usually be sufficient, though independently of this a more precise week-by-week plan will need to be prepared for the purposes of fine-tuning liquidity in preparation for the proceedings.

The financial plan must show that it will actually be feasible to conduct the insolvency proceedings by way of self-administration as intended while also safeguarding the liquidity of the (future) insolvency estate. This forecast – as is usual – must show incomings and outgoings that are more likely than not to materialise.

This means on the one hand that it must include payments from customers, materials received and other incomings and take into account the effects on these of an application for commencement of insolvency proceedings – such as demands for advance payment and the loss of factoring as an option. The plan must also consider the effects arising from insolvency pay and insolvency estate loans (i.e. new loans granted after commencement of insolvency proceedings) and “artificial” insolvency estate loans (funds from other sources used to continue operations), assuming these are likely to come into play. On the other hand, the costs of the (preliminary) proceedings – such as consultancy fees, the supervisor’s remuneration and court costs – must also be considered.

Because the requirement is for a plan showing cash going out and coming in, from a purely practical perspective it should be derived from a monthly income statement forecast, as this will be compatible with the performance indicators used by the debtor’s financial accounting department and so enable planning to be solidly based in the debtor’s own accounting practices. Although an income statement forecast of this kind is not explicitly required, it is, together with a pro forma balance sheet, a convenient way of providing the “detailed description of [...] financing sources” required by section 270a (1) No. 1 InsO and showing how the debtor intends to continue trading without eroding the insolvency estate.

This means, for example, not disposing of any fixed assets necessary for continuation of operations or financing loss-making operations by selling off inventory.

In all cases, the plan must address and describe sources of funding. At the time the financial plan is prepared, it must be more likely than not that the sources of funding, such as an insolvency estate loan, will be available, but they do not need to be certain.[5]

The plan must also be based on reliable and up-to-date figures. To ensure that it is, the debtor will need to look at its accounting processes, for example, to determine whether all of its invoices are being posted promptly, and review the master records of debtors and creditors from which payment due dates can be derived.[6]

5 BT-Drucks. (Bundestag Printed Matter) 19/24181, p. 204; *Blankenburg*, ZInsO 2021, p. 753 (755).

6 *Steffan/Oberg/Poppe*, ZIP 2021, p. 617 (624).

As in law the financial plan covers a period of just six months, it will not necessarily cover the entirety of the insolvency proceedings until termination and so cannot rule out a deficit arising beyond that period. In practice, therefore, the financial plan will need to show that operations are not expected to erode the insolvency estate on an ongoing basis after commencement of proceedings during the planning period, and thus that no shortfall is expected during the proceedings thereafter. On the other hand, a temporary consumption of assets (normally early on) which enables the debtor to continue to trade in a way that produces a better outcome for creditors than standard proceedings (e.g. because it will generate surpluses down the line or improve the financial condition in the event that the undertaking is sold) may be tolerated, subject to ongoing comparison with the plan or the reorganisation concept.

Reorganisation concept

The reorganisation concept required pursuant to section 270a (1) No. 2 InsO must set out the causes of the crisis and describe the measures envisaged to overcome that crisis and achieve the objective of the self-administration. This is not the same thing as a recovery report to standard IDW S6 of the Institute of Public Auditors in Germany (IDW).[7] The content and scope of this concept are not explicitly set out in law and will be determined by the size and specific circumstances of the undertaking concerned.[8]

Description of status of negotiations

The reorganisation concept must also state to what extent the measures under consideration have previously been discussed with creditors. If there has not yet been any discussion with creditors, this must also be stated. The explanatory memorandum to the SanInsFoG does not mention any negative legal consequences in this latter case.[9] Even before the legislative reform, however, it was generally agreed that self-administration against the will of key stakeholders or without their knowledge is not normally appropriate.

Comparative cost calculation

An application for self-administration must also include a description of any additional or lesser costs that will be incurred during self-administration in comparison with standard proceedings and in relation to the insolvency estate. This comparison must, firstly, contrast the expected procedural costs determined on the basis of a statement of assets and liabilities (supervision costs, court costs) for preliminary and commenced proceedings, i.e. supervision versus insolvency administration, and secondly, in the case of self-administration, must show the advisory costs that will be incurred for performance of standard tasks, such as insolvency advice, handling of rights to segregation and separate satisfaction, or updating the plan accounting documents. From the perspective of the court and the insolvency creditors, self-administration must ultimately be no more expensive than standard proceedings, unless continued operation of the debtor undertaking will generate value that compensates for any greater cost, or else increases the insolvency estate and thus enables higher dividends to be paid on claims.

7 Braun/*Riggert*, InsO, s. 270a para. 4; *Steffan/Oberg/Poppe*, ZInsO 2021, p. 1116 (1120).

8 BT-Drucks. (Bundestag Printed Matter) 19/24181, p. 204; *Blankenburg*, ZInsO, p. 753 (756).

9 Explanatory memorandum to the bill, BT-Drucks. (Bundestag Printed Matter) 619/20, p. 238.

Arrangements to ensure compliance with duties under insolvency law

An applicant undertaking must set out in its application how it will ensure compliance with the provisions of insolvency law and its obligations under that law. Normally – and also because the legislator has now introduced more stringent requirements – a debtor will draw on external support from an advisor experienced in insolvency matters. In its application the debtor can document its intention to work with such an advisor during self-administration and which tasks will be handled by the advisor.

Conditions for access not satisfied

If there are defects in the application which cannot be remedied even after the debtor is allowed a period to do so (section 270b (1) sentence 2 InsO), and the requirements for interim self-administration are not satisfied, the debtor will be given the opportunity to withdraw the application (section 270c (5) InsO). The InsO provides this option only where the debtor is facing imminent illiquidity. The question therefore arises of how the court can assess whether a debtor was merely facing imminent illiquidity, given that its application was deemed inadequate.[10] In practice, this will only be possible by generous interpretation in favour of the applicant in case of doubt.

If a debtor does not withdraw an admissible application for commencement of insolvency proceedings but the requirements for interim self-administration are not satisfied, a preliminary insolvency administrator must be appointed.[11]

Particular requirements for the protective shield

The protective shield procedure has been retained as a subcategory of interim self-administration. The strict differentiation between the two has been abandoned, however. This appears appropriate, as the protective shield procedure has always been a subtype of preliminary insolvency proceedings. The fact that this was couched in rather nebulous terms in some press reports makes no difference to this.

As before, however, an application for use of the protective shield must always be accompanied by a statement that the debtor is not yet illiquid but that illiquidity is imminent. On the other hand, overindebtedness can already have occurred, but in this case it must be ensured that the planned reorganisation does not clearly lack any prospect of success (section 270d (1) InsO).

Under 270d (2) InsO, an applicant debtor can propose a particular person as preliminary supervisor, but the person who issued the statement cannot be appointed as preliminary supervisor or supervisor. The court can deviate from such a proposal only if the person proposed is clearly unsuitable for the role. The court must give written reasons for its decision. As a remedy to this decision is not explicitly provided for, this obligation to state grounds and any deviation from the debtor's proposal are not justiciable – as was already the case in 270b (2) sentence 2 of the previous version of the InsO.[12]

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10 *Blankenburg,* ZInsO 2021, p. 753 (762).

11 *Blankenburg,* ZInsO 2021, p. 753 (762).

12 Hamburg Local Court (*AG Hamburg*) NZI 2013, p. 903; *Gutmann/Laubereau,* ZInsO 2012, p. 1861 (1864); Uhlenbruck/*Zipperer,* InsO, s. 270b para. 63; alternative opinion: Hamburg Higher Regional Court (*OLG Hamburg*), order of 23/05/2014 – 2 VA 5/13; *Sämisch,* ZInsO 2014, p. 1312 (1314).

In summary, we note that the advantages of the protective shield procedure are twofold. Firstly, the debtor can "bring along" a supervisor, which in practice is a significant advantage for shareholders, who often feel that filing an application for self-administration means putting the fate of "their" company in strange hands. Secondly, the protective shield procedure continues to be attractive from a communications perspective.

Termination/ revocation of (interim) self-administration

Termination of interim self-administration is governed by 270e InsO, while revocation of self-administration during the main proceedings is governed by section 272 InsO. The rules for termination/revocation during both phases of the proceedings are almost identical. The grounds for termination in section 270e InsO apply both to the protective shield procedure and to interim self-administration proceedings.

Termination of interim self-administration is new. Previously the law only provided for termination during the protective shield procedure and termination following commencement.

Termination during preliminary proceedings

Pursuant to section 270e (1) InsO, a serious breach of obligations under insolvency law or unwillingness or inability on the part of the debtor to align its management with the interests of creditors are general grounds for termination of interim self-administration. Section 270e (1) InsO lists a number of examples, but the words "in particular" make it clear that they are not to be viewed as exhaustive.

The examples are: a deficient self-administration strategy based on inaccurate facts or a breach of the duty to inform the court (section 270e (1) No. 1a InsO), incomplete or flawed bookkeeping (section 270e (1) No. 1b InsO), and hampering of enforcement of liability claims (section 270e (1) No. 1c InsO).

Interim self-administration can also be terminated if defects in the self-administration strategy are not remedied within the period of time set (section 270e (1) No. 2 InsO) or the reorganisation sought is found to have no prospect of success (section 270e (1) No. 3 InsO).

Pursuant to section 270e (4), the preliminary creditors' committee must be given the opportunity to make representations prior to a decision pursuant to section 270e (1) No. 1 or 3 InsO. A decision may be rendered without representations from the creditors' committee only under the conditions set out in section 270b (3) sentence 3 InsO, as previously described.

As section 270e (1) Nos. 4 and 5 InsO provide that interim self-administration must also be terminated if applied for by the preliminary supervisor with the approval of the preliminary creditors' committee, by the preliminary creditors' committee, or by the debtor, it must be assumed that the grounds set out in points 1 to 3 lead to termination ex officio.[13]

13 See also Braun/*Riggert*, InsO, s. 270e para. 3.

Pursuant to 270e (2) InsO, a single insolvency creditor or creditor entitled to separate satisfaction can also apply for termination of interim self-administration. In this case, however, grounds for the application must be given, and it must be demonstrated to the satisfaction of the court that the requirements for self-administration are not met and that there is a threat of significant detriment to the creditor making the application if self-administration continues. The debtor must be heard prior to termination. An immediate appeal may be brought against the court's decision (section 270e (2) sentence 3 InsO).

Revocation following commencement

The revocation of self-administration following commencement of proceedings is governed by section 272 InsO. The grounds for revocation are essentially the same as those set out in section 270e InsO. The only addition, in section 272 (1) No. 3 InsO, is that revocation of self-administration can also be requested by the creditors' meeting with the majority specified in section 76 (2) InsO.

Conclusion

In summary, the rules around ordering and termination of interim self-administration are now much more detailed. Some of these rules could be improved, both in their wording and in terms of their practical impact. It remains to be seen how suitable they prove to be in their application.

In particular, the enhanced requirements regarding submission of documents and preparation of a financial plan will have the effect of impeding access to self-administration in smaller proceedings. This will be due not least to the increasing advisory costs that will accompany the enhanced requirements, as a result of which self-administration proceedings will be possible only under certain circumstances.[14]

Dr Jürgen Erbe MBA, Attorney-at-Law in Germany and Certified Specialist in Insolvency Law, heads the Mannheim office of Schultze & Braun. The main focus of his work is acting as (preliminary) insolvency administrator and as (preliminary) supervisor in self-administration proceedings. He also advises management in self-administration proceedings. Dr Erbe is regularly appointed as insolvency administrator by the courts in Mannheim, Heidelberg, Darmstadt, Ludwigshafen, Aschaffenburg and Worms.
Email: *JErbe@schultze-braun.de*

Christoph Wehr has supported companies in distress from Schultze & Braun's Berlin office, with a particular focus on business consultancy, since 2014. He plans and implements recovery concepts, both pre-insolvency and during self-administration proceedings. He previously worked in venture capital and as sales director for several locations of a retail chain.
Email: *CWehr@schultze-braun.de*

14 See also *Erbe*, NZI 2021, 753 et seq.

The property sector – the CO_2 debate as disruptive event

By Christian Alpers, Certified Business Accountant (Dipl.-Betriebswirt), Certified Property Valuer (IHK) and partner at Falkensteg GmbH, and Rüdiger Bauch, Attorney-at-Law in Germany and Certified Specialist in Insolvency Law

ESG criteria

The abbreviation "ESG" is encountered more and more frequently, in the property sector as elsewhere. It stands for ***E**nvironmental, **S**ocial, **G**overnance*. *Environmental* of course refers to environmental matters, *Social* relates to social responsibility, and *Governance*, meaning corporate governance, concerns an organisation's leadership and management culture. Together they mean a sustainable investment which takes account of environmental and social concerns and is subject to responsible governance. This article looks at the "E" in ESG, the environment.

Environmental sustainability is an increasingly important consideration in investment planning, as is illustrated by the clear position taken by the world's biggest financial services provider *BlackRock*. This year, BlackRock CEO *Larry Fink* wrote that sustainability would be a central standard for future investments.[1] *Environment* is now an economic factor and no longer a mere add-on criterion – including in the property sector.

Regulatory development

The state is one of the actors driving development in this area, so a quick review of the history is needed here. Germany has a long tradition of government intervention in the property sector. The key tool for such intervention is public construction law – the construction of new buildings in particular has always been subject to extensive government regulation. The planning consent procedure gives the state broad scope to influence and examine a building at the planning stage. Initially, the focus was less on protecting the environment and more on simply reducing energy use and thus dependency on primary energy sources.

Thermal Insulation Regulation

Following the 1974 oil crisis, the first version of the Thermal Insulation Regulation (*Wärmeschutzverordnung*) entered into force on 1 November 1977. It set out specifications for thermal insulation to be installed in new buildings with the objective of reducing energy consumption. This was something new: the Regulation was the first piece of binding national legislation to set out energy standards for construction. The magical date of 1977 is still important today, because the only acceptable form of energy performance certificate for buildings constructed before 1977 and not renovated since then is a demand certificate (*Bedarfsausweis*).

Energy Saving Regulation

The Thermal Insulation Regulation was modified, i.e. its requirements tightened up and brought into line with new technical standards, a number of times. The second Thermal Insulation Regulation was introduced in 1984 and the third in 1995. Finally,

1 https://www.blackrock.com/ch/individual/en/larry-fink-ceo-letter.

the Buildings Energy Act (*Gebäudeenergiegesetz*) was introduced on 1 November 2020. On 1 February 2002, the final version of the Thermal Insulation Regulation was replaced by the Energy Saving Regulation (*Energieeinsparverordnung*). The Energy Saving Regulation also incorporated elements of the Heating Systems Regulation (*Heizungsanlagenverordnung*), which entered into force in 1978 and was amended several times until the final version took effect in 1998.

Renewable Energies (Heat) Act

In 2009, this legislation was joined by the Act on the Promotion of Renewable Energies in the Heat Sector (*Erneuerbare-Energien-Wärmegesetz*). For the first time, this Act made the use of renewable energies in new buildings mandatory in an effort to further reduce dependency on external energy sources and drive forward the transition to renewable energy. Finally, in 2020, all of this primary and secondary legislation setting out the statutory basis regarding energy aspects of building design was consolidated in the Buildings Energy Act. This Act also brought a number of new developments, among them a wide-ranging ban on the installation of oil-fired heating systems from 2026.

Since the 1970s, then, the German federal legislator has worked continually and systematically on energy standards in the property sector and will need to continue to readjust and adapt these standards in the future as technology advances. Overall, it is clear that statutory interventions worked as intended. By 2018, consumption of final energy for heating and hot water had fallen by 10% since 1977, despite the fact that over 1.75 billion m^2 of residential space had been built during that time.[2] Economic development had been decoupled from energy efficiency.

Climate-neutral commercial property

In the present debate, it is clear that all of this was just the beginning and that we can expect rules to be tightened massively in future, because action is urgently required if the aim is to comprehensively fight climate change. The German Federal Government's Climate Action Plan, derived from the Paris Climate Accords, currently states that commercial properties will be climate-neutral by 2050.

Encroachment on the freedom of future generations

Even more far-reaching measures are needed following a recent ruling by the German Federal Constitutional Court (*Bundesverfassungsgericht*) that the Federal Climate Change Act (*Bundes-Klimaschutzgesetz*) was not sufficiently ambitious. The Court found that the Federal Government had cause to take sufficient action to mitigate climate change, as failure to act would constitute an encroachment on the freedoms of future generations. The Federal Government has since begun to act. It plans to introduce, if not direct CO_2 pricing, at least a hefty surcharge on the cost of energy consumed (CO_2 surcharge). No legislative proposal has been presented as yet. But it is certain that the judgment of the Federal Constitutional Court on 24 March 2021 and the political response to the "hundred year" flood in July 2021 will bring major changes.

New standards for profitability

Profit, return, growth – for a long time, the property sector acted almost entirely on the basis of economic criteria. This was also true of virtually every sector of the economy. The quality of an investment was measured above all in terms of

2 *Holm/Gertis*, "40 Jahre Wärmeschutzverordnung" in Fouad, Bauphysik-Kalender 2019, p. 3 (13).

the financial return that it brought. Today things are no longer quite so simple. Alongside economic factors, environmental and socio-cultural factors are becoming increasingly important. Climate change is a particular driver of this development. Heatwaves, natural disasters and rising sea levels are forcing a rethink at every level of society, including in the property sector. The Federal Government – in line with corresponding agreements at EU level – has set an ambitious goal: Germany will be climate-neutral by 2045. This will require rapid transformation in almost every area of life. The property sector will play a key role in this transformation. In June 2021, the Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*) stated that buildings in Germany had produced around 120 million tonnes of CO_2 in 2020.[3] The objective is for Germany's building stock to be virtually climate-neutral by 2050 at the latest. This can only be achieved if the energy consumption of a substantial proportion of buildings is significantly reduced while renewable energy usage is increased.

Faster pace of energy improvements

The effort required to do this will be immense. Energy-efficient new buildings are one part of the answer, but improvements also need to be made to the existing building stock. Tried and tested measures, such as insulating façades, better windows and new heating systems, will not be enough on their own to achieve the necessary reductions in CO_2. New technical solutions which are efficient and cost-effective are needed. The pace of modernisation of existing buildings to meet climate standards also needs to accelerate significantly. Across Germany as a whole, the proportion of houses and apartments that are made energy efficient each year has long averaged at about 1 per cent. The owners of those properties pay a lot to do this: the most recent figure is EUR 40 billion per year. There have already been some noteworthy successes: In 2020, the property sector was responsible for the emission of 120 million tonnes of CO_2 equivalents. Thirty years previously that figure stood at 210 million tonnes.[4]

As renovations continue, the energy consumed by buildings will decline. At the same time, more and more renewable energy is being used. Over the last year, environmentally friendly heat pumps have been the most important primary energy source for new heating systems. Much is still to be done, however. By 2030, emissions from buildings must fall to 67 million tonnes of CO_2 equivalents. The current rate of renovation is not enough to achieve this and will have to rise to at least 3%.

ESG-compliant investments drive construction costs

If the profitability of an investment can no longer be decided on returns alone, and other sustainability criteria are also important, does this mean that investors will have to forsake returns? Not at all. On the contrary: property investors who act in accordance with ESG principles will improve the quality of their portfolios and create prospects for higher rental income. But those who obstinately ignore sustainability aspects can expect reductions in both income and profits and will lose out to the competition. Why is that the case?

3 BT-Drucks. (Bundestag Printed Matter) 19/30298.

4 https://www.bmu.de/pressemitteilung/treibhausgasemissionen-sinken-2020-um-87-prozent.

First, let's look at the direct costs. Use of sustainable technologies drives construction costs up. New buildings which use geothermal or solar energy, for instance, cost more than projects which do not include energy-efficiency measures of this kind. In existing properties, retrofitting costs – which are usually already high – frequently correlate with the timing of the work. Replacement of a heating system will obviously be less costly if done during scheduled major renovation works rather than midway through a life cycle.

Grants and loans on favourable terms

The costs of energy-efficient building and renovation work are cushioned by government support in the form of direct grants or loans on favourable terms, such as those granted by the state-owned KfW-Bank or the investment banks of the individual federal states. The capital markets also support sustainable investments. Borrowers who obtain funding via *Green Bonds* or *ESG-linked loans* can often access better terms. Funding is subject to the money being used exclusively for sustainability projects (this is the case with *Green Bonds*) or the borrower undertaking to meet certain sustainability objectives, after which it can use the funds as it wishes (this is the case with *ESG-linked loans*).

On the downside are properties which do not meet these criteria. Owners who drag their feet on investments typically lack liquidity and access to financing, and sooner or later end up as debtors in individual enforcement proceedings or insolvency. For example, the installation of oil-fired heating systems, even as replacements, will not be permitted from 2026. A sequestration or insolvency administrator handling a non-compliant property will be in a problematic situation. In financial terms, it is usually the lien holder with first priority who has to pay up and remedy failures by the debtor.

But even once the immediate crisis is over, ESG standards will determine questions of financing, refinancing and disposal at least to some extent. Over the coming years, properties which do not comply with ESG standards will become a burden. So it is advisable for investors to address these issues and standards at a very early stage.

ESG quality as value creation facto

When looking at the returns on ESG-compliant investments, we need to distinguish between financial returns and those that are not directly financial. Property investors who consistently consider the environmental and human effects of their investments will reinforce their reputation, both with the public at large and within their own industries. Though this does not affect liquidity directly, it brings many benefits in terms of competition and, more and more frequently, in the employment market. In addition, these investors need have no fear of sanctions that the state may impose in an effort to reach climate goals.

Conversely, failure to take ESG criteria into account could have serious long-term consequences for a property company.

A property's ESG quality means market value

That brings us to the direct economic effects of ESG-compliant investments. Large institutional investors in particular are already increasingly aligning their decisions with sustainability criteria. Insurance companies, for instance, have a vested interest in investing in environmentally beneficial properties, as in doing so they can counter the damaging impacts of climate change and the ever more extreme weather phenomena it brings. Listed companies are required to produce sustainability reports and open themselves up to critical questions from their investors. For the property sector, this means that the ESG quality of a property is becoming a factor that influences market value. As long as the supply of demonstrably sustainable properties is limited, increasing demand will drive up prices for such properties. And as supply increases, ESG-compliant properties will over time become the market standard. That will curb prospects for further price increases.

On the other hand, non-sustainable properties will be at risk of accelerating falls in value as demand for them declines over time, and it is possible that debt financing is already inaccessible for properties which will not meet future standards. In a survey of financing experts carried out by property consultancy firm *JLL*, 14% of respondents stated that sustainability already has a "big" influence on market value. About a third accorded it "moderate" importance.[5]

Return – a question of perspective

Achievable net rent excluding operating and heating costs (referred to in Germany as "cold rent") is also closely related to the ESG quality of a property. Landlords who make energy improvements to their buildings create higher quality residential space for new, often higher income tenants. New lettings will bring significantly higher cold rents than before the improvements. Landlords can ensure that existing tenants contribute to the improvements to their homes by adding 8% of the cost of the work per year to the annual rent. In this case, though, increases in rent following renovations cannot exceed three euros per square metre per month over a six-year period. Tenants and the advocacy groups that represent them are frequently highly sensitive when larger housing companies in particular carry out energy improvements and pass on part of the costs within the limits permitted in law. This goes to show the many and complex conflicts that the property sector needs to navigate: On the one hand, extensive green renovations have to be paid for, but on the other, affordable living costs are a significant social good.

Warm rent neutrality?

During a research project, the Federal Office for Building and Regional Planning (BBSR) found that following energy improvements, housing companies charge lower cold rents to existing tenants than they do to new tenants – a consequence of the statutory cap. The full picture for all involved does not become clear, however, until operating costs are also taken into account. Ultimately, tenants care about the total cost of their home, that is to say how much rent they pay in total, including operating and heating costs (referred to as "warm rent"). Energy improvements, and in particular the use of renewable energies, reduce these costs. But this saving is not usually big enough to offset the accompanying increase in cold rents immediately. The BBSR found in its study that "warm rent neutrality" is achievable only in exceptional cases.

Institutional investors need proof that ESG-compliant property investment is profitable. From their perspective, the potential markup on cold rent may not be

5 https://www.jll.de/de/trends-and-insights/investoren/esg-kriterien-in-der-immobilienfinanzierung.

high enough to justify energy improvements. A study carried out at the Technical University of Darmstadt came to the following conclusion: “Investments in building energy improvements bring above-average returns for landlords.”[6] Other studies, such as that by the German Energy Agency (dena),[7] deliberately leave open the question of profitability, as in its view the answer to that question is often dependent on factors which vary from region to region.

However, there is also the time factor to consider. From the investor perspective, the returns will, in the long term, significantly exceed the costs. Failure to implement energy improvements will make a decline in value likely, and in the worst case could result in properties being left vacant.

Not a curse, not a blessing, but inevitable

Is transformation along more sustainable lines a blessing or a curse for the property sector? This is not the right question to ask. ESG rating arrived on the institutional investment scene some time ago and is now a huge trend globally. It is changing the rules across all sectors of the economy. Without proof that an investment meets certain ESG standards, investors run risks that will bring negative consequences in the long term. So it is inevitable that property companies will need to incorporate sustainability considerations into their business model. Not least because financing is more easily and cheaply available for “green companies”.

In short: Compliance with sustainability criteria is an additional indicator of financial performance and is becoming a competitive factor that shapes markets. However – and the sector still has work to do here – binding standards are needed regarding social responsibility and governance issues in particular, as this is the only way to ensure transparency and comparability.

Conclusion

In light of the magnitude of energy consumption by both commercial and residential properties, it is clear that the CO_2 neutrality that is desirable for environmental reasons cannot be achieved without a significant contribution by the property sector.

Given the number of existing properties, it is becoming apparent that the legislator, in addition to introducing rules for new builds, will be unable to avoid making energy improvements to existing properties mandatory. Though the previous tactic of offering funding to encourage owners to improve their properties voluntarily has enjoyed some success, the ban on installation of oil-fired heating systems from 2026 shows that the legislator wants to pursue the modernisation of old buildings more vigorously. This is because two thirds of the 19 million residential buildings now standing were built before 1979, that is to say before the first Thermal Insulation Regulation entered into force. According to a survey carried out by the Institute for Housing and Environment (*Institut für Wohnen und Umwelt*), only 25 to 30% of them have been modernised to date.[8]

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6 https://www.real-estate.bwl.tu-darmstadt.de/media/bwl9/dateien/arbeitspapiere/Energetische_Gebauudesanierung_in_Deutschland_Teil_2_2.pdf.

7 https://www.dena.de/fileadmin/dena/Publikationen/PDFs/2019/dena-GEBAEUDEREPORT_KOMPAKT_2019.pdf.

8 Institut Wohnen und Umwelt, “Datenbasis Gebäudebestand”, Darmstadt 2010. https://www.iwu.de/publikationen/fachinformationen/gebaeudetypologie/.

This is not enough, and so regulatory pressure to improve buildings can be expected to intensify.

With regard to any (future) statutory obligations, the question of whether the parties subject to those obligations will be able to carry them out should also be taken into account. Alongside the fact that many private individuals have invested in property for their retirement income and energy improvements are a significant financial burden, there are also practical problems. Aside from the rise in construction prices over recent years, availability of building materials and building firms is an increasingly pressing issue. Both are already in short supply, and so the question in Germany but also in the other European countries is how the desired work can be implemented at all.

Christian Alpers heads the Real Estate department at FalkenSteg. FalkenSteg is a partner-led restructuring, corporate finance and real estate consultancy with locations in Düsseldorf, Frankfurt am Main and Munich. The Real Estate department specialises in the management and sale of distressed properties.
Email: *Christian.alpers@falkensteg.com*

Attorney-at-Law Rüdiger Bauch heads up insolvency administration activities at Schultze & Braun's offices in Braunschweig, Halle, Leipzig and Magdeburg. He has worked as a court-appointed expert, insolvency administrator, supervisor and sequestration administrator since 1998 and is appointed mainly by courts in Saxony, Saxony-Anhalt, Thuringia and Lower Saxony. He chairs the Insolvency Law Committee of the Saxony-Anhalt Law Association (Rechtsanwaltskammer des Landes Sachsen-Anhalt).
Email: *RBauch@schubra.de*

Insolvency statistics

By Volker Böhm, Attorney-at-Law in Germany and Certified Specialist in Insolvency Law

Against all the odds, the German economy picked up again in 2021 after the lockdown year of 2020. In Q2 2021, gross domestic product was almost 10% higher than during the same period the previous year.[1] However, in late summer 2021, a renewed setback was evident in the ifo Institut's Business Climate Index. In September 2021, this barometer of German business sentiment fell for the third time in a row. As the cause, the ifo Institut pointed in particular to the supply shortages affecting raw materials and primary products, as are very markedly in evidence in the semiconductor sector, and even talked of a "bottleneck recession".[2]

Insolvency numbers fell once again in 2020. Just over 11,000 (11,063) new insolvency proceedings were commenced, 18.23% fewer than in the previous year (2019: 13,530) This is by far the biggest fall of the last ten years; previous declines were all in the single digit percentage range. This trend towards double-digit falls continued into the first six months of 2021, when the number of new proceedings fell by 14.08% compared with the first six months of 2020, despite the fact that the suspension of the obligation to apply for commencement of insolvency proceedings for undertakings affected by the COVID-19 pandemic ended on 30 April 2020.

In summer 2021, flooding and heavy rain caused enormous financial losses in some parts of Germany. Just a few months after the suspension of the obligation to apply for commencement of insolvency proceedings for companies affected by COVID-19 expired, the obligation was suspended once again, this time for companies affected by the floods. And once again, the state distributed billions of euros in aid for the damage caused. As a result, there was no rise in insolvencies due to these events.

Nationally, the percentage of applications resulting in actual proceedings (the "commencement rate") was 69.84% in 2020, significantly lower than the previous year's figure (2019: 72.36%). In contrast, the total value of creditor claims involved in insolvency proceedings rose significantly: In 2020, the average value of claims at risk per insolvency proceedings was EUR 2.770 million, compared with just EUR 1.199 million in 2019. This figure remained comparatively high, at EUR 2.607 million, in the first six months of 2021. The total value of claims filed nearly doubled in 2020 compared with 2019, rising from EUR 22,416,472.00 in 2019 to EUR 43,873,554.00 in 2020. So the trend towards fewer insolvency proceedings involving higher creditor claims is continuing.

Moving in the opposite direction to the total number of insolvencies, the number of self-administration proceedings has risen sharply. There were 266 such

1 Summary "*Entwicklung des Bruttoinlandprodukts*" dated 24/08/2021, accessed at: www.dashbord-deutschland.de #/Themen/Konjunktur_Wirtschaft?DB=Volkswirtschaft.

2 "*Industrie belastet ifo Geschäftsklimaindex (September 2021)*", accessed at: www.ifo.de/Umfrage/ifo-geschaeftsklimaindex.

proceedings across Germany as a whole in 2020, a 22.58% rise on the previous year (2019: 217). There was a particularly steep increase in the number of proceedings involving use of the protective shield procedure, from 16 in 2019 to 58 in 2020. As a result, the proportion of proceedings involving self-administration and the protective shield procedure rose considerably in 2020. This figure now stands at 2.4%, significantly higher than the 1.6% figure reported in 2019. The proportion of larger proceedings involving self-administration is likely to be substantial.

There have been only a few changes in the regional distribution of cases across the various insolvency courts. As is the case every year, the insolvency court in Berlin handled the largest number of proceedings by a significant margin. Cologne and Munich swapped their 2019 places to come in second and third. Frankfurt rose from eleventh to fifth place, while Nuremberg fell from tenth to fifteenth place. The Bonn insolvency court fell out of the top 20 in 2020 and was replaced by the court in Hannover, which handled just over a fifth of the number of cases brought before the court in Berlin. All in all, 11% of German insolvency courts look after 40% of proceedings commenced.

The final chart, showing the ten most frequently appointed firms of administrators, has changed only slightly since 2019. The top four firms are unchanged, while the firms in fifth, sixth and seventh places have moved around. The proportion of all corporate insolvency proceedings commenced in Germany handled by one of the top 10 firms has risen only slightly to stand at 24.03%, almost a quarter of total corporate insolvencies. This figure is approximately the same as last year.

Corporate Insolvencies[1] in Germany in 2020

No,	Number of insolvency courts	Federal state	Proceedings opened	Turned down for lack of assets	Total	Opening quota in %	Claims filed in 1,000 Euro	Amount per claim in 1,000 Euro
1	24	Baden-Württemberg	1,134	590	1,724	65.78	2,027,162	1,176
2	29	Bavaria	1,534	638	2,172	70.63	19,307,877	8,889
3	1	Berlin	785	448	1,233	63.67	652,741	529
4	4	Brandenburg	232	96	328	70.73	182,240	556
5	2	Bremen	161	63	224	71.88	490,870	2,191
6	1	Hamburg	452	109	561	80.57	841,969	1,501
7	18	Hesse	829	436	1,265	65.53	7,273,574	5,750
8	4	Meckl, West Pomerania	164	37	201	81.59	213,685	1,063
9	33	Lower Saxony	924	351	1,275	72.47	2,712,897	2,128
10	19	North-Rhine Westphalia	3,025	1,328	4,353	69.49	7,943,349	1,825
11	22	Rhineland-Palatinate	449	173	622	72.19	505,627	813
12	1	Saarland	138	70	208	66.35	215,738	1,037
13	3	Saxony	437	132	569	76.80	531,800	935
14	4	Saxony-Anhalt	236	117	353	66.86	132,320	375
15	13	Schleswig-Holstein	423	111	534	79.21	563,458	1,055
16	4	Thuringia	140	79	219	63.93	278,247	1,271
	182	**Total:**	**11,063**	**4,778**	**15,841**	**69.84**	**43,873,554**	**2,770**

Corporate Insolvencies[1] in Germany, First Six Months of 2021

No,	Number of insolvency courts	Federal state	Proceedings opened	Turned down for lack of assets	Total	Opening quota in %	Claims filed in 1,000 Euro	Amount per claim in 1,000 Euro
1	24	Baden-Württemberg	574	274	848	67.69	821,252	968
2	29	Bavaria	675	272	947	71.28	744,946	787
3	1	Berlin	426	214	640	66.56	327,436	512
4	4	Brandenburg	98	30	128	76.56	39,020	305
5	2	Bremen	50	11	61	81.97	3,766,866	61,752
6	1	Hamburg	335	12	347	96.54	48,180	139
7	18	Hesse	359	202	561	63.99	8,263,872	14,731
8	4	Meckl, West Pomerania	88	12	100	88.00	195,029	1,950
9	33	Lower Saxony	400	166	566	70.67	551,076	974
10	19	North-Rhine Westphalia	1,485	626	2,111	70.35	4,305,081	2,039
11	22	Rhineland-Palatinate	202	76	278	72.66	451,672	1,625
12	1	Saarland	64	26	115	55.65	16,572	144
13	3	Saxony	197	56	253	77.87	107,700	426
14	4	Saxony-Anhalt	94	42	136	69.12	70,305	517
15	13	Schleswig-Holstein	457	10	467	97.86	92,420	198
16	4	Thuringia	79	27	106	74.53	116,996	1,104
	182	**Total:**	**5,583**	**2,056**	**7,639**	**73.09**	**19,918,423**	**2,607**

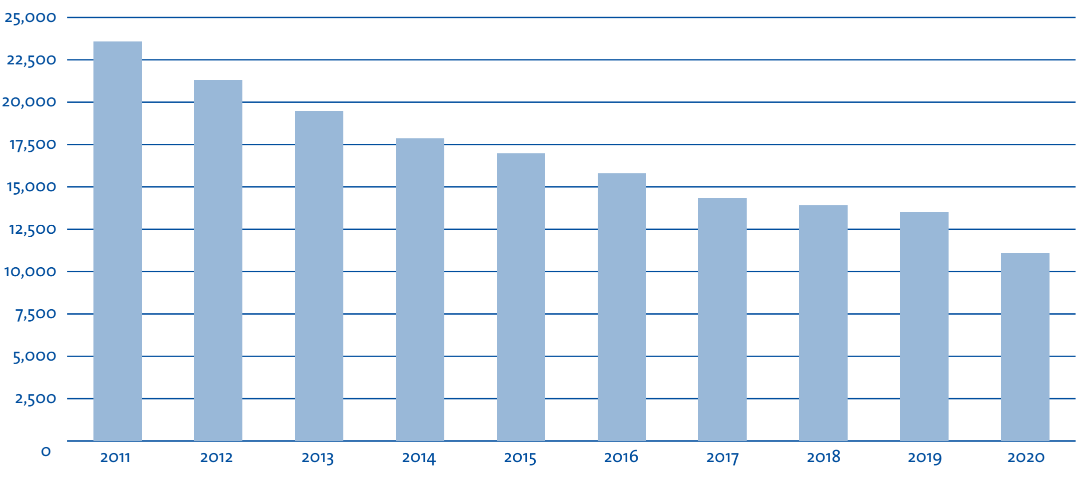
1 Including businesses under sole proprietorship and freelancers.

Source: official statistics of the Federation and the *Länder* (Federal Statistics Office, Länder Statistics Offices).

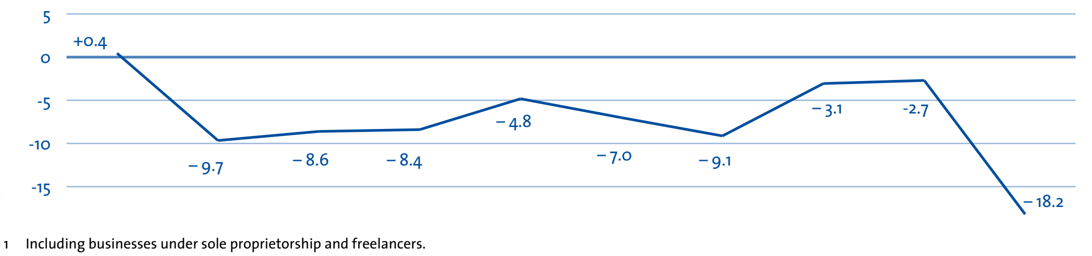
Insolvency Proceedings Opened in Germany,[1] 2011–2020

Number of insolvency courts	Federal state	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
24	Baden-Württemberg	1,537	1,481	1,417	1,256	1,272	1,122	1,221	1,329	1,287	1,134
29	Bavaria	2,436	2,364	2,239	2,174	2,341	1,932	1,867	1,764	1,923	1,534
1	Berlin	911	881	811	817	916	924	842	896	896	785
4	Brandenburg	497	446	444	440	363	404	334	319	307	232
2	Bremen	180	163	165	198	179	107	113	168	111	161
1	Hamburg	609	626	839	870	640	735	584	536	596	452
18	Hesse	1,209	1,103	1,148	977	967	931	935	916	905	829
4	Meckl. West Pomerania	344	284	251	238	258	245	189	203	189	164
33	Lower Saxony	1,802	1,740	1,602	1,559	1,363	1,379	1,273	1,185	1,049	924
19	North-Rhine Westphalia	8,567	8,275	6,871	5,993	5,485	4,982	4,249	4,038	3,925	3,025
22	Rhineland-Palatinate	945	836	804	678	650	565	535	509	517	449
1	Saarland	308	240	254	222	211	219	168	201	205	138
3	Saxony	1,206	1,077	967	856	786	836	732	644	525	437
4	Saxony-Anhalt	579	480	525	434	427	369	359	334	312	236
13	Schleswig-Holstein	2,092	913	798	809	842	797	715	614	615	423
4	Thuringia	364	399	339	318	279	241	231	251	168	140
182	**Total:**	**23,586**	**21,308**	**19,474**	**17,839**	**16,979**	**15,788**	**14,347**	**13,907**	**13,530**	**11,063**

1. Number of insolvencies



2. Change from previous year in %



1 Including businesses under sole proprietorship and freelancers.

Source: official statistics of the Federation and the *Länder* (Federal Statistics Office, Länder Statistics Offices).

Insolvency Proceedings Opened in Germany, 2020

1. In alphabetical order by insolvency court

Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Aachen	255	86	169
Aalen	85	21	64
Alzey	21	4	17
Amberg	72	25	47
Ansbach	51	16	35
Arnsberg	94	34	60
Aschaffenburg	92	31	61
Augsburg	179	51	128
Aurich	60	15	45
Bad Hersfeld	18	2	16
Bad Homburg v. d. H.	43	19	24
Bad Kreuznach	73	19	54
Bad Neuenahr-Ahrweiler	45	6	39
Baden-Baden	72	25	47
Bamberg	63	23	40
Bayreuth	49	15	34
Berlin	1.219	554	665
Bersenbrück	31	10	21
Betzdorf	24	8	16
Bielefeld	310	119	191
Bingen/Rh.	32	13	19
Bitburg	19	3	16
Bochum	240	74	166
Bonn	232	76	156
Bremen	228	138	90
Bremerhaven	35	15	20
Brunswick	99	37	62
Bückeburg	26	10	16
Celle	54	17	37
Chemnitz	322	66	256
Cloppenburg	45	11	34
Coburg	73	18	55
Cochem	16	6	10
Cologne	675	263	412
Cottbus	123	32	91
Crailsheim	16	2	14
Cuxhaven	70	30	40
Darmstadt	270	110	160
Deggendorf	25	9	16
Delmenhorst	56	25	31
Dessau	69	16	53
Detmold	87	39	48
Dortmund	336	110	226
Dresden	255	73	182
Duisburg	354	136	218
Düsseldorf	378	192	186
Erfurt	124	22	102
Eschwege	12	3	9
Essen	388	169	219
Esslingen	129	56	73
Eutin	45	9	36
Flensburg	86	25	61
Frankfurt/M.	391	172	219
Frankfurt/O.	118	40	78
Freiburg	127	40	87
Friedberg	74	19	55
Fritzlar	32	4	28
Fulda	42	21	21
Fürth (Bay.)	133	40	93
Gera	104	27	77

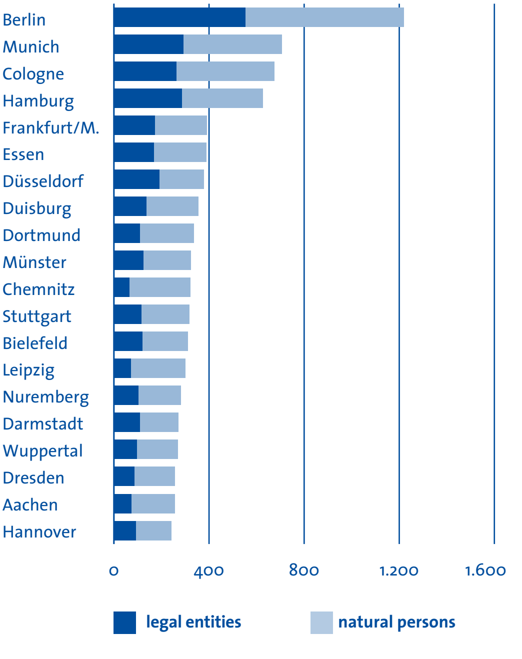
Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Gießen	61	18	43
Gifhorn	68	22	46
Göppingen	79	29	50
Goslar	22	4	18
Göttingen	91	40	51
Hagen	238	90	148
Halle-Saalkreis	166	55	111
Hamburg	626	287	339
Hameln	79	26	53
Hanau	119	44	75
Hannover	241	92	149
Hechingen	50	10	40
Heidelberg	75	20	55
Heilbronn	202	61	141
Hildesheim	50	20	30
Hof	54	11	43
Holzminden	22	8	14
Husum	24	3	21
Idar-Oberstein	34	8	26
Ingolstadt	104	40	64
Itzehoe	26	10	16
Kaiserslautern	58	11	47
Karlsruhe	171	66	105
Kassel	86	22	64
Kempten	112	36	76
Kiel	81	22	59
Kleve	131	47	84
Koblenz	68	17	51
Königstein	32	12	20
Konstanz	78	21	57
Korbach	18	2	16
Krefeld	114	40	74
Landau (i. d. Pf.)	66	14	52
Landshut	160	42	118
Leer	44	10	34
Leipzig	300	71	229
Limburg	36	9	27
Lingen	20	2	18
Lörrach	42	19	23
Lübeck	78	16	62
Ludwigsburg	121	33	88
Ludwigshafen/Rh.	116	29	87
Lüneburg	98	38	60
Magdeburg	147	46	101
Mainz	77	24	53
Mannheim	174	59	115
Marburg	46	11	35
Mayen	44	9	35
Meiningen	87	25	62
Meldorf	49	11	38
Memmingen	33	9	24
Meppen	60	31	29
Mönchengladbach	164	60	104
Montabaur	76	19	57
Mosbach	48	16	32
Mühldorf (a. Inn)	48	8	40
Mühlhausen	50	18	32
Munich	706	292	414
Münster	324	125	199
Neu-Ulm	73	17	56

Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Neubrandenburg	60	23	37
Neumünster	120	32	88
Neuruppin	86	22	64
Neustadt/Wstr.	30	10	20
Neuwied	46	10	36
Niebüll	29	10	19
Nordenham	20	10	10
Norderstedt	56	17	39
Nordhorn	27	13	14
Nördlingen	36	12	24
Nuremberg	281	104	177
Offenbach/M.	181	71	110
Offenburg	87	28	59
Oldenburg (Oldb.)	76	20	56
Osnabrück	101	37	64
Osterode	16	5	11
Paderborn	129	39	90
Passau	61	13	48
Pforzheim	82	22	60
Pinneberg	98	39	59
Pirmasens	31	6	25
Potsdam	190	63	127
Ravensburg	93	28	65
Regensburg	106	38	68
Reinbek	71	31	40
Rosenheim	83	23	60
Rostock	85	36	49
Rottweil	83	34	49
Saarbrücken/Sulzbach	212	76	136
Schwarzenbek	56	13	43
Schweinfurt	56	16	40

Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Schwerin	97	24	73
Siegen	81	32	49
Stade	44	16	28
Stendal	49	9	40
Stralsund	78	35	43
Straubing	40	17	23
Stuttgart	316	115	201
Syke	94	28	66
Tostedt	59	18	41
Traunstein	47	11	36
Trier	76	17	59
Tübingen	156	47	109
Uelzen	20	5	15
Ulm	72	27	45
Vechta	37	15	22
Verden	39	14	25
Villingen-Schwenningen	47	13	34
Waldshut-Tiengen	24	4	20
Walsrode	21	6	15
Weiden i. d. OPf.	54	18	36
Weilheim i. OB	75	25	50
Wetzlar	54	21	33
Wiesbaden	146	35	111
Wilhelmshaven	44	11	33
Wittlich	35	7	28
Wolfratshausen	60	23	37
Wolfsburg	38	8	30
Worms	35	10	25
Wuppertal	269	97	172
Würzburg	87	24	63
Zweibrücken	30	9	21
Total	**20,475**	**7,150**	**13,325**

2. Top 20 insolvency courts

Ranking	Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
1	Berlin	1,219	554	665
2	Munich	706	292	414
3	Cologne	675	263	412
4	Hamburg	626	287	339
5	Frankfurt/M.	391	172	219
6	Essen	388	169	219
7	Düsseldorf	378	192	186
8	Duisburg	354	136	218
9	Dortmund	336	110	226
10	Münster	324	125	199
11	Chemnitz	322	66	256
12	Stuttgart	316	115	201
13	Bielefeld	310	119	191
14	Leipzig	300	71	229
15	Nuremberg	281	104	177
16	Darmstadt	270	110	160
17	Wuppertal	269	97	172
18	Aachen	255	86	169
19	Dresden	255	73	182
20	Hannover	241	92	149
	Total	**8,216**	**3,233**	**4,983**



▶ 11 % of insolvency courts are responsible for 40% of proceedings.

1 Including companies without legal personality.
Source: WBDat Wirtschafts- und Branchendaten GmbH, Cologne.

Insolvency Proceedings Opened in Germany, First Six Months of 2021

1. In alphabetical order by insolvency court

Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Aachen	136	33	103
Aalen	46	8	38
Alzey	11	3	8
Amberg	22	8	14
Ansbach	31	9	22
Arnsberg	54	14	40
Aschaffenburg	56	12	44
Augsburg	121	20	101
Aurich	34	4	30
Bad Hersfeld	13	3	10
Bad Homburg v. d. H.	26	9	17
Bad Kreuznach	19	2	17
Bad Neuenahr-Ahrweiler	23	2	21
Baden-Baden	64	18	46
Bamberg	45	9	36
Bayreuth	41	21	20
Berlin	643	247	396
Bersenbrück	11	4	7
Betzdorf	19	2	17
Bielefeld	162	31	131
Bingen/Rh.	18	2	16
Bitburg	24	6	18
Bochum	156	30	126
Bonn	148	32	116
Bremen	166	90	76
Bremerhaven	18	4	14
Brunswick	39	6	33
Bückeburg	23	3	20
Celle	36	8	28
Chemnitz	162	36	126
Cloppenburg	25	5	20
Coburg	24	5	19
Cochem	5		5
Cologne	382	104	278
Cottbus	50	11	39
Crailsheim	16	2	14
Cuxhaven	35	11	24
Darmstadt	163	42	121
Deggendorf	17	3	14
Delmenhorst	23	4	19
Dessau	50	10	40
Detmold	41	7	34
Dortmund	224	56	168
Dresden	142	34	108
Duisburg	142	31	111
Düsseldorf	223	86	137
Erfurt	88	20	68
Eschwege	8	2	6
Essen	224	58	166
Esslingen	73	23	50
Eutin	27	10	17
Flensburg	49	16	33
Frankfurt/M.	197	88	109
Frankfurt/O.	52	11	41
Freiburg	77	9	68
Friedberg	39	7	32
Fritzlar	12	2	10
Fulda	10	2	8
Fürth (Bay.)	87	23	64
Gera	66	11	55

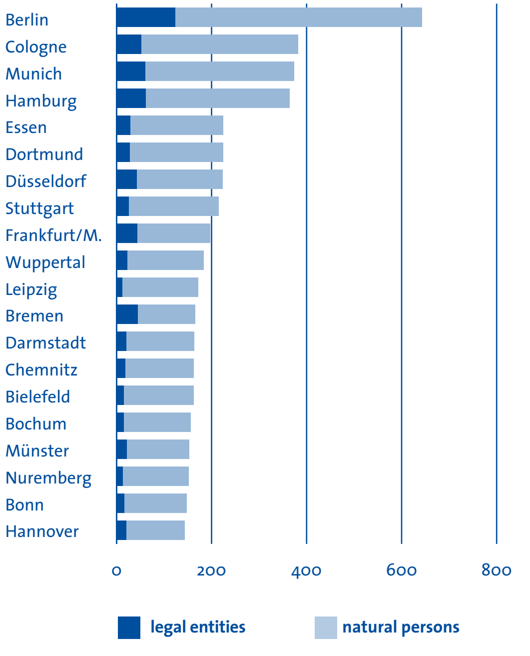
Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Gießen	26	10	16
Gifhorn	38	6	32
Göppingen	51	9	42
Goslar	13	2	11
Göttingen	50	7	43
Hagen	113	18	95
Halle-Saalkreis	58	14	44
Hamburg	364	124	240
Hameln	40	9	31
Hanau	57	13	44
Hannover	143	40	103
Hechingen	38	6	32
Heidelberg	51	11	40
Heilbronn	114	23	91
Hildesheim	37	7	30
Hof	30	2	28
Holzminden	7		7
Husum	17	3	14
Idar-Oberstein	17	3	14
Ingolstadt	58	15	43
Itzehoe	15	2	13
Kaiserslautern	59	9	50
Karlsruhe	92	22	70
Kassel	38	8	30
Kempten	64	12	52
Kiel	39	8	31
Kleve	58	14	44
Koblenz	42	10	32
Königstein	14	1	13
Konstanz	46	9	37
Korbach	10	4	6
Krefeld	60	27	33
Landau (i. d. Pf.)	33	3	30
Landshut	88	17	71
Leer	17	5	12
Leipzig	172	24	148
Limburg	28	12	16
Lingen	17	3	14
Lörrach	27	9	18
Lübeck	42	7	35
Ludwigsburg	85	12	73
Ludwigshafen/Rh.	74	16	58
Lüneburg	39	20	19
Magdeburg	64	14	50
Mainz	30	12	18
Mannheim	112	23	89
Marburg	30	4	26
Mayen	20	1	19
Meiningen	38	12	26
Meldorf	24	3	21
Memmingen	24	3	21
Meppen	42	19	23
Mönchengladbach	105	21	84
Montabaur	53	12	41
Mosbach	26	6	20
Mühldorf (a. Inn)	24	4	20
Mühlhausen	29	8	21
Munich	374	121	253
Münster	153	44	109
Neu-Ulm	47	11	36

Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Neubrandenburg	39	15	24
Neumünster	63	22	41
Neuruppin	68	15	53
Neustadt/Wstr.	19	7	12
Neuwied	27	2	25
Niebüll	18	5	13
Nordenham	7	1	6
Norderstedt	25	10	15
Nordhorn	11	5	6
Nördlingen	20	3	17
Nuremberg	152	26	126
Offenbach/M.	91	32	59
Offenburg	52	12	40
Oldenburg (Oldb.)	39	8	31
Osnabrück	63	10	53
Osterode	9	1	8
Paderborn	79	20	59
Passau	32	4	28
Pforzheim	66	14	52
Pinneberg	47	9	38
Pirmasens	17	5	12
Potsdam	98	20	78
Ravensburg	62	6	56
Regensburg	54	14	40
Reinbek	34	12	22
Rosenheim	64	10	54
Rostock	69	17	52
Rottweil	48	9	39
Saarbrücken/Sulzbach	136	37	99
Schwarzenbek	24	6	18
Schweinfurt	32	7	25

Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
Schwerin	52	12	40
Siegen	41	12	29
Stade	14	4	10
Stendal	27	5	22
Stralsund	41	8	33
Straubing	8	5	3
Stuttgart	215	51	164
Syke	52	6	46
Tostedt	31	14	17
Traunstein	26		26
Trier	41	9	32
Tübingen	81	18	63
Uelzen	16	4	12
Ulm	51	12	39
Vechta	14	8	6
Verden	27	11	16
Villingen-Schwenningen	29	8	21
Waldshut-Tiengen	11	3	8
Walsrode	20	9	11
Weiden i. d. OPf.	33	6	27
Weilheim i. OB	30	8	22
Wetzlar	18	6	12
Wiesbaden	56	20	36
Wilhelmshaven	19	7	12
Wittlich	21	5	16
Wolfratshausen	39	9	30
Wolfsburg	19	6	13
Worms	20	7	13
Wuppertal	183	45	138
Würzburg	62	15	47
Zweibrücken	23	5	18
Total	**11,499**	**2,965**	**8,534**

2. Top 20 insolvency courts

Ranking	Insolvency courts	Total No.	Thereof, legal entities[1]	Thereof, natural persons
1	Berlin	643	247	396
2	Cologne	382	104	278
3	Munich	374	121	253
4	Hamburg	364	124	240
5	Dortmund	224	56	168
6	Essen	224	58	166
7	Düsseldorf	223	86	137
8	Stuttgart	215	51	164
9	Frankfurt/M.	197	88	109
10	Wuppertal	183	45	138
11	Leipzig	172	24	148
12	Bremen	166	90	76
13	Darmstadt	163	42	121
14	Bielefeld	162	31	131
15	Chemnitz	162	36	126
16	Bochum	156	30	126
17	Münster	153	44	109
18	Nuremberg	152	26	126
19	Bonn	148	32	116
20	Hannover	143	40	103
	Total	**4,606**	**1,375**	**3,231**



▶ 11 % of insolvency courts are responsible for 40% of proceedings.

1 Including companies without legal personality.
Source: WBDat Wirtschafts- und Branchendaten GmbH, Cologne.

Number of self-administration proceedings since the ESUG was introduced in March 2012

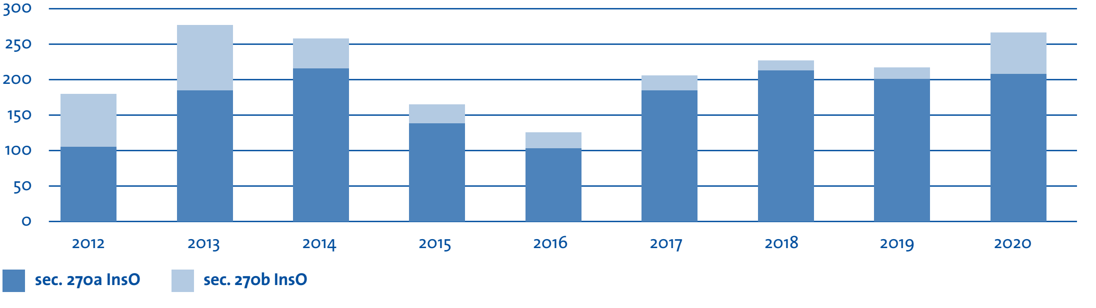
ESUG/Self-administration proceedings	2012	2013	2014	2015	2016	2017	2018	2019	2020	First six months of 2021	Total
sec. 270a InsO	105	185	216	138	103	185	213	201	208	*	**1,554**
sec. 270b InsO	75	92	42	27	23	21	14	16	58	*	**368**
Total	180	277	258	165	126	206	227	217	266	119	**2,041**

Note: These are minimum numbers in each case. They are not 100% final as these proceedings do not necessarily have to be published by the courts.

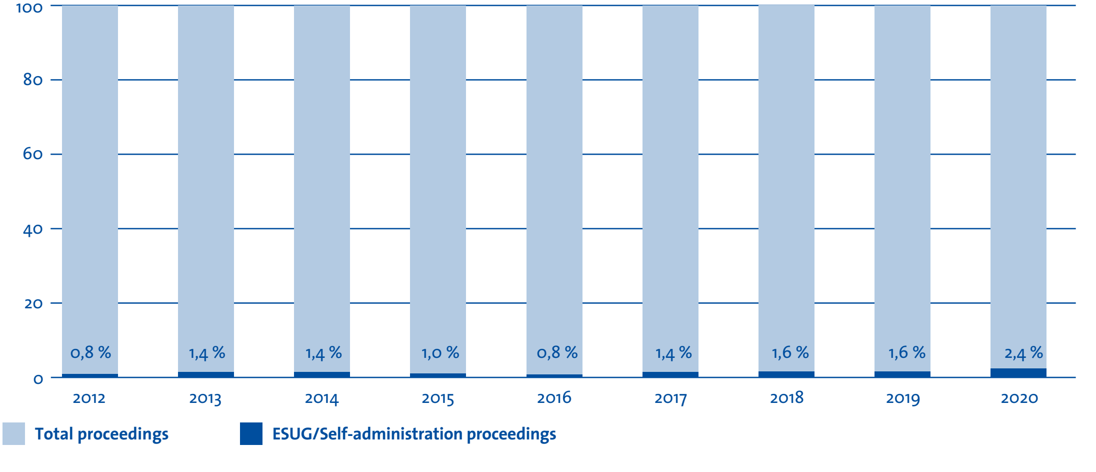
Source: www.insolvenz-portal.de

* Amendments to the InsO from 1 January 2021: Only purely ESUG proceedings are analysed.

ESUG/Self-administration proceedings 2012–2020



Percentage of total proceedings involving ESUG instruments



Ranking of the Top 10 Law Firms in 2020

Insolvency Proceedings Opened in Germany (without Consumer Insolvencies)

Ranking	Law firm	Legal entities[1]	Share of law firm (top 10) in %	Share of law firm (Germany) in %	No. of administrators appointed	Natural persons	Share of law firm (top 10) in %	Share of law firm (Germany) in %	No. of administrators appointed	Number (total)
1	PLUTA Rechtsanwalts-GmbH	364	21.19	5.09	26	376	21.14	2.82	31	740
2	White & Case Insolvenz GbR	235	13.68	3.29	15	171	9.61	1.28	15	406
3	Schultze & Braun	222	12.92	3.10	29	269	15.12	2.02	33	491
4	Görg Rechtsanwälte	182	10.59	2.55	18	203	11.41	1.52	21	385
5	hww hermann wienberg wilhelm	155	9.02	2.17	15	153	8.60	1.15	15	308
6	Brinkmann & Partner	136	7.92	1.90	14	234	13.15	1.76	15	370
7	BBL Brockdorff	114	6.64	1.59	10	199	11.19	1.49	13	313
8	AndresPartner	114	6.64	1.59	4	92	5.17	0.69	6	206
9	Dr. Beck & Partner GbR	100	5.82	1.40	6	53	2.98	0.40	6	153
10	Jaffé Rechtsanwälte Insolvenzverwalter	96	5.59	1.34	5	29	1.63	0.22	5	125
	Total	**1,718**	**100.00**	**24.03**	**142**	**1.779**	**100.00**	**13.35**	**160**	**3,497**

Number	Germany	Legal entities1	Share of top 10 (legal entities)	Share of top 10 in % (legal entities)	Natural persons	Share of top 10 (natural persons)	Share of top 10 in % (legal entities)	Number (total)	Share of top 10 in %	No. of administrators
182	**All local courts**	**7,150**	**1,718**	**24.03**	**13,325**	**1,779**	**13.35**	**20,475**	**17.08**	**1,845**

Ranking of the Top 10 Law Firms, First Six Months of 2021

Insolvency Proceedings Opened in Germany (without Consumer Insolvencies)

Ranking	Law firm	Legal entities[1]	Share of law firm (top 10) in %	Share of law firm (Germany) in %	No. of administrators appointed	Natural persons	Share of law firm (top 10) in %	Share of law firm (Germany) in %	No. of administrators appointed	Number (total)
1	PLUTA Rechtsanwalts-GmbH	105	15.13	3.54	17	243	20.59	2.85	29	348
2	Schultze & Braun	104	14.99	3.51	26	152	12.88	1.78	30	256
3	White & Case Insolvenz GbR	94	13.54	3.17	13	97	8.22	1.14	13	191
4	BBL Brockdorff	82	11.82	2.77	8	109	9.24	1.28	14	191
5	Brinkmann & Partner	63	9.08	2.12	10	111	9.41	1.30	14	174
6	Görg Rechtsanwälte	62	8.93	2.09	16	158	13.39	1.85	22	220
7	hww hermann wienberg wilhelm	52	7.49	1.75	10	112	9.49	1.31	15	164
8	Dr. Beck & Partner GbR	46	6.63	1.55	5	47	3.98	0.55	5	93
9	AndresPartner	45	6.48	1.52	5	61	5.17	0.71	6	106
10	SGP Schneider Geiwitz & Partner	41	5.91	1.38	12	90	7.63	1.05	10	131
	Total	**694**	**100.00**	**23.41**	**122**	**1.180**	**100.00**	**13.83**	**158**	**1.874**

Number	Germany	Legal entities1	Share of top 10 (legal entities)	Share of top 10 in % (legal entities)	Natural persons	Share of top 10 (natural persons)	Share of top 10 in % (legal entities)	Number (total)	Share of top 10 in %	No. of administrators
182	**All local courts**	**2,965**	**984**	**33.19**	**8,534**	**1,096**	**12.84**	**11,499**	**16.30**	**1,684**

1 Including companies without legal personality.
Source: WBDat Wirtschafts- und Branchendaten GmbH, Cologne.

Insolvency Courts in Germany, Offices of Schultze & Braun in Germany, France and Italy

Schultze & Braun

I. Offices in Germany:

1. Achern
Eisenbahnstr. 19–23
77855 Achern
Telephone +49 7841 708-0
Telefax +49 7841 708-3 01

2. Ansbach
Am Galgenrangen 12
91522 Ansbach
Telephone +49 981 487787-17
Telefax +49 981 4816487

3. Aschaffenburg
Frohsinnstraße 29
63739 Aschaffenburg
Telephone +49 6021 58518-0
Telefax +49 6021 58518-110

4. Augsburg
Schaezlerstraße 13
86150 Augsburg
Telephone +49 821 508822-0
Telefax +49 821 508822-100

5. Berlin
Markgrafenstraße 22
10117 Berlin
Telephone +49 30 3083038-2 00
Telefax +49 30 3083038-1 11

6. Braunschweig
Museumstr. 5
38100 Braunschweig
Telephone +49 531 6128720-0
Telefax +49 531 6128720-100

7. Bremen
Domshof 18–20
28195 Bremen
Telephone +49 421 3686-0
Telefax +49 421 3686-100

8. Chemnitz
Promenadenstr. 3
09111 Chemnitz
Telephone +49 371 38237-0
Telefax +49 371 38237-10

9. Dessau-Roßlau
Stiftstraße 16
06844 Dessau-Roßlau
Telephone +49 340 5210443
Telefax +49 340 5710128

10. Dingolfing
Speisemarkt 7
84130 Dingolfing
Telephone +49 8731 32690-66
Telefax +49 8731 32690-67

11. Dresden
Boltenhagener Platz 9
01109 Dresden
Telephone +49 351 88527-0
Telefax +49 351 88527-40

12. Erfurt
Barbarossahof 3
99092 Erfurt
Telephone +49 361 5513-0
Telefax +49 361 5513-1 00

13. Frankfurt am Main
Olof-Palme-Str. 13
60439 Frankfurt
Telephone +49 69 50986-0
Telefax +49 69 50986-1 10

14. Freiburg im Breisgau
Fischerau 24–26
79098 Freiburg
Telephone +49 761 296732-0
Telefax +49 761 296732-100

15. Halle
Kleine Märkerstraße 10
06108 Halle
Telephone +49 345 5200-111
Telefax +49 345 5200-066

16. Hamburg
Mittelweg 9
20148 Hamburg
Telephone +49 40 3060457-0

17. Hannover
Berliner Allee 7
30175 Hannover
Telephone +49 511 554706-0
Telefax +49 511 554706-99

18. Heilbronn
Im Zukunftspark 10
74076 Heilbronn
Telephone +49 7131 20565-0
Telefax +49 7131 20565-100

19. Hof
Pfarr 1
95028 Hof
Telephone +49 9281 880-500
Telefax +49 9281 880-510

20. Karlsruhe
Kriegsstraße 113
76135 Karlsruhe
Telephone +49 721 91957-0
Telefax +49 721 91957-11

21. Leipzig
Inselstraße 29
04103 Leipzig
Telephone +49 341 26972-0
Telefax +49 341 26972-10

22. Magdeburg
Bei der Hauptwache 2
39104 Magdeburg
Telephone +49 391 5354-0
Telefax +49 391 5354-100

23. Mannheim
N7, 12
68161 Mannheim
Telephone +49 621 480264-0
Telefax +49 621 480264-10

24. Marburg
Software Center 5a
35037 Marburg
Telephone +49 6421 94813-50
Telefax +49 6421 94813-60

25. Munich
Elsenheimerstraße 55a
80687 Munich
Telephone +49 89 3300809-0
Telefax +49 89 3300809-99

26. Nuremberg
Marienbergstr. 94
90411 Nuremberg
Telephone +49 911 60079-0
Telefax +49 911 60079-10

27. Rostock
Gerhart-Hauptmann-Straße 24
18055 Rostock
Telephone +49 381 49139-50
Telefax +49 381 49139-77

28. Rottweil
Neckartal 100
78628 Rottweil
Telephone +49 741 17464-30
Telefax +49 741 17464-40

29. Saarbrücken
Saarbrücker Str. 4
66130 Saarbrücken
Telephone +49 681 87625-0
Telefax +49 681 87625-100

30. Stuttgart
Paulinenstraße 41
70178 Stuttgart
Telephone +49 711 23889-0
Telefax +49 711 23889-200

31. Ulm
Karlstraße 31–33
89073 Ulm
Telephone +49 731 207 93 11-0
Telefax +49 731 207 93 11-99

32. Vechta
An der Gräfte 22
49377 Vechta
Telephone +49 4441 978862
Telefax +49 421 3686-100

33. Würzburg
Augustinerstraße 5
97070 Würzburg
Telephone +49 931 6609983-0
Telefax +49 931 6609983-99

II. Offices in France and Italy:

2. Paris
Schultze & Braun GmbH
Rechtsanwaltsgesellschaft
60, rue Saint Lazare
75009 Paris
France
Telephone +33 140342597
Telefax +33 967269779

3. Strasbourg
Schultze & Braun GmbH
Rechtsanwaltsgesellschaft
2, avenue de la Forêt Noire
67000 Strasbourg
France
Telephone +33 388317310
Telefax +33 388317319

4. Bologna
Schultze & Braun GmbH
Rechtsanwaltsgesellschaft
Via Massimo D'Azeglio, 27
40123 Bologna
Italy
Telephone +39 51 225166
Telefax +39 51 2960230

5. Milan
Schultze & Braun GmbH
Rechtsanwaltsgesellschaft
Via Mazzini, 20
20123 Milano
Italy
Telephone +39 02 82951022
Telefax +39 02 72020196

Event Calendar, Venues and Dates on Insolvency Law in 2022

January	February	March	April	May	June
01 Sat New Year's Day	01 Tue	01 Tue	01 Fri	01 Sun	01 Wed
02 Sun	02 Wed	02 Wed	02 Sat	02 Mon	02 Thu
03 Mon	03 Thu	03 Thu 03.–06.03. INSOL Europe – Annual Congress Dublin	03 Sun	03 Tue	03 Fri
04 Tue	04 Fri	04 Fri	04 Mon	04 Wed	04 Sat
05 Wed	05 Sat	05 Sat	05 Tue	05 Thu	05 Sun Whitsunday
06 Thu	06 Sun	06 Sun	06 Wed	06 Fri	06 Mon Whit Monday
07 Fri	07 Mon	07 Mon	07 Thu	07 Sat	07 Tue
08 Sat	08 Tue	08 Tue	08 Fri	08 Sun	08 Wed 08.–11.06. NABT – Annual Convention Vancouver
09 Sun	09 Wed	09 Wed	09 Sat	09 Mon	09 Thu
10 Mon	10 Thu	10 Thu	10 Sun	10 Tue	10 Fri
11 Tue	11 Fri	11 Fri	11 Mon	11 Wed 11.–13.05. Handelsblatt Jahrestagung Restrukturierung Frankfurt/Main	11 Sat
12 Wed	12 Sat	12 Sat	12 Tue	12 Thu	12 Sun
13 Thu	13 Sun	13 Sun	13 Wed	13 Fri	13 Mon
14 Fri	14 Mon	14 Mon	14 Thu	14 Sat	14 Tue
15 Sat	15 Tue	15 Tue	15 Fri Good Friday	15 Sun	15 Wed
16 Sun	16 Wed	16 Wed	16 Sat	16 Mon 16.–18.05. ALI – Annual Meeting Washingtin D.C	16 Thu
17 Mon	17 Thu	17 Thu	17 Sun Easter Sunday	17 Tue	17 Fri
18 Tue	18 Fri	18 Fri	18 Mon Easter Monday	18 Wed	18 Sat
19 Wed	19 Sat	19 Sat	19 Tue	19 Thu	19 Sun
20 Thu	20 Sun	20 Sun	20 Wed	20 Fri	20 Mon
21 Fri	21 Mon	21 Mon	21 Thu	21 Sat	21 Tue
22 Sat	22 Tue	22 Tue	22 Fri	22 Sun	22 Wed 22.–24.06. DAV – Deutscher Anwaltstag Hamburg
23 Sun	23 Wed	23 Wed	23 Sat	23 Mon	23 Thu
24 Mon	24 Thu	24 Thu	24 Sun	24 Tue	24 Fri
25 Tue	25 Fri	25 Fri	25 Mon	25 Wed	25 Sat
26 Wed	26 Sat	26 Sat	26 Tue	26 Thu	26 Sun
27 Thu	27 Sun	27 Sun	27 Wed	27 Fri	27 Mon
28 Fri	28 Mon 28.02. Leipziger Insolvenzrechtstag Leipzig	28 Mon	28 Thu 28.–30.04. ABI – Annual Spring Meeting Washington D.C.	28 Sat	28 Tue
29 Sat		29 Tue	29 Fri	29 Sun	29 Wed
30 Sun		30 Wed 30.03. DAV – Deutscher Insolvenzrechtstag Berlin	30 Sat	30 Mon	30 Thu
31 Mon		31 Thu		31 Tue	

July	August	September	October	November	December
01 Fri	01 Mon	01 Thu	01 Sat	01 Tue	01 Thu
02 Sat	02 Tue	02 Fri	02 Sun	02 Wed 01.–04.11. TMA – Annual Conference Boston	02 Fri
03 Sun	03 Wed	03 Sat	03 Mon	03 Thu	03 Sat
04 Mon	04 Thu	04 Sun	04 Tue	04 Fri	04 Sun
05 Tue	05 Fri	05 Mon	05 Wed	05 Sat	05 Mon
06 Wed	06 Sat 04.–09.08. ABA – Annual Meeting Chicago	06 Tue	06 Thu	06 Sun	06 Tue
07 Thu	07 Sun	07 Wed	07 Fri	07 Mon	07 Wed
08 Fri	08 Mon	08 Thu	08 Sat	08 Tue	08 Thu
09 Sat	09 Tue	09 Fri	09 Sun	09 Wed	09 Fri
10 Sun	10 Wed	10 Sat	10 Mon	10 Thu	10 Sat
11 Mon	11 Thu	11 Sun	11 Tue	11 Fri	11 Sun
12 Tue	12 Fri	12 Mon	12 Wed	12 Sat	12 Mon
13 Wed	13 Sat	13 Tue	13 Thu	13 Sun	13 Tue
14 Thu	14 Sun	14 Wed	14 Fri	14 Mon 14.–15.11. III – Annual International Insolvency Conference Hong Kong	14 Wed
15 Fri	15 Mon	15 Thu	15 Sat	15 Tue	15 Thu
16 Sat	16 Tue	16 Fri	16 Sun	16 Wed	16 Fri
17 Sun	17 Wed	17 Sat	17 Mon	17 Thu	17 Sat
18 Mon	18 Thu	18 Sun	18 Tue	18 Fri	18 Sun
19 Tue	19 Fri	19 Mon	19 Wed	19 Sat	19 Mon
20 Wed	20 Sat	20 Tue	20 Thu 18.–22.10. NCBJ – Annual Meeting Orlando	20 Sun	20 Tue
21 Thu	21 Sun	21 Wed	21 Fri	21 Mon	21 Wed
22 Fri	22 Mon	22 Thu	22 Sat	22 Tue	22 Thu
23 Sat	23 Tue	23 Fri	23 Sun	23 Wed	23 Fri
24 Sun	24 Wed	24 Sat	24 Mon	24 Thu	24 Sat
25 Mon	25 Thu	25 Sun	25 Tue	25 Fri	25 Sun Christmas Day
26 Tue	26 Fri	26 Mon	26 Wed	26 Sat	26 Mon Boxing Day
27 Wed	27 Sat	27 Tue	27 Thu	27 Sun	27 Tue
28 Thu	28 Sun	28 Wed	28 Fri	28 Mon	28 Wed
29 Fri	29 Mon	29 Thu	29 Sat	29 Tue	29 Thu
30 Sat	30 Tue	30 Fri	30 Sun	30 Wed	30 Fri
31 Sun	31 Wed		31 Mon		31 Sat

German-English Glossary

This glossary is a compilation of German, English and US insolvency and bankruptcy terms, where the underlying concepts are similar or at least comparable. It also contains an appropriate translation of the German terms to help users better understand legal texts in this area.

Terms are not interchangeable and must be used very carefully. Schultze & Braun does not accept any liability for use of the terms by third parties.

GERMAN-ENGLISH

	German	Appropriate translation
1	Anschlusskonkursverfahren	follow-up bankruptcy proceedings
2	Ausfall	shortfall
3	echte Gesamtschuld	genuine joint and several obligation
4	Eröffnungsbeschluss	order commencing proceedings
5	Gesellschaft ohne Rechtspersönlichkeit	company without legal personality
6	Grundstück	real property
7	Hauptinsolvenzverfahren	main insolvency proceedings
8	Insolvenzantragsverfahren	preliminary insolvency proceedings
9	insolvenzfreies Vermögen	property exempted from inclusion in the insolvency estate
10	Insolvenzstrafrecht	law governing criminal liability for an insolvency offence
11	Kompetenzkonflikt	conflicts of jurisdiction
12	körperlicher Gegenstand	tangible assets
13	Massekostendeckung	coverage of procedural costs in the insolvency
14	Neumasseverbindlichkeit	new preferential liabilities incurred after the announcement of deficiency of assets
15	Passivprozess	court proceedings as defendant
16	Prozessgericht	ordinary civil courts
17	Rechtspfleger	senior judicial officer
18	Regelabwicklung	standard administration
19	Schuldenbereinigungsplan	debt settlement plan
20	Sicherungsabtretung	assignment for security purposes
21	Soll-Masse	target estate
22	Stimmrecht	voting right
23	Überwachung	monitoring
24	Vergleichsantrag	application for composition proceedings
25	Verpächter	lessor
26	Vertrauensschutz	protection of legitimate expectation
27	Vorauswahlliste	pre-selection list
28	Wiedereinsetzung in den vorigen Stand	restoration of the status quo ante
29	Zerschlagungswert	break-up values
30	Zustimmungsfiktion	deemed consent

Part Two

Further suspension of the obligation to apply for commencement of insolvency proceedings and the transitional rule regarding directors' liability

By Dr Elske Fehl-Weileder, Attorney-at-Law in Germany and Certified Specialist in Insolvency Law

The obligation to apply for commencement of insolvency proceedings in case of material insolvency (illiquidity or overindebtedness) is a central component of German insolvency law – not least because of the liability consequences that follow if this obligation is breached. There have been numerous changes to the law in both these respects since the last edition of the Yearbook was published.

In March 2020, the obligation to apply for commencement of insolvency proceedings pursuant to section 15a of the Insolvency Code (*Insolvenzordnung*, InsO) was suspended in response to the COVID-19 pandemic so as to cushion the impact of the lockdown on affected companies.[1] This suspension was extended a number of times, in various forms and subject to various requirements. Latterly, from January to April 2021, it was available only to undertakings which had applied for help under the interim assistance scheme but had not yet received it.

Shortly after the obligation to apply for commencement of insolvency proceedings returned to full effect in May 2021, Germany was overtaken in July 2021 by another catastrophe in the form of heavy rain and flooding, which hit the western part of the country hard. For companies damaged by the floods, the obligation to apply for commencement of insolvency proceedings was suspended once again, this time until 31 January 2022. This was done in the Reconstruction Assistance Act 2021 (*Aufbauhilfegesetz* 2021), which was passed by the Bundesrat on 10 September 2021 and entered into force on 15 September 2021.[2] For the suspension to apply, firstly, material insolvency must be attributable to the heavy rain and flooding in July 2021, and secondly, serious negotiations regarding financing or recovery must be under way and those negotiations must present a reasonable prospect of recovery.

The suspension of the obligation to apply for commencement of insolvency proceedings is of direct relevance not only for the question of whether a company's management is required to file for insolvency. The question of whether this obligation existed will determine whether, in subsequent insolvency proceedings, the insolvency administrator can claim back from the company's management payments which were made out of the company's assets after the occurrence of material insolvency. Since 1 January 2021, the basis for such claims has been the

1 Act to Temporarily Suspend the Obligation to Apply for Commencement of Insolvency Proceedings and to Limit Directors' Liability in the Case of Insolvency Caused by the Covid-19 Pandemic (*Gesetz zur vorübergehenden Aussetzung der Insolvenzantragspflicht und zur Begrenzung der Organhaftung bei einer durch die COVID-19-Pandemie bedingten Insolvenz*, COVInsAG) of 27 March 2020, Federal Gazette (BGBl.) I 2020, 569.

2 Act Establishing a "Reconstruction Assistance 2021" Fund and Temporarily Suspending the Obligation to Apply for Commencement of Insolvency Proceedings due to the Heavy Rainfall and Flooding in July 2021 and amending Further Laws (*Aufbauhilfegesetz* 2021, AufbhG 2021), Article 7, BT-Drucks. (Bundestag Printed Matter) 19/32039.

new section 15b InsO, which replaces section 64 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG) and sections 92 and 93 of the Stock Corporation Act (*Aktiengesetz*, AktG).[3]

The legislator initially left open the question of whether the new liability rule set out in section 15b InsO should also apply to payments which were made before the amendment entered into force, i.e. on or before 31 December 2020. This question was the subject of heated discussion among practitioners before the legislator finally put it to rest. It ended the uncertainty with a new law, the MoPeG,[4] which clarified that the new rules apply to payments made from 1 January 2021 only. So for old cases, the situation remains unchanged, and the extensive body of rulings on directors' liability handed down by the Federal Court of Justice (*Bundesgerichtshof*) continues to apply in full.

3 Inserted by the Act on the Advancement of Restructuring and Insolvency Law (*Gesetz zur Fortentwicklung des Sanierungs- und Insolvenzrechts, SanInsFoG) of 29 December 2020, Federal Gazette (BGBl.) I 2020, 3256.*

4 Partnership Law Modernisation Act (*Personengesellschaftsrechtsmodernisierungsgesetz*, MoPeG) of 10 August 2021, Article 36, which entered into force on the date of promulgation, Federal Gazette (BGBl.) I 2021, 3436.

Insolvency Code

Insolvency Code of 5 October 1994 (*BGBl.* [Federal Law Gazette] I 1994, page 2866), most recently amended by Article 35 of the Act of 10 August 2021 (*BGBl.* I 2021, p. 3436)

Contents

Part One – General Provisions

Section 1 – Objectives of Insolvency Proceedings

The purpose of insolvency proceedings is the collective satisfaction of the debtor's creditors through realisation of the debtor's assets and distribution of the proceeds or through agreement on an alternative arrangement in an insolvency plan, particularly in order to maintain the enterprise. Debtors who have acted in good faith will be given the opportunity to have their remaining debts discharged.

Section 2 – Local Court as Insolvency Court

(1) The local court within whose district a regional court is located has exclusive jurisdiction for insolvency proceedings as the insolvency court for the district of this regional court.

(2) In order for the proceedings to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to designate other or additional local courts as insolvency courts and stipulate different districts for the insolvency courts by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

(3) Statutory orders under subsection (2) shall, for each district of a higher regional court, specify an insolvency court at which a place of group jurisdiction pursuant to section 3a may be established. The jurisdiction of the insolvency court specified may extend within a Federal State beyond the district of a higher regional court.

Section 3 – Local Jurisdiction

(1) The insolvency court within whose district a debtor has its[1] place of general jurisdiction has exclusive local jurisdiction. If the centre of a self-employed economic activity carried on by the debtor is located in a different place, the insolvency court within whose district this place is located has exclusive jurisdiction.

(2) If during the last six months before the application is lodged the debtor has used tools pursuant to section 29 of the Business Stabilisation and Restructuring Act [*Unternehmensstabilisierungs- und -restrukturierungsgesetz*], the court which was responsible for the measures as restructuring court also has local jurisdiction.

(3) If more than one court has jurisdiction, the court to which application is first made for commencement of insolvency proceedings shall exclude the other courts.

1 Unless a reference is specifically to a natural person or to a legal entity, all references to 'the debtor' and pronouns relating thereto should be construed as referring to male and female natural persons and legal entities.

Section 3a – Place of Group Jurisdiction

(1) Upon application by a debtor that is a member of a corporate group within the meaning of section 3e (group-affiliated debtor), the insolvency court seised of the insolvency proceedings shall declare its jurisdiction over the other group-affiliated debtors (other group proceedings) if an admissible application for commencement of insolvency proceedings has been lodged with respect to the debtor and if the debtor is manifestly not merely of secondary importance for the corporate group as a whole. Secondary importance may generally not be assumed if in the last full financial year, the debtor's annual average number of employees represented more than 15% of the annual average number of employees in the corporate group, and
1. the debtor's total assets amounted to more than 15% of the consolidated total assets of the corporate group or
2. the debtor's sales revenue amounted to more than 15% of the consolidated sales revenue of the corporate group.
If several group-affiliated debtors simultaneously lodged an application in accordance with sentence 1, or if in the case of several applications, it is unclear which application was lodged first, the decisive application shall be the one lodged by the debtor that had the most employees in the last full financial year; the other applications shall be inadmissible. If none of the group-affiliated debtors meets the requirements of sentence 2, the place of group jurisdiction may in any event be established at the court that has jurisdiction for the commencement of the proceedings for the group-affiliated debtor that had the most employees in the last full financial year.

(2) If there are doubts that concentration of the proceedings at the insolvency court seised of the matter is in the common interest of the creditors, the court may refuse the application under subsection (1) sentence 1.

(3) The debtor's right of application vests in the insolvency administrator upon commencement of the insolvency proceedings or in a preliminary insolvency administrator vested with the right to manage and dispose of the debtor's assets upon his/her appointment.

(4) On application by the debtor, the court with jurisdiction over other group proceedings, provided that it has jurisdiction for decisions in restructuring cases pursuant to section 34 of the Business Stabilisation and Restructuring Act [*Unternehmensstabilisierungs- und -restrukturierungsgesetz*], shall also declare its jurisdiction, in accordance with the requirements in subsection (1), over other group proceedings in insolvency matters pursuant to subsection (1).

Section 3b – Continuation of Place of Group Jurisdiction

A place of group jurisdiction established pursuant to section 3a remains unaffected by the non-commencement, termination, or discontinuation of insolvency proceedings in respect of the debtor that lodged the application as long as proceedings are pending at that place of jurisdiction in respect of another group-affiliated debtor.

Section 3c – Responsibility for Other Group Proceedings

(1) At the court at the place of group jurisdiction, the division responsible for the other group proceedings is the one who is responsible for the proceedings in which the place of group jurisdiction was established.

(2) The application for commencement of other group proceedings may also be lodged at the court having jurisdiction pursuant to section 3 (1).

Section 3d – Referral to the Place of Group Jurisdiction

(1) If an application for commencement of insolvency proceedings in respect of the assets of a group-affiliated debtor is lodged with an insolvency court that is not the court at the place of group jurisdiction, the court seised of the matter may refer the proceedings to the court at the place of group jurisdiction. Upon application, a referral shall be made if the debtor lodges an admissible application for commencement of insolvency proceedings with the court at the place of group jurisdiction immediately after it became aware that a creditor had lodged an application for commencement of insolvency proceedings.

(2) The debtor is entitled to make the application. Section 3a (3) applies with the necessary modifications.

(3) The court at the place of group jurisdiction may dismiss the preliminary insolvency administrator appointed by the referring court if this is necessary in order to appoint one individual as the insolvency administrator for several or all proceedings in respect of the group-affiliated debtors in accordance with section 56b.

Section 3e – Corporate Group

(1) A corporate group within the meaning of this Code consists of legally independent enterprises that have the centre of their main interests on domestic territory and are directly or indirectly affiliated with one another due to

1. the ability to exercise a controlling influence or

2. consolidation under common management.

(2) Also considered a corporate group within the meaning of subsection (1) are a partnership and its general partners, if none of the latter is a natural person or a partnership with a natural person as general partner, or the connection of partnerships continues in this manner.

Section 4 – Applicability of the Code of Civil Procedure *[Zivilprozessordnung]*

Unless otherwise specified in the present Code, the provisions of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications to insolvency proceedings. Section 128a of the Code of Civil Procedure [*Zivilprozessordnung*] applies with the proviso that notices of creditors' meetings and other meetings are to make the participants aware of the obligation to refrain from deliberately recording sound and images and to ensure through appropriate measures that third parties cannot hear or view the transmission of sound and images.

Section 4a – Deferment of the Costs of Insolvency Proceedings

(1) If the debtor is a natural person and has lodged an application for discharge of residual debt, on application he/she shall be permitted to defer the costs of the insolvency proceedings until the discharge of residual debt is granted if it is likely that the debtor's assets will be insufficient to cover these costs. Deferment pursuant to sentence 1 also includes the costs of the debt settlement plan proceedings and the residual debt discharge proceedings. The debtor shall attach a declaration to the application stating whether a ground for refusal pursuant to section 290 (1) No 1 applies. If such a ground applies, deferment is excluded.

(2) If the debtor is permitted to defer the costs of the proceedings, on application he/she shall be assigned a lawyer of his/her choice who is willing to represent him/her, if representation by a lawyer appears necessary despite the duty of care incumbent on the court. Section 121 (3) to (5) of the Code of Civil Procedure *[Zivilprozessordnung]* applies with the necessary modifications.

(3) The effect of deferment is that

1. the Federal treasury or Federal State treasury may claim against the debtor for

a) the court costs in arrears and the court costs arising,

b) the claims of the lawyer assigned to the debtor which pass to the treasury, only in accordance with the stipulations laid down by the court;

2. the lawyer assigned to the debtor cannot assert claims for remuneration against the debtor.

Deferment is granted separately for each stage of the proceedings. The effects specified in sentence 1 apply on an interim basis pending the decision on deferment. Section 4b (2) applies with the necessary modifications.

Section 4b – Repayment and Adjustment of Deferred Amounts

(1) If, after discharge of residual debt has been granted, the debtor is not in a position to pay the deferred amount out of his/her income and assets, the court may extend the deferment and fix the monthly instalments to be paid. Section 115 (1) and (2) and section 120 (2) of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.

(2) The court may vary the decision on deferment and the monthly instalments at any time if personal or financial circumstances relevant to the decision have significantly changed. The debtor is obliged to notify the court without delay of any significant change in these circumstances. Section 120 (4) sentences 1 and 2 of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications. A change to the detriment of the debtor is excluded if four years have elapsed since termination of the proceedings.

Section 4c – Revocation of Deferment

The court may revoke the deferment if

1. the debtor intentionally or through gross negligence provides incorrect information regarding circumstances relevant for the commencement of insolvency proceedings or for deferment, or if the debtor does not provide a declaration requested by the court regarding his/her circumstances;
2. the personal or financial requirements for deferment were not met; in this case revocation is excluded if four years have elapsed since termination of the proceedings;
3. the debtor is intentionally or negligently more than three months in arrears with the payment of a monthly instalment or with the payment of another amount;
4. the debtor is not in reasonable gainful employment and if unemployed does not try to find such employment or refuses a suitable activity and thereby prejudices the satisfaction of the insolvency creditors; this shall not apply if the debtor is not at fault; section 296 (2) sentences 2 and 3 apply with the necessary modifications;
5. discharge of residual debt is refused or revoked.

Section 4d – Appeal

(1) The debtor has the right of immediate appeal against the refusal of deferment or its revocation and against the refusal of the application for assignment of counsel.

(2) If deferment is granted, the public treasury has the right of immediate appeal. The appeal can only be based on the fact that deferment should have been refused in view of the debtor's personal or financial circumstances.

Section 5 – Procedural Principles

(1) The insolvency court shall ascertain ex officio all circumstances relevant to the insolvency proceedings. To this end it may, in particular, hear witnesses and experts.

(2) If the debtor's financial circumstances are straightforward and the number of creditors or the amount of the debts is small, the proceedings will be conducted in writing. The insolvency court may order that the proceedings or individual parts of the proceedings are conducted orally if this is appropriate to facilitate the course of the proceedings. The court may rescind or vary this order at any time. The order and its rescission or variation shall be published.

(3) The court may issue its decisions without a hearing. If a hearing is held, section 227 (3) sentence 1 of the Code of Civil Procedure *[Zivilprozessordnung]* is not applicable.

(4) Schedules and lists may be produced and processed electronically. The governments of the Federal States are authorised to lay down detailed provisions by statutory order regulating the maintenance of the schedules and lists, their electronic submission, as well as the electronic submission of accompanying documents and their storage. They may also stipulate the data format requirements for electronic submission. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

(5) Insolvency administrators should maintain an electronic creditor information system via which every insolvency creditor who has filed a claim can be given access in a commonly used file format to all decisions of the insolvency court, all reports sent to the insolvency court which do not concern only the claims of other creditors, and all documents concerning the creditor's own claims. If in the preceding business year the debtor has fulfilled at least two of the three criteria specified in section 22a (1), the insolvency administrator must maintain an electronic creditor information system and make the documents specified in sentence 1 available for electronic access without delay. The administrator shall provide the parties entitled to view the documents with the information necessary for access without delay.

Section 6 – Immediate Appeal

(1) The decisions of the insolvency court are subject to appeal only in those cases in which this Code provides the right of immediate appeal. The immediate appeal shall be lodged with the insolvency court.

(2) The period for lodging an appeal starts to run on the date on which the decision is pronounced, or if it not pronounced, on the date on which it is served.

(3) The decision on the appeal shall be effective only when it becomes final and binding. The appeal court may, however, order that the decision is effective immediately.

Section 7 (repealed)

Section 8 – Service

(1) Service of documents is effected ex officio without the document to be served requiring certification. Service may be effected by posting the document to the address of the addressee for service; section 184 (2) sentences 1, 2 and 4 of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications. If service is to be effected on domestic territory, the document shall be deemed to have been served three days after posting.

(2) Service shall not be effected on persons whose place of residence is unknown. If such persons have a representative with authority to accept service, service shall be effected on that representative.

(3) The insolvency court may instruct the insolvency administrator to carry out the service of documents pursuant to subsection (1). He/she may use third parties, in particular his/her own staff, for effecting and recording the service of documents. The insolvency administrator shall add the notes made by him/her in accordance with section 184 (2) sentence 4 of the Code of Civil Procedure *[Zivilprozessordnung]* to the court files without delay.

Section 9 – Public Announcements

(1) Public announcements are made by means of centralised, national publication on the internet[2]; publication may be made in extract form. The announcement shall accurately identify the debtor, stating in particular its address and line of business; it shall be deemed to have been made when a further two days have elapsed since the day of publication.

(2) The insolvency court may decide on additional publications if Federal State legislation makes provision for this. The Federal Ministry of Justice and Consumer Protection is authorised to regulate the details of the centralised, national publication on the internet by statutory order issued with the approval of the Bundesrat. This shall, in particular, stipulate time limits for deletion and provisions ensuring that publications
1. are not tampered with and are complete and up-to-date;
2. can be traced to their source at any time.

(3) Public announcement shall suffice as proof of service on all parties to the proceedings even if this Code prescribes separate service in addition.

Section 10 – Hearing of the Debtor

(1) If this Code provides for the debtor to be granted a hearing, this may be omitted if the debtor resides abroad and the hearing would unduly delay the proceedings or if the debtor's place of residence is unknown. In this case a representative or relative of the debtor shall be heard.

(2) If the debtor is not a natural person, subsection (1) applies with the necessary modifications in relation to the hearing of persons authorised to represent the debtor or who hold a participating interest in the debtor. If the debtor is a legal entity and the legal entity does not have a representative body (no management), the persons who hold a participating interest in the debtor may be heard; subsection (1) sentence 1 applies with the necessary modifications.

Section 10a – Preliminary Discussion

(1) A debtor who fulfils at least two of the three criteria specified in section 22a (1) is entitled to a preliminary discussion at the insolvency court responsible for it concerning matters relevant for the proceedings, in particular the requirements for self-administration, the self-administration strategy, the composition of the preliminary creditors' committee, the person to be appointed as preliminary insolvency administrator or supervisor, any further protective orders and authorisation to create preferential liabilities. If the debtor is not entitled to a preliminary discussion pursuant to sentence 1, the court may offer a preliminary meeting at its own discretion.

(2) With the approval of the debtor, the court can hear creditors, in particular in order to discuss their willingness to serve as members of a preliminary creditors' committee.

(3) The division on behalf of which the judge conducts the preliminary discussion pursuant to subsection (1) sentence 1 has jurisdiction for insolvency proceedings in respect of the assets of the debtor during the six months after the preliminary meeting.

2 www.insolvenzbekanntmachungen.de

Part Two – Commencement of Insolvency Proceedings. Assets Involved and Parties to the Proceedings

Chapter One – Requirements for Commencement and Preliminary Insolvency Proceedings

Section 11 – Admissibility of Insolvency Proceedings

(1) Insolvency proceedings may be commenced in respect of the assets of any natural person or legal entity. An unincorporated association is equivalent to a legal entity in this respect.

(2) Insolvency proceedings may further be commenced:
1. in respect of the assets of a company without legal personality (general partnership, limited partnership, registered partnership, partnership under the Civil Code *[Bürgerliches Gesetzbuch]*, shipping partnership, European Economic Interest Grouping);
2. in accordance with sections 315 to 334, in respect of a deceased's estate, the joint marital property of a continued community of property or the joint marital property of a community of property jointly managed by the spouses or life partners.

(3) After the dissolution of a legal entity or a company without legal personality the commencement of insolvency proceedings is permitted as long as the assets have not been distributed.

Commentary:
In subsection (2) No. 1 and subsection (3), the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 12 – Legal Entities under Public Law

(1) Insolvency proceedings may not be commenced in respect of the assets
1. of the Federal Republic or a Federal State;
2. of a legal entity under public law which is subject to the supervision of a Federal State, if the law of the Federal State so provides.

(2) If a Federal State has declared insolvency proceedings to be inadmissible in respect of the assets of a legal entity in accordance with subsection (1) No. 2, in the event of its illiquidity or overindebtedness its employees may apply to the Federal State for the benefits which they would be able to claim from the Employment Agency pursuant to the provisions on insolvency pay contained in the Third Book of the Code of Social Security Law *[Drittes Buch Sozialgesetzbuch]* and from the statutory insolvency insurance institution pursuant to the provisions of the Act to Improve Occupational Pensions *[Gesetz zur Verbesserung der betrieblichen Altersversorgung]* if insolvency proceedings had been commenced.

Section 13 – Application for Commencement of Insolvency Proceedings

(1) Insolvency proceedings shall only be commenced on written application. The creditors and the debtor are entitled to lodge the application. An application by the debtor shall be accompanied by a list of creditors and their claims. If the debtor has a business operation that has not been discontinued, the list shall indicate in particular
1. the largest claims;
2. the largest secured claims;
3. the tax authorities' claims;
4. the social security authorities' claims and
5. claims arising under occupational pension schemes.

In this case the debtor shall also give particulars of the total assets, the sales revenue and the average number of employees in the preceding business year. The particulars pursuant to sentence 4 are obligatory if
1. the debtor applies for self-administration;
2. the debtor fulfils the criteria specified in section 22a (1) or
3. an application has been made for the appointment of a preliminary creditors' committee.

A declaration shall be attached to the list pursuant to sentence 3 and the particulars pursuant to sentences 4 and 5 stating that the information provided is accurate and complete.

(2) The application may be withdrawn up until the court orders commencement of insolvency proceedings or the application is refused with final effect.

(3) If the application for commencement of insolvency proceedings is inadmissible, the insolvency court shall invite the applicant to remedy the deficiency without delay and shall grant him/her a reasonable period of time in which to do so.

(4) The Federal Ministry of Justice and Consumer Protection is authorised to introduce a form to be used by the debtor for lodging an application by means of statutory order issued with the approval of the Bundesrat. Insofar as a form is introduced pursuant to sentence 1, the debtor must use this form. Different forms may be introduced by the courts for proceedings that are processed electronically and for proceedings that are not processed electronically.

Section 13a – Application for the Establishment of a Place of Group Jurisdiction

(1) The following information must be specified in an application under section 3a (1):
1. name, registered office and objects and also the total assets, sales revenue and average number of employees in the last financial year of the other group-affiliated undertakings which are not merely of secondary importance to the corporate group; corresponding information should be provided for the remaining group-affiliated undertakings;
2. the reasons why concentration of proceedings at the insolvency court seised of the matter is in the common interest of the creditors;
3. whether continuation or reorganisation of the corporate group or part thereof is being pursued;
4. which group-affiliated undertakings are institutions within the meaning of section 1 (1b) of the Banking Act *[Kreditwesengesetz]*, financial holding companies within the meaning of section 1 (3a) KWG, capital investment companies within the meaning of section 17 (1) of the Investment Code *[Kapitalanlagegesetzbuch]*, payment service providers within the meaning of section 1 (1) of the Payment Services Supervision Act *[Zahlungsdiensteaufsichtsgesetz]* or insurance undertakings within the meaning of section 7 No. 33 of the Act on the Supervision of Insurance Undertakings *[Versicherungsaufsichtsgesetz]* and
5. the group-affiliated debtors in relation to which the commencement of insolvency proceedings has been applied for or proceedings have been commenced, including the insolvency court having jurisdiction and the case number.

(2) The most recent consolidated accounts for the corporate group must be annexed to the application under section 3a (1). If these are not available, the most recent annual accounts of the undertakings in the group which are not merely of secondary importance to the corporate group must be annexed. The annual accounts of the remaining undertakings in the corporate group should be annexed.

Section 14 – Application by a Creditor

(1) An application by a creditor is admissible if the creditor has a legal interest in the commencement of insolvency proceedings and substantiates its claim and the grounds for commencement of insolvency proceedings by prima facie evidence. The application shall not become inadmissible solely on account of the claim being satisfied.

(2) If the application is admissible, the insolvency court shall hear the debtor.

(3) If the creditor's claim is satisfied after the application has been lodged, the debtor must bear the costs of the proceedings if the application is rejected as unfounded. The debtor must also bear the costs if the application of a creditor is rejected by reason of a non-public stabilisation order pursuant to the Business Stabilisation and Restructuring Act [*Unternehmensstabilisierungs- und -restrukturierungsgesetz*] which is effective at the time the application is lodged and the creditor could not have known of the stabilisation order.

Section 15 – Right of Legal Entities and Companies without Legal Personality to Apply for Commencement of Insolvency Proceedings

(1) In addition to the creditors, any member of the representative body or, in the case of a company without legal personality or of a partnership limited by shares, any general partner, and also any liquidator is entitled to apply for commencement of insolvency proceedings relating to the assets of a legal entity or of a company without legal personality. In the case of a legal entity with no management, each shareholder, and in the case of a stock corporation or a cooperative, in addition each member of the supervisory board, is also entitled to apply for commencement of insolvency proceedings.

(2) If the application is not lodged by all members of the representative body, all general partners, all shareholders of the legal entity, all members of the supervisory board or all liquidators, it shall be admissible if grounds for commencement of insolvency proceedings are demonstrated to the satisfaction of the court. In addition, if an application is lodged by shareholders of a legal entity or members of the supervisory board, the lack of management shall also be demonstrated to the satisfaction of the court. The insolvency court shall hear the remaining members of the representative body, general partners, shareholders of the legal entity, members of the supervisory board or liquidators.

(3) If none of the general partners of a company without legal personality is a natural person, subsections (1) and (2) shall apply with the necessary modifications to the members of the representative body and the liquidators of the partners authorised to represent the company. The same shall apply if the connection between the companies continues in this form.

Commentary:
In the title, the words "companies without legal personality" will be replaced with the words "partnerships with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436). In subsection (1) sentence 1 and subsection (3) sentence 1, the words "company without legal personality" will be replaced by the words "partnership with legal personality".

Section 15a – Obligation of Legal Entities and Companies without Legal Personality to Apply for Commencement of Insolvency Proceedings

(1) If a legal entity becomes illiquid or overindebted, the members of the representative body or the liquidators must apply for commencement of insolvency proceedings without undue delay. The application must be lodged no later than three weeks after the occurrence of illiquidity and six weeks after the occurrence of overindebtedness. The same shall apply to the members of the representative body of the partners authorised to represent the company or the liquidators in the case of a company without legal personality where none of the general partners is a natural person; this shall not apply if the general partners include another company which has a natural person as general partner.

(2) In the case of a company within the meaning of subsection (1) sentence 3, subsection (1) shall apply with the necessary modifications if the members of the representative body of the partners authorised to represent the company are, in turn, companies in which none of the general partners is a natural person, or if the connection between the companies continues in this form.

(3) In the event that a company with limited liability has no management, each shareholder, and in the event that a stock corporation or a co-operative has no management, each member of the supervisory board, is obliged to lodge an application for commencement of insolvency proceedings unless such person was unaware of the company's illiquidity and overindebtedness or lack of management.

(4) Anyone who, contrary to subsection (1) sentence 1 and sentence 2, also in conjunction with sentence 3 or subsection (2) or subsection (3),
1. does not apply for commencement of insolvency proceedings or does not apply within the specified time limit or
2. does not apply correctly

shall be punished by imprisonment for up to three years or by a fine.

(5) If the offender in the cases specified in subsection (4) acts negligently, the punishment shall be imprisonment for up to one year or a fine.

(6) In the case of subsection (4), number 2, also in conjunction with subsection (5), the offence shall be punishable only if the application for commencement of insolvency proceedings was refused as inadmissible with final effect.

(7) Subsections (1) to (6) are not applicable to associations and foundations to which section 42 (2) of the Civil Code *[Bürgerliches Gesetzbuch]* applies.

Commentary:
In the title, the words "companies without legal personality" will be replaced with the words "partnerships with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436). In subsection (1) sentence 3, the words "company without legal personality" will be replaced by the words "partnership with legal personality".

Section 15b – Payments in the case of Illiquidity and Overindebtedness; Limitation Period

(1) After a legal entity has become illiquid or overindebted, the members of the representative body and liquidators of the legal entity obligated to apply for commencement of insolvency proceedings under section 15a (1) sentence 1 are no longer permitted to make payments on its behalf. This does not apply to payments which are consistent with the due care of a prudent and conscientious manager.

(2) Subject to subsection (3), payments made in the ordinary course of business, particularly those that serve to maintain business operations, are deemed consistent with the due care of a prudent and conscientious manager. During the period for timely lodging of an application pursuant to section 15a (1) sentences 1 and 2, this applies for only as long as the parties obligated to apply for commencement of insolvency proceedings pursue measures to permanently eliminate the material insolvency or to prepare an application for commencement of insolvency proceedings with the due care of a prudent and conscientious manager. Payments that are made in the period between the lodging of the application and the commencement of insolvency proceedings are deemed consistent with the due

care of a prudent and conscientious manager if they are made with the consent of a preliminary insolvency administrator.

(3) If the time limit for timely lodging of an application pursuant to section 15a (1) sentences 1 and 2 has passed and the party obligated to apply for commencement of insolvency proceedings has not done so, payments are not generally compatible with the due care of a prudent and conscientious manager.

(4) If payments are made contrary to subsection (1), the parties obligated to apply for commencement of insolvency proceedings must reimburse the legal entity. If the creditors of the legal entity have incurred a lesser loss, the obligation to pay compensation is limited to compensation for that loss. Insofar as the reimbursement or compensation is required to satisfy the creditors of the legal entity, the obligation shall not be excluded by reason of the fact that these parties acted in compliance with a resolution of a body of the legal entity. If the legal entity waives reimbursement or compensation claims or enters into a settlement in respect of these claims, the waiver or settlement is ineffective. This does not apply if the party owing the reimbursement or compensation is illiquid and enters into a settlement with its creditors in order to avoid insolvency proceedings, if the obligation to reimburse or pay compensation is dealt with in an insolvency plan or if an insolvency administrator is acting for the legal entity.

(5) Subsection (1) sentence 1 and subsection (4) also apply for payments to persons who hold a participating interest in the legal entity insofar as such payments necessarily led to the illiquidity of the legal entity, unless this was not apparent even with exercise of the due care referred to in subsection (1) sentence 2. Sentence 1 is not applicable to cooperatives.

(6) Subsections (1) to (5) also apply to the members of the representative body of the partners authorised to represent the company who are obligated to lodge an application for commencement of insolvency proceedings pursuant to section 15a (1) sentence 3 and subsection (2).

(7) Claims based on the foregoing provisions become time-barred after five years. If the legal entity is quoted at the time of the breach of obligation, the claims become time-barred after 10 years.

(8) There is no breach of tax payment obligations if between the occurrence of illiquidity pursuant to section 17 or overindebtedness pursuant to section 19 and the decision of the insolvency court on the application for commencement of insolvency proceedings tax claims are not satisfied or are not satisfied in good time, provided that the parties obligated to apply for commencement of insolvency proceedings comply with their obligations under section 15a. If contrary to the obligation under section 15a an application for commencement of insolvency proceedings is lodged late, the foregoing applies only to tax claims falling due following the appointment of a preliminary insolvency administrator or the ordering of interim self-administration. If insolvency proceedings are not commenced and this is attributable to a breach of duty by the parties obligated to apply for commencement of insolvency proceedings, sentences 1 and 2 do not apply.

Section 16 – Ground for Commencement

It is a prerequisite for commencement of insolvency proceedings that a ground for commencement exists.

Section 17 – Illiquidity

(1) The general ground for commencement of proceedings is illiquidity.

(2) The debtor is deemed illiquid if it is unable to meet its due payment obligations. Illiquidity shall generally be presumed if the debtor has stopped making payments.

Section 18 – Imminent Illiquidity

(1) If the debtor applies for commencement of insolvency proceedings, imminent illiquidity is also a ground for commencement of proceedings.

(2) The debtor faces imminent illiquidity if it is likely to be unable to meet existing payment obligations when they fall due. In general, a forecast period of 24 months is to be taken as a basis.

(3) In the case of a legal entity or a company without legal personality, if the application is not lodged by all members of the representative body, all general partners or all liquidators, subsection (1) shall only be applicable if the applicant or applicants is or are entitled to represent the legal entity or company.

Commentary:

In subsection (3), the words “company without legal personality” will be replaced with the words “partnership with legal personality” with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 19 – Overindebtedness

(1) In the case of a legal entity, overindebtedness is also a ground for commencement of proceedings.

(2) Overindebtedness exists if the debtor's assets no longer cover its existing liabilities, unless the continued operation of the enterprise during the next twelve months is substantially likely in the circumstances. Claims to repayment of shareholder loans or claims arising out of legal acts corresponding in economic terms to such loans which the creditor and debtor have agreed pursuant to section 39 (2) will be subordinated in insolvency proceedings to the claims specified in section 39 (1) Nos 1 to 5 are not to be taken into consideration in relation to the liabilities in terms of sentence 1.

(3) If a company without legal personality does not have a natural person as general partner, subsections (1) and (2) shall apply with the necessary modifications. This shall not apply if the general partners include another company which has a natural person as general partner.

Commentary:
In subsection (3) sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 20 – Obligation of Disclosure and Co-operation during Preliminary Insolvency Proceedings. Reference to Discharge of Residual Debt

(1) If the application is admissible, the debtor must provide the insolvency court with the information it requires to decide on the application and otherwise support the court in the performance of its duties. Sections 97, 98 and 101 (1) sentences 1 and 2 and (2) apply with the necessary modifications.

(2) If the debtor is a natural person, he/she shall be informed that he/she may obtain discharge of residual debt pursuant to sections 286 to 303a.

Section 21 – Interim Measures Order

(1) Until the application has been decided the insolvency court shall take all measures which appear necessary to prevent any changes in the debtor's financial position to the prejudice of the creditors. The debtor has the right of immediate appeal against the ordering of the measure.

(2) The court may in particular

1. appoint a preliminary insolvency administrator to whom section 8 (3) and sections 56 to 56b and 58 to 66 and 296a apply with the necessary modifications;

1a. establish a preliminary creditors' committee to which section 67 (2, 3) and sections 69 to 73 apply with the necessary modifications; persons who only became creditors upon commencement of proceedings may also be appointed as members of the creditors' committee;

2. issue a general restraint order against the debtor prohibiting disposals of assets or order that disposals by the debtor require the approval of the preliminary insolvency administrator to be effective;

3. order a prohibition or temporary suspension of compulsory enforcement measures against the debtor unless immovable assets are involved;

4. issue an interim postal redirection order to which sections 99 and 101 (1) sentence 1 apply with the necessary modifications;

5. order that assets which would be covered by section 166 or in respect of which segregation could be claimed in the event of commencement of proceedings may not be realised or collected by the creditor and that such assets may be used for the continued operation of the debtor's enterprise insofar as they are of substantial importance for this purpose; section 169 sentences 2 and 3 apply with the necessary modifications; the creditor shall be compensated for any loss in value resulting from such use by regular payments. The obligation to make compensation payments exists only insofar as the loss in value resulting from the use impairs the security of the creditor entitled to separate satisfaction. If the preliminary insolvency administrator collects a debt assigned to secure a claim in place of the creditor, sections 170 and 171 shall apply with the necessary modifications.

The ordering of protective measures does not affect the validity of disposals of financial collateral pursuant to section 1 (17) of the Banking Act *[Kreditwesengesetz]* and the validity of the settlement of claims and performance under payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities brought into systems pursuant to section 1 (16) of the Banking Act *[Kreditwesengesetz]*. This shall apply even if a transaction of this type by the debtor is carried out and settled or financial collateral is provided on the day the order is made and the other party proves that it neither knew nor ought to have known of the court order; if the other party is a system operator or a participant in the system, the day on which the order is made shall be determined in accordance with the meaning of business day in section 1 (16b) of the Banking Act *[Kreditwesengesetz]*.

(3) If other measures are insufficient, the debtor may be compelled to appear before the court and

be taken into custody after being heard. If the debtor is not a natural person the same shall apply with the necessary modifications to the members of its representative body. Section 98 (3) applies with the necessary modifications to the ordering of detention.

Section 22 – Legal Status of the Preliminary Insolvency Administrator

(1) If a preliminary insolvency administrator is appointed and a general prohibition of disposal is imposed on the debtor, the right to manage and dispose of the debtor's assets vests in the preliminary insolvency administrator. In this event the preliminary insolvency administrator shall:
1. secure and preserve the debtor's assets;
2. continue an enterprise operated by the debtor until the decision on commencement of insolvency proceedings, unless the insolvency court consents to the closure of the enterprise in order to avoid a substantial reduction in the assets;
3. investigate whether the debtor's assets will cover the costs of the proceedings; the court may in addition instruct the preliminary insolvency administrator as an expert to investigate whether there is a ground for commencement of proceedings and what prospects exist for the debtor's enterprise to continue.

(2) If a preliminary insolvency administrator is appointed without a general prohibition of disposal being imposed on the debtor, the court shall determine the duties of the preliminary insolvency administrator. Such duties are not permitted to exceed the duties pursuant to subsection (1) sentence 2.

(3) The preliminary insolvency administrator is entitled to enter the debtor's business premises and conduct investigations there. The debtor shall permit the preliminary insolvency administrator to inspect its books and business records. The debtor shall provide the preliminary insolvency administrator with all necessary information and support him/her in the performance of his/her duties; sections 97, 98 and 101 (1) sentences 1 and 2 and 101 (2) apply with the necessary modifications.

Section 22a – Appointment of a Preliminary Creditors' Committee

(1) The insolvency court shall establish a preliminary creditors' committee pursuant to section 21 (2) number 1a if the debtor has fulfilled at least two of the following three criteria in the previous business year:
1. a balance sheet total of at least EUR 6,000,000 after deduction of any losses exceeding equity within the meaning of section 268 (3) of the Commercial Code *[Handelsgesetzbuch];*
2. sales revenues of at least EUR 12,000,000 in the last 12 months prior to the balance sheet date;
3. an annual average of at least fifty employees.

(2) On application by the debtor, the preliminary insolvency administrator or a creditor, the court shall appoint a preliminary creditors' committee pursuant to section 21 (2) number 1a if the potential members of the preliminary creditors' committee are named and a declaration of consent by those persons is attached to the application.

(3) A preliminary creditors' committee shall not be appointed if the debtor's business operations have ceased, if the establishment of a preliminary creditors' committee is disproportionate in view of the anticipated value of the insolvency estate or if the establishment of the committee would cause a delay leading to a prejudicial change in the debtor's financial position.

(4) At the court's request, the debtor or the preliminary insolvency administrator shall name potential members of the preliminary creditors' committee.

Section 23 – Publication of Restrictions on Disposals

(1) The decision ordering any of the restrictions on disposals specified in section 21 (2) No. 2 and the appointment of a preliminary insolvency administrator shall be published. It shall be served separately on the debtor, on persons who have liabilities towards the debtor and on the preliminary insolvency administrator. The debtor's debtors shall be requested at the same time to pay their liabilities only in compliance with the decision.

(2) If the debtor is registered in the Commercial Register, Register of Cooperatives, Register of Partnerships or Register of Associations, the insolvency court registry shall send an official copy of the decision to the registration court.

(3) Sections 32 and 33 apply with the necessary modifications in respect of the registration of restrictions on disposals in the Land Register, the Register of Ships, the Register of Ships under Construction and the Register of Liens on Aircraft.

Commentary:

In subsection (2), the words "Commercial Register, Register of Cooperatives, Register of Partnerships or Register of Associations" will be replaced by the words "Commercial Register, Register of Cooperatives, Register of Companies, Register of Partnerships or Register of Associations" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

In section 23 (2), the words "or Register of Associations" will be replaced with a comma and the words "Register of Associations or Register of Foundations", and the words "or in the case of the Register of Foundations the registry authority" will be inserted after the word "registration court" with effect from 1 January 2026 by the Act to Harmonise Foundation Law and Amend the Infectious Diseases Protection Act *(Gesetz zur Vereinheitlichung des Stiftungsrechts und zur Änderung des Infektionsschutzgesetz)* (Federal Gazette I 2021, p. 2947).

Section 24 – Effects of the Restrictions on Disposals

(1) Sections 81 and 82 apply with the necessary modifications in relation to any breach of the restrictions on disposals specified in section 21 (2) No. 2.

(2) If the right to dispose of an asset of the debtor has vested in a preliminary insolvency administrator, section 85 (1) sentence 1 and section 86 shall apply with the necessary modifications in relation to the resumption of pending court proceedings.

Section 25 – Revocation of the Protective Measures

(1) If the protective measures are revoked, section 23 shall apply with the necessary modifications to the public announcement of the revocation of a restriction on disposals.

(2) If the right to dispose of the assets of the debtor has vested in a preliminary insolvency administrator, the preliminary insolvency administrator shall discharge the costs incurred and fulfil the obligations entered into by him/her out of the assets administered by him/her prior to the revocation of his/her appointment. The same shall apply in respect of liabilities arising out of contracts for continuing obligations insofar as the preliminary insolvency administrator has claimed counter-performance in respect of the assets administered by him/her.

Section 26 – Refusal of Application due to Insufficient Assets

(1) The insolvency court shall refuse the application for commencement of insolvency proceedings if the debtor's assets are likely to be insufficient to cover the costs of the proceedings. The application shall not be refused if sufficient funds are advanced or if the costs are deferred pursuant to section 4a. The order shall be published without delay.

(2) The court shall order that any debtor in respect of whom an application to commence insolvency proceedings has been refused for deficiency of assets be entered in the list of debtors pursuant to Section 882b of the Code of Civil Procedure *[Zivilprozessordnung]* and shall immediately transmit the order electronically to the central enforcement court pursuant to Section 882h (1) of the Code of Civil Procedure *[Zivilprozessordnung]*. Section 882c (3) of the Code of Civil Procedure *[Zivilprozessordnung]* applies with the necessary modifications.

(3) Anyone who has made an advance payment pursuant to subsection (1) sentence 2 may claim reimbursement of the advanced amount from any person who, contrary to the provisions of insolvency or company law, has intentionally or negligently and in breach of duty failed to lodge an application for commencement of insolvency proceedings. If a dispute arises as to whether the person acted intentionally or negligently and in breach of duty, such person shall bear the burden of proof.

(4) Any person who, contrary to the provisions of insolvency or company law, has intentionally or negligently and in breach of duty failed to lodge an application for commencement of insolvency proceedings is obliged to make the advance payment pursuant to subsection (1) sentence 2. If a dispute arises as to whether the person acted intentionally or negligently and in breach of duty, such person shall bear the burden of proof. Payment of the advance payment may be requested by the preliminary insolvency administrator and by any person who has a justified financial claim against the debtor.

Section 26a – Remuneration of the Preliminary Insolvency Administrator

(1) If insolvency proceedings are not commenced, the insolvency court shall make an order determining the preliminary insolvency administrator's remuneration and reimbursable expenses.

(2) The determination shall be made against the debtor unless the application for commencement of insolvency proceedings is inadmissible or not well-founded and the applicant creditor is

guilty of gross negligence. In this case the preliminary insolvency administrator's remuneration and reimbursable expenses shall be imposed on and awarded against the creditor in whole or in part. Gross negligence shall be assumed in particular if the application had no prospect of success from the outset and the creditor should have recognised this. The order shall be served on the preliminary insolvency administrator and on the party responsible for the preliminary insolvency administrator's costs. The provisions of the Code of Civil Procedure *[Zivilprozessordnung]* concerning compulsory enforcement based on cost assessment orders apply with the necessary modifications.

(3) The preliminary insolvency administrator and the party responsible for the preliminary insolvency administrator's costs have the right of immediate appeal against the order. Section 567 (2) of the Code of Civil Procedure *[Zivilprozessordnung]* applies with the necessary modifications.

Section 27 – Order Commencing Proceedings

(1) If insolvency proceedings are commenced, the insolvency court shall appoint an insolvency administrator. Section 270 remains unaffected.

(2) The order commencing proceedings shall contain:

1. the debtor's company name or surname and first names, date of birth, registration court, registration number under which the debtor is entered in the Commercial Register, branch of business or occupation and place of business or place of residence;
2. name and address of the insolvency administrator;
3. the time when the order was made;
4. the grounds on which the court did not follow a unanimous proposal from the preliminary creditors' committee as to the person to be the appointed as administrator; the name of the proposed person shall not be mentioned.
5. an abstract representation of the time limits for deletion applicable to personal data pursuant to section 3 of the Ordinance regarding Public Announcements on the Internet in Insolvency Proceedings of 12 February 2002 (as published in the Federal Law Gazette, see *BGBl.* I p. 677), last amended by Article 2 of the Act of 13 April 2007 (as published in the Federal Law Gazette, see *BGBl.* I p. 509).

(3) If the time when the order commencing proceedings is made is not stated, it shall be deemed to have been made at midday on the day on which the order is issued.

Commentary:
In subsection (2) No. 1, the words "in the Commercial Register" will be deleted with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 28 – Requests to Creditors and Debtors

(1) In the order commencing proceedings the creditors shall be requested to file their claims with the insolvency administrator within a specified period in compliance with section 174. The period shall amount to not less than two weeks and not more than three months.

(2) In the order commencing proceedings the creditors shall be requested to inform the administrator without delay of the security interests they claim to have in movable assets or rights of the debtor. Details must be provided of the asset in which the security interest is claimed, the nature and reason for the creation of the security interest and also the secured claim. Anyone who intentionally or negligently fails to provide or delays in providing such information shall be liable for the resulting damage.

(3) In the order commencing proceedings, a request shall be made to persons who have liabilities towards the debtor that they should no longer render performance to the debtor but instead to the administrator.

Section 29 – Scheduling of Dates

(1) In the order commencing proceedings the insolvency court shall schedule dates for:

1. a meeting of creditors to decide on the future course of the insolvency proceedings on the basis of a report by the insolvency administrator (report meeting); the date for the meeting should not be fixed more than six weeks in advance and may not be fixed more than three months in advance;
2. a meeting of creditors to verify the claims filed (verification meeting); the period between the expiry of the time limit for filing claims and the verification meeting shall amount to at least one week and not more than two months.

(2) The meetings may be combined. The court shall dispense with the report meeting if the debtor's financial circumstances are straightforward and the number of creditors or the amount of the debts is small.

Section 30 – Publication of the Order Commencing Proceedings

(1) The insolvency court registry shall publish the order commencing proceedings immediately.

(2) The order shall be served separately on the debtor's creditors and debtors and on the debtor itself.

(3) (repealed)

Section 31 – Commercial Register, Register of Cooperatives, Register of Partnerships and Register of Associations

If the debtor is registered in the Commercial Register, Register of Cooperatives, Register of Partnerships or Register of Associations, the insolvency court registry shall forward to the registration court:

1. an official copy of the order commencing proceedings in the event that insolvency proceedings are commenced;

2. an official copy of the order refusing the application in the event that the application for commencement of insolvency proceedings is refused due to insufficient assets and if the debtor is a legal entity or a company without legal personality which will be dissolved as a result of the refusal of the application due to insufficient assets.

Commentary:

In the title and the part of the sentence before No. 1, the words "Commercial Register, Register of Cooperatives, Register of Partnerships and Register of Associations" will be replaced with the words "Commercial Register, Register of Cooperatives, Register of Companies, Register of Partnerships or Register of Associations" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Gazette I 2021, p. 3436). In No. 2, the words "company without legal personality" will be replaced by the words "partnership with legal personality".

Section 31 is amended as follows with effect from 1 January 2026 by the Act to Harmonise Foundation Law and Amend the Infectious Diseases Protection Act *(Gesetz zur Vereinheitlichung des Stiftungsrechts und zur Änderung des Infektionsschutzgesetz)* (Federal Gazette I 2021, p. 2947): a) In the title, the words "and Register of Associations" will be replaced by a comma and the words "Register of Associations and Register of Foundations". b) In the clause before No. 1, the words "or Register of Associations" will be replaced by a comma and the words "Register of Associations or Register of Foundations" and the words "or in the case of the Register of Foundations the registry authority" will be inserted after the word "registration court".

Section 32 – Land Register

(1) Commencement of the insolvency proceedings shall be registered in the Land Register:
1. in respect of plots of land for which the debtor is registered as owner;
2. in respect of the debtor's registered rights in plots of land and in registered rights if there are concerns, based on the type of rights and in the circumstances, that the insolvency creditors would be disadvantaged in the absence of registration.

(2) If the insolvency court is aware of such plots of land or rights it shall request the Land Registry ex officio to make the registration. The insolvency administrator may also request the Land Registry to make the registration.

(3) If the administrator releases or sells a plot of land or a right in respect of which commencement of insolvency proceedings has been registered, on application the insolvency court shall request that the Land Registry delete the entry. The insolvency administrator may also request that the Land Registry delete the entry.

Section 33 – Ships and Aircraft Registers

Section 32 applies with the necessary modifications to the registration of commencement of insolvency proceedings in the Register of Ships, Register of Ships under Construction and Register of Liens on Aircraft. In this case the ships, ships under construction and aircraft entered in these registers take the place of plots of land and the registration court takes the place of the Land Register.

Section 34 – Appeal

(1) If commencement of insolvency proceedings is refused, the applicant and, if the application is refused pursuant to section 26, the debtor, has the right of immediate appeal.

(2) If insolvency proceedings are commenced, the debtor has the right of immediate appeal.

(3) Once the decision revoking the order commencing proceedings becomes final, termination of the proceedings shall be published. Section 200 (2) sentence 2 applies with the necessary modifications. The effects of legal acts which have been

carried out by or with the insolvency administrator shall be unaffected by termination of the proceedings.

Chapter Two – Insolvency Estate. Classification of Creditors

Section 35 – Definition of Insolvency Estate

(1) Insolvency proceedings cover all of the assets which belong to the debtor at the time when the proceedings are commenced and which the debtor acquires during the proceedings (insolvency estate).

(2) If the debtor pursues an activity as a self-employed person or intends to pursue such an activity in the near future, the insolvency administrator shall declare to him/her whether the assets from the self-employed activity belong to the insolvency estate and whether claims arising out of this activity can be asserted in the insolvency proceedings. Section 295a applies with the necessary modifications. On application by the creditors' committee, or, if one has not been appointed, the creditors' meeting, the insolvency court shall order the declaration to be invalid.

(3) The debtor shall inform the administrator without delay of the assumption or resumption of an activity as a self-employed person. If the debtor asks the administrator for release of such activity, the administrator shall respond to the request without delay and within one month at the latest.

(4) The insolvency administrator's declaration shall be notified to the court. The court shall publish the declaration and the order concerning its invalidity.

Section 36 – Objects Exempted from Attachment

(1) Objects not subject to compulsory enforcement do not form part of the insolvency estate. Sections 850, 850a, 850c, 850e, 850f (1), sections 850g to 850k, 851c and 851d of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.

(2) However, the insolvency estate includes
1. the debtor's business records; statutory obligations governing the retention of documents remain unaffected;
2. if the debtor is self-employed, the objects pursuant to section 811 (1) No. 1 (b) and animals pursuant to section 811 (1) No. 8 (b) of the Code of Civil Procedure *[Zivilprozessordnung]*; not included are objects required for continuation of a gainful occupation consisting in the provision of personal services..

(3) Objects which constitute normal household goods and which are used in the debtor's household shall not form part of the insolvency estate if it is readily apparent that their disposal would only yield proceeds out of all proportion to their value.

(4) The insolvency court has jurisdiction to decide whether an object is liable to compulsory enforcement under the provisions specified in subsection (1) sentence 2. The insolvency administrator may file the request in place of a creditor. Sentences 1 and 2 apply with the necessary modifications to preliminary insolvency proceedings.

Commentary:
Subsection (2) No. 2 is amended with effect from 1 January 2022 by the Act to Improve Protection of Bailiffs against Violence and to Amend further Provisions of the Law regarding Compulsory Enforcement and to Amend the Infectious Diseases Protection Act *(Gesetz zur Verbesserung des Schutzes von Gerichtsvollziehern vor Gewalt sowie zur Änderung weiterer zwangsvollstreckungsrechtlicher Vorschriften und zur Änderung des Infektionsschutzgesetzes)* (Federal Gazette I 2021, p. 850).

Section 37 – Joint Marital Property in a Community of Property

(1) If, under the marital property regime of community of property, the joint marital property is managed by only one spouse and insolvency proceedings are commenced against this spouse, the joint marital property shall form part of the insolvency estate. No partitioning of the joint marital property shall take place. The joint marital property shall not be affected by insolvency proceedings commenced against the other spouse.

(2) If the spouses both manage the joint marital property, insolvency proceedings commenced against one spouse shall not affect the joint marital property.

(3) Subsection (1) applies to a continued community of property, provided that the surviving spouse takes the place of the spouse who managed the joint marital property alone and the late spouse's descendants take the place of the other spouse.

(4) Subsections (1) to (3) apply with the necessary modifications to life partners.

Section 38 – Definition of Insolvency Creditor

The insolvency estate serves to satisfy the personal creditors who have a justified financial claim against the debtor at the time of commencement of insolvency proceedings (insolvency creditors).

Section 39 – Subordinated Insolvency Creditors

(1) The following claims are subordinated to all other claims of the insolvency creditors; they shall be satisfied in the following order and in proportion to their respective amounts if they have equal ranking:
1. the interest and penalties for late payment accruing on the claims of the insolvency creditors since commencement of the insolvency proceedings;
2. the costs incurred by the individual insolvency creditors through their participation in the proceedings;
3. fines, administrative fines, administrative penalties and periodic penalty payments, and also the incidental legal consequences of a criminal or administrative offence resulting in liability for a monetary payment;
4. claims to gratuitous performance by the debtor;
5. pursuant to subsections (4) and (5) claims for repayment of a shareholder loan or claims arising out of legal acts corresponding in economic terms to such a loan.
Sentence 1 No. 5 is not applicable if a state development bank or a subsidiary of such bank has granted a loan to an enterprise in which the state development bank or subsidiary holds a participating interest or has undertaken another legal act economically equivalent to the grant of a loan.

(2) Claims which creditor and debtor have agreed will be subordinated in insolvency proceedings shall be satisfied, in case of doubt as to their ranking, after the claims specified in subsection (1).

(3) The interest on the claims of subordinated insolvency creditors and the costs incurred by these creditors through their participation in the proceedings rank equally with the claims of these creditors.

(4) Subsection (1) No. 5 applies to companies that have neither a natural person nor a company in which a general partner is a natural person as general partner. If a creditor acquires shares upon imminent or existing illiquidity of the company or its overindebtedness for the purpose of its reorganisation, until the viable recovery of the company has been achieved this shall not lead to the application of subsection (1) No. 5 to the creditor's claims arising out of existing or newly granted loans or claims arising out of legal acts corresponding in economic terms to such a loan.

(5) Subsection (1) No. 5 shall not apply to the non-executive partner of a company within the meaning of subsection (4) sentence 1 who holds 10% or less of the company's liable equity capital.

Section 40 – Maintenance Claims

Claims against the debtor for maintenance under family law may be lodged in the insolvency proceedings for the period after commencement of proceedings only insofar as the debtor is liable as heir of the obligor. Section 100 remains unaffected.

Section 41 – Unmatured Claims

(1) Unmatured claims are deemed to be due.

(2) If they bear no interest, they shall be discounted at the statutory interest rate. The claims are thereby reduced to the amount which, by adding the statutory rate of interest accruing for the period from commencement of the insolvency proceedings until maturity, corresponds to the full amount of the claim.

Section 42 – Claims Subject to a Condition Subsequent

Claims subject to a condition subsequent shall be taken into account in the insolvency proceedings as unconditional claims as long as the condition has not arisen.

Section 43 – Liability of Several Persons

A creditor to whom several persons are liable in full for the same performance may claim the entire amount which it was entitled to claim at the time of commencement of proceedings in the insolvency proceedings against each debtor until full satisfaction.

Section 44 – Rights of Joint Debtors and Guarantors

Joint debtors and guarantors may only assert the claim against the debtor in insolvency proceedings which they could acquire in the future through satisfaction of the creditor if the creditor does not assert its claim.

Section 44a – Secured Loans

In insolvency proceedings relating to the assets of a company, pursuant to section 39 (1) No. 5 a creditor may demand pro rata satisfaction out of the insolvency estate in respect of a claim to repayment of a loan or an equivalent claim for which a shareholder provides security or is liable as guarantor only to the extent of any shortfall incurred when the security or the guarantee is exercised.

Section 45 – Conversion of Claims

Claims that are not based on money or for which an amount of money is not specified must be asserted at the value which can be estimated for them at the time of commencement of the insolvency proceedings. Claims expressed in foreign currency or in a unit of account must be converted into domestic currency on the basis of the exchange rate effective for the place of payment at the time of commencement of the insolvency proceedings.

Section 46 – Recurring Performance

Claims for recurring performance with a specified amount and duration shall be lodged for the amount resulting from the aggregation of all outstanding payments less the interim interest specified in section 41. If the duration of the performance is not specified, section 45 sentence 1 shall apply with the necessary modifications.

Section 47 – Segregation

Any creditor who can claim on the basis of a real right (in rem) or a personal right (in personam) that an asset does not form part of the insolvency estate is not an insolvency creditor. The creditor's right to segregation of the asset is determined in accordance with the laws applicable outside the insolvency proceedings.

Section 48 – Substitute Segregation

If an asset in relation to which a right to segregation could have been claimed is disposed of without authorisation by the debtor prior to commencement of the insolvency proceedings, or by the insolvency administrator after commencement of the insolvency proceedings, the creditor entitled to claim segregation of the asset may demand assignment of the right to the consideration insofar as this is still outstanding. The creditor may demand the consideration from the insolvency estate insofar as it is still present in distinct form within the insolvency estate.

Section 49 – Separate Satisfaction from Immovable Assets

Creditors with a right to satisfaction from assets which are subject to compulsory enforcement against the debtor's immovable property (immovable assets) are entitled to separate satisfaction in accordance with the provisions of the Act on Forced Sale and Sequestration *[Gesetz über die Zwangsversteigerung und die Zwangsverwaltung]*.

Section 50 – Separate Satisfaction of Pledgees

(1) In accordance with the provisions of sections 166 to 173, creditors who have a contractual lien, a lien acquired through levy of attachment or a statutory lien on an asset in the insolvency estate are entitled to separate satisfaction from the pledged asset in respect of their principal claim, interest and costs.

(2) The statutory lien of a landlord or lessor cannot be claimed in insolvency proceedings in respect of rent covering a period earlier than the last twelve months prior to commencement of the insolvency proceedings, or in respect of damages payable as a consequence of the termination of the lease by the insolvency administrator. The lien of the lessor of an agricultural property is not subject to this restriction in respect of rent.

Section 51 – Other Creditors Entitled to Separate Satisfaction

The following creditors have equivalent status to the creditors specified in section 50:

1. Creditors to whom the debtor has transferred ownership of a movable object or assigned a right as security for a claim;
2. Creditors who have a right of retention over an object because they have made improvements to the object, insofar as their claim arising from such improvement does not exceed the remaining value of the improvement;
3. Creditors who have a right of retention under the Commercial Code *[Handelsgesetzbuch]*;
4. The Federal Republic, Federal States, municipalities and associations of municipalities, insofar as objects subject to tax and customs duties serve as security for public charges and levies in accordance with statutory provisions.

Section 52 – Shortfall of Creditors Entitled to Separate Satisfaction

Creditors who are entitled to demand separate satisfaction are insolvency creditors if they also have a personal claim against the debtor. However, they are entitled to pro rata satisfaction out of the insolvency estate only to the extent that they waive the right to separate satisfaction or that separate satisfaction fails.

Section 53 – Preferential Creditors

The costs of the insolvency proceedings and the other preferential liabilities of the insolvency estate rank ahead of all other claims for settlement out of the insolvency estate.

Section 54 – Costs of the Insolvency Proceedings

The costs of the insolvency proceedings are:

1. The court costs for the insolvency proceedings;
2. The remuneration and the expenses of the preliminary insolvency administrator, the insolvency administrator and the members of the creditors' committee.

Section 55 – Other Preferential Liabilities

(1) Preferential liabilities are further:

1. Liabilities that arise through the acts of the insolvency administrator or in any other way through the administration, realisation and

distribution of the insolvency estate without forming part of the costs of the insolvency proceedings;
2. Liabilities arising out of reciprocal contracts insofar as performance is demanded on behalf of the insolvency estate or if such a contract has to be performed after commencement of the insolvency proceedings;
3. Liabilities resulting from unjust enrichment of the insolvency estate.

(2) After commencement of the insolvency proceedings, liabilities created by a preliminary insolvency administrator in whom power of disposal over the debtor's assets has vested are deemed to be preferential liabilities. The same applies in respect of liabilities arising out of contracts for continuing obligations insofar as the preliminary insolvency administrator has claimed counter-performance in respect of the assets administered by him/her.

(3) If justified wage claims pass to the Federal Employment Agency *[Bundesagentur für Arbeit]* under subsection (2), in accordance with section 169 of the Third Book of the Code of Social Security Law *[Drittes Sozialgesetzbuch]*, the Federal Employment Agency may claim these only as an insolvency creditor. Sentence 1 applies with the necessary modifications in respect of the claims specified in section 175 (1) of the Third Book of the Code of Social Security Law *[Drittes Sozialgesetzbuch]* insofar as these continue to exist against the debtor.

(4) After commencement of the insolvency proceedings, value added tax liabilities of the insolvency debtor created by a preliminary insolvency administrator or by the debtor with the consent of a preliminary insolvency administrator or by the debtor following appointment of a preliminary supervisor are deemed to be preferential liabilities. The following liabilities are equivalent to value added tax liabilities:
1. other import and export duties;
2. excise duties regulated by Federal law;
3. air passenger tax and motor vehicle tax; and
4. wage tax.

Chapter Three – Insolvency Administrator. Creditors' Representative Bodies

Section 56 – Appointment of the Insolvency Administrator

(1) The individual appointed as insolvency administrator shall be a natural person chosen from among all those persons willing to undertake insolvency administration work who is suitable in respect of the individual case, particularly experienced in business matters and independent of the creditors and of the debtor. A person who has served as restructuring practitioner or rehabilitation mediator in a restructuring case involving the debtor can, if the debtor satisfies at least two of the three criteria specified in section 22a (1), be appointed as insolvency administrator only if the preliminary creditors' committee consents. Willingness to undertake insolvency administration work may be restricted to particular proceedings. The person's requisite independence shall not be excluded merely by reason of the fact that the person
1. has been proposed by the debtor or by a creditor;
2. advised the debtor in general terms on the course of insolvency proceedings and their consequences prior to the application for commencement of insolvency proceedings.

(2) The insolvency administrator shall receive a certificate of appointment. When his/her office terminates, he/she must return the certificate to the insolvency court.

Section 56a – Creditor Participation in Appointment of the Insolvency Administrator

(1) Prior to the appointment of the insolvency administrator the preliminary creditors' committee shall be given the opportunity to make representations concerning the criteria for the appointment and the person of the insolvency administrator unless this will clearly lead to a prejudicial change in the debtor's financial position within two business days.

(2) The court may deviate from a unanimous recommendation of the preliminary creditors' committee on the person to be appointed as insolvency administrator only if the proposed person is not suitable for appointment. The court has to base its choice of insolvency administrator on the criteria for the person of the insolvency administrator decided by the preliminary creditors' committee.

(3) If, having regard to a prejudicial change in the debtor's financial position, the court refrains from holding a hearing pursuant to subsection (1), it shall give written reasons for its decision. At its first meeting the preliminary creditors' committee may unanimously choose a different person to the person appointed as insolvency administrator.

Section 56b – Appointment of Administrator in the case of Debtors in the same Corporate Group

(1) If an application for commencement of insolvency proceedings is lodged in relation to the assets of group-affiliated debtors, the relevant insolvency courts must reach agreement on whether it is in the interests of the creditors to appoint only one person as administrator. In reaching agreement the courts must, in particular, discuss whether that person can attend to all the proceedings relating to the group-affiliated

debtors with the requisite independence and whether potential conflicts of interest can be eliminated through the appointment of special insolvency administrators.

(2) The court may deviate from the recommendation of or the specifications set by a preliminary creditors' committee pursuant to section 56a if the preliminary creditors' committee appointed for another group-affiliated debtor unanimously proposes another person who is suitable for a role pursuant to subsection (1) sentence 1. The preliminary creditors' committee must be heard before this person is appointed. If a special insolvency administrator has to be appointed to resolve conflicts of interest, section 56a applies with the necessary modifications.

Section 57 – Election of a Different Insolvency Administrator

At the first creditors' meeting following the appointment of the insolvency administrator the creditors may choose a different person in his/her place. The other person shall be elected if, in addition to the majority specified in section 76 (2), the majority of the creditors voting also vote for such person. The court may refuse the appointment of the person elected only if this person is not suitable for appointment. Each insolvency creditor has the right of immediate appeal against the refusal.

Section 58 – Supervision by the Insolvency Court

(1) The insolvency administrator is subject to the supervision of the insolvency court. The court may request that the insolvency administrator provide specific information or a status and management report at any time.

(2) If the insolvency administrator does not fulfil his/her duties, following prior warning the court may impose a penalty payment on him/her. An individual penalty payment may not exceed the sum of twenty-five thousand Euro. The insolvency administrator has the right of immediate appeal against the decision imposing the penalty.

(3) Subsection (2) applies with the necessary modifications in relation to the enforcement of the obligation incumbent on a dismissed insolvency administrator to surrender possession of assets.

Section 59 – Dismissal of the Insolvency Administrator

(1) The insolvency court may remove the insolvency administrator from office for good cause. Such dismissal may occur ex officio or on application by the insolvency administrator, the debtor, the creditors' committee, the creditors' meeting or an insolvency creditor. Dismissal is to occur on application by the debtor or an insolvency creditor only if an application for dismissal is lodged within six months of the appointment and the insolvency administrator is not independent; the applicant must substantiate this. The court shall hear the insolvency administrator prior to its decision.

(2) The insolvency administrator has the right of immediate appeal against his/her dismissal. The applicant has the right of immediate appeal against the refusal of the application. If the application was lodged by the creditors' meeting, each insolvency creditor also has the right of immediate appeal.

Section 60 – Liability of the Insolvency Administrator

(1) The insolvency administrator shall be liable for damages to all parties to the proceedings if he/she intentionally or negligently breaches the duties incumbent upon him/her under this Code. In carrying out his/her duties he/she shall exercise the due care of a prudent and conscientious insolvency administrator.

(2) If the insolvency administrator has to utilise employees of the debtor within the scope of their previous activities in order to fulfil the duties incumbent upon him/her and these employees are not clearly unsuitable in this regard, the insolvency administrator shall not be responsible for any fault on the part of such persons pursuant to section 278 of the Civil Code *[Bürgerliches Gesetzbuch]* but shall be responsible only for their supervision and for decisions of particular importance.

Section 61 – Failure to Settle Preferential Liabilities

If a preferential liability created as a result of a legal act by the insolvency administrator cannot be settled in full out of the insolvency estate, the insolvency administrator shall be liable in damages to the preferential creditor. This shall not apply if the insolvency administrator could not have known at the time the liability was created that the insolvency estate would probably be insufficient to meet the liability in question.

Section 62 – Limitation Period

The time-barring of the right to claim damages arising from a breach of duty on the part of the insolvency administrator is governed by the provisions on the standard limitation period under the Civil Code *[Bürgerliches Gesetzbuch]*. The claim shall become time-barred at the latest three years from the date of termination of the insolvency proceedings or from the date on which the order discontinuing the proceedings became final. Sentence 2 applies to breaches of duty committed in relation to subsequent distribution (section 203) or supervision of insolvency plan implementation (section 260) subject to the proviso that implementation of the subsequent distribution or termination of supervision takes the place of termination of the insolvency proceedings.

Section 63 – Remuneration of the Insolvency Administrator

(1) The insolvency administrator is entitled to remuneration for the execution of his/her office and to reimbursement of reasonable expenses. The standard rate of remuneration is calculated on the basis of the value of the insolvency estate at the date of termination of the insolvency proceedings. Account shall be taken of the scope and complexity of the administrator's execution of office by means of derogations from the standard rate.

(2) If the costs of the proceedings are deferred in accordance with section 4a, the insolvency administrator has a claim against the public treasury for his/her remuneration and expenses insofar as the insolvency estate is insufficient to cover these.

(3) The services of the preliminary insolvency administrator are remunerated separately. He/she generally receives 25 per cent of the insolvency administrator's remuneration calculated on the basis of the assets which are included within the scope of his/her services during the preliminary insolvency proceedings. The relevant date for determining the value is the date on which preliminary insolvency administration ends, or the date with effect from which the asset is no longer subject to preliminary insolvency administration. If the difference between the actual value of the calculation basis for the remuneration and the determined value of the remuneration exceeds 20 per cent, the court may amend the order concerning the preliminary insolvency administrator's remuneration up until the decision on the insolvency administrator's remuneration becomes final.

Section 64 – Insolvency Court's Power to Fix Remuneration

(1) The insolvency court shall fix the insolvency administrator's remuneration and reimbursement of his/her expenses by order.

(2) The order must be published and served separately on the insolvency administrator, the debtor and, if a creditors' committee has been appointed, on the members of the committee. The amounts fixed shall not be published; the public announcement shall make reference to the fact that the full order may be inspected at the court registry.

(3) The insolvency administrator, the debtor and each insolvency creditor has the right of immediate appeal against the order. Section 567 (2) of the Code of Civil Procedure *[Zivilprozessordnung]* applies with the necessary modifications.

Section 65 – Power to Issue Statutory Orders

The Federal Ministry of Justice and Consumer Protection is authorised to issue detailed regulations concerning the remuneration and reimbursement of expenses of preliminary insolvency administrators and insolvency administrators and the relevant procedure for this by statutory order.

Section 66 – Presentation of Accounts

(1) Upon termination of his/her office, the insolvency administrator shall present accounts to a creditors' meeting.

(2) The insolvency court shall examine the administrator's final accounts prior to the creditors' meeting. It shall present the final accounts and supporting documents together with a statement concerning its review of the accounts and any comments by the creditors' committee, if one has been appointed, for inspection by the parties; the court may set a time limit for the creditors' committee to make its representations. The period between the presentation of the documents and the date of the creditors' meeting shall amount to at least one week.

(3) The creditors' meeting may request the administrator to present interim accounts on specified dates during the proceedings. Subsections (1) and (2) shall apply with the necessary modifications.

(4) A different arrangement may be agreed in the insolvency plan.

Section 67 – Establishment of the Creditors' Committee

(1) Prior to the first creditors' meeting the insolvency court may establish a creditors' committee.

(2) The creditors entitled to separate satisfaction, the insolvency creditors with the largest claims and the minor creditors shall be represented on the creditors' committee. The committee should include a representative of the employees.

(3) Persons who are not creditors may also be appointed as members of the creditors' committee.

Section 68 – Election of Different Members

(1) The creditors' meeting decides whether a creditors' committee should be established. If the insolvency court has already established a creditors' committee, the creditors' meeting decides whether the committee should be retained.

(2) The creditors' meeting may vote to dismiss the members appointed by the insolvency court and

elect other or additional members of the creditors' committee.

Section 69 – Duties of the Creditors' Committee

The members of the creditors' committee shall support and supervise the insolvency administrator in the execution of his/her office. They shall keep themselves informed about the progress of business and have the books and business records inspected and the monetary transactions and cash assets examined.

Section 70 – Dismissal

The insolvency court may dismiss a member of the creditors' committee for good cause. Dismissal may take place ex officio, on application by the relevant member of the creditors' committee or on application by the creditors' meeting. The member of the creditors' committee must be heard by the court before it issues its decision; the member has the right of immediate appeal against the decision.

Section 71 – Liability of Members of the Creditors' Committee

The members of the creditors' committee shall be liable in damages to the creditors entitled to separate satisfaction and the insolvency creditors if they intentionally or negligently breach the duties incumbent upon them under this Code. Section 62 applies with the necessary modifications.

Section 72 – Resolutions of the Creditors' Committee

A resolution of the creditors' committee is valid if a majority of the members participated in the adoption of the resolution and the resolution was passed by a majority of the votes cast.

Section 73 – Remuneration of Members of the Creditors' Committee

(1) The members of the creditors' committee are entitled to remuneration for their services and to reimbursement of reasonable expenses. Account shall be taken of the expenditure of time involved and the scope of activities performed.

(2) Section 63 (2) and sections 64 and 65 apply with the necessary modifications.

Section 74 – Convening the Creditors' Meeting

(1) The creditors' meeting is convened by the insolvency court. All creditors entitled to separate satisfaction, all insolvency creditors, the insolvency administrator, the members of the creditors' committee and the debtor are entitled to attend the meeting.

(2) The time, place and agenda of the creditors' meeting shall be published. Publication is not required if a creditors' meeting adjourns negotiations.

Section 75 – Application to Convene a Creditors' Meeting

(1) A creditors' meeting shall be convened if this is requested by:
1. the insolvency administrator;
2. the creditors' committee;
3. at least five creditors entitled to separate satisfaction or non-subordinated insolvency creditors whose rights to separate satisfaction and claims are assessed by the insolvency court as together reaching one fifth of the total resulting from the value of all rights to separate satisfaction and the amounts of the claims of all non-subordinated insolvency creditors;
4. one or more creditors entitled to separate satisfaction or non-subordinated insolvency creditors whose rights to separate satisfaction and claims are assessed by the court as reaching two fifths of the total specified in number 3 above.

(2) The period between receipt of the application and the date of the creditors' meeting should amount to no more than three weeks.

(3) If the court refuses to convene a creditors' meeting, the applicant has the right of immediate appeal against the refusal.

Section 76 – Resolutions of the Creditors' Meeting

(1) The creditors' meeting is chaired by the insolvency court.

(2) A resolution of the creditors' meeting is passed if the total of the amounts of the claims of the creditors voting in favour of the resolution amounts to more than half of the total of the amounts of the claims of the creditors voting; in the case of creditors entitled to separate satisfaction to whom the debtor is not personally liable, the value of the right to separate satisfaction takes the place of the amount of the claim.

Section 77 – Determination of Voting Rights

(1) Claims which have been filed, and which are not disputed either by the insolvency administrator or by a creditor entitled to vote, confer entitlement to a voting right. Subordinated creditors are not entitled to vote.

(2) Creditors whose claims are disputed are entitled to vote insofar as this is agreed at the creditors' meeting by the administrator and the creditors entitled to vote who are present at the creditors' meeting. If no agreement is reached, the insolvency court shall decide the matter. The court may vary its decision on application by the administrator or a creditor present at the creditors' meeting.

(3) Subsection (2) applies with the necessary modifications to
1. creditors with claims subject to a condition precedent;
2. creditors entitled to separate satisfaction.

Section 78 – Cancellation of a Resolution of the Creditors' Meeting

(1) If a resolution of the creditors' meeting is contrary to the common interest of the insolvency creditors, the insolvency court shall cancel the resolution if requested to do so at the creditors' meeting by a creditor entitled to separate satisfaction, a non-subordinated creditor or the insolvency administrator.

(2) Cancellation of the resolution shall be published. Each creditor entitled to separate satisfaction and each non-subordinated creditor has the right of immediate appeal against the cancellation. The applicant has the right of immediate appeal against the refusal of an application for cancellation of a resolution.

Section 79 – Provision of Information to the Creditors' Meeting

The creditors' meeting is entitled to request specific information and a status and management report from the insolvency administrator. If a creditors' committee has not been appointed, the creditors' meeting may have the insolvency administrator's monetary transactions and cash assets examined.

Part Three – Effects of Commencement of Insolvency Proceedings

Chapter One – General Effects

Section 80 – Transfer of Right of Management and Right of Disposal

(1) As a result of commencement of insolvency proceedings the right of the debtor to manage and dispose of the assets of the insolvency estate vests in the insolvency administrator.

(2) An existing prohibition of disposal imposed on the debtor that is only intended to protect particular persons (sections 135 and 136 of the Civil Code *[Bürgerliches Gesetzbuch]*) is of no effect in the proceedings. The provisions regulating the effects of an attachment or a seizure by way of compulsory enforcement remain unaffected.

Section 81 – Disposals by the Debtor

(1) If the debtor has disposed of an asset in the insolvency estate after commencement of the insolvency proceedings, the disposal is ineffective. Sections 892 and 893 of the Civil Code *[Bürgerliches Gesetzbuch],* sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction *[Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken]* and sections 16 and 17 of the Act Governing Rights in Aircraft *[Gesetz über Rechte an Luftfahrzeugen]* remain unaffected. The consideration shall be refunded to the other party out of the insolvency estate to the extent that the insolvency estate is thereby enriched.

(2) Subsection (1) applies to a disposal of future claims to emoluments due to the debtor under a service contract, or to recurring emoluments replacing them, insofar as the disposal also affects emoluments for the period after termination of the insolvency proceedings. The right of the debtor to assign these emoluments to a trustee for the purpose of the collective satisfaction of the insolvency creditors remains unaffected.

(3) If the debtor has made a disposal on the day on which proceedings are commenced, it shall be presumed that the disposal was made after the commencement of proceedings. A disposal by the debtor of financial collateral within the meaning of section 1 (17) of the Banking Act *[Kreditwesengesetz]* after commencement of proceedings is effective notwithstanding sections 129 to 147 if it takes place on the day of commencement of proceedings and the other party proves that it was neither aware nor should have been aware of the commencement of proceedings.

Section 82 – Performance in Favour of the Debtor

If the debtor receives performance in settlement of a liability after commencement of insolvency proceedings, although the liability was to be settled to the credit of the insolvency estate, the performing party shall be discharged of liability if it was unaware of the commencement of proceedings at the time of its performance. If performance was effected prior to publication of the order for commencement of proceedings, it shall be presumed that the said party was unaware of the commencement of proceedings.

Section 83 – Inheritance. Continued Community of Property

(1) If an inheritance or legacy has accrued to the debtor prior to commencement of insolvency proceedings, or if this occurs during the proceedings, the debtor alone is entitled to accept or disclaim such inheritance or legacy. The same applies in relation to the rejection of continued community of property.

(2) If the debtor is a prior heir, the insolvency administrator may not dispose of the assets of the inheritance if the disposal would be ineffective with

respect to the subsequent heir pursuant to section 2115 of the Civil Code *[Bürgerliches Gesetzbuch]* in the event of subsequent succession occurring.

Section 84 – Winding-up of a Company or Co-ownership

(1) If co-ownership by defined shares, other co-ownership or a company without legal personality exists between the debtor and third parties, the division or other winding-up shall take place outside the insolvency proceedings. The third parties may claim separate satisfaction from the debtor's share as so determined in respect of claims arising out of the legal relationship.

(2) In the case of co-ownership by defined shares, an agreement which excludes the right to demand the cancellation of co-ownership in perpetuity or temporarily, or which designates a period of notice, is of no effect in the proceedings. The same shall apply to a clause with this content in a testator's will in respect of the co-ownership of his/her heirs and to a corresponding agreement by the co-heirs.

Commentary:

In subsection (1) sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 85 – Resumption of Court Proceedings as Claimant

(1) Court proceedings in which the debtor is claimant pending at the time of commencement of insolvency proceedings and affecting the assets of the insolvency estate may be resumed by the insolvency administrator with their existing status. If the insolvency administrator delays in resuming the proceedings, section 239 (2) to (4) of the Code of Civil Procedure *[Zivilprozessordnung]* shall apply with the necessary modifications.

(2) If the administrator refuses to resume the proceedings, both the debtor and the defendant may resume the proceedings.

Section 86 – Resumption of Particular Court Proceedings as Defendant

(1) Court proceedings pending against the debtor at the time of commencement of insolvency proceedings may be resumed both by the insolvency administrator and by the opposing party if they affect:
1. the segregation of an asset from the insolvency estate;
2. separate satisfaction or
3. a preferential liability.

(2) If the insolvency administrator acknowledges the claim immediately, the opposing party may only claim reimbursement of the costs of the court proceedings as an insolvency creditor.

Section 87 – Claims of the Insolvency Creditors

The insolvency creditors may only pursue their claims in accordance with the provisions governing insolvency proceedings.

Section 88 – Enforcement Prior to Commencement of Insolvency Proceedings

(1) If an insolvency creditor has obtained a security over the debtor's assets which constitute the insolvency estate during the month prior to the application for commencement of insolvency proceedings or after the application has been lodged by compulsory enforcement, this security becomes ineffective when insolvency proceedings are commenced.

(2) The period specified in subsection (1) amounts to three months if consumer insolvency proceedings pursuant to section 304 are commenced.

Section 89 – Prohibition of Enforcement

(1) During insolvency proceedings compulsory enforcement on behalf of individual insolvency creditors is not permitted against the insolvency estate or the other assets of the debtor.

(2) During insolvency proceedings compulsory enforcement against future claims to emoluments due to the debtor under a service contract, or to recurring emoluments replacing them, is not permitted, including on behalf of creditors who are not insolvency creditors. This does not apply to compulsory enforcement for a maintenance claim or for a claim based on an intentional tort against the part of the emoluments which is not subject to attachment on behalf of other creditors.

(3) The insolvency court shall decide on any objections raised against the admissibility of compulsory enforcement on the basis of subsections (1) and (2). The court may issue an interim order prior to its decision; it may, in particular, order the temporary suspension of compulsory enforcement with or without the condition of provision of security or that compulsory enforcement may only be continued subject to the provision of security.

Section 90 – Prohibition of Enforcement in Relation to Preferential Liabilities

(1) Compulsory enforcement in respect of preferential liabilities not resulting from legal acts by the insolvency administrator is not permitted for a period of six months from the date of commencement of insolvency proceedings.

(2) The following liabilities are not regarded as such preferential liabilities:
1. liabilities arising out of a reciprocal contract which the administrator has opted to perform;
2. liabilities arising out of a contract for continuing obligations for the period after the first date on which the administrator could have terminated the contract;
3. liabilities arising out of a contract for continuing obligations insofar as the administrator claims counter-performance on behalf of the insolvency estate.

Section 91 – Exclusion of Other Acquisition of Rights

(1) After commencement of insolvency proceedings, rights in the assets of the insolvency estate cannot be validly acquired even if such acquisition is not based on a disposal by the debtor or compulsory enforcement on behalf of an insolvency creditor.

(2) Sections 878, 892 and 893 of the Civil Code *[Bürgerliches Gesetzbuch]*, section 3 (3) and sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction *[Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken]*, section 5 (3) and sections 16 and 17 of the Act Governing Rights in Aircraft *[Gesetz über Rechte an Luftfahrzeugen]* and section 20 (3) of the Maritime Distribution Regulations *[Schiffahrtsrechtliche Verteilungsordnung]* remain unaffected.

Section 92 – Collective Loss

Claims of the insolvency creditors for compensation for loss suffered collectively by these insolvency creditors as a result of a reduction in the value of the assets of the insolvency estate before or after commencement of insolvency proceedings (collective loss) may be asserted during the insolvency proceedings only by the insolvency administrator. If such claims are directed against the administrator, they may be asserted only by a newly appointed insolvency administrator.

Section 93 – Personal Liability of Partners

If insolvency proceedings are commenced in respect of the assets of a company without legal personality or a partnership limited by shares, the personal liability of a partner for the liabilities of the company or partnership may be claimed during insolvency proceedings only by the insolvency administrator.

Commentary:

The words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 94 – Maintenance of a Set-off Position

If, at the time when insolvency proceedings are commenced, an insolvency creditor has a right of set-off by operation of law or on the basis of an agreement, this right is unaffected by the proceedings.

Section 95 – Acquisition of a Set-off Position during the Proceedings

(1) If, at the time when insolvency proceedings are commenced, one or more of the claims to be set off are still subject to a condition precedent or are not due, or if the claims are not yet based on performance of an equivalent nature, set-off can only occur once the prerequisites for set-off are met. Sections 41 and 45 shall not apply. Set-off is excluded if the claim against which set-off is to be exercised becomes unconditional and due before set-off can occur.

(2) Set-off shall not be excluded by reason of the fact that the claims are expressed in different currencies or units of account if these currencies or units of account are freely exchangeable at the place of payment of the claim against which set-off is to be exercised. The conversion shall be made on the basis of the exchange rate effective for this place at the time of receipt of the set-off declaration.

Section 96 – Inadmissibility of Set-off

(1) Set-off is inadmissible if
1. an insolvency creditor has become indebted to the insolvency estate only after commencement of insolvency proceedings;
2. an insolvency creditor has acquired its claim from another creditor only after commencement of insolvency proceedings;
3. an insolvency creditor has acquired the opportunity to set off a claim through an avoidable legal act;
4. a creditor whose claim is to be satisfied from the debtor's free assets is indebted to the insolvency estate.

(2) Subsection (1) and also section 95 (1) sentence 3 shall not prevent the disposal of financial collateral within the meaning of section 1 (17) of the Banking Act *[Kreditwesengesetz]* or the settlement of claims and performance under payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities brought into systems pursuant to section 1 (16) of the Banking Act *[Kreditwesengesetz]* which serves to implement such contracts, provided settlement occurs at the latest on the day of commencement of insolvency proceedings; if the other party is a system operator or a participant in the system the day of commencement of insolvency proceedings shall be determined in accordance with the meaning of business day in section 1 (16b) of the Banking Act *[Kreditwesengesetz]*.

Section 97 – Debtor's Obligation to Disclose Information and to Co-operate

(1) The debtor must disclose information regarding all circumstances relevant to the insolvency proceedings to the insolvency court, the insolvency administrator, the creditors' committee and, if ordered to do so by the court, the creditors' meeting. The debtor shall also disclose any facts which may result in a prosecution for the commission of a criminal offence or an administrative offence. However, any information disclosed by the debtor in accordance with the obligation under subsection (1) shall be used against the debtor or any relative of the debtor specified in section 52 (1) of the Code of Criminal Procedure *[Strafprozessordnung]* in criminal proceedings or in proceedings under the Act on Breaches of Administrative Regulations *[Gesetz über Ordnungswidrigkeiten]* only with the debtor's consent.

(2) The debtor must support the administrator in the performance of his/her duties.

(3) On the order of the court the debtor has to be available at any time to fulfil his/her obligations of disclosure and co-operation. The debtor must refrain from all acts adversely affecting the performance of these obligations.

Section 98 – Enforcement of the Debtor's Obligations

(1) If considered necessary by the insolvency court for obtaining truthful testimony, the insolvency court shall order the debtor to affirm for the record in an affidavit that to the best of his/her knowledge and belief the information requested of him/her which he/she has provided is accurate and complete. Sections 478 to 480 and 483 of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.

(1a) The court can carry out the measures pursuant to section 802l (1) sentence 1 of the Code of Civil Procedure *[Zivilprozessordnung]* in place of the bailiff if

1. the summons to attend the meeting scheduled for the provision of the information on financial circumstances and assets cannot be served on the debtor and

a) the address at which the service was to be effected is the same as the address provided by one of the authorities specified in section 755 (1) and (2) of the Code of Civil Procedure *[Zivilprozessordnung]* within a period of three months before or after service is attempted, or

b) after service is attempted the registration authority states that it holds no current address for the debtor, or

c) during the three months prior to issue of the enforcement instruction the registration authority stated that it holds no current address for the debtor;

2. the debtor does not comply with his/her obligation to provide information pursuant to section 97 or

3. this is considered necessary for other reasons in order to achieve the purposes of the insolvency proceedings.

Section 802l (2) of the Code of Civil Procedure *[Zivilprozessordnung]* applies with the necessary modifications.

(2) The court may order the debtor's compulsory attendance and order the debtor to be detained after the hearing

1. if the debtor refuses to disclose information or to provide an affidavit or to co-operate in relation to the performance of the insolvency administrator's duties;

2. if the debtor attempts to evade the fulfilment of his/her obligations of disclosure and cooperation, in particular by making preparations to abscond; or

3. if this is necessary to prevent acts by the debtor adversely affecting the performance of his/her obligations of disclosure and co-operation, in particular to secure the insolvency estate.

(3) Sections 904 to 906, 909, 910 and 913 of the Code of Civil Procedure *[Zivilprozessordnung]* apply to the detention order with the necessary modifications. The arrest warrant shall be cancelled by the court ex officio as soon as the prerequisites for the detention order are no longer present. There is a right of immediate appeal against the detention order and against the dismissal of an application for cancellation of the arrest warrant on the grounds that the prerequisites for detention have ceased to exist.

Commentary:
Subsection (1a) is inserted with effect from 1 November 2022 by the Act to Improve Protection of Bailiffs against Violence and to Amend further Provisions of the Law regarding Compulsory Enforcement and to Amend the Infectious Diseases Protection Act *(Gesetz zur Verbesserung des Schutzes von Gerichtsvollziehern vor Gewalt sowie zur Änderung weiterer zwangsvollstreckungsrechtlicher Vorschriften und zur Änderung des Infektionsschutzgesetzes)* (Federal Gazette I 2021, p. 850).

Section 99 – Postal Redirection Order

(1) On application by the insolvency administrator or ex officio, the insolvency court shall order in a substantiated decision that the companies specified in the order redirect all or specific parts of the mail for the debtor to the insolvency administrator if such a measure appears to be necessary in order to investigate or prevent legal acts by the debtor which are prejudicial to the creditors. The order shall be issued after the debtor has been heard, provided this will not jeopardise the objective of the order due to the particular circumstances of the individual case. If the order is issued without the debtor being heard beforehand, this shall be substantiated separately in the decision and the hearing shall take place without delay thereafter.

(2) The insolvency administrator is entitled to open the mail which is redirected to him/her. Communications which are unrelated to the insolvency estate must be forwarded to the debtor without delay. The remaining mail may be inspected by the debtor.

(3) The debtor has the right of immediate appeal against the postal redirection order. The court shall revoke the order after hearing the insolvency administrator if the prerequisites for it cease to exist.

Section 100 – Maintenance out of the Insolvency Estate

(1) The creditors' meeting decides whether and to what extent the debtor and his/her family should be granted maintenance out of the insolvency estate.

(2) Until the creditors' meeting has reached its decision the insolvency administrator may, with the consent of the creditors' committee if one has been appointed, grant the debtor the necessary maintenance. Maintenance may be granted in the same manner to the debtor's minor unmarried children, spouse, former spouse, civil partner or former civil partner and to the other parent of his/her child in respect of the entitlement under sections 1615l and 1615n of the Civil Code *[Bürgerliches Gesetzbuch]*.

Section 101 – Members of the Representative Body. Employees

(1) If the debtor is not a natural person, sections 97 to 99 apply with the necessary modifications to the members of the debtor's representative or supervisory body and to the debtor's general partners with the power of representation. In addition, section 97 (1) and section 98 apply with the necessary modifications to persons who resigned from a position specified in sentence 1 not more than two years prior to the application for commencement of insolvency proceedings; if the debtor does not have any representatives, this shall also apply to the parties holding a participating interest in the debtor. Section 100 applies with the necessary modifications to the debtor's general partners with the power of representation.

(2) Section 97(1) sentence 1 applies with the necessary modifications to employees and former employees of the debtor insofar as they left the debtor's employment not more than two years prior to the application for commencement of insolvency proceedings.

(3) If the persons specified in subsections (1) and (2) do not comply with their obligations of disclosure and co-operation, they may be ordered to bear the costs of the proceedings if the application for commencement of insolvency proceedings is rejected.

Section 102 – Restriction of a Basic Right

The basic right to the privacy of correspondence, posts and telecommunications (Article 10 of the Basic Law *[Grundgesetz]*) is restricted by section 21 (2) No. 4 and sections 99 and 101 (1) sentence 1.

Chapter Two – Performance of Transactions. Co-operation of the Works Council

Section 103 – Insolvency Administrator's Right of Choice

(1) If a reciprocal contract has not been performed or has not been fully performed by the debtor and the other party at the time when insolvency proceedings are commenced, the insolvency administrator may perform the contract in place of the debtor and demand performance from the other party.

(2) If the administrator refuses to perform the contract, the other party may assert a claim for non-performance only as an insolvency creditor. If the other party requests that the insolvency administrator exercise his/her right of choice, the administrator must declare without delay whether or not he/she wishes to demand performance of

the contract. If he/she fails to do so, he/she cannot insist on performance.

Section 104 Fixed Term Transactions, Financial Services, Contractual Netting

(1) If a precise delivery date or period was agreed for goods with a market or exchange price and the date or expiry of the period occurs only after the commencement of insolvency proceedings, performance of the contract cannot be claimed; only a claim for non-performance can be asserted. This shall also apply to transactions for financial services with a market or exchange price for which a specific date or a specific period was agreed if such date occurs or such period expires after the commencement of insolvency proceedings. Financial services include, in particular, the following
1. the delivery of precious metals;
2. the delivery of financial instruments or similar rights, provided the acquisition of a participating interest in a company is not intended to create a durable link to this company;
3. cash payments
a) to be made in foreign currency or in a unit of account or
b) the amount of which is determined directly or indirectly by means of the exchange rate of a foreign currency or unit of account, the interest rate on claims or the price of other goods or services;
4. deliveries and cash payments from derivative financial instruments that are not excluded by number 2;
5. options and other rights to deliveries in accordance with sentence 1 or to deliveries, cash payments, options and rights within the meaning of numbers 1 to 5;
6. financial collateral arrangements within the meaning of section 1 (17) of the Banking Act (*Kreditwesengesetz*, KWG).
Financial instruments within the meaning of sentence 3 numbers 2 and 4 mean the instruments specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ 2014 L 173, p. 349; OJ 2015 L 74, p. 38; OJ 2016 L 188, p. 28; OJ 2016 L 273, p. 35), most recently amended by Directive (EU) 2016/1034 (OJ 2016 L 175, p. 8).

(2) The claim for non-performance is determined by the market or exchange value of the transaction. The market or exchange value shall be
1. the market or exchange price for a substitute transaction that is concluded immediately following the commencement of insolvency proceedings, but not later than on the fifth business day following commencement or
2. if a substitute transaction in accordance with number 1 is not concluded, the market or exchange price for a substitute transaction that could have been concluded on the second business day following the commencement of insolvency proceedings.
If market activity does not allow a substitute transaction to be concluded in accordance with sentence 2, numbers 1 or 2, the market or exchange price shall be determined in accordance with methods and procedures that ensure adequate valuation of the transaction.

(3) If transactions under subsection (1) are combined by way of a master agreement or by way of the set of rules of a central counterparty within the meaning of section 1 (31) of the Banking Act (*Kreditwesengesetz*, KWG) into a uniform contract which provides that, if certain grounds exist, the included transactions can only be closed out in their entirety, all these included transactions shall be regarded as a single transaction within the meaning of subsection (1). This shall also apply where other transactions are included with them; the general provisions apply to the latter.

(4) The contractual parties may make divergent arrangements, provided that they are compatible with the essential principles of the statutory provision being derogated from. In particular, they may agree
1. that the effects under subsection (1) shall also occur prior to the commencement of insolvency proceedings, in particular where a contracting party lodges an application for the commencement of insolvency proceedings in respect of its own assets or where a ground for commencement exists (contractual close-out);
2. that those transactions under subsection (1) in respect of which claims to the delivery of goods or the provision of financial services become due prior to the commencement of insolvency proceedings but after the date specified for contractual close-out shall also be subject to contractual close-out;
3. that for the purpose of determining the market or exchange value of the transaction
a) the date of contractual close-out shall take the place of the commencement of insolvency proceedings;
b) a substitute transaction under subsection (2) sentence 2, number 1 may be concluded until the end of the 20th business day following contractual close-out, where this is necessary to maximise the value at settlement;
c) in the place of the date specified in subsection (2) sentence 2, number 2, the relevant date shall be a date or period between contractual close-out and expiry of the fifth business day thereafter.

(5) The other party may assert such a claim only as an insolvency creditor.

Section 105 – Divisible Performance

If the performance owed under a contract is divisible and the other party has already partially provided the performance due by it at the time of commencement of insolvency proceedings, this party is an insolvency creditor for the amount of its claim to counter-performance corresponding to the partial performance, even if the insolvency administrator demands performance in relation to the performance still outstanding. The other party is not entitled to claim the return of any partial performance that passed into the debtor's assets prior to commencement of proceedings from the insolvency estate on the grounds of non-performance of its claim to counter-performance.

Section 106 – Priority Notice

(1) If a priority notice is registered in the Land Register to secure a claim for the grant or cancellation of a right in a plot of land belonging to the debtor or in a right registered for the debtor or to secure a claim for amendment of the content or the ranking of such a right, the creditor may demand satisfaction of its claim out of the insolvency estate. This shall also apply if the debtor assumed additional obligations towards the creditor and these have not been fulfilled or have not been fulfilled in their entirety.

(2) Subsection (1) applies with the necessary modifications to a priority notice registered in the Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft.

Section 107 – Retention of Title

(1) If the debtor sold a movable item subject to retention of title and transferred possession to the purchaser prior to commencement of insolvency proceedings, the purchaser may demand performance of the purchase contract. This shall also apply if the debtor assumed additional obligations towards the purchaser and these have not been fulfilled or have not been fulfilled in their entirety.

(2) If the debtor purchased a movable item subject to retention of title and acquired possession of the item from the seller prior to commencement of insolvency proceedings, the insolvency administrator who has been requested by the seller to exercise his/her right of choice does not have to make his/her declaration pursuant to section 103 (2) sentence 2 until immediately after the report meeting. This shall not apply if a significant reduction in the value of the item can be expected during the period up to the report meeting and if the creditor has informed the insolvency administrator of this circumstance.

Section 108 – Continuation of Particular Contractual Obligations

(1) Tenancies and leases entered into by the debtor in relation to immovable property or premises and also service contracts entered into by the debtor shall continue to exist with effect for the insolvency estate. This shall also apply to tenancies and leases which the debtor entered into as landlord or lessor relating to other assets which have been assigned by way of security to a third party who financed their acquisition or production.

(2) A loan agreement entered into by the debtor as lender shall continue to exist with effect for the insolvency estate insofar as the object owed has been made available to the borrower.

(3) Claims for the period prior to commencement of insolvency proceedings may be asserted by the other party only as an insolvency creditor.

Section 109 – Debtor as Tenant or Lessee

(1) A tenancy or lease entered into by the debtor in relation to immovable property or premises as tenant or lessee may be terminated by the insolvency administrator irrespective of the agreed contractual term or an agreed exclusion of the ordinary right of termination; the notice period shall amount to three months to the end of a month unless a shorter notice period is applicable. If the subject matter of the tenancy is the debtor's dwelling house, termination shall be replaced by the right of the insolvency administrator to declare that claims which become due after the expiry of the period specified in sentence 1 cannot be asserted in the insolvency proceedings. If the administrator effects termination pursuant to sentence 1 or if he/she makes a declaration pursuant to sentence 2, the other party may claim damages as an insolvency creditor in respect of the premature termination of the contractual relationship or in respect of the consequences of the declaration.

(2) If the debtor had not yet taken possession of the immovable property or premises at the time of commencement of insolvency proceedings, both the insolvency administrator and the other party may withdraw from the contract. If the insolvency administrator withdraws from the contract, the other party may claim damages as an insolvency creditor in respect of the premature termination of the contractual relationship. Each party must notify the other party on request within two weeks as to whether it wishes to withdraw from the contract; if the party in question fails to do so, such party loses the right to withdraw from the contract.

Section 110 – Debtor as Landlord or Lessor

(1) If the debtor, as landlord or lessor of immovable property or premises, disposed of future claims for rent prior to commencement of insolvency proceedings, this disposal shall be effective only insofar as it relates to the rent for the calendar month during which insolvency proceedings are commenced. If insolvency proceedings are commenced after the fifteenth day of a month, the disposal shall be effective also in respect of the following calendar month.

(2) A disposal within the meaning of subsection (1) includes, in particular, the collection of rent. A disposal effected by means of compulsory enforcement shall be equivalent to an act disposing of a right.

(3) The tenant or lessee may set off a claim held against the debtor against the claim for rent for the period specified in subsection (1). Sections 95 and 96 Nos 2 to 4 remain unaffected.

Section 111 – Sale of Let or Leased Property

If the insolvency administrator sells immovable property or premises let or leased by the debtor and the acquirer takes over the tenancy or lease agreement in place of the debtor, the acquirer may terminate the tenancy or lease agreement subject to the statutory notice period. Termination can be effected only as of the earliest permitted date.

Section 112 – Prohibition of Termination

After the application for commencement of insolvency proceedings has been lodged, a tenancy or lease agreement which the debtor entered into as tenant or lessee cannot be terminated by the other party on the grounds of:

1. default in the payment of rent arising prior to the application for commencement of insolvency proceedings;
2. deterioration in the debtor's financial circumstances.

Section 113 – Termination of a Service Contract

A service contract under which the debtor is entitled to services may be terminated by the insolvency administrator and by the other party irrespective of the agreed term of the contract and the agreed exclusion of the ordinary right of termination. The notice period shall amount to three months to the end of a month unless a shorter notice period is applicable. If the insolvency administrator terminates the contract, the other party may claim compensation as an insolvency creditor for the premature termination of the service contract.

Section 114 (repealed)

Section 115 – Extinguishment of Mandates

(1) A mandate issued by the debtor relating to the assets of the insolvency estate is extinguished upon commencement of insolvency proceedings.

(2) If suspension of the mandate represents a risk, the mandated party shall continue to handle the transferred business until the insolvency administrator is able to take care of the business him-self/herself. The mandate shall be deemed to continue to this extent. The mandated party is a preferential creditor in respect of the claims to reimbursement arising from this continuation of the mandate.

(3) If the mandated party is unaware of the commencement of insolvency proceedings through no fault on its part, the mandate shall be deemed to continue to its benefit. The mandated party is an insolvency creditor in respect of the claims to reimbursement arising from this continuation of the mandate.

Section 116 – Extinguishment of Business Management Contracts

If anyone is obliged under a service contract or a contract for work to manage a business for the debtor, section 115 shall apply with the necessary modifications. The provisions regulating reimbursement claims arising from the continuation of the business management contract shall also apply in respect of remuneration claims. Sentence 1 does not apply to payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities; these shall continue to apply with effect for the insolvency estate.

Section 117 – Extinguishment of Powers of Attorney

(1) A power of attorney issued by the debtor relating to the assets of the insolvency estate is extinguished upon commencement of insolvency proceedings.

(2) If a mandate or a business management contract continues pursuant to section 115 (2), the power of attorney shall also be deemed to continue.

(3) If the authorised representative is unaware of the commencement of insolvency proceedings through no fault on his/her part, he/she shall not be liable under section 179 of the Civil Code *[Bürgerliches Gesetzbuch]*.

Section 118 – Dissolution of Companies

If a company without legal personality or a partnership limited by shares is dissolved through the commencement of insolvency proceedings relating to the assets of a partner, the managing partner is a preferential creditor in respect of the claims to which the managing partner is entitled arising out of the interim continuation of urgent business transactions. The managing partner is an insolvency creditor in respect of the claims arising out of the continuation of business transactions in the period during which it was unaware of the commencement of insolvency proceedings through no fault on its part; section 84 (1) remains unaffected.

Commentary:
In sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 119 – Invalidity of Divergent Agreements

Agreements that exclude or restrict the applicability of sections 103 to 118 in advance are invalid.

Section 120 – Termination of Works Agreements

(1) If provision is made in works agreements for benefits that burden the insolvency estate, the insolvency administrator and the works council shall consult on a mutually agreed reduction in the benefits. Such works agreements may also be terminated subject to three months' notice, even if a longer notice period has been agreed.

(2) The right to terminate a works agreement for good cause without notice remains unaffected.

Section 121 – Operational Changes and Conciliation Proceedings

In insolvency proceedings relating to the assets of the employer, section 112 (2) sentence 1 of the Works Constitution Act *[Betriebsverfassungsgesetz]* applies subject to the proviso that the proceedings before the conciliation committee shall be preceded by an attempt at mediation only if the insolvency administrator and the works council jointly seek conciliation.

Section 122 – Judicial Approval for Undertaking an Operational Alteration

(1) If an operational alteration is planned and no agreement on a reconciliation of interests can be reached between the insolvency administrator and the works council pursuant to section 112 of the Works Constitution Act *[Betriebsverfassungsgesetz]* within three weeks from the date of commencement of negotiations or of a written request to commence negotiations, despite the administrator having provided comprehensive information to the works council in good time, the insolvency administrator may apply for the approval of the Labour Court to the implementation of the operational alteration without this being preceded by proceedings pursuant to section 112 (2) of the Works Constitution Act *[Betriebsverfassungsgesetz]*. To this extent section 113 (3) of the Works Constitution Act *[Betriebsverfassungsgesetz]* shall not be applicable. The right of the insolvency administrator to bring about a re-conciliation of interests pursuant to section 125 or to lodge an application for declaratory judgment pursuant to section 126 remains unaffected.

(2) The court shall grant its approval if the financial position of the enterprise, taking into consideration the social interests of the employees as well, requires the operational alteration to be implemented without prior proceedings pursuant to section 112 (2) of the Works Constitution Act *[Betriebsverfassungsgesetz]*. The provisions of the Labour Court Act *[Arbeitsgerichtsgesetz]* concerning court order proceedings apply with the necessary modifications; the parties to the proceedings are the insolvency administrator and the works council. The application shall be dealt with as a matter of priority in accordance with section 61a (3) to (6) of the Labour Court Act *[Arbeitsgerichtsgesetz]*.

(3) There is no right of appeal against the decision of the court to the Higher Labour Court. An appeal may be brought before the Federal Labour Court if this is allowed in the decision of the Labour Court; section 72 (2) and (3) of the Labour Court Act shall apply with the necessary modifications. The substantiated appeal must be lodged with the Federal Labour Court within one month of service of the Labour Court's full written decision.

Section 123 – Scope of the Social Compensation Plan

(1) In order to compensate for or mitigate the financial prejudice sustained by employees as a result of the planned operational alteration, a social compensation plan drawn up subsequent to commencement of insolvency proceedings may provide for a total of up to two and a half months' salary (section 10 (3) of the Protection Against Unfair Dismissal Act *[Kündigungsschutzgesetz]*) for the employees affected by dismissal.

(2) The liabilities under such a social compensation plan are preferential liabilities. However, if an insolvency plan does not materialise, not more than one third of the insolvency estate which would be available for distribution to the

insolvency creditors in the absence of a social compensation plan may be used for the settlement of social compensation plan claims. If the total amount of all social compensation plan claims exceeds this limit, the individual claims shall be reduced proportionately.

(3) Whenever sufficient liquid funds are available in the insolvency estate, with the approval of the insolvency court the insolvency administrator shall make payments on account towards the social compensation plan claims. Compulsory enforcement against the insolvency estate is not permitted in respect of a social compensation plan claim.

Section 124 – Social Compensation Plan Prior to Commencement of Insolvency Proceedings

(1) A social compensation plan drawn up prior to the commencement of insolvency proceedings but no earlier than three months prior to the application for commencement of insolvency proceedings may be revoked by the insolvency administrator or by the works council.

(2) If the social compensation plan is revoked, the employees entitled to claims under the social compensation plan may be taken into account if a social compensation plan is drawn up within the insolvency proceedings.

(3) Benefits received by employees towards their claims from the revoked social compensation plan prior to commencement of insolvency proceedings cannot be reclaimed on the grounds of the revocation. When a new social compensation plan is drawn up, in calculating the total amount of the social compensation plan claims pursuant to section 123 (1), such benefits to dismissed employees shall be deducted to the extent of up to two and a half months' salary.

Section 125 – Reconciliation of Interests and Protection against Dismissal

(1) If an operational alteration (section 111 of the Works Constitution Act *[Betriebsverfassungsgesetz]*) is planned and the employees who are to be dismissed are designated by name in a reconciliation of interests between the insolvency administrator and the works council, section 1 of the Protection Against Unfair Dismissal Act *[Kündigungsschutzgesetz]* shall apply subject to the provisos that:

1. it shall be presumed that termination of the employment contracts of the designated employees is due to compelling operational requirements which preclude the continued employment of the employees in the company or their continued employment on unchanged terms of employment;

2. selection of employees on the basis of social criteria may be reviewed only with respect to length of service, age and maintenance obligations and in this respect only for gross errors; the maintenance or creation of a balanced personnel structure shall not be regarded as grossly erroneous. Sentence 1 shall not apply if circumstances have significantly changed since the reconciliation of interests was achieved.

(2) The reconciliation of interests under subsection (1) replaces the work council's right to comment pursuant to section 17 (3) sentence 2 of the Protection Against Unfair Dismissal Act *[Kündigungsschutzgesetz]*.

Section 126 – Court Order Proceedings Relating to Protection Against Dismissal

(1) If the company does not have a works council or if no reconciliation of interests in accordance with section 125 (1) is achieved on other grounds within three weeks from the date of commencement of negotiations or of a written request to commence negotiations, despite the administrator having provided comprehensive information to the works council in good time, the insolvency administrator may apply for a declaration by the Labour Court that the termination of the employment of the specific employees designated in the application is due to compelling operational requirements and justified on social grounds. The selection of employees on the basis of social criteria may be reviewed only with respect to length of service, age and maintenance obligations.

(2) The provisions of the Labour Court Act *[Arbeitsgerichtsgesetz]* relating to court order proceedings apply with the necessary modifications; the parties to the proceedings are the insolvency administrator, the works council and the designated employees, insofar as they do not agree to the termination of their employment or to the amended terms of employment. Section 122 (2) sentence 3 and (3) apply with the necessary modifications.

(3) Section 12a (1) sentences 1 and 2 of the Labour Court Act *[Arbeitsgerichtsgesetz]* apply with the necessary modifications to the costs incurred by the parties in the proceedings at first instance. In the proceedings before the Federal Labour Court, the provisions of the Code of Civil Procedure *[Zivilprozessordnung]* relating to the payment of the costs of the proceedings apply with the necessary modifications.

Section 127 – Legal Action by an Employee

(1) If the insolvency administrator gives notice to an employee who is designated in the application pursuant to section 126 (1) and the employee

brings an action for declaratory judgment that his/her employment is not terminated by the dismissal or that the change to his/her terms of employment is unjustified on social grounds, the final judgment in the proceedings under section 126 shall be binding on both parties. This shall not apply if circumstances have changed significantly since the last hearing.

(2) If the employee brings an action before the decision in the proceedings under section 126 has become final, on application by the insolvency administrator the hearing of the action shall be suspended until this time.

Section 128 – Sale of Business Operation

(1) The application of sections 125 to 127 shall not be excluded by reason of the fact that the operational alteration on which the reconciliation of interests or the application for declaratory judgment is based is to be implemented only after the sale of a business operation. The acquirer of the business operation shall be a party to the proceedings under section 126.

(2) In the case of a transfer of undertakings, the presumption pursuant to section 125 (1) sentence 1 No. 1 or the declaration by the court pursuant to section 126 (1) sentence 1 shall also be to the effect that the employment relationship is not being terminated by reason of the transfer of undertakings.

Chapter Three – Avoidance in Insolvency

Section 129 – Principle

(1) Legal acts undertaken prior to commencement of insolvency proceedings which are prejudicial to the insolvency creditors may be avoided by the insolvency administrator in accordance with sections 130 to 146.

(2) An omission is deemed to be equivalent to a legal act.

Section 130 – Congruent Coverage

(1) A legal act providing security to or enabling the satisfaction of an insolvency creditor may be avoided if it was undertaken
1. during the three months prior to the application for commencement of insolvency proceedings, if the debtor was illiquid at the time when the act was undertaken and if the creditor was aware at that time of the debtor's illiquidity or
2. after the application for commencement of insolvency proceedings is filed and if the creditor was aware of the debtor's illiquidity or of the application for commencement of insolvency proceedings when the act was undertaken.
This shall not apply if the legal act is based on a financial collateral arrangement containing an obligation to provide financial collateral, other financial collateral or additional financial collateral within the scope of section 17 (1) of the Banking Act *[Kreditwesengesetz]* in order to restore the ratio agreed in the financial collateral arrangement between the value of the secured liabilities and the value of the collateral (margin collateral).

(2) Awareness of circumstances that necessarily indicate the debtor's illiquidity or the application for the commencement of proceedings is deemed to be equivalent to awareness of the debtor's illiquidity or of the application for commencement of proceedings.

(3) A person with a close relationship to the debtor at the time when the act was undertaken (section 138) shall be presumed to have been aware of the debtor's illiquidity or of the application for commencement of proceedings.

Section 131 – Incongruent Coverage

(1) A legal act providing security to or enabling the satisfaction of an insolvency creditor to which the creditor had no right or no right to claim in that manner or at that time may be avoided it if was undertaken
1. during the month prior to the date of the application for commencement of insolvency proceedings or following such application;
2. within the second or third month prior to the date on which the application for commencement of insolvency proceedings is filed and the debtor was illiquid when the act took place or
3. within the second or third month prior to the date on which the application for commencement of insolvency proceedings is filed and the creditor was aware when the act took place that it would prejudice the insolvency creditors.

(2) For application of subsection (1) No. 3, awareness of circumstances that necessarily indicate prejudice to the insolvency creditors is deemed to be equivalent to awareness of the prejudice to the insolvency creditors. A person with a close relationship to the debtor when the act was undertaken (section 138) shall be presumed to have been aware of the prejudice to the insolvency creditors.

Section 132 – Legal Acts Directly Prejudicial to the Insolvency Creditors

(1) A transaction by the debtor that is directly prejudicial to the insolvency creditors may be avoided if it is entered into
1. during the three months prior to the date of the application for commencement of insolvency proceedings, if at the time the transaction took

place, the debtor was illiquid and the other party to the transaction was aware of the debtor's illiquidity when the transaction took place or
2. after the application for commencement of insolvency proceedings has been filed and if the other party to the transaction was aware of the debtor's illiquidity or of the application for commencement of insolvency proceedings when the transaction took place.

(2) Any other transaction by the debtor as a result of which the debtor loses a right or is no longer able to assert such right or as a result of which a pecuniary claim against the debtor is maintained or becomes enforceable is deemed to be equivalent to a transaction that is directly prejudicial to the insolvency creditors.

(3) Section 130 subsections (2) and (3) apply with the necessary modifications.

Section 133 – Intentional Prejudice

(1) A legal act which was intended to prejudice its creditors undertaken by the debtor during the ten years prior to the date of the application for commencement of insolvency proceedings, or after the date of the application, may be avoided if the other party was aware of the debtor's intention when the legal act was undertaken. Such awareness shall be presumed if the other party was aware of the debtor's imminent illiquidity and that the act would prejudice the creditors.

(2) If the legal act provided security to or enabled the satisfaction of the other party, the period in subsection (1) sentence 1 shall amount to four years.

(3) If the legal act provided security to or enabled the satisfaction of the other party and such party had a right to claim it in that manner and at that time, imminent illiquidity under subsection (1) sentence 2 shall be replaced by existing illiquidity. If the other party concluded a payment agreement with the debtor or otherwise granted it relaxed payment terms, it shall be presumed that the other party was not aware of the debtor's illiquidity at the time of the act.

(4) A contract for pecuniary interest entered into by the debtor with a closely connected person (section 138) which is directly prejudicial to the insolvency creditors may be avoided. Avoidance is excluded if the contract was entered into more than two years prior to the date of the application for commencement of insolvency proceedings or if at the time the contract was concluded, the other party to the contract was unaware of the debtor's intention to prejudice the creditors.

Section 134 – Gratuitous Performance

(1) Gratuitous performance by the debtor may be avoided unless it took place more than four years prior to the date of the application for commencement of insolvency proceedings.

(2) Performance provided in return for a customary occasional gift of small value is not subject to avoidance.

Section 135 – Shareholder Loans

(1) A legal act which, in respect of the claim of a shareholder to repayment of a loan within the meaning of section 39 (1) No. 5 or an equivalent claim,
1. provided security, if the act was undertaken during the ten years prior to the application for commencement of insolvency proceedings or after the application has been filed; or
2. satisfied the claim, if the act was undertaken during the year prior to the application for commencement of insolvency proceedings or after the application has been filed may be avoided.

(2) A legal act undertaken by a company within the time frames specified in subsection (1) No. 2 in order to satisfy a third party's claim to repayment of a loan may be avoided if a shareholder had provided security or was liable as surety for such claim. This shall also apply with the necessary modifications to payments on claims equivalent in economic terms to a loan.

(3) If the debtor has been granted an asset for use or exercise by a shareholder, the shareholder's right to segregation cannot be claimed for the duration of the insolvency proceedings, but for a maximum period of one year from the date of commencement of the insolvency proceedings, if the asset is of substantial importance for the continuation of the debtor's business. The shareholder is entitled to compensation for the use or exercise of the asset which shall be calculated on the basis of the average remuneration paid during the year preceding the commencement of insolvency proceedings; if the asset has been provided for use or exercise for a shorter period, the average remuneration during this period is applicable.

(4) Section 39 subsections (4) and (5) apply with the necessary modifications.

Section 136 – Silent Partnership

(1) A legal act by means of which a silent partner's capital contribution is wholly or partially repaid or a silent partner's share of accrued losses is wholly or partially waived may be avoided if the underlying agreement was entered into during the year prior to the application for commencement of insolvency proceedings relating to the assets of the owner of the business or after the filing of the application. This shall also apply

even if the silent partnership has been dissolved in connection with the agreement.

(2) Avoidance is excluded if a ground for commencement of insolvency proceedings arose only after the agreement was concluded.

Section 137 – Bill of Exchange and Cheque Payments

(1) Bill of exchange payments by the debtor cannot be reclaimed from the payee on the basis of section 130 if, in accordance with the law on bills of exchange, the payee would have lost its claim under the bill of exchange against other parties liable on the bill upon refusal to accept payment.

(2) The amount paid on a bill of exchange shall, however, be refunded by the last party liable for recourse or, if the latter endorsed the bill of exchange in favour of a third party, by the third party if the last party liable for recourse or the third party was aware of the debtor's illiquidity or of the application for commencement of insolvency proceedings at the time when it endorsed the bill of exchange or caused it to be endorsed. Section 130 subsections (2) and (3) apply with the necessary modifications.

(3) Subsections (1) and (2) apply with the necessary modifications to cheque payments by the debtor.

Section 138 – Closely Connected Persons

(1) If the debtor is a natural person, closely connected persons are:
1. the debtor's spouse, even if the marriage did not take place until after the legal act or was dissolved during the year prior to the legal act;
1a. the debtor's civil partner, even if the civil partnership was entered into only after the legal act or was dissolved during the year prior to the legal act;
2. the ascendants and descendants of the debtor or of the debtor's spouse as specified in number 1 above or of the debtor's civil partner as specified in number 1a above and also full and half-siblings of the debtor or of the debtor's spouse as specified in number 1 above or of the debtor's civil partner as specified in number 1a above as well as the spouses or civil partners of these persons;
3. persons living in the household of the debtor or having lived in the household of the debtor during the year prior to the legal act and also persons who have the opportunity to become aware of the debtor's financial circumstances by virtue of a contractual connection to the debtor under a service contract;
4. a legal entity or a company without legal personality, if the debtor or one of the persons mentioned in numbers 1 to 3 is a member of the representative or supervisory body, a general partner or holds more than one quarter of its capital or has the opportunity by virtue of a comparable connection on the basis of company law or of a service contract to become aware of the debtor's financial circumstances.

(2) If the debtor is a legal entity or a company without legal personality, closely connected persons are:
1. the members of the debtor's representative or supervisory body and general partners of the debtor and also persons who hold more than one quarter of the debtor's capital;
2. a person or company with the opportunity to become aware of the debtor's financial circumstances by virtue of a comparable connection to the debtor on the basis of company law or a service contract;
3. a person with a personal connection as detailed in subsection (1) to one of the persons specified in number 1 or 2; this shall not apply if the persons specified in number 1 or 2 are bound by law to secrecy in relation to the debtor's affairs.

Commentary:
In subsection (1) No. 4 and in subsection (2) in the part of the sentence before No. 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 139 – Calculation of Time Periods Prior to the Application for Commencement of Insolvency Proceedings

(1) The time periods specified in sections 88 and 130 to 136 commence at the start of the day corresponding in number to the day on which the application to commence insolvency proceedings is received by the insolvency court. If a month lacks such a day, the time period commences at the start of the following day.

(2) If several applications for commencement of insolvency proceedings are filed, the first admissible and well-founded application shall be applicable even if the proceedings are commenced on the basis of a later application. An application rejected with final effect shall be taken into account only if it was rejected due to insufficiency of assets.

Section 140 – Date of Performance of a Legal Act

(1) A legal act is deemed to be performed on the date on which its legal effects occur.

(2) If registration in the Land Register, Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft is necessary for a transaction to take effect, the transaction shall be deemed to be performed as soon as the remaining requirements for it to take effect have been met, the debtor's declaration of intent has become binding and the other party has lodged the application for registration of the change of title. If an application for registration of a priority notice to secure the right to the change of title has been lodged, sentence 1 shall apply subject to the proviso that this application takes the place of the application for registration of the change of title.

(3) In the case of a conditional or fixed term legal act, fulfilment of the condition or occurrence of the expiry date shall not be taken into account.

Section 141 – Enforceable Title

A legal act may be avoided even if an enforceable title was obtained for the legal act or if the act was performed by way of compulsory enforcement.

Section 142 – Cash Transactions

(1) Any performance by the debtor for which counter-performance of the same value is received directly into the debtor's assets may be avoided only if the requirements of section 133 (1) are fulfilled and the other party recognised that the debtor acted dishonestly.

(2) The exchange of performance and counter-performance is direct if there is a close temporal connection between performances, depending on the nature of the performances exchanged and taking into account customary business practices. If the debtor pays wages to its employees, a close temporal connection exists if the period between the performance of work and the payment of wages does not exceed three months.

Section 143 – Legal Consequences

(1) Any property of the debtor which is sold, given away or relinquished by means of the avoidable act must be returned to the insolvency estate. The provisions regulating the legal consequences of unjust enrichment where the recipient was aware that there were no legal grounds for the performance apply with the necessary modifications. Interest is payable on money owed only if the requirements of debtor default or of section 291 of the Civil Code *[Bürgerliches Gesetzbuch]* are met; an additional claim to surrender of benefits obtained from an amount of money received is excluded.

(2) The recipient of gratuitous performance has to make restitution only to the extent that it is thereby enriched. This shall not apply as soon as it knows or must know in the circumstances that the gratuitous performance is prejudicial to the creditors.

(3) In the case of avoidance under section 135 (2), the shareholder who provided security or was liable as surety must refund the benefit granted to the third party to the insolvency estate. The obligation shall exist only up to the amount for which the shareholder was liable as surety or which corresponds to the value of the security provided by such shareholder at the time of repayment of the loan or of the payment on the equivalent claim. The shareholder shall be released from the obligation if it makes the property which served the creditor as security available to the insolvency estate.

Section 144 – Claims by the Recipient of Avoidable Performance

(1) If the recipient of avoidable performance returns what it has received, its claim revives.

(2) Any consideration shall be refunded out of the insolvency estate insofar as it is still present in distinct form within the insolvency estate or the insolvency estate is enriched by its value. Over and above this, the recipient of avoidable performance may assert a claim for return of the consideration only as an insolvency creditor.

Section 145 – Avoidance against Legal Successors

(1) Avoidance of a legal act may be asserted against the heirs or other universal successors of the recipient of avoidable performance.

(2) Avoidance of a legal act may be asserted against any other legal successor:
1. if the legal successor was aware at the time of his/her acquisition of the circumstances on which the voidability of the acquisition by his/her predecessor is based;
2. if, at the time of his/her acquisition, the legal successor belonged to the circle of persons closely connected to the debtor (section 138), unless he/she was unaware at this time of the circumstances on which the voidability of the acquisition by his/her predecessor is based;
3. if the legal successor acquired the property by gratuitous transfer.

Section 146 – Limitation of the Right of Avoidance

(1) The right of avoidance is subject to the provisions on the standard limitation period under the Civil Code *[Bürgerliches Gesetzbuch]*.

(2) Even if the right of avoidance has become time-barred, the insolvency administrator may refuse to fulfil a duty of performance based on an avoidable act.

Section 147 – Legal Acts after Commencement of Proceedings

A legal act undertaken after the commencement of insolvency proceedings which is valid in accordance with section 81 (3) sentence 2, sections 892 and 893 of the Civil Code *[Bürgerliches Gesetzbuch]*, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction *[Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken]* and sections 16 and 17 of the Act Governing Rights in Aircraft *[Gesetz über Rechte an Luftfahrzeugen]* may be avoided under the provisions applicable to the avoidance of a legal act undertaken prior to the commencement of insolvency proceedings. Sentence 1 applies to legal acts based on the claims and performance specified in section 96 (2) provided that as a result of such avoidance clearing, including settlement of balances, is not reversed and the relevant payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities do not become ineffective.

Part Four – Management and Realisation of the Insolvency Estate

Chapter One – Securing the Insolvency Estate

Section 148 – Taking Charge of the Insolvency Estate

(1) After commencement of the insolvency proceedings the insolvency administrator shall immediately assume possession and management of all the assets belonging to the insolvency estate.

(2) The administrator may enforce the surrender of property in the debtor's custody on the basis of an enforceable execution copy of the order commencing proceedings by way of compulsory enforcement. Section 766 of the Code of Civil Procedure *[Zivilprozessordnung]* applies subject to the proviso that the insolvency court takes the place of the court of enforcement.

Section 149 – Valuables

(1) The creditors' committee may determine where and on what conditions funds, securities and objects of value are to be deposited or invested. If a creditors' committee has not been appointed, or if the creditors' committee has not yet passed a relevant resolution, the insolvency court may make a corresponding order.

(2) The creditors' meeting may decide on differing arrangements.

Section 150 – Sealing

In order to secure the assets of the insolvency estate, the insolvency administrator may have seals affixed by a bailiff or other person authorised by statute. The record documenting the sealing or unsealing of assets must be deposited by the insolvency administrator in the court registry for the parties' inspection.

Section 151 – List of Assets of the Insolvency Estate

(1) The insolvency administrator shall draw up a list of the individual assets belonging to the insolvency estate. The debtor shall be consulted, if this is possible without prejudicial delay.

(2) The value of each asset shall be stated. If the value depends on whether the enterprise continues to operate or is closed down, both values shall be stated. Valuations that are particularly difficult to assess may be passed to an expert.

(3) On application by the administrator the insolvency court may waive the drawing up of the list; the application must state the grounds on which it is based. If a creditors' committee is appointed, the administrator may submit the application only with the consent of the creditors' committee.

Section 152 – List of Creditors

(1) The insolvency administrator shall draw up a list of all the debtor's creditors ascertained by him/her from the debtor's books and business records, from other information from the debtor, through the filing of their claims or in any other way.

(2) The list shall record the creditors entitled to separate satisfaction and the individual ranking categories of the subordinated insolvency creditors separately. The creditor's address and the basis and the amount of the creditor's claim shall be stated in each case. In the case of the creditors entitled to separate satisfaction, the asset subject to the right of separate satisfaction and the amount of the probable shortfall shall also be indicated; section 151 (2) sentence 2 applies with the necessary modifications.

(3) The list shall further indicate the possibilities which exist for set-off. The amount of the preferential liabilities in the event of a prompt realisation of the debtor's assets shall be estimated.

Section 153 – Statement of Assets and Liabilities

(1) The insolvency administrator shall draw up a structured overview as of the date of commencement of the insolvency proceedings listing and comparing the assets of the insolvency estate and the debtor's liabilities. Section 151 (2) applies with the necessary modifications to the valuation of the assets; section 151 (2) sentence 1 applies with the necessary modifications to the classification of the liabilities.

(2) After the statement of assets and liabilities has been drawn up, on application by the insolvency administrator or a creditor the insolvency court may order the debtor to affirm the completeness of the statement of assets and liabilities by affidavit. Sections 98 and 101 (1) sentences 1 and 2 apply with the necessary modifications.

Section 154 – Deposit in the Court Registry

The list of assets of the insolvency estate, the list of creditors and the statement of assets and liabilities shall be deposited in the court registry for the parties' inspection no later than one week prior to the report meeting.

Section 155 – Accounting under Commercial and Tax Law

(1) The debtor's duties under commercial and tax law to keep books and present accounts remain unaffected. The insolvency administrator shall fulfil these duties in relation to the insolvency estate.

(2) A new financial year begins upon commencement of the insolvency proceedings. However, the period up to the report meeting will not be taken into account in the statutory periods for drawing up and publishing financial statements.

(3) Section 318 of the Commercial Code *[Handelsgesetzbuch]* applies to the appointment of the auditor in the insolvency proceedings, provided that the appointment shall be made exclusively by the registration court on application by the insolvency administrator. If an auditor has already been appointed for the financial year prior to commencement of the insolvency proceedings, the validity of the appointment shall not be affected by commencement of the insolvency proceedings.

Chapter Two – Decision on Realisation

Section 156 – Report Meeting

(1) At the report meeting the insolvency administrator shall report on the debtor's financial position and the causes thereof. The insolvency administrator shall state whether prospects exist for the debtor's business to be maintained in full or in part, what possibilities exist for an insolvency plan and what the implications would be in each case for the satisfaction of the creditors.

(2) At the report meeting the debtor, the creditors' committee, the works council and the committee representing executive staff shall be given the opportunity to comment on the administrator's report. If the debtor conducts a trade or business, or is a farmer, the competent official professional organisation representing the industry, business, trade or agriculture may also be given the opportunity to make representations at the meeting.

Section 157 – Decision on the Future Course of the Proceedings

The creditors' meeting shall decide at the report meeting whether the debtor's business should be closed down or temporarily continued. It may instruct the insolvency administrator to draw up an insolvency plan and specify the objective of the plan. It may alter its decisions at subsequent meetings.

Section 158 – Measures Prior to the Decision

(1) If the insolvency administrator wishes to close down or dispose of the debtor's business prior to the report meeting, he/she must obtain the consent of the creditors' committee, if one has been appointed.

(2) The administrator must notify the debtor prior to the adoption of a resolution by the creditors' committee, if one has been appointed, or, if a creditors' committee has not been appointed, prior to the closure or disposal of the business. On the debtor's application and after hearing the administrator the insolvency court shall prohibit the closure or disposal of the business if this can be suspended until the report meeting without a significant reduction in the insolvency assets.

Section 159 – Realisation of the Insolvency Estate

Following the report meeting, the insolvency administrator shall realise the assets forming the insolvency estate without delay unless the resolutions of the creditors' meeting preclude this.

Section 160 – Legal Acts of Particular Importance

(1) The insolvency administrator must obtain the consent of the creditors' committee if he/she wishes to undertake legal acts that are of particular importance for the insolvency proceedings. If a creditors' committee has not been appointed, the consent of the creditors' meeting must be obtained. If the convened creditors' meeting does not have a quorum, consent shall be deemed to have been granted; the creditors shall be informed of this consequence in the notice calling the creditors' meeting.

(2) Consent in accordance with subsection (1) is required in particular

1. in the case of a planned disposal of the enterprise or a business operation, the entire stock, an immovable asset by private sale, the debtor's interest in another company which is intended to create a durable link to this company or the right to receive income of a recurring nature;

2. if a loan is to be taken out that would significantly burden the insolvency estate;
3. if legal action involving a significant amount in dispute is to be brought or initiated, or if the initiation of such legal action is rejected or if a scheme of composition or an arbitration agreement is entered into for the purpose of settling or averting such legal action.

Section 161 – Temporary Prohibition of the Legal Act

In the cases specified in section 160 the insolvency administrator shall notify the debtor prior to the adoption of a resolution by the creditors' committee or the creditors' meeting, if this is possible without prejudicial delay. If the creditors' meeting has not granted its consent, on application by the debtor or a majority of creditors as specified in section 75 (1) No. 3 and after hearing the administrator, the insolvency court may temporarily prohibit performance of the legal act and convene a creditors' meeting to decide on performance of the legal act.

Section 162 – Disposal of Business Operations to Parties with a Special Interest

(1) The disposal of the enterprise or of a business operation requires the consent of the creditors' meeting if the acquirer or a person who holds at least one fifth of the acquirer's capital
1. belongs to the group of persons with a close relationship to the debtor (section 138);
2. is a creditor with a right to separate satisfaction or a non-subordinated insolvency creditor whose rights to separate satisfaction and claims are assessed by the insolvency court as together reaching one fifth of the total resulting from the value of all rights to separate satisfaction and the amounts of the claims of all non-subordinated insolvency creditors.

(2) A person shall also be deemed to hold a participating interest in the acquirer within the meaning of subsection (1) insofar as a company controlled by the person or a third party holds a participating interest in the acquirer for the account of the person or of the controlled company.

Section 163 – Disposal of Business Operations Below Value

(1) On application by the debtor or a majority of creditors as specified in section 75 (1) No. 3 and after hearing the administrator, the insolvency court may order that the planned disposal of the enterprise or of a business operation requires the consent of the creditors' meeting if the applicant demonstrates to the satisfaction of the court that a disposal to another acquirer would be more favourable for the insolvency estate.

(2) If costs are incurred by the applicant as a result of the application, the applicant is entitled to reimbursement of these costs from the insolvency estate as soon as the court order is issued.

Section 164 – Validity of the Acts of the Insolvency Administrator

The validity of the acts of the insolvency administrator shall not be affected by any contravention of sections 160 to 163.

Chapter Three – Assets Subject to Rights to Separate Satisfaction

Section 165 – Realisation of Immovable Assets

The insolvency administrator may apply to the competent court to conduct the forced sale or sequestration of an immovable asset of the insolvency estate even if the asset is subject to a right to separate satisfaction.

Section 166 – Realisation of Movable Assets

(1) The insolvency administrator may realise a movable asset that is subject to a right to separate satisfaction by private sale if he/she has the item in his/her possession.

(2) The insolvency administrator may collect or otherwise realise an account receivable which the debtor has assigned in order to secure a claim.

(3) Subsections (1) and (2) do not apply
1. to assets subject to a security interest in favour of the operator of or a participant in a system pursuant to section 1 (16) of the Banking Act *[Kreditwesengesetz]* in order to secure its claims under the system;
2. to assets subject to a security interest in favour of the central bank of a Member State of the European Union or a contracting state of the Agreement on the European Economic Area or in favour of the European Central Bank or
3. to a financial collateral arrangement within the meaning of section 1 (17) of the Banking Act *[Kreditwesengesetz]*.

Section 167 – Provision of Information to the Creditor

(1) If the insolvency administrator is entitled to realise a movable asset pursuant to section 166 (1), he/she must provide information on the condition of the asset to the creditor entitled to separate satisfaction on the latter's request. In place of providing information, he/she may permit the creditor to inspect the asset.

(2) If the insolvency administrator is entitled to collect an account receivable pursuant to section 166 (2), he/she must provide information about it to the creditor entitled to separate satisfaction on the latter's request. In place of providing

information, he/she may permit the creditor to inspect the debtor's books and business records.

Section 168 – Notification of Intention to Sell

(1) Before the insolvency administrator sells an asset to a third party which he/she is entitled to realise pursuant to section 166, he/she must notify the creditor entitled to separate satisfaction of the means by which the asset is to be sold. He/she must give the creditor the opportunity to indicate, within one week, another option for realising the asset which would be more beneficial for the creditor.

(2) If the creditor's proposal is made within the one week period or in good time prior to the sale, the insolvency administrator must take advantage of the realisation option put forward by the creditor or put the creditor in the position it would have been in if the insolvency administrator had taken advantage of the proposed option.

(3) The other realisation option may also consist in the creditor taking over the asset itself. A realisation option is also more favourable if it results in cost savings.

Section 169 – Protection of the Creditor against a Delay in Realisation

As long as an asset which the insolvency administrator is entitled to realise pursuant to section 166 is not realised, the interest due is payable to the creditor out of the insolvency estate on a regular basis from the date of the report meeting onwards. If the creditor has already been prevented prior to commencement of the insolvency proceedings from realising the asset on the basis of an order under section 21, the interest due is payable at the latest with effect from the date which falls three months after this order. Sentences 1 and 2 shall not apply insofar as the creditor is unlikely to obtain satisfaction from the proceeds of realisation, taking into account the amount of the claim and also the value of and other encumbrances on the asset.

Section 170 – Distribution of Proceeds

(1) After a movable asset or a claim has been realised by the insolvency administrator, the costs incurred in assessing and realising the object shall first be taken from the realisation proceeds for the benefit of the insolvency estate. The remaining amount shall be applied without undue delay to satisfy the creditors entitled to separate satisfaction.

(2) If the insolvency administrator hands over an asset which he/she is entitled to realise pursuant to section 166 to the creditor for realisation, out of the realisation proceeds achieved by the creditor the latter must first pay an amount covering the costs of assessing the asset and also the amount of the value added tax (section 171 (2) sentence 3) to the insolvency estate.

Section 171 – Calculation of the Contribution to Costs

(1) The costs of assessment include the costs of the actual assessment of the asset and of determining the rights in the asset. They shall be charged at a flat rate of four per cent of the realisation proceeds.

(2) The costs of realisation shall be charged at a flat rate of five per cent of the realisation proceeds. If the costs actually and necessarily incurred for realisation of the asset are considerably lower or higher than this, these costs shall be charged. If realisation of the asset results in a charge to the insolvency estate of value added tax, the amount of the value added tax shall be charged in addition to the flat rate pursuant to sentence 1 or the actual costs incurred pursuant to sentence 2.

Section 172 – Other Use of Movable Assets

(1) The insolvency administrator may use a movable asset for the insolvency estate which he/she is entitled to realise, provided the loss in value thereby resulting is compensated for by regular payments to the creditor from the date of commencement of the insolvency proceedings. The obligation to make compensatory payments exists only insofar as the loss in value resulting from the use adversely affects the security of the creditor entitled to separate satisfaction.

(2) The insolvency administrator may combine, intermix and process such an asset insofar as this does not adversely affect the security of the creditor entitled to separate satisfaction. If the creditor's right continues in another asset, the creditor must release the new security to the extent that it exceeds the value of the previous security.

Section 173 – Realisation by the Creditor

(1) If the insolvency administrator is not entitled to realise a movable asset or a claim subject to a right of separate satisfaction, the creditor's right of realisation remains unaffected.

(2) On application by the insolvency administrator and after hearing the creditor, the insolvency court may set a period of time within which the creditor has to realise the asset or claim. After the expiry of the period of time the insolvency administrator is entitled to realise the asset or claim.

Part Five – Satisfaction of the Insolvency Creditors. Discontinuation of Proceedings

Chapter One – Acceptance of Claims

Section 174 – Filing of Claims

(1) The insolvency creditors must file their claims in writing with the insolvency administrator. The claim submission shall include copies of the documentation evidencing the claim. Persons providing collection services (registered persons pursuant to section 10 (1) sentence 1 No. 1 of the Legal Services Act *[Rechtsdienstleistungsgesetz]*) are also authorised to represent the creditor in the proceedings pursuant to this section.

(2) When the claim is filed the basis and the amount of the claim must be stated, together with the facts which, in the view of the creditor, indicate that the claim is based on the commission of an intentional tort, an intentional violation, in breach of duty, of a statutory maintenance obligation or a criminal offence by the debtor under sections 370, 373 or 374 of the Fiscal Code *[Abgabenordnung]*.

(3) The claims of subordinated creditors have to be filed only if the insolvency court specifically requires the filing of these claims. When such claims are filed, reference must be made to their subordination and the ranking to which the creditor is entitled.

(4) Claims may be submitted by the transmission of an electronic document if the insolvency administrator has expressly agreed to the transmission of electronic documents. In this case, an electronic invoice may also be transmitted as documentation within the meaning of subsection (1) sentence 2. On the request of the insolvency administrator or the insolvency court, printouts, copies or originals of documentation must be submitted.

Section 175 – Schedule

(1) The insolvency administrator shall register each filed claim in a schedule together with the information specified in section 174 subsections (2) and (3). The schedule containing the filed claims together with the documentation attached shall be deposited in the court registry of the insolvency court for the parties' inspection within the first third of the period of time between the expiry of the time limit for filing claims and the verification meeting.

(2) If a creditor has filed a claim on the basis of an intentional violation, in breach of duty, of a statutory maintenance obligation or a criminal offence by the debtor under sections 370, 373 or 374 of the Fiscal Code *[Abgabenordnung]*, the insolvency court shall advise the debtor of the legal consequences of section 302 and the possibility of objection.

Section 176 – Format of the Verification Meeting

The amount and ranking of the filed claims shall be verified at the verification meeting. Claims disputed by the insolvency administrator, the debtor or an insolvency creditor shall be discussed individually.

Section 177 – Late Claim Submission

(1) Claims filed after the expiry of the period allowed for filing shall also be verified at the verification meeting. However, if the insolvency administrator or an insolvency creditor objects to this verification or if a claim is only filed after the verification meeting, at the defaulting party's expense the insolvency court shall either fix a special verification meeting or order the verification process to be undertaken in writing. Sentences 1 and 2 apply with the necessary modifications to subsequent amendments to filed claims.

(2) If the court has requested subordinated creditors to file their claims pursuant to section 174 (3) and if the period allowed for filing expires less than one week prior to the verification meeting, at the expense of the insolvency estate the court shall either fix a special verification meeting or order the verification process to be undertaken in writing.

(3) Notice of the special verification meeting shall be published. The insolvency creditors who have filed claims, the insolvency administrator and the debtor shall be specifically invited to the meeting. Section 74 (2) sentence 2 applies with the necessary modifications.

Section 178 – Requirements for and Effects of Acceptance of Claims

(1) A claim is deemed to be accepted insofar as no objection is raised against it at the verification meeting or during the written verification process (section 177) either by the insolvency administrator or by one of the insolvency creditors, or any objection raised is overcome. An objection by the debtor shall not preclude acceptance of the claim.

(2) For each filed claim the insolvency court shall register in the schedule the extent to which the claim has been accepted in terms of amount and ranking or who objected to acceptance of the claim. An objection by the debtor shall also be registered. The clerk of the court registry shall note the acceptance of the claim on bills of exchange and other debt instruments.

(3) In terms of the amount and the ranking of accepted claims, the entry in the schedule has the

effect of a final judgment against the insolvency administrator and all insolvency creditors.

Section 179 – Disputed Claims

(1) If a claim is disputed by the insolvency administrator or one of the insolvency creditors, it is left to the creditor to pursue acceptance of the claim against the party disputing the claim.
(2) If an enforceable debt instrument or a final judgment exists for such a claim, it is the responsibility of the party disputing the claim to pursue the objection.
(3) The insolvency court shall issue the creditor whose claim has been disputed with a certified extract from the schedule. In the case specified in subsection (2), the party disputing the claim shall also receive a certified extract. The creditors whose claims have been accepted will not be notified; this shall be indicated to the creditors prior to the verification meeting.

Section 180 – Competence for Acceptance of Claims

(1) An action for acceptance of a claim must be brought in ordinary proceedings. The local court at which the insolvency proceedings are or were pending has exclusive jurisdiction for the action. If the matter in dispute is not within the competence of local courts, the regional court within whose district the insolvency court is located shall have exclusive jurisdiction.
(2) If an action concerning the claim was pending at the time of commencement of insolvency proceedings, acceptance of the claim shall be pursued by resumption of the action.

Section 181 – Scope of the Acceptance

Acceptance of a claim in terms of the basis, amount and ranking of the claim may only be requested in accordance with the description of the claim stated upon its filing or at the verification meeting.

Section 182 – Amount in Dispute

The value of the matter in dispute in an action for acceptance of a claim, the legal validity of which was disputed by the insolvency administrator or by an insolvency creditor, shall be determined on the basis of the amount to be expected for the claim upon distribution of the insolvency estate.

Section 183 – Effects of the Decision

(1) A final decision in terms of which a claim is accepted or an objection is held to be well-founded is effective with respect to the insolvency administrator and all insolvency creditors.
(2) It is the responsibility of the successful party to apply to the insolvency court for amendment of the schedule.
(3) If only individual creditors conducted the action and not the insolvency administrator, these creditors may claim reimbursement of their costs out of the insolvency estate insofar as a benefit has accrued to the estate as a result of the decision.

Section 184 – Action against an Objection by the Debtor

(1) If the debtor has disputed a claim at the verification meeting or during the written verification process (section 177), the creditor may bring an action against the debtor for acceptance of the claim. If an action concerning the claim was pending at the time of commencement of the insolvency proceedings, the creditor may resume this action against the debtor.
(2) If an enforceable debt instrument or a final judgment exists for such a claim, it is the responsibility of the debtor to pursue the objection within a time limit of one month commencing on the date of the verification meeting or, during the written verification process, when the claim is disputed. After the expiry of this time limit, if the objection is not pursued, an objection shall be deemed not to have been raised. The insolvency court shall issue the debtor and the creditor whose claim was disputed with a certified extract from the schedule and draw the debtor's attention to the consequences of a failure to observe the time limit. The debtor must prove to the court that it has pursued the claim.

Section 185 – Special Jurisdiction

If an action for acceptance of a claim cannot be brought by recourse to the ordinary courts, acceptance of the claim shall be pursued at the other court with jurisdiction or by the competent administrative authority. Section 180 (2) and sections 181, 183 and 184 apply with the necessary modifications. If acceptance of the claim is to be pursued at another court, section 182 also applies with the necessary modifications.

Section 186 – Restoration of the Status Quo Ante

(1) If the debtor failed to attend the verification meeting, on application the insolvency court shall grant the debtor restoration of the status quo ante. Section 51 (2), section 85 (2) and sections 233 to 236 of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.
(2) The pleadings relating to the application for restoration of the status quo ante shall be served on the creditor whose claim is to be retroactively

disputed. If restoration of the status quo ante is granted, the challenge raised in these pleadings is equivalent to a challenge raised at the verification meeting.

Chapter Two – Distribution

Section 187 – Satisfaction of the Insolvency Creditors

(1) Satisfaction of the insolvency creditors may commence only after the general verification meeting.

(2) Distributions may be made to the insolvency creditors whenever sufficient cash funds are available in the insolvency estate. Subordinated insolvency creditors shall not be included in interim distributions.

(3) Distributions are made by the insolvency administrator. If a creditors' committee has been appointed, its consent must be obtained by the insolvency administrator prior to each distribution.

Section 188 – Distribution Schedule

Prior to each distribution the insolvency administrator shall draw up a schedule of the claims to be included in the distribution. The schedule shall be deposited in the court registry for the parties' inspection. The insolvency administrator shall notify the court of the total amount of the claims and the amount available for distribution from the insolvency estate; the court shall publish the notified total amount of the claims and the amount available for distribution.

Section 189 – Consideration of Disputed Claims

(1) An insolvency creditor whose claim has not been accepted and in respect of whose claim no enforceable title or final judgment exists must prove to the insolvency administrator, at the latest within a time limit of two weeks from the date of the publication by the court, that an action for declaratory judgment has been raised together with the amount of such claim, or that proceedings in an earlier pending case have been resumed.

(2) If the appropriate proof is provided within the specified time, the share apportioned to the claim shall be withheld from distribution while the action is pending.

(3) If the appropriate proof is not provided within the specified time, the claim shall not be taken into consideration when the distribution is made.

Section 190 – Consideration of Creditors Entitled to Separate Satisfaction

(1) A creditor who is entitled to separate satisfaction must prove to the insolvency administrator, at the latest within the time limit specified in section 189 (1), that it has waived its right to separate satisfaction or suffered a shortfall in relation thereto, together with the amount of such waiver or shortfall. If proof is not provided within the time limit, the claim shall not be taken into consideration when the distribution is made.

(2) It is sufficient in order for claims to be taken into consideration in relation to an interim distribution if the creditor proves to the administrator, at the latest within the time limit, that realisation of the asset which is subject to the right of separate satisfaction is being pursued and credibly establishes the amount of the probable shortfall. In this event, the share apportioned to the claim shall be withheld from distribution. If the requirements of subsection (1) are not met by the time of the final distribution, the retained share shall become freely available for the final distribution.

(3) If only the insolvency administrator is entitled to realise the asset which is subject to the right of separate satisfaction, subsections (1) and (2) are not applicable. In the case of an interim distribution, if the insolvency administrator has not yet realised an asset he/she shall estimate the amount of the creditor's shortfall and retain the share apportioned to the claim.

Section 191 – Consideration of Claims Subject to a Condition Precedent

(1) The full amount of a claim subject to a condition precedent shall be taken into consideration in relation to an interim distribution. The share apportioned to the claim shall be withheld from distribution.

(2) A claim subject to a condition precedent shall not be taken into consideration in relation to the final distribution if the possibility of the condition occurring is so remote that the claim has no asset value at the time of the distribution. In this event a share retained pursuant to subsection (1) sentence 2 shall become freely available for the final distribution.

Section 192 – Subsequent Consideration

Creditors not taken into consideration in an interim distribution who subsequently meet the requirements of sections 189 and 190 shall, on the next distribution, first receive an amount from the remaining insolvency estate which puts them in the same position as the other creditors.

Section 193 – Amendment of the Distribution Schedule

The insolvency administrator shall undertake the amendments to the schedule required on the basis of sections 189 to 192 within three days of the expiry of the time limit specified in section 189 (1).

Section 194 – Objections to the Distribution Schedule

(1) In the case of an interim distribution, an objection to the schedule by a creditor must be notified to the insolvency court within one week of the expiry of the time limit specified in section 189 (1).

(2) A decision by the court rejecting the objection shall be served on the creditor and the insolvency administrator. The creditor has the right of immediate appeal against the order.

(3) A decision by the court ordering the amendment of the schedule shall be served on the creditor and the insolvency administrator and deposited in the court registry for the parties' inspection. The administrator and the insolvency creditors have the right of immediate appeal against the order. The period for lodging an appeal begins on the day on which the decision was deposited in the court registry.

Section 195 – Determination of the Fraction

(1) The creditors' committee shall determine the fraction to be paid by way of an interim distribution on the recommendation of the insolvency administrator. If no creditors' committee has been appointed, the insolvency administrator shall determine the fraction.

(2) The insolvency administrator shall notify the creditors taken into consideration in the interim distribution of the fraction.

Section 196 – Final Distribution

(1) The final distribution shall take place as soon as realisation of the insolvency estate has been completed, with the exception of ongoing income.

(2) The final distribution may only be made with the approval of the insolvency court.

Section 197 – Final Meeting

(1) On approving the final distribution, the insolvency court shall fix the date for a final creditors' meeting. The purpose of this meeting is:
1. to discuss the insolvency administrator's final accounts;
2. to raise objections to the final schedule and
3. for the creditors to make a decision in relation to assets of the insolvency estate which cannot be realised.

(2) There must be a period of not less than one month and not more than two months between publication of notice of the meeting and the date of the meeting.

(3) Section 194 (2) and (3) apply with the necessary modifications to the decision of the court on a creditor's objections.

Section 198 – Deposit of Retained Amounts

The insolvency administrator shall deposit any amounts retained when the final distribution is made with an appropriate institution for the account of the parties concerned.

Section 199 – Surplus on Final Distribution

If the claims of all the insolvency creditors can be settled in full by the final distribution, the insolvency administrator shall hand over any surplus remaining to the debtor. If the debtor is not a natural person, the administrator shall hand over to each party holding a participating interest in the debtor the share of the surplus to which such party would be entitled under liquidation outside insolvency proceedings.

Section 200 – Termination of the Insolvency Proceedings

(1) As soon as the final distribution has been carried out, the insolvency court shall order the termination of the insolvency proceedings.

(2) The order and the grounds for termination of the proceedings shall be published. Sections 31 to 33 apply with the necessary modifications.

Section 201 – Rights of the Insolvency Creditors after Termination of the Proceedings

(1) After termination of the insolvency proceedings the insolvency creditors may assert their remaining claims against the debtor without restriction.

(2) Insolvency creditors whose claims were accepted and not disputed by the debtor at the verification meeting may pursue compulsory enforcement against the debtor on the basis of their entry in the schedule as under an enforceable judgment. A claim in relation to which an objection raised has been overcome is equivalent to an undisputed claim. An application for the issue of an execution copy of the schedule may be submitted only after termination of the insolvency proceedings.

(3) The provisions regulating the discharge of residual debt remain unaffected.

Section 202 – Jurisdiction in Relation to Enforcement

(1) In the circumstances specified in section 201, the local court where the insolvency proceedings are or were pending has exclusive jurisdiction
1. for an action for the issue of the court certificate of enforceability;
2. for an action following the issue of the court certificate of enforceability disputing that the requirements for its issue had arisen;
3. for an action asserting objections affecting the claim itself.

(2) If the matter in dispute is not within the competence of local courts, the regional court within whose district the insolvency court is located shall have exclusive jurisdiction.

Section 203 – Order for a Subsequent Distribution

(1) On application by the insolvency administrator or an insolvency creditor or ex officio, the insolvency court shall order a subsequent distribution if, subsequent to the final meeting,
1. retained amounts become available for distribution;
2. amounts paid out of the insolvency estate are returned to it or
3. assets of the insolvency estate are identified.

(2) Termination of the insolvency proceedings does not preclude the ordering of a subsequent distribution.

(3) The court may refrain from making such an order and transfer the available amount or the identified asset to the debtor if this appears appropriate having regard to the insignificance of the amount or the low value of the asset and the costs of a subsequent distribution. The court may make the ordering of a subsequent distribution subject to advance payment of a sum of money covering the costs of the subsequent distribution.

Section 204 – Appeal

(1) The order refusing the application for subsequent distribution shall be served on the applicant. The applicant has the right of immediate appeal against the order.

(2) The decision ordering a subsequent distribution shall be served on the insolvency administrator, the debtor and, if a creditor applied for the distribution, this creditor. The debtor has the right of immediate appeal against the decision.

Section 205 – Implementation of the Subsequent Distribution

After a subsequent distribution has been ordered, the insolvency administrator shall distribute the available amount or the proceeds from the realisation of the identified asset on the basis of the final schedule. He/she shall present accounts to the insolvency court in relation to the distribution.

Section 206 – Exclusion of Preferential Creditors

Preferential creditors whose claims became known to the insolvency administrator
1. in relation to an interim distribution, only after determination of the fraction;
2. in relation to the final distribution, only after the conclusion of the final meeting or
3. in relation to a subsequent distribution, only after its public announcement may demand satisfaction only out of the funds remaining in the insolvency estate after the distribution.

Chapter Three – Discontinuation of Proceedings

Section 207 – Discontinuation due to Insufficient Assets

(1) If it transpires after commencement of insolvency proceedings that the insolvency estate is insufficient to cover the costs of the proceedings, the insolvency court shall discontinue the proceedings. The proceedings shall not be discontinued if a sufficient sum of money is advanced or if the costs are deferred pursuant to section 4a; section 26 (3) applies with the necessary modifications.

(2) The creditors' meeting, the insolvency administrator and the preferential creditors shall be heard prior to discontinuation.

(3) Any cash funds available in the insolvency estate shall be used by the administrator prior to discontinuation to settle the costs of the proceedings and of these, in the first place, the expenses in proportion to their amounts. The administrator is no longer obliged to realise the assets of the insolvency estate.

Section 208 – Notification of Deficiency of Assets

(1) If the costs of the insolvency proceedings are covered but the insolvency estate is insufficient to meet the other preferential liabilities which are due, the insolvency administrator shall notify the insolvency court that there is a deficiency of assets. The same shall apply if it is likely that the estate will be insufficient to meet the other existing preferential liabilities when they become due.

(2) The court shall publish the notification of deficiency of assets. It shall be served separately on the preferential creditors.

(3) The duty incumbent on the insolvency administrator to manage and realise the insolvency estate shall continue even after the notification of deficiency of assets.

Section 209 – Satisfaction of the Preferential Creditors

(1) The insolvency administrator shall settle the preferential liabilities in the following order; liabilities with the same ranking shall be settled in proportion to their amounts:
1. the costs of the insolvency proceedings;
2. preferential liabilities that were created after the notification of deficiency of assets without forming part of the costs of the insolvency proceedings;

3. the remaining preferential liabilities, including lastly the maintenance permitted pursuant to sections 100 and 101 (1) sentence 3.

(2) The following shall also be deemed to be preferential liabilities within the meaning of subsection (1) No. 2:
1. liabilities arising out of a reciprocal contract which the insolvency administrator has chosen to perform subsequent to the notification of deficiency of assets;
2. liabilities arising out of a contract for continuing obligations for the period after the first date on which the insolvency administrator could have given notice of termination subsequent to the notification of deficiency of assets;
3. liabilities arising out of a contract for continuing obligations insofar as the insolvency administrator has claimed counter-performance on behalf of the insolvency estate subsequent to the notification of deficiency of assets.

Section 210 – Prohibition of Enforcement

As soon as the insolvency administrator has given notification of deficiency of assets, enforcement in respect of a preferential liability within the meaning of section 209 (1) No. 3 is not permitted.

Section 210a – Insolvency Plan on Deficiency of Assets

Where notification of deficiency of assets is given, the provisions regulating insolvency plans are applicable subject to the provisos that
1. the preferential creditors with the ranking of section 209 (1) number 3 take the place of the non-subordinated insolvency creditors and
2. the non-subordinated insolvency creditors take the place of the subordinated insolvency creditors.

Section 211 – Discontinuation after Notification of Deficiency of Assets

(1) As soon as the insolvency administrator has distributed the insolvency estate in accordance with section 209, the insolvency court shall discontinue the insolvency proceedings.

(2) The insolvency administrator shall render a separate account of his/her activities subsequent to the notification of deficiency of assets.

(3) If assets of the insolvency estate are identified after the discontinuation of the proceedings, on application by the administrator or a preferential creditor or ex officio, the court shall order a subsequent distribution. Section 203 (3) and sections 204 and 205 apply with the necessary modifications.

Section 212 – Discontinuation Where the Grounds for Commencement of Proceedings Cease to Exist

The insolvency proceedings shall be discontinued on application by the debtor if it is warranted that, after the proceedings are discontinued, the debtor will neither be in a position of illiquidity nor imminent illiquidity, nor of overindebtedness, if overindebtedness was the ground for commencement of insolvency proceedings. The application shall be admissible only if the debtor demonstrates to the satisfaction of the court that no ground for commencement of proceedings exists.

Section 213 – Discontinuation with the Consent of the Creditors

(1) The insolvency proceedings shall be discontinued on application by the debtor if, after the expiry of the time limit for filing claims, the debtor procures the consent of all the insolvency creditors who have filed claims. In the case of creditors whose claims are disputed by the debtor or the insolvency administrator and in the case of creditors entitled to separate satisfaction, the insolvency court shall decide at its own discretion to what extent it requires the consent of these creditors or the provision of security in relation to them.

(2) The proceedings may be discontinued on application by the debtor prior to the expiry of the time limit for filing claims if no other creditors are known beyond the creditors whose consent the debtor has procured.

Section 214 – Proceedings Concerning Discontinuation

(1) An application for discontinuation of insolvency proceedings pursuant to section 212 or section 213 shall be published. It shall be deposited in the court registry for the parties' inspection; in the case specified in section 213 it must be accompanied by the creditors' declarations of consent. The insolvency creditors may object in writing to the application within one week of its publication.

(2) The insolvency court shall make its decision on discontinuation after hearing the applicant, the insolvency administrator and the creditors' committee, if one has been appointed. In the case of an objection, the objecting creditor shall also be heard.

(3) The insolvency administrator shall settle the undisputed preferential claims and provide security for the disputed preferential claims prior to discontinuation of the proceedings.

Section 215 – Publication and Effects of Discontinuation

(1) The order discontinuing insolvency proceedings pursuant to section 207, 211, 212 or 213 and the reason for discontinuation shall be published. The debtor, the insolvency administrator and the members of the creditors' committee shall be

informed in advance when the discontinuation will become effective (section 9 (1) sentence 3). Section 200 (2) sentence 2 applies with the necessary modifications.

(2) Upon discontinuation of the insolvency proceedings, the right to freely dispose of the insolvency estate reverts to the debtor. Sections 201 and 202 apply with the necessary modifications.

Section 216 – Appeal

(1) If insolvency proceedings are discontinued pursuant to section 207, 212 or 213, each insolvency creditor and, if discontinuation occurs pursuant to section 207, the debtor has the right of immediate appeal.

(2) If an application pursuant to section 212 or section 213 is refused, the debtor has the right of immediate appeal.

Part Six – Insolvency Plan

Chapter One – Preparation of the Plan

Section 217 – Principle

(1) The satisfaction of the creditors entitled to separate satisfaction and of the insolvency creditors, the realisation of the insolvency estate and its distribution to the parties concerned as well as the handling of the proceedings and the liability of the debtor subsequent to termination of the insolvency proceedings may be regulated in an insolvency plan derogating from the provisions of this Code. If the debtor is not a natural person, the share and membership rights of the parties holding a participating interest in the debtor may also be included in the plan.

(2) The insolvency plan may also modify the rights of holders of insolvency claims to which they are entitled because an affiliated enterprise within the meaning of section 15 of the Stock Corporation Act [*Aktiengesetz*] assumed liability as surety or co-debtor or on some other basis, as well as to assets of that business (intra-group third-party collateral).

Section 218 – Submission of the Insolvency Plan

(1) The insolvency administrator and the debtor are entitled to submit an insolvency plan to the insolvency court. Submission by the debtor may be combined with the application for commencement of insolvency proceedings. A plan that is only received by the court after the final meeting will not be considered.

(2) If the creditors' meeting has instructed the insolvency administrator to draw up an insolvency plan, the administrator must submit the plan to the court within a reasonable period of time.

(3) Where the plan is drawn up by the insolvency administrator, the creditors' committee, if one has been appointed, the works council, the committee representing executive staff and the debtor shall assist in an advisory capacity.

Section 219 – Structure of the Plan

The insolvency plan consists of the declaratory part and the constructive part. It shall be accompanied by the attachments specified in sections 229 and 230.

Section 220 – Declaratory Part

(1) The declaratory part of the insolvency plan describes the measures taken or yet to be taken following the commencement of insolvency proceedings in order to establish the basis for the planned modification of the rights of the parties concerned.

(2) The declaratory part must contain all other information concerning the basis and effects of the plan which is relevant for the decision of the parties concerned on approval of the plan and for its confirmation by the court. It shall include, in particular, a comparative analysis showing the effects of the plan on the likely satisfaction of the creditors. If the plan provides for continued operation of the business, it is generally to be assumed that the business will continue to be operated when ascertaining likely satisfaction without a plan. The foregoing does not apply if a sale of the business or its continuation in some other manner has no prospect of success.

(3) If the insolvency plan provides for altering the rights of insolvency creditors arising under intra-group third-party collateral (section 217 (2)), the declaratory part is also to include the circumstances of the affiliated enterprise that granted the collateral and the effects of the plan on that enterprise.

Section 221 – Constructive Part

The constructive part of the insolvency plan sets out how the legal status of the parties concerned is to be changed as a result of the plan. The insolvency administrator may be authorised by the plan to take the necessary measures for implementation of the plan and to correct any manifest errors in the plan.

Section 222 – Formation of Groups

(1) In determining the rights of the parties involved in the insolvency plan, insofar as parties with differing legal status are affected, groups shall be formed. A distinction shall be made between
1. creditors entitled to separate satisfaction, if their rights are impaired by the plan;
2. non-subordinated insolvency creditors;

3. the individual ranking categories of the subordinated insolvency creditors, unless their claims are deemed to be waived pursuant to section 225;
4. parties holding a participating interest in the debtor, if their share or membership rights are included in the plan;
5. the holders of rights arising from intra-group third-party collateral.

(2) Groups of parties with the same legal status may be formed, grouping together parties with equivalent economic interests. The groups must be appropriately distinguished from one another. The differentiation criteria shall be specified in the plan.

(3) The employees shall form a separate group if they hold significant claims as insolvency creditors. Separate groups may be formed for minor creditors and for small shareholders holding an interest in the liable equity capital of less than one per cent or less than Euro 1,000.

Section 223 – Rights of Parties Entitled to Separate Satisfaction

(1) Unless otherwise specified in the insolvency plan, the plan shall not affect the right of the creditors entitled to separate satisfaction to obtain satisfaction from the assets that are subject to rights to separate satisfaction. A derogating provision is excluded in relation to financial collateral arrangements within the meaning of section 1 (17) of the Banking Act *[Kreditwesengesetz]* as well as to securities provided
1. to the operator of or participant in a system pursuant to section 1 (16) of the Banking Act *[Kreditwesengesetz]* in order to secure its claims under the system or
2. to the central bank of a Member State of the European Union or the European Central Bank.

(2) If the plan contains a derogating provision, the constructive part shall indicate in respect of the creditors entitled to separate satisfaction the fraction by which their rights are to be reduced, the period of time for which their rights are to be deferred and any other provisions to which they are to be subject.

Section 223a – Intra-group Third-party Collateral

Unless otherwise specified in the insolvency plan, the insolvency plan will not affect the right of an insolvency creditor arising from intra-group third-party collateral (section 217 (2)). If such provision is made, the alteration must be reasonably compensated. Section 223 (1) sentence 2 and (2) apply with the necessary modifications.

Section 224 – Rights of Insolvency Creditors

The constructive part of the insolvency plan shall indicate in respect of the non-subordinated creditors the fraction by which their claims are to be reduced, the period of time for which their claims are to be deferred, how their claims are to be secured and any other provisions to which they are to be subject.

Section 225 – Rights of Subordinated Insolvency Creditors

(1) Unless otherwise specified in the insolvency plan, the claims of subordinated insolvency creditors shall be deemed to be waived.

(2) If the plan contains a derogating provision, the constructive part shall contain the information specified in section 224 in respect of each group of subordinated creditors.

(3) The liability of the debtor for fines and the comparable liabilities pursuant to section 39 (1) No. 3 subsequent to termination of the insolvency proceedings can neither be excluded nor restricted by a plan.

Section 225a – Rights of Shareholders

(1) The share or membership rights of the parties holding a participating interest in the debtor remain unaffected by the insolvency plan unless the plan provides otherwise.

(2) Provision may be made in the constructive part of the plan for creditors' claims to be converted into share or membership rights in the debtor. A conversion against the wishes of the creditors concerned is excluded. The plan may, in particular, provide for a reduction or an increase in the registered capital, the provision of in-kind contributions, the exclusion of subscription rights or the payment of financial settlements to departing shareholders.

(3) Any provision that is admissible under company law may be made in the plan, in particular the continuation of a liquidated company or the transfer of share or membership rights.

(4) Measures pursuant to subsections (2) or (3) shall not confer entitlement to rescind or terminate contracts involving the debtor. They shall further not result in any other cessation of contracts. Contractual agreements to the contrary are invalid. Agreements linked to a breach of duty by the debtor remain unaffected by sentences 1 and 2 insofar as this is not confined to a measure pursuant to subsections (2) or (3) being envisaged or implemented.

(5) If a measure pursuant to subsection (2) or (3) constitutes good cause for a party holding a participating interest in the debtor to withdraw from the legal entity or company without legal personality and if this right of withdrawal is exercised, the financial position which would have arisen on liquidation of the debtor shall be

applicable in determining the amount of any settlement claim. Payment of the settlement claim may be deferred over a period of up to three years in order to avoid an unreasonable burden on the debtor's financial position. Interest is payable on unpaid settlement balances.

Commentary:
In subsection (5) sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 226 – Equal Treatment of the Parties Concerned

(1) Within each group equal rights shall be extended to all parties concerned.

(2) Any differing treatment of the parties in a group is only permitted with the consent of all parties concerned. In this case the insolvency plan shall be accompanied by the declaration of consent of each party concerned.

(3) Any agreement concluded between the insolvency administrator, the debtor or other parties and individual parties conferring on the latter an advantage not provided for in the plan in exchange for their conduct during voting or otherwise in connection with the insolvency proceedings is void.

Section 227 – Liability of the Debtor

(1) If nothing to the contrary is specified in the insolvency plan, the debtor shall be discharged from his/her residual obligations towards the insolvency creditors by way of the satisfaction of these creditors provided for in the constructive part of the plan.

(2) If the debtor is a company without legal personality or a partnership limited by shares, subsection (1) shall apply with the necessary modifications to the personal liability of the partners.

Commentary:
In subsection (2), the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 228 – Modification of Relationships under Property Law

If rights in objects are to be created, modified, transferred or cancelled, the necessary declarations of intent by the parties concerned may be incorporated into the constructive part of the insolvency plan. If rights in a plot of land or in registered rights which are registered in the Land Register are involved, these rights shall be specified in compliance with section 28 of the Land Register Code *[Grundbuchordnung]*. Sentence 2 applies with the necessary modifications to rights registered in the Register of Ships, Register of Ships under Construction and Register of Liens on Aircraft.

Section 229 – Statement of Assets and Liabilities. Earnings and Financial Plan

If the creditors are to be satisfied from the earnings resulting from the continuation of the enterprise by the debtor or a third party, the insolvency plan shall be accompanied by a statement of assets and liabilities listing the values of the assets and liabilities which would be set against each other if the plan were to become effective. In addition, the plan shall indicate the outgoings and earnings to be expected for the period during which the creditors are to be satisfied and the sequence of income and expenditure which is intended to ensure the liquidity of the enterprise during this period. The creditors who have not filed their claims but who are known about when the plan is drawn up must also be taken into consideration in this regard.

Section 230 – Additional Attachments

(1) If the insolvency plan provides for the continued operation of the debtor's enterprise by the debtor and the debtor is a natural person, the plan shall also be accompanied by the debtor's declaration of his/her willingness to continue to operate the enterprise on the basis of the plan. If the debtor is a company without legal personality or a partnership limited by shares, the plan shall be accompanied by a corresponding declaration by the persons who are to be general partners of the enterprise in terms of the plan. The debtor's declaration pursuant to sentence 1 is not required if the debtor submits the plan himself/herself.

(2) If creditors are to take over share or membership rights or participating interests in a legal entity, an unincorporated association or a company without legal personality, the plan shall be accompanied by the declaration of consent of each of these creditors.

(3) If a third party has agreed to assume obligations towards the creditors in the event that the plan

is confirmed, the plan shall be accompanied by the declaration of the third party.

(4) If the insolvency plan provides for alteration of the rights of creditors arising under intra-group third-party collateral, the plan is to be accompanied by the approval of the affiliated enterprise that provided the collateral.

Commentary:
In subsection (1) sentence 2, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436). In subsection (2), the words "company without legal personality" will be replaced by the words "partnership with legal personality".

Section 231 – Rejection of the Plan

(1) The insolvency court shall reject the plan ex officio
1. if the provisions concerning the right to submit a plan and the contents of the plan, in particular the formation of groups, are not complied with and the submitting party cannot or does not remedy the defect within a reasonable period of time set by the court;
2. if a plan submitted by the debtor clearly has no prospect of being accepted by the parties concerned or of being confirmed by the court or
3. if the claims to which the parties concerned are entitled according to the constructive part of a plan submitted by the debtor clearly cannot be satisfied.
The decision of the court shall be made within two weeks of submission of the plan.

(2) If the debtor had already submitted a plan during the insolvency proceedings which was refused by the parties concerned, not confirmed by the court or withdrawn by the debtor after publication of the date of the discussion meeting, the court shall reject a new plan submitted by the debtor if the insolvency administrator, with the consent of the creditors' committee if one has been appointed, requests its rejection.

(3) The submitting party has the right of immediate appeal against the order rejecting the plan.

Section 232 – Comments on the Plan

(1) If the insolvency plan is not rejected, the insolvency court shall forward the plan for comment, regarding the comparative analysis in particular, to:
1. the creditors' committee, if one has been appointed, the works council and the committee representing executive staff;
2. the debtor, if the insolvency administrator submitted the plan;
3. the insolvency administrator, if the debtor submitted the plan.

(2) The court may also give the debtor's competent official professional organisation representing industry, business, trade or agriculture, or other expert bodies, the opportunity to make representations.

(3) The court shall fix a period for submission of representations. The submission period shall not exceed two weeks.

(4) The court can forward the plan for comment to the parties specified in subsections (1) and (2) before the decision pursuant to section 231. If a comment received in response contains a new submission of facts on which the court wishes to base a decision to reject the plan, the court shall forward that comment for comment to the party which submitted the plan and the other parties entitled to comment pursuant to subsection (1) within a time limit of no longer than one week.

Section 233 – Stay of Realisation and Distribution

On application by the debtor or the insolvency administrator, the insolvency court shall order the stay of the process of realisation and distribution insofar as the continued realisation and distribution of the insolvency estate would jeopardise the implementation of a submitted insolvency plan. The court shall not order a stay or shall revoke the stay order if it entails the risk of significant detriment to the insolvency estate or if the insolvency administrator, with the consent of the creditors' committee or creditors' meeting, requests the continuation of realisation and distribution.

Section 234 – Deposit of the Plan

The insolvency plan, together with its attachments and any representations received, shall be deposited in the court registry for the parties' inspection.

Chapter Two – Acceptance and Confirmation of the Plan

Section 235 – Discussion and Voting Meeting

(1) The insolvency court shall schedule a meeting at which the insolvency plan and the voting rights of the parties concerned can be discussed and for subsequent voting on the plan (discussion and voting meeting). The meeting shall be scheduled for no later than one month in advance. It may be

called at the same time as the representations pursuant to section 232 are being obtained.

(2) The date of the discussion and voting meeting shall be published. The public announcement of the meeting must indicate that the plan and the representations received may be inspected at the court registry. Section 74 (2) sentence 2 applies with the necessary modifications.

(3) The insolvency creditors who have filed claims, the creditors entitled to separate satisfaction, the insolvency administrator, the debtor, the works council and the committee representing executive staff shall be specifically invited. A copy of the plan or a summary of the main content, which the submitting party must provide on request, shall be sent with the invitation. If the share or membership rights of the parties holding a participating interest in the debtor are included in the plan, these parties shall also be invited in accordance with sentences 1 and 2; this shall not apply to shareholders or to shareholders in a partnership limited by shares. Section 8 (3) applies with the necessary modifications. Section 121 (4a) of the Stock Corporation Act *[Aktiengesetz]* applies with the necessary modifications to quoted companies; they shall make a summary of the main content of the plan available on their website.

Section 236 – Combination with the Verification Meeting

The discussion and voting meeting must not take place prior to the verification meeting. Both meetings may, however, be combined.

Section 237 – Voting Rights of the Insolvency Creditors

(1) Section 77 (1) sentence 1, section 77 (2) and section 77 (3) No. 1 apply with the necessary modifications to the voting rights of the insolvency creditors in relation to the vote on the insolvency plan. Creditors entitled to separate satisfaction are only entitled to vote as insolvency creditors to the extent that the debtor is also personally liable towards them and they waive their right to separate satisfaction or separate satisfaction fails; so long as the amount of the shortfall has not been determined, their claims shall be taken into consideration at the level of the probable shortfall.

(2) Creditors whose claims are not impaired by the plan do not have a voting right.

Section 238 – Voting Rights of the Creditors Entitled to Separate Satisfaction

(1) Insofar as the legal position of creditors entitled to separate satisfaction is also regulated in the insolvency plan, the rights of these creditors shall be discussed individually at the meeting. Rights to separate satisfaction which are not disputed by the insolvency administrator, by a creditor entitled to separate satisfaction or by an insolvency creditor give entitlement to a voting right. Section 41, section 77 (2) and section 77 (3) No. 1 apply with the necessary modifications to voting rights in the case of disputed rights, rights subject to a condition precedent or rights that have not yet matured.

(2) Section 237 (2) applies with the necessary modifications.

Section 238a – Voting Rights of Shareholders

(1) The voting rights of the debtor's shareholders are determined solely in accordance with their participating interest in the subscribed capital or the debtor's assets. Restrictions on voting rights, special voting rights and multiple voting rights shall be disregarded.

(2) Section 237 (2) applies with the necessary modifications.

Section 238b – Voting Rights of Holders of Rights arising from Intra-group Third-party Collateral

If the plan provides for altering the rights of creditors arising under intra-group third-party collateral, voting rights are to be determined by the probable amount of the contribution to satisfaction from assertion of the rights arising from the third-party collateral.

Section 239 – Voting List

The registrar of the court registry shall draw up a list recording the voting rights of the parties concerned resulting from the discussions at the meeting.

Section 240 – Amendment of the Plan

The party who submits the plan is entitled to amend the content of individual provisions of the insolvency plan on the basis of the discussions at the meeting. The amended plan may be voted on at the same meeting.

Section 241 – Separate Voting Meeting

(1) The insolvency court may schedule a separate meeting for the vote on the insolvency plan. In this event the period of time between the discussion meeting and the voting meeting shall amount to not more than one month.

(2) The parties entitled to vote and the debtor shall be invited to the voting meeting. This shall not apply to shareholders or to shareholders in a partnership limited by shares. It is sufficient in respect of these parties to publish the date of the meeting. Section 121 (4a) of the Stock Corporation Act *[Aktiengesetz]* applies with the necessary modifications to quoted companies. In the event

of an amendment to the plan, specific reference shall be made to the amendment.

Section 242 – Written Vote

(1) If a separate voting meeting is scheduled, voting rights may be exercised in writing.

(2) The insolvency court shall send out voting papers to the parties entitled to vote advising them of their voting right after the discussion meeting. Votes in writing shall only be taken into account if they are received by the court by no later than the day before the voting meeting; reference shall be made to this when the voting papers are sent out.

Section 243 – Voting in Groups

Each group of parties entitled to vote shall vote separately on the insolvency plan.

Section 244 – Required Majorities

(1) Acceptance of the insolvency plan by the creditors requires that, in each group,
1. the majority of the voting creditors approve the plan and
2. the total of the claims of the assenting creditors amounts to more than half of the total of the claims of the voting creditors.

(2) Creditors who are entitled to a right jointly or whose rights constituted a single right until the occurrence of the ground for commencement of insolvency proceedings shall be counted as one creditor in the vote. The same applies where a right is encumbered with a lien or a usufruct.

(3) Subsection (1) number 2 applies with the necessary modifications to the parties holding a participating interest in the debtor subject to the proviso that the total of the participating interests takes the place of the total of the claims.

Section 245 – Prohibition of Obstruction

(1) Even if the required majorities have not been achieved, the approval of a voting group shall be deemed to have been granted if
1. the members of this group are likely to be in no worse a position as a result of the insolvency plan than they would be in without a plan;
2. the members of this group participate to a reasonable extent in the economic value accruing to the parties concerned on the basis of the plan; and
3. the majority of the voting groups approved the plan with the required majorities.

(2) For a group of creditors reasonable participation within the meaning of subsection (1) number 2 exists if, pursuant to the plan,
1. no other creditor receives economic value exceeding the full amount of its claim;
2. neither a creditor whose claim for satisfaction would rank behind the claims of the creditors in the group without a plan, nor the debtor, nor any party holding a participating interest in the debtor receives economic value that is not fully compensated for through performance received into the debtor's assets and
3. no creditor whose claim for satisfaction would rank equally with the claims of the creditors in the group without a plan is placed in a better position than these creditors.
If the debtor is a natural person whose involvement in the continued operation of the enterprise, owing to special circumstances inherent in the debtor, is essential in order to realise the added value from the plan and the debtor has undertaken in the plan to continue operation of the enterprise as well as to transfer the economic value that he or she receives or retains in the event that his/her involvement ends before five years, or a shorter period provided for implementation of the plan, have elapsed for reasons for which he/she is responsible, reasonable participation of the group of creditors may also exist if the debtor receives economic value notwithstanding sentence 1 number 2. Sentence 2 applies with the necessary modifications for holders of share or membership rights involved in the management.

(2a) If the required majority is not achieved in the group that is to be formed pursuant to section 222 (1) sentence 2 number 5, subsections (1) and (2) apply to this group only if the compensation envisaged for the alteration reasonably compensates the holders of rights arising from the intragroup third-party collateral for the loss of rights they are to suffer.

(3) For a group of shareholders, reasonable participation within the meaning of subsection (1) number 2 exists if, pursuant to the plan,
1. no creditor receives economic value exceeding the full amount of its claim and
2. no shareholder who would be on an equal footing with the shareholders in the group without a plan is placed in a better position than these shareholders.

Section 245a – Less Favourable Treatment in the Case of Natural Persons

If the debtor is a natural person, when examining the likelihood of less favourable treatment pursuant to section 245 (1) number 1 it is to be assumed in case of doubt that the income, assets and family circumstances of the debtor at the time of voting on the insolvency plan will be taken as a basis throughout the duration of the proceedings and the period during which insolvency creditors may assert their remaining claims against the debtor without restriction. If the debtor has lodged an admissible application for discharge of residual debt, in case of doubt it is also to be assumed that discharge of residual debt will be granted upon expiry of the assignment period provided for in section 287 (2).

Section 246 – Approval of Subordinated Insolvency Creditors

The following additional conditions apply to the acceptance of the insolvency plan by the subordinated insolvency creditors:

1. The approval of the groups with claims ranking behind those specified in section 39 (1) No. 3 is deemed to be granted if no insolvency creditor is placed in a better position as a result of the plan than the creditors in these groups.
2. If none of the creditors in a group participates in the vote, the approval of the group is deemed to have been granted.

Section 246a – Approval of the Shareholders

If none of the members of a group of shareholders participates in the vote, the approval of the group is deemed to have been granted.

Section 247 – Approval of the Debtor

(1) The approval of the debtor to the plan is deemed to have been granted if the debtor does not object to the plan in writing, at the latest at the voting meeting.

(2) An objection under subsection (1) shall be disregarded if

1. the debtor is likely to be in no worse a position as a result of the plan than it would be in without a plan and
2. no creditor receives economic value exceeding the full amount of its claim.

Section 248 – Court Confirmation

(1) Following acceptance of the insolvency plan by the parties concerned (sections 244 to 246a) and approval of the plan by the debtor, the plan must be confirmed by the insolvency court.

(2) Prior to its decision confirming the plan, the court shall hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor.

Section 248a – Court Confirmation of Plan Correction

(1) Correction of the insolvency plan by the insolvency administrator pursuant to section 221 sentence 2 requires the confirmation of the insolvency court.

(2) Prior to its decision confirming the plan, the court shall hear the insolvency administrator, the creditors' committee, if one has been appointed, the creditors and shareholders, insofar as their rights are affected, and also the debtor.

(3) On application, confirmation shall be refused if a party is likely to be placed in a worse position by the plan amendment resulting from the correction than it would be in under the effects envisaged by the plan.

(4) The creditors and shareholders specified in subsection (2) and the insolvency administrator have the right of immediate appeal against the order confirming or rejecting the correction. Section 253 (4) applies with the necessary modifications.

Section 249 – Conditional Plan

If the insolvency plan provides that prior to confirmation particular contributions are to be provided or other measures are to be put into effect, the plan may be confirmed only if these requirements are met. Confirmation shall be refused ex officio if the requirements are not met even after the expiry of a reasonable period of time set by the insolvency court.

Section 250 – Breach of Procedural Provisions

Confirmation shall be refused ex officio if

1. the provisions concerning the content and procedural handling of the insolvency plan, acceptance of the plan by the parties concerned and approval of the plan by the debtor have not been observed in a material respect and the defect cannot be remedied or
2. acceptance of the plan was improperly obtained, in particular by the preferential treatment of a party.

Section 251 – Protection of Minorities

(1) On application by a creditor or, if the debtor is not a natural person, a party holding a participating interest in the debtor, confirmation of the insolvency plan shall be refused if

1. the applicant objected to the plan in writing or had its objection minuted, at the latest at the voting meeting and
2. the applicant is likely to be placed in a worse position as a result of the plan than it would be in without a plan; if the debtor is a natural person, section 245a applies with the necessary modifications.

(2) The application is admissible only if the applicant demonstrates to the satisfaction of the court, at the latest at the voting meeting, that it is likely to be placed in a worse position as a result of the plan.

(3) The application shall be rejected if funds are made available in the constructive part of the plan in case a party proves less favourable

treatment. Whether the party concerned receives a settlement out of these funds shall be resolved outside the insolvency proceedings.

Section 252 – Publication of the Decision

(1) The order confirming or refusing confirmation of the insolvency plan shall be pronounced at the voting meeting or at a special meeting to be scheduled as soon as possible. Section 74 (2) sentence 2 applies with the necessary modifications.

(2) If the plan is confirmed, a copy of the plan or a summary of the main content shall be sent to the insolvency creditors who filed claims and the creditors entitled to separate satisfaction referring to its confirmation. If the share or membership rights of the parties holding a participating interest in the debtor are included in the plan, the documents shall also be sent to them; this shall not apply to shareholders or shareholders in a partnership limited by shares. Quoted companies shall make a summary of the main content of the plan available on their website. The sending of a copy of the plan or a summary of the main content pursuant to sentences 1 and 2 is not required if a copy of the plan was sent with the invitation pursuant to section 235 (2) sentence 2 and the plan was accepted without change. Section 8 (3) applies with the necessary modifications.

Section 253 – Appeal

(1) The creditors, the debtor and, if the debtor is not a natural person, the parties holding a participating interest in the debtor have the right of immediate appeal against the order confirming or refusing confirmation of the insolvency plan.

(2) The right of immediate appeal against the confirmation order is admissible only if the appellant
1. objected to the plan in writing or had its objection minuted, at the latest at the voting meeting;
2. voted against the plan and
3. demonstrates to the satisfaction of the court that it will be placed in a substantially worse position as a result of the plan than it would be in without a plan and that this disadvantage cannot be compensated for by a payment out of the funds specified in section 251 (3); if the debtor is a natural person, section 245a applies with the necessary modifications.

(3) Subsection (2) numbers 1 and 2 shall apply only if specific reference was made in the public announcement of the meeting (section 235 (2)) and in the notices of invitation to the meeting (section 235 (3)) to the necessity of an objection to and rejection of the plan.

(4) On application by the insolvency administrator, the regional court shall refuse the appeal without delay if it appears that the entry into effect of the insolvency plan as soon as possible deserves priority because, in the view of the court, exercising its independent discretion, the disadvantages of a delay in implementing the plan outweigh the disadvantages for the appellant; a redress procedure pursuant to section 572 (1) sentence 1 of the Code of Civil Procedure *[Zivilprozessordnung]* shall not take place. This shall not apply in the event of a particularly serious infringement of the law. If the court refuses the appeal pursuant to sentence 1, the appellant shall be compensated out of the insolvency estate for the loss it incurs as a result of the implementation of the plan; cancellation of the effects of the insolvency plan cannot be requested as compensation. The regional court which refused the immediate appeal has exclusive jurisdiction for actions claiming compensation pursuant to sentence 3.

Chapter Three – Effects of the Confirmed Plan. Monitoring Implementation of the Plan

Section 254 – General Effects of the Plan

(1) When the order confirming the insolvency plan becomes final, the effects set out in the constructive part become binding for and against all parties concerned.

(2) With the exception of rights arising from intragroup third-party collateral (section 217 (2)) which are modified in accordance with section 223a, the plan shall not affect the rights of the insolvency creditors against co-debtors and sureties of the debtor, the rights of these creditors in objects which do not form part of the insolvency estate or rights under a priority notice relating to such objects. Under the plan the debtor is, however, discharged vis-à-vis its co-debtors, sureties or any other party holding a right of recourse in the same way as it is discharged vis-à-vis its creditors.

(3) If a creditor receives satisfaction exceeding the amount it could claim under the plan, this shall not give rise to a duty on the part of the recipient to make restitution.

(4) If creditors' claims are converted into share or membership rights in the debtor, following court confirmation of the plan the debtor cannot assert any claims against the former creditors on account of an overvaluation of the claims in the plan.

Section 254a – Rights in Objects. Other Effects of the Plan

(1) If rights in objects are to be created, amended, transferred or cancelled or if shareholdings in a company with limited liability are to be transferred, the declarations of intent by the parties concerned that are recorded in the insolvency

plan shall be deemed to have been made in the prescribed form.

(2) If the share or membership rights of the parties holding a participating interest in the debtor are included in the plan (section 225a), the resolutions of the shareholders or other declarations of intent by the parties concerned that are recorded in the plan shall be deemed to have been made in the prescribed form. Notices of meetings, announcements and other measures required under company law in preparation for resolutions of the shareholders shall be deemed to have been effected in the prescribed form. The insolvency administrator is entitled to undertake the necessary registrations with the relevant registration court.

(3) The same shall apply with the necessary modifications to the undertakings recorded in the plan on which a measure pursuant to subsection (1) or (2) is based.

Section 254b – Effect for all Parties Concerned

Sections 254 and 254a apply also to insolvency creditors who have not filed their claims and to parties who have objected to the insolvency plan.

Section 255 – Revival Clause

(1) If the claims of insolvency creditors are deferred or partially waived on the basis of the constructive part of the insolvency plan, the deferment or waiver will cease to be binding on a creditor against whom the debtor significantly defaults in implementing the plan. Significant default shall only be considered to have occurred when the debtor has not paid a liability that is due despite having received a written reminder from the creditor granting a period of grace of at least two weeks.

(2) If new insolvency proceedings are commenced in respect of the debtor's assets before the plan has been implemented in full, the deferment or waiver of claims shall cease to be binding on all the insolvency creditors.

(3) The plan may provide otherwise. However, subsection (1) cannot be departed from to the detriment of the debtor.

Section 256 – Disputed Claims. Shortfall Claims

(1) If a claim was disputed at the verification meeting or if the amount of the shortfall claim of a creditor entitled to separate satisfaction has not yet been determined, default in the implementation of the insolvency plan within the meaning of section 255 (1) shall not be considered to have occurred if, until final determination of the amount of the claim, the debtor takes account of the claim to the extent corresponding to the decision of the insolvency court on the voting right of the creditor at the vote on the plan. If the insolvency court has not yet decided on the creditor's voting right, on application by the debtor or the creditor the court shall make a subsequent determination of the extent to which the debtor must take account of the claim on a provisional basis.

(2) If the final determination results in the debtor having paid an insufficient amount, it shall make retrospective payment of the amount outstanding. Significant default in the implementation of the plan shall only be considered to have occurred when the debtor does not make retrospective payment of the amount outstanding despite having received a written reminder from the creditor granting a period of grace of at least two weeks.

(3) If the final determination results in the debtor having paid an excessive amount, it may claim repayment of the excess only insofar as the excess also exceeds the unmatured part of the claim to which the creditor is entitled under the insolvency plan.

Section 257 – Enforcement based on the Plan

(1) Insolvency creditors whose claims were accepted and not disputed by the debtor at the verification meeting may pursue compulsory enforcement against the debtor based on the confirmed, final and binding insolvency plan in conjunction with their entry in the schedule as under an enforceable judgment. A claim in relation to which an objection which was raised has been overcome is equivalent to an undisputed claim. Section 202 applies with the necessary modifications.

(2) The same shall apply to compulsory enforcement against a third party who assumed obligations for the implementation of the plan alongside the debtor by means of a written declaration submitted to the insolvency court without reserving the defence of failure to pursue remedies.

(3) If a creditor asserts the rights to which it is entitled in the event of significant default by the debtor in the implementation of the plan, the creditor has to satisfy the court in relation to the reminder and the expiry of the period of grace in order to obtain the issue of the court certificate of enforceability in respect of these rights and for the purpose of carrying out compulsory enforcement but is not required to produce any further evidence in respect of the debtor's default.

Section 258 – Termination of the Insolvency Proceedings

(1) As soon as the order confirming the insolvency plan has become final and binding, the insolvency court shall order the termination of the

insolvency proceedings unless the insolvency plan provides otherwise.

(2) The insolvency administrator shall settle the undisputed, mature preferential claims and provide security for disputed or unmatured preferential claims prior to termination of the proceedings. A financial plan may also be submitted showing that satisfaction of the unmatured preferential claims is ensured.

(3) The order shall contain the date of termination, which must be no earlier than two days following the date of the order. The order and the grounds for termination of the proceedings shall be published. The debtor, the insolvency administrator and the members of the creditors' committee shall be informed in advance of the date of termination. Sections 31 to 33 apply with the necessary modifications. If the date of termination is not stated, the termination shall take effect when a further two days have elapsed since the day of publication.

Section 259 – Effects of Termination

(1) The offices of the insolvency administrator and members of the creditors' committee expire upon termination of the insolvency proceedings. The right to freely dispose of the insolvency estate reverts to the debtor.

(2) The provisions concerning monitoring of implementation of the plan remain unaffected.

(3) The insolvency administrator may continue a pending action concerning avoidance in insolvency even after termination of the proceedings if provision is made for this in the constructive part of the insolvency plan. In this case the action will be undertaken for account of the debtor unless the plan provides otherwise.

Section 259a – Protection from Enforcement

(1) If, after termination of the proceedings, compulsory enforcement by individual insolvency creditors who did not file their claims by the date of the voting meeting threatens the implementation of the insolvency plan, on application by the debtor the insolvency court may order the full or partial lifting of a measure of compulsory enforcement or prohibit it for a maximum of three years. The application is admissible only if the debtor credibly establishes the factual allegations substantiating the threat.

(2) If the threat is credibly established, the court may also temporarily suspend compulsory enforcement.

(3) The court shall set aside or vary its order on application if this is necessary taking account of a change in circumstances.

Section 259b – Special Limitation Period

(1) The claim of an insolvency creditor who did not file its claim by the date of the voting meeting becomes time-barred within one year.

(2) The limitation period begins when the claim is due and payable and the order confirming the insolvency plan has become final and binding.

(3) Subsections (1) and (2) are applicable only if this results in a claim becoming time-barred earlier than by application of the limitation provisions which would otherwise be applicable.

(4) The limitation period for the claim of an insolvency creditor is suspended while enforcement is not permitted by reason of protection from enforcement pursuant to section 259a. The suspension ends three months after termination of protection from enforcement.

Section 260 – Monitoring of Plan Implementation

(1) Provision may be made in the constructive part of the insolvency plan for monitoring the implementation of the plan.

(2) In the case provided for in subsection (1), after termination of the insolvency proceedings monitoring will be undertaken in relation to fulfilment of the claims to which the creditors are entitled against the debtor pursuant to the constructive part of the plan.

(3) If so provided in the constructive part of the plan, the monitoring shall extend to fulfilment of the claims to which the creditors are entitled pursuant to the constructive part of the plan against a legal entity or company without legal personality set up after the commencement of insolvency proceedings in order to take over and continue the debtor's enterprise or a business operation of the debtor (takeover company).

Commentary:

In subsection (3), the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 261 – Duties and Powers of the Insolvency Administrator

(1) The monitoring of implementation of the plan is the duty of the insolvency administrator. The offices of the insolvency administrator and members of the creditors' committee and also the supervision of the insolvency court will continue for this purpose. Section 22 (3) applies with the necessary modifications.

(2) During the monitoring period the insolvency administrator must report annually to the creditors' committee, if one has been appointed, and to the court on the current status of and future prospects for implementation of the insolvency plan. The right of the creditors' committee and of the court to request specific information or an interim report at any time remains unaffected.

Section 262 – Insolvency Administrator's Duty of Notification

If the insolvency administrator ascertains that claims which are being monitored for fulfilment are not or cannot be met, he/she must notify the creditors' committee and the insolvency court accordingly without delay. If a creditors' committee has not been appointed, the administrator shall instead notify all creditors with claims against the debtor or the takeover company pursuant to the constructive part of the insolvency plan.

Section 263 – Transactions Requiring Approval

Provision may be made in the constructive part of the insolvency plan for particular transactions undertaken by the debtor or the takeover company during the monitoring period to require the approval of the insolvency administrator to be effective. Section 81 (1) and section 82 apply with the necessary modifications.

Section 264 – Credit Limit

(1) Provision may be made in the constructive part of the insolvency plan for the insolvency creditors to be subordinated to creditors with claims arising under loans and other lending taken out by the debtor or the takeover company during the monitoring period or left in place by a preferential creditor into the monitoring period. In this event a total amount for such lending shall also be fixed (credit limit). This may not exceed the value of the assets listed in the statement of assets and liabilities annexed to the plan (section 229 sentence 1).

(2) The insolvency creditors shall be subordinated under subsection (1) only to creditors with whom it is agreed that the lending granted by them is within the credit limit in terms of principal claim, interest and costs, the amounts of which shall be specified, and in relation to whom the insolvency administrator has confirmed this agreement in writing.

(3) Section 39 (1) No. 5 remains unaffected.

Section 265 – Subordination of New Creditors

Creditors with other contractual entitlements which arise during the monitoring period are also subordinated to creditors with claims arising under loans taken out or left in place in accordance with section 264. Entitlements arising under a contract for continuing obligations entered into prior to the monitoring period shall also be regarded as such entitlements for the period after the first date on which the creditor could have terminated the contract after the commencement of monitoring.

Section 266 – Consideration of Subordinated Ranking

(1) The subordinated ranking of the insolvency creditors and the creditors specified in section 265 shall be taken into account only in insolvency proceedings commenced prior to the termination of monitoring.

(2) In these new insolvency proceedings these creditors shall rank senior to the other subordinated creditors.

Section 267 – Notification of Monitoring

(1) If implementation of the insolvency plan is being monitored, an announcement to this effect shall be published along with the order terminating the insolvency proceedings.

(2) Publication is also required of the following:
1. in the case of section 260 (3), the extension of monitoring to the takeover company;
2. in the case of section 263, the transactions requiring the approval of the insolvency administrator;
3. in the case of section 264, the amount of the credit limit.

(3) Section 31 applies with the necessary modifications. In the case of section 263, insofar as the right to dispose of a plot of land, a registered ship, ship under construction or aircraft, a right in such an object or a right in such a right is restricted, sections 32 and 33 shall apply with the necessary modifications.

Section 268 – Termination of Monitoring

(1) The insolvency court shall order termination of monitoring
1. if the claims whose fulfilment is subject to monitoring are fulfilled or if the fulfilment of these claims is guaranteed, or
2. if three years have elapsed since termination of the insolvency proceedings and no application for commencement of new insolvency proceedings has been submitted.

(2) The order shall be published.
Section 267 (3) applies with the necessary modifications.

Section 269 – Costs of Monitoring

The monitoring costs shall be borne by the debtor. In the case of section 260 (3), the takeover company shall bear the costs incurred for its monitoring.

Part Seven – Coordination of the Proceedings of Debtors Belonging to the Same Corporate Group

Chapter One. General Provisions

Section 269a – Co-operation between Insolvency Administrators

The insolvency administrators for group-affiliated debtors are obligated to provide information to and co-operate with one another, unless this interferes with the interests of the parties to the proceedings for which they have been appointed. In particular, they must upon request promptly provide all information that may be of importance for the other proceedings.

Section 269b – Co-operation between Courts

If insolvency proceedings in respect of the assets of group-affiliated debtors are conducted before different insolvency courts, the courts are obligated to co-operate and, in particular, to exchange information that may be of importance for the other proceedings. This applies in particular to:

1. the ordering of protective measures,
2. the commencement of insolvency proceedings,
3. the appointment of an insolvency administrator,
4. material decisions relating to direction of the proceedings,
5. the scope of the insolvency estate, and
6. the submission of insolvency plans, as well as other measures to end the insolvency proceedings.

Section 269c – Co-operation between Creditors' Committees

(1) Upon application by a creditors' committee that has been appointed in insolvency proceedings in respect of the assets of a group-affiliated debtor, the court at the place of group jurisdiction may appoint a group creditors' committee after hearing the other creditors' committees. Each creditors' committee or preliminary creditors' committee for a group-affiliated debtor that is manifestly not merely of secondary importance for the corporate group as a whole shall appoint one member of the group creditors' committee. A further member of this committee shall be appointed from among the representatives of the employees.

(2) The group creditors' committee shall support the insolvency administrators and the creditors' committees in the individual insolvency proceedings in order to facilitate the co-ordinated handling of those proceedings. Sections 70 to 73 apply with the necessary modifications. With respect to remuneration, service as member of the group creditors' committee is considered to be service on the creditors' committee that is represented by the member of the group creditors' committee.

(3) In the cases in subsections (1) and (2), a preliminary creditors' committee is equivalent to the creditors' committee.

Chapter Two. Coordination Proceedings

Section 269d – Coordination Court

(1) If an application for commencement of insolvency proceedings is lodged in relation to the assets of debtors belonging to a group of companies or if such proceedings have been commenced, the court having jurisdiction for the commencement of other group proceedings (coordination court) may, on request, institute coordination proceedings.

(2) Each group-affiliated debtor is entitled to lodge a request. Section 3a (3) applies with the necessary modifications. Each creditors' committee or preliminary creditors' committee formed in relation to a group-affiliated debtor is also entitled to lodge a request on the basis of a unanimous resolution.

Section 269e – Proceedings Coordinator

(1) The coordination court shall appoint a person who is independent of the group-affiliated debtors and their creditors as proceedings coordinator. The person to be appointed should be independent of the insolvency administrators and of the supervisors appointed for group-affiliated debtors. The appointment of a group-affiliated debtor is excluded.

(2) Before appointing a proceedings coordinator the coordination court shall give any group creditors' committee that has been appointed the opportunity to make representations concerning the person to be appointed as proceedings coordinator and the criteria to be applied in relation to him/her.

Section 269f – Duties and Legal Status of the Proceedings Coordinator

(1) The proceedings coordinator is responsible for ensuring the coordinated handling of the proceedings relating to the group-affiliated debtors, insofar as this is in the interests of the creditors. To this end the proceedings coordinator may, in particular, present a coordination plan. He/she may explain this plan at the respective creditors' meetings or have the plan explained by a person authorised by him/her.

(2) The insolvency administrators and preliminary insolvency administrators of the group-affiliated debtors are obliged to co-operate with the proceedings coordinator. In particular they must, on request, provide him/her with the information that he/she requires for the proper exercise of his/her duties.
(3) Unless provision to the contrary is made in this Part, section 27 (2) No. 4 and sections 56 to 60 and sections 62 to 65 apply with the necessary modifications to the appointment of the proceedings coordinator, supervision by the insolvency court, and liability and remuneration.

Section 269g – Remuneration of the Proceedings Coordinator

(1) The proceedings coordinator is entitled to remuneration for his/her activities and to reimbursement of reasonable expenses. The standard rate of remuneration is calculated on the basis of the value of the combined insolvency estates in the proceedings relating to group-affiliated debtors included in the coordination proceedings. Account shall be taken of the scope and complexity of the coordination role by means of derogations from the standard rate. Sections 64 and 65 apply with the necessary modifications.
(2) The remuneration of the proceedings coordinator must be settled pro rata out of the insolvency estates of the group-affiliated debtors; in case of doubt the ratio of the value of the individual insolvency estates to one another shall be decisive.

Section 269h – Coordination Plan

(1) In order to coordinate the handling of the insolvency proceedings relating to the assets of the group-affiliated debtors, the proceedings coordinator and, if a proceedings coordinator has not yet been appointed, the insolvency administrators of the group-affiliated debtors may jointly present a coordination plan to the coordination court for confirmation. The coordination plan requires the approval of any group creditors' committee that has been appointed. The court shall reject the plan ex officio if the provisions concerning the right to present the plan, the content of the plan or the procedural handling of the plan have not been complied with and the presenting parties cannot or do not remedy the defect within a reasonable period of time set by the court.
(2) The coordination plan may describe all measures that are relevant for coordinated handling of the proceedings. In particular the plan may include proposals:
1. for restoring the financial standing of the individual group-affiliated debtors and the corporate group;
2. for settling intra-group disputes;
3. for contractual agreements between the insolvency administrators.
(3) Each presenting party has the right of immediate appeal against the order refusing confirmation of the plan. The other presenting parties must be involved in the proceedings.

Section 269i – Derogations from the Coordination Plan

(1) The insolvency administrator of a group-affiliated debtor must explain the coordination plan at the report meeting if this is not done by the proceedings coordinator or a person authorised by him/her. Following the explanation of the plan the insolvency administrator must give reasons for wishing to derogate from measures described in the plan. If a coordination plan does not yet exist at the time of the report meeting, the insolvency administrator shall comply with his/her duties under sentences 1 and 2 at a creditors' meeting for which the insolvency court shall immediately set a date.
(2) By resolution of the creditors' meeting the coordination plan must be based on an insolvency plan to be drawn up by the insolvency administrator.

Part Eight – Self-administration

Section 270 – Principle

(1) The debtor is entitled to manage and dispose of the insolvency estate under the oversight of a supervisor if the court orders self-administration in its order for commencement of insolvency proceedings. The proceedings shall be governed by the general provisions unless provision to the contrary is made in this Part.
(2) The provisions of this Part are not applicable to consumer insolvency proceedings under section 304.

Section 270a – Application; Self-Administration Strategy

(1) The debtor shall attach to the application for self-administration a self-administration strategy covering:
1. a financial plan that covers a period of six months and includes a detailed description of the financing sources through which the continuation of normal business activities and coverage of the costs of the proceedings are to be ensured during this period;
2. a concept for implementation of the insolvency proceedings that, based on a description of the nature, extent and causes of the crisis, outlines the objective of the self-administration and the measures envisaged to achieve that objective;

3. a description of the status of negotiations with creditors, persons holding a participating interest in the debtor and third parties concerning the envisaged measures;
4. a description of the arrangements taken by the debtor in order to ensure its ability to meet its obligations under insolvency law; and
5. a substantiated description of any additional or lesser costs that will be incurred during self-administration in comparison with standard proceedings and in relation to the insolvency estate.

(2) In addition, the debtor must declare
1. whether it is in default in satisfying liabilities under employment relationships or pension commitments, tax liabilities, or liabilities to social security authorities or suppliers and, if so, the extent of such liabilities and the creditors to whom they are owed;
2. whether enforcement or realisation prohibitions pursuant to this Code or pursuant to the Business Stabilisation and Restructuring Act [*Unternehmensstabilisierungs- und -restrukturierungsgesetz*] were ordered for its benefit during the last three years prior to the application and, if so, in what proceedings they were ordered; and
3. whether it has satisfied its disclosure obligations, in particular under sections 325 to 328 or 339 of the Commercial Code [*Handelsgesetzbuch*], for the last three financial years.

Section 270b – Order for Interim Self-Administration

(1) The court shall appoint a preliminary supervisor to whom sections 274 and 275 are applicable (interim self-administration) if
1. the debtor's self-administration strategy is complete and coherent; and
2. no circumstances are known indicating that the self-administration strategy is based on inaccurate facts in material respects.
If the self-administration strategy has defects that can be remedied, the court may order temporary interim self-administration; in this case it shall set a time limit for remedying the defects of no more than 20 days.

(2) If the costs of self-administration and continuation of normal business activities are not covered under the finance plan submitted pursuant to section 270a (1) number 1, if the likely costs of self-administration shown pursuant to section 270a (1) number 5 significantly exceed the likely costs of standard proceedings, or if circumstances are known indicating that
1. there are payment arrears owed to employees or substantial payment arrears owed to the other creditors specified in section 270a (2) number 1;
2. during the last three years prior to the application for commencement of insolvency proceedings enforcement or realisation prohibitions pursuant to this Act or pursuant to the Business Stabilisation and Restructuring Act [*Unternehmensstabilisierungs- und -restrukturierungsgesetz*] were ordered for the benefit of the debtor; or
3. during one of the last three years prior to the application for commencement of insolvency proceedings the debtor breached its disclosure obligations, particularly pursuant to sections 325 to 328 or 339 of the Commercial Code [*Handelsgesetzbuch*] the preliminary supervisor is to be appointed only if, despite these circumstances, it may be expected that the debtor is willing and able to align its management with the interests of creditors.

(3) A preliminary creditors' committee shall be given the opportunity to make representations prior to issuance of the decision pursuant to subsection (2). A decision may be issued without representations from the creditors' committee only if two business days have elapsed since the application was lodged or if prejudicial changes in the debtor's financial position which cannot be averted other than through appointment of a preliminary insolvency administrator are clearly likely. The court shall be bound by a unanimous resolution of the preliminary creditors' committee in favour of interim self-administration. If the preliminary creditors' committee votes unanimously against interim self-administration, the order shall not be issued.

(4) If the court appoints a preliminary insolvency administrator, the reasons for doing so must be stated in writing. Section 27 (2) number 4 applies with the necessary modifications.

Section 270c – Interim Self-Administration Proceedings

(1) The court may instruct the preliminary supervisor to report on
1. the self-administration strategy submitted by the debtor, in particular as to whether it is based on the actual identified and apparent circumstances, is coherent, and appears practicable;
2. the completeness and suitability of the accounting and bookkeeping as the basis for the self-administration strategy and in particular for the financial plan;
3. the existence of liability claims of the debtor against serving or former members of representative bodies.

(2) The debtor must inform the court and the preliminary supervisor without delay of significant changes concerning the self-administration strategy.

(3) The court may order interim measures pursuant to section 21 (1) and (2) sentence 1 number 1a and

(3) to (5). If the court orders interim self-administration pursuant to section 270b (1) sentence 2, it may also order that disposals by the debtor require the approval of the preliminary supervisor

(4) On application by the debtor the court must decree that the debtor is creating preferential liabilities. Particular justification is required if this power extends to liabilities which are not included in the financial plan. Section 55 (2) applies with the necessary modifications.

(5) If the debtor has submitted the application for commencement of insolvency proceedings in the case of imminent illiquidity and applied for self-administration, but the court regards the requirements for self-administration as not being fulfilled, the court shall advise the debtor of its concerns and give the debtor the opportunity to withdraw the application for commencement of insolvency proceedings prior to the decision on commencement.

Section 270d – Preparation for Reorganisation; Protective Shield

(1) If along with the application the debtor has submitted a substantiated statement from a tax advisor, certified public accountant, lawyer or other comparably qualified person experienced in insolvency matters attesting that the debtor faces imminent illiquidity or overindebtedness but is not illiquid and that the planned reorganisation does not clearly lack any prospect of success, on application by the debtor the insolvency court shall fix a period of time for submission of an insolvency plan. The time allowed shall amount to no more than three months.

(2) The person who issued the statement pursuant to subsection (1) cannot be appointed as preliminary supervisor. The debtor may make proposals concerning the person to be appointed as preliminary supervisor. The court may deviate from a proposal by the debtor only if the proposed person is clearly unsuitable for the role; the court shall give written reasons for its decision.

(3) The court must order measures pursuant to section 21 (2) sentence 1 number 3 if the debtor applies for this.

(4) The debtor or the preliminary supervisor must notify the court without delay in the event of illiquidity occurring. After the order pursuant to subsection (1) has been revoked or after expiry of the time allowed for submission of an insolvency plan, the court shall decide on commencement of insolvency proceedings.

Section 270e – Termination of Interim Self-Administration

(1) Interim self-administration is terminated by appointment of a preliminary insolvency administrator if

1. the debtor seriously breaches obligations under insolvency law or it is otherwise apparent that it is not willing or able to align its management with the interests of creditors, in particular if it is found that

a) the debtor has based the self-administration strategy on inaccurate facts in material respects or is failing to meet its obligations under section 270c (2);

b) the accounting and bookkeeping are so incomplete or flawed as to make it impossible to evaluate the self-administration strategy, particularly the financial plan;

c) the debtor has liability claims against serving or former members of its representative bodies enforcement of which could be hampered during self-administration;

2. defects in the self-administration strategy are not remedied within the period of time set pursuant to section 270b (1) sentence 2;

3. achievement of the self-administration objective, in particular planned reorganisation, is found to have no prospect of success;

4. the preliminary supervisor with the approval of the preliminary creditors' committee or the preliminary creditors' committee applies for this;

5. the debtor applies for this.

(2) Interim self-administration is also terminated by appointment of a preliminary insolvency administrator if a creditor entitled to separate satisfaction or insolvency creditor applies for termination and demonstrates to the satisfaction of the court that the requirements for an order for self-administration are not met and that it is threatened with significant detriment as a result of self-administration. The debtor shall be heard prior to a decision on the application. The creditor and the debtor have the right of immediate appeal against the decision.

(3) The former preliminary supervisor may be appointed as preliminary insolvency administrator.

(4) The preliminary creditors' committee must be given the opportunity to make representations prior to issuance of the decision pursuant to subsection (1) number 1 or 3. Section 270b (3) sentence 2 applies with the necessary modifications. If the court appoints a preliminary insolvency administrator, it must state the grounds for doing so in writing. Section 27 (2) number 4 applies with the necessary modifications.

Section 270f – Order for Self-Administration

(1) Self-administration is ordered on application by the debtor, unless interim self-administration could not be granted pursuant to section 270b or would have to be revoked pursuant to section 270e.

(2) A supervisor shall be appointed in place of an insolvency administrator. The claims of the insolvency creditors shall be submitted to the supervisor. Sections 32 and 33 are not applicable.

(3) Section 270b (1) sentence 1 and subsections (2) and (3) applies with the necessary modifications.

Section 270g – Self-administration in the case of Group-Affiliated Debtors

If self-administration or interim self-administration is ordered for a group-affiliated debtor, the debtor is subject to the duties of co-operation in section 269a. The debtor in self-administration is entitled to the rights of application in sections 3a (1), 3d (2), and 269d (2) sentence 2.

Section 271 – Subsequent Order

If the creditors' meeting applies for self-administration with the majority specified in section 76 (2) and the majority of the creditors voting, the court shall make a corresponding order, provided the debtor consents. The former insolvency administrator may be appointed as supervisor.

Section 272 – Revocation of the Order

(1) The insolvency court shall revoke the order for self-administration if

1. the debtor seriously breaches obligations of insolvency law or it is otherwise apparent that it is not willing or able to align its management with the interests of creditors; this also applies if it is found that

a) the debtor has based the self-administration strategy on inaccurate facts in material respects;

b) the accounting and bookkeeping are so incomplete or flawed as to make it impossible to evaluate the self-administration strategy, particularly the financial plan;

c) the debtor has liability claims against serving or former members of the representative body enforcement of which could be hampered during self-administration;

2. achievement of the self-administration objective, in particular planned reorganisation, is found to have no prospect of success;

3. this is requested by the creditors' meeting with the majority specified in section 76 (2) and the majority of the creditors voting;

4. this is requested by a creditor entitled to separate satisfaction or an insolvency creditor, the requirements for an order for self-administration provided for in section 270f (1) in conjunction with section 270b (1) sentence 1 have ceased to apply and the applicant is threatened with significant detriment as a result of self-administration;

5. this is requested by the debtor.

(2) An application by a creditor shall be admissible only if the requirements specified in subsection (1) number 4 are proved to the satisfaction of the court. The debtor shall be heard prior to a decision on the application. The creditor and the debtor have the right of immediate appeal against the decision.

(3) The former supervisor may be appointed as insolvency administrator.

Section 273 – Publication

The decision of the insolvency court ordering self-administration or ordering revocation of the order for self-administration after commencement of insolvency proceedings shall be published.

Section 274 – Legal Status of the Supervisor

(1) Section 27 (2) number 4, section 54 number 2 and also sections 56 to 60 and 62 to 65 apply with the necessary modifications to the appointment of the supervisor, his/her supervision by the insolvency court, his/her liability and his/her remuneration.

(2) The supervisor shall investigate the financial position of the debtor and monitor the debtor's management of the business and living expenses. The court may order that the supervisor can support the debtor in relation to prefinancing of insolvency pay, insolvency-related accounting and negotiations with customers and suppliers. Section 22 (3) applies with the necessary modifications.

(3) If the supervisor identifies circumstances suggesting prejudice to the creditors if self-administration continues, he/she shall notify the creditors' committee and the insolvency court without delay. If a creditors' committee has not been appointed, the supervisor shall instead notify the insolvency creditors who have submitted claims and the creditors entitled to separate satisfaction.

Section 275 – Involvement of the Supervisor

(1) The debtor shall incur liabilities which fall outside the ordinary course of business only with the approval of the supervisor. Even liabilities which fall within the ordinary course of business may not be incurred by the debtor if the supervisor objects.

(2) The supervisor may require the debtor to permit all incoming funds to be received and all payments to be made by the supervisor alone.

Section 276 – Involvement of the Creditors' Committee

The debtor must obtain the approval of the creditors' committee if it wishes to undertake legal acts that are of particular importance for the insolvency proceedings. Section 160 (1) sentence 2, section 160 (2), section 161 sentence 2 and section 164 apply with the necessary modifications.

Section 276a – Involvement of Supervisory Bodies

(1) If the debtor is a legal entity or a company without legal personality, the supervisory board, shareholders' meeting or corresponding bodies shall have no influence over the debtor's management. The dismissal and new appointment of members of the management board shall be effective only with the supervisor's approval. Approval shall be granted if the measure does not result in prejudice to the creditors.

(2) If the debtor is constituted as a legal entity, the members of the representative body are also liable pursuant to sections 60 to 62. In the case of a company without legal personality, this applies to the partners authorised to represent the company. If none of the partners authorised to represent the company is a natural person, this applies to the members of the representative bodies of the partners authorised to represent the company. Sentence 3 applies with the necessary modifications if the members of the representative bodies are companies without legal personality in which no natural person is a member of the representative body or the connection of partnerships continues in this manner.

(3) Subsections (1) and (2) apply with the necessary modifications between the date of the interim self-administration order or the interim measures order pursuant to section 270c (3) and the date of commencement of insolvency proceedings.

Commentary:

In subsection (1) sentence 1 and in subsection (2) sentence 2, the words "company without legal personality" will be replaced by the words "partnership with legal personality", and in subsection (2) sentence 4 the words "companies without legal personality" will be replaced by the words "partnerships with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaf tsrechtsmodernisierungsgesetz)* (Federal Gazette I 2021, p. 3436).

Section 277 – Ordering the Requirement of Approval

(1) On application by the creditors' meeting the insolvency court shall order that particular transactions by the debtor require the approval of the supervisor to be effective. Section 81 (1) sentences 2 and 3 and section 82 apply with the necessary modifications. If the supervisor approves the creation of a preferential liability, section 61 shall apply with the necessary modifications.

(2) The order may also be issued on application by a creditor entitled to separate satisfaction or an insolvency creditor if it is required without delay in order to avoid prejudice to the creditors. The application shall be admissible only if this requirement is proved to the satisfaction of the court.

(3) The order shall be published. Section 31 applies with the necessary modifications. Insofar as the right to dispose of a plot of land, a registered ship, ship under construction or aircraft or a right in such an object, or a right in such a right is restricted, sections 32 and 33 shall apply with the necessary modifications.

Section 278 – Funds for the Debtor's Living Expenses

(1) The debtor is entitled to withdraw funds for himself/herself and the family members specified in section 100 (2) sentence 2 from the insolvency estate that permit a modest standard of living, taking into account the debtor's previous lifestyle.

(2) If the debtor is not a natural person, subsection (1) shall apply with the necessary modifications to the debtor's general partners with authority to represent the debtor.

Section 279 – Reciprocal Contracts

The provisions on the performance of transactions and the co-operation of the works council (sections 103 to 128) shall apply subject to the proviso that the debtor takes the place of the insolvency administrator. The debtor shall exercise its rights under these provisions in agreement with the supervisor. The debtor can validly exercise the rights pursuant to sections 120, 122 and 126 only with the supervisor's approval.

Section 280 – Liability. Avoidance in Insolvency

Only the supervisor may assert a claim of liability on behalf of the insolvency estate pursuant to sections 92 and 93 and avoid legal acts pursuant to sections 129 to 147.

Section 281 – Provision of Information to the Creditors

(1) The debtor shall draw up the list of assets of the insolvency estate, the list of creditors and the statement of assets and liabilities (sections 151 to 153). The supervisor shall review the lists and the

statement of assets and liabilities and in each case state in writing whether the result of his/her review gives rise to any objections.

(2) The debtor shall present the report at the report meeting. The supervisor shall comment on the report.

(3) The debtor is obliged to present accounts (sections 66 and 155). Subsection (1) sentence 2 applies with the necessary modifications to the final presentation of accounts by the debtor.

Section 282 – Realisation of Collateral

(1) The right of the insolvency administrator to realise assets subject to rights to separate satisfaction is vested in the debtor. The costs of assessment of the assets and of determining the rights in these assets shall, however, not be charged. Only the costs actually and necessarily incurred for realisation of the assets and the amount of the value added tax shall be recognised as realisation costs.

(2) The debtor shall exercise its realisation right in agreement with the supervisor.

Section 283 – Satisfaction of Insolvency Creditors

(1) During the verification of claims, claims filed may be disputed by the debtor and the supervisor as well as by the insolvency creditors. A claim disputed by an insolvency creditor, the debtor or the supervisor is not considered as accepted.

(2) Distributions shall be carried out by the debtor. The supervisor shall review the distribution schedules and in each case state in writing whether the result of his/her review gives rise to any objections.

Section 284 – Insolvency Plan

(1) An instruction from the creditors' meeting to prepare an insolvency plan shall be addressed either to the supervisor or to the debtor. The preliminary creditors' committee may address an instruction to prepare an insolvency plan to the preliminary supervisor or to the debtor. If the instruction is addressed to the debtor, the preliminary supervisor or supervisor shall assist in an advisory capacity.

(2) It is the duty of the supervisor to monitor implementation of the plan.

Section 285 – Deficiency of Assets

The supervisor shall notify the insolvency court of a deficiency of assets.

Part Nine – Discharge of Residual Debt

Section 286 – Principle

If the debtor is a natural person, he/she shall be discharged from the liabilities towards the insolvency creditors not fulfilled during the insolvency proceedings pursuant to sections 287 to 303a.

Section 287 – Debtor's Application

(1) Discharge of residual debt requires an application by the debtor which should be combined with his/her application for commencement of insolvency proceedings. If the application is not so combined, it shall be lodged within two weeks of notification pursuant to section 20 (2). The debtor shall attach a declaration to the application stating whether one of the cases pursuant to section 287a (2) sentence 1 numbers 1 or 2 applies. The debtor must ensure that the declaration pursuant to sentence 3 is accurate and complete.

(2) The application shall be accompanied by the declaration by the debtor assigning his/her attachable claims to emoluments due under a service contract, or to recurring emoluments replacing them, to a trustee to be designated by the insolvency court for a period of three years following commencement of insolvency proceedings (assignment period). If the debtor has already been granted discharge of residual debt on the basis of an application lodged after 30 September 2020, the assignment period in any new proceedings shall amount to five years; the debtor shall attach a declaration of assignment to this effect to the application.

(3) Agreements by the debtor are invalid insofar as they would frustrate or impair the assignment declaration pursuant to subsection (2).

(4) The insolvency creditors who have filed claims must be heard in relation to the debtor's application before the final meeting.

Section 287a – Decision of the Insolvency Court

(1) If the application for discharge of residual debt is admissible, the court shall make an order determining that the debtor will obtain discharge of residual debt if he/she complies with the obligations pursuant to sections 295 and 295a and if the conditions for a refusal under sections 290 and 297 to 298 are not present. The order shall be published. The debtor has the right of immediate appeal against the order.

(2) The application for discharge of residual debt is inadmissible if

1. during the last eleven years prior to the application for commencement of insolvency proceedings or subsequent to this application the

debtor has been granted discharge of residual debt, or during the last five years prior to the application for commencement of insolvency proceedings or subsequent to this application the debtor has been refused discharge of residual debt pursuant to section 297 or

2. during the last three years prior to the application for commencement of insolvency proceedings or subsequent to this application the debtor has been refused discharge of residual debt pursuant to section 290 (1) numbers 5, 6 or 7 or pursuant to section 296; this also applies in the case stipulated in section 297a if the subsequent refusal is based on grounds pursuant to section 290 (1) numbers 5, 6 or 7.

In these cases the court shall give the debtor the opportunity to withdraw the application for commencement of insolvency proceedings prior to the decision on commencement.

Section 287b – Debtor's obligation to secure income

With effect from commencement of the assignment period until termination of the insolvency proceedings the debtor must be in reasonable gainful employment and if unemployed must try to find such employment and not refuse any suitable activity.

Section 288 – Appointment of the Trustee

The debtor and the creditors may recommend a natural person who is suitable in respect of the individual case to the insolvency court as trustee. If no decision concerning the discharge of residual debt has yet been issued, along with its decision by which it decides on the termination or discontinuation of the insolvency proceedings due to deficiency of assets, the court shall appoint the trustee upon whom the debtor's attachable emoluments devolve in accordance with the assignment declaration (section 287 (2)).

Section 289 – Discontinuation of the Insolvency Proceedings

If the insolvency proceedings are discontinued, discharge of residual debt may be granted only if, after notification of deficiency of assets, the insolvency estate has been distributed pursuant to section 209 and the insolvency proceedings are discontinued pursuant to section 211.

Section 290 – Refusal of Discharge of Residual Debt

(1) Discharge of residual debt shall be refused by order if refusal has been requested by an insolvency creditor who has filed its claims and if

1. during the last five years prior to the application for commencement of insolvency proceedings or subsequent to this application the debtor has been convicted of a criminal offence under sections 283 to 283c of the Criminal Code *[Strafgesetzbuch]* for which he/she was sentenced to a fine of more than 90 daily units or to imprisonment for a period of more than three months;

2. during the three years prior to the application for commencement of insolvency proceedings or subsequent to the application the debtor has intentionally or through gross negligence provided incorrect or incomplete written information about his/her financial circumstances in order to obtain a loan, to receive payments from public resources or to avoid payments to public funds;

3. (repealed)

4. during the last three years prior to the application for commencement of insolvency proceedings or subsequent to the application the debtor has intentionally or through gross negligence prejudiced the satisfaction of the insolvency creditors by creating inappropriate liabilities, dissipating assets or delaying the commencement of insolvency proceedings without any prospect of an improvement in his/her financial position;

5. the debtor has intentionally or through gross negligence breached obligations of disclosure and co-operation under this Code,

6. in the lists of his/her assets and income, creditors and the claims against him/her to be submitted pursuant to the declaration to be submitted under section 287 (1) sentence 3 and pursuant to section 305 (1) No 3, the debtor has intentionally or through gross negligence provided incorrect or incomplete information,

7. the debtor violates his/her obligation to secure income pursuant to section 287b and thereby prejudices the satisfaction of the insolvency creditors; this shall not apply if the debtor is not at fault; section 296 (2) sentences 2 and 3 apply with the necessary modifications.

(2) The creditor's application may be made, in writing, up to the final meeting or to the decision pursuant to section 211 (1); it is admissible only if the creditor proves to the satisfaction of the court that a ground for refusal exists. The decision on the application for refusal shall be made after the relevant point in time pursuant to sentence 1.

(3) The debtor and each insolvency creditor who has applied for refusal of discharge of residual debt has the right of immediate appeal against the order. The order shall be published.

Section 291 (repealed)

Section 292 – Legal Status of the Trustee

(1) The trustee must notify the parties obliged to pay the emoluments of the assignment. He/she must keep the amounts he/she receives through

the assignment and other payments from the debtor or third parties separate from his/her assets and distribute them once a year to the insolvency creditors on the basis of the final schedule, provided the costs of the proceedings deferred pursuant to section 4a less the costs of appointment of counsel have been discharged. Section 36 (1) sentence 2 and subsection (4) apply with the necessary modifications. The trustee may defer distribution until the end of the assignment period at the latest if this appears appropriate in view of the insignificance of the amounts to be distributed; the trustee must notify the court of this once a year, stating the level of the amounts received.

(2) The creditors' meeting may also assign to the trustee the task of monitoring fulfilment of the debtor's obligations. In this case the trustee must inform the creditors without delay if he/she ascertains that the debtor has breached any of these obligations. The trustee is obliged to monitor the debtor's compliance only if the additional remuneration to which he/she is entitled for this is covered or paid in advance.

(3) Upon termination of his/her office the trustee shall present accounts to the insolvency court. Sections 58 and 59 apply with the necessary modifications, section 59 with the proviso, however, that each insolvency creditor may apply for the dismissal of the trustee, including on grounds other than lack of independence, and each insolvency creditor has the right of immediate appeal.

Section 293 – Remuneration of the Trustee

(1) The trustee is entitled to remuneration for his/her activities and to reimbursement of reasonable expenses.
Account shall be taken of the expenditure of time involved and the scope of activities performed by the trustee.

(2) Section 63 (2) and sections 64 and 65 apply with the necessary modifications.

Section 294 – Equal Treatment of Creditors

(1) Compulsory enforcement against the debtor's assets on behalf of individual insolvency creditors is not permitted during the period between termination of the insolvency proceedings and the end of the assignment period.

(2) Any agreement by the debtor or other persons with individual insolvency creditors creating a preference in favour of such creditors is void.

(3) Set-off against the claim to the emoluments covered by the assignment declaration is inadmissible.

Section 295 – Debtor's Obligations

During the period between termination of the insolvency proceedings and the end of the assignment period the debtor is obliged

1. to be in reasonable gainful employment and if unemployed to try to find such employment and not to refuse any suitable activity;
2. to surrender to the trustee one half of the value of property he/she acquires by testamentary disposition or in consideration of a future right of succession or as a gift, and the full value of property he/she acquires as a prize in a lottery, draw or other game with prizes; customary occasional gifts and winnings of low value are not subject to the obligation to surrender;
3. to notify the insolvency court and the trustee without delay of any change of residence or place of employment, not to conceal any emoluments covered by the assignment declaration or assets covered by number 2, and to provide the insolvency court and the trustee on request with information about his/her employment or his/her efforts to find employment and about his/her emoluments and assets;
4. to make payments in satisfaction of the insolvency creditors only to the trustee and not to create a preference for any insolvency creditor;
5. not to create inappropriate liabilities within the meaning of section 290 (1) No. 4.

On application by the debtor the insolvency court shall determine whether property acquired in accordance with sentence 1 No. 2 is excluded from the obligation to surrender.

Section 295a Debtor's obligations in the case of self-employed activity

(1) Insofar as the debtor is self-employed, he/she is obliged, by means of payments to the trustee, to put the insolvency creditors in the position they would be in if he/she had entered into a reasonable service contract. The payments must be made each calendar year by 31 January of the following year.

(2) On application by the debtor, the court shall determine the sum corresponding to the emoluments under the service contract to be taken as a basis in accordance with subsection (1). The debtor must prove to the satisfaction of the court the amount of the emoluments that he/she could obtain under a reasonable service contract. The trustee and the insolvency creditors must be heard prior to the decision. The debtor and each insolvency creditor has the right of immediate appeal against the decision.

Section 296 – Breach of Obligations

(1) The insolvency court shall refuse the discharge of residual debt on application by an insolvency creditor if the debtor breaches one of his/her obligations during the period between termination of the insolvency proceedings and the end of the assignment period and thereby impairs the satisfaction of the insolvency creditors; this shall not apply if the debtor is not at fault; in the case of section 295 sentence 1 number 5, simple negligence shall be disregarded. The application may be lodged only within one year of the date on which the creditor became aware of the breach of an obligation. The application is admissible only if the prerequisites specified in sentences 1 and 2 are proved to the satisfaction of the court.

(2) Prior to its decision on the application, the court shall hear the trustee, the debtor and the insolvency creditors. The debtor must provide information on the fulfilment of his/her obligations and, if the creditor so requests, affirm the accuracy of the information in an affidavit. If the debtor fails without reasonable excuse to provide the information or the affidavit within the time limit set by the court or if he/she fails without reasonable excuse to attend a hearing scheduled by the court for provision of the information or the affidavit despite having been duly summoned, the court shall refuse the discharge of residual debt.

(3) The applicant and the debtor have the right of immediate appeal against the decision. The refusal of the discharge of residual debt shall be published.

Section 297 – Insolvency Offences

(1) On application by an insolvency creditor the insolvency court shall refuse the discharge of residual debt if the debtor has been convicted of a criminal offence under sections 283 to 283c of the Criminal Code *[Strafgesetzbuch]* for which he/she was sentenced to a fine of more than 90 daily units or to imprisonment for a period of more than three months during the period between the final meeting and termination of the insolvency proceedings or during the period between termination of the insolvency proceedings and the end of the assignment period.

(2) Section 296 (1) sentences 2 and 3 and subsection (3) apply with the necessary modifications.

Section 297a – Grounds for refusal emerging subsequently

(1) On application by an insolvency creditor the insolvency court shall refuse the discharge of residual debt if it emerges after the final meeting or, in the case pursuant to section 211, after the proceedings are discontinued that a ground for refusal pursuant to section 290 (1) was present. The application may be lodged only within six months of the date on which the creditor became aware of the ground for refusal. It is admissible only if the creditor proves to the satisfaction of the court that the prerequisites specified in sentences 1 and 2 are met and that the creditor had no knowledge of them before the relevant date.

(2) Section 296 (3) applies with the necessary modifications.

Section 298 – Cover for the Trustee's Minimum Remuneration

(1) On application by the trustee the insolvency court shall refuse the discharge of residual debt if the amounts paid to the trustee for his/her previous year of office do not cover the minimum remuneration and the debtor fails to pay in the outstanding amount despite being requested to do so by the trustee in writing within a time limit of at least two weeks and being informed of the possibility that the discharge of residual debt could be refused. This shall not apply if the costs of the insolvency proceedings have been deferred pursuant to section 4a.

(2) The debtor shall be heard prior to the decision. Discharge shall not be refused if the debtor pays in the outstanding amount within two weeks of being requested to do so by the court or if the debtor is permitted to defer the amount in accordance with section 4a.

(3) Section 296 (3) applies with the necessary modifications.

Section 299 – Premature Termination

If the discharge of residual debt is refused pursuant to sections 296, 297, 297a or 298, the term of the assignment declaration, the office of the trustee and the restriction on the creditors' rights shall expire when the decision becomes final.

Section 300 – Decision on Discharge of Residual Debt

(1) The insolvency court shall decide on the grant of discharge of residual debt following expiry of the full assignment period. The order shall be issued after the insolvency creditors, the insolvency administrator or trustee and the debtor have been heard. Discharge of residual debt granted in accordance with sentence 1 shall be deemed to have been granted upon expiry of the assignment period.

(2) If no claims have been filed in the insolvency proceedings or if the insolvency claims have been satisfied and if the debtor has settled the costs of the proceedings and the other preferential liabilities, the court shall on application by the debtor

decide on the grant of discharge of residual debt before the assignment period has expired. Subsection (1) sentence 2 applies with the necessary modifications. The debtor must prove to the satisfaction of the court that the prerequisites of sentence 1 are met. If discharge of residual debt is granted pursuant to sentence 1, section 299 and section 300a apply with the necessary modifications.

(3) The insolvency court shall refuse the discharge of residual debt on application by an insolvency creditor if the prerequisites of section 290 (1), section 296 (1) or (2) sentence 3, section 297 or section 297a are met, or on application by the trustee if the prerequisites of section 298 are met.

(4) The order shall be published. The debtor and each insolvency creditor who applied for refusal of discharge of residual debt at the hearing pursuant to subsection (1) or (2) or who pleaded that the prerequisites for early discharge of residual debt under subsection (2) were not met has the right of immediate appeal.

Section 300a – New asset acquisitions in ongoing insolvency proceedings

(1) If the debtor is granted discharge of residual debt, the assets that the debtor acquires after the end of the assignment period, or after the occurrence of the prerequisites of section 300 (2) sentence 1, no longer form part of the insolvency estate. Sentence 1 does not apply to assets returned to the insolvency estate as a consequence of avoidance of a legal act by the insolvency administrator or which belong to the insolvency estate as a consequence of litigation conducted by the insolvency administrator or as a consequence of acts of realisation by the insolvency administrator.

(2) Until the grant of discharge of residual debt has become final, new asset acquisitions to which the debtor is entitled must be received and managed by the administrator in a fiduciary capacity. After the grant of discharge of residual debt has become final, the provisions of section 89 do not apply. When the grant of discharge of residual debt has become final, the insolvency administrator shall hand over the new asset acquisitions to the debtor and render an account to the debtor of his/her management of the new asset acquisitions.

(3) If discharge of residual debt is granted and has become final, the insolvency administrator has a claim against the debtor for remuneration for his/her services pursuant to subsection (2) and for reimbursement of reasonable expenses. Section 293 applies with the necessary modifications.

Section 301 – Effect of Discharge of Residual Debt

(1) If discharge of residual debt is granted, it takes effect against all insolvency creditors. This also applies in respect of creditors who have not filed their claims.

(2) The rights of the insolvency creditors against co-debtors and sureties of the debtor and the rights of these creditors under a priority notice registered to secure a claim or under a right giving entitlement to separate satisfaction in insolvency proceedings are not affected by the discharge of residual debt. The debtor is, however, discharged vis-à-vis his/her co-debtors, sureties or any other party holding a right of recourse in the same way as he/she is discharged vis-à-vis the insolvency creditors.

(3) If a creditor without entitlement to satisfaction by virtue of the discharge of residual debt is satisfied, this shall not give rise to a duty on the part of the recipient to make restitution.

(4) A prohibition on the assumption or carrying on of a commercial activity, business, trade, or liberal profession issued solely by reason of the debtor's insolvency shall cease to apply when the grant of discharge of residual debt becomes final. Sentence 1 does not apply to the refusal and withdrawal of an authorisation to carry on a licensed activity.

Section 302 – Excluded Claims

The following claims are not affected by the grant of discharge of residual debt:

1. liabilities of the debtor based on the commission of an intentional tort, on arrears of statutory maintenance which the debtor, in breach of duty, has intentionally not granted, or arising out of a liability to tax if the debtor has received a final conviction in connection therewith on account of a criminal offence under sections 370, 373 or 374 of the Fiscal Code; the creditor must register the corresponding claim stating this as the legal ground pursuant to section 174 (2);
2. fines and the comparable liabilities of the debtor pursuant to section 39 (1) No. 3;
3. liabilities arising out of interest-free loans granted to the debtor for settlement of the costs of the insolvency proceedings.

Section 303 – Revocation of Discharge of Residual Debt

(1) On application by an insolvency creditor the insolvency court shall revoke the grant of discharge of residual debt if

1. it subsequently transpires that the debtor intentionally breached one of his/her obligations and satisfaction of the insolvency creditors was significantly impaired as a result;

2. it subsequently transpires that the debtor has been convicted pursuant to section 297 (1) during the assignment period, or if, only after grant of discharge of residual debt, the debtor is convicted pursuant to section 297 (1) for a criminal offence committed before the end of the assignment period or

3. after grant of discharge of residual debt the debtor has intentionally or through gross negligence breached obligations of disclosure and cooperation incumbent upon him/her during the insolvency proceedings pursuant to this Code.

(2) The creditor's application is admissible only if it is submitted within one year of the date on which the decision on the discharge of residual debt became final; revocation pursuant to subsection (1) No 3 may be applied for up to six months after the date on which termination of the insolvency proceedings became final. The creditor shall prove to the satisfaction of the court that the requirements for the ground for revocation are met. In the cases specified in subsection (1) No 1 the creditor must in addition prove to the satisfaction of the court that he/she had no knowledge of the ground for revocation before the decision became final.

(3) The debtor and in the cases specified in subsection (1) Nos 1 and 3 also the trustee or the insolvency administrator shall be heard prior to the decision. The applicant and the debtor have the right of immediate appeal against the decision. The decision revoking the discharge of residual debt shall be published.

Section 303a – Registration in the List of Debtors

The insolvency court shall order registration in the list of debtors pursuant to section 882b of the Code of Civil Procedure *[Zivilprozessordnung]*. Debtors shall be registered

1. who have been refused discharge of residual debt pursuant to sections 290, 296, 297 or 297a or on application by an insolvency creditor pursuant to section 300 subsection (3);

2. whose discharge of residual debt has been revoked.

The court shall immediately transmit the order electronically to the central enforcement court pursuant to Section 882h (1) of the Code of Civil Procedure *[Zivilprozessordnung]*. Section 882c (2) and (3) of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.

Part Ten – Consumer Insolvency Proceedings

Section 304 – Principle

(1) If the debtor is a natural person who does or did not pursue a self-employed economic activity, the proceedings are governed by the general provisions unless provision to the contrary is made in this Part. If the debtor did pursue a self-employed economic activity, sentence 1 shall apply if his/her financial circumstances are straightforward and there are no claims against him/her under employment contracts.

(2) Financial circumstances are straightforward within the meaning of subsection (1) sentence 2 only if, at the time when the application for commencement of insolvency proceedings is submitted, the debtor has fewer than 20 creditors.

Section 305 – Debtor's Application for Commencement of Insolvency Proceedings

(1) Along with the written application for commencement of insolvency proceedings or without delay following the application, the debtor must submit:

1. a certificate issued by an appropriate person or body based on personal counselling and a detailed examination of the debtor's income and assets stating that within the last six months prior to the application for commencement of insolvency proceedings an unsuccessful attempt was made to reach an out-of-court debt settlement agreement with the creditors on the basis of a plan; the plan shall be attached and the principal reasons for its failure shall be explained; the Federal States may determine which persons or bodies are to be regarded as appropriate;

2. the application for discharge of residual debt (section 287) or a declaration that an application for discharge of residual debt is not to be made;

3. a list of available assets and income (list of assets), a summary of the main content of this list (statement of assets and liabilities), a list of creditors and a list of the claims against the debtor; a declaration must be attached to the lists and to the statement of assets and liabilities stating that the information they contain is accurate and complete;

4. a debt settlement plan; this may include all arrangements which, taking account of the creditors' interests and the debtor's assets, income and family circumstances, are likely to lead to a reasonable debt settlement; the plan shall also state whether and to what extent guarantees, liens and other creditors' securities are to be affected by the plan.

(2) In the list of claims pursuant to subsection (1) No. 3 reference may also be made to enclosed itemisations of claims by the creditors. At the debtor's request the creditors are obliged to provide the debtor with a written itemisation of their claims against him/her at their expense to enable him/her to prepare the list of claims; they must, in particular, state the amount of their claims broken down into principal claim, interest and costs. The debtor's request must contain a reference to an application for commencement of insolvency proceedings that has already been submitted to the court or to an application planned for the near future.

(3) If information is missing from the official forms pursuant to subsection (5) that the debtor has submitted, the insolvency court shall request the debtor to provide the missing information without delay. If the debtor does not comply with this request within one month, his/her application for commencement of insolvency proceedings shall be deemed to have been withdrawn. In cases coming under section 306 (3) sentence 3, the period shall be three months.

(4) The debtor may be represented before the insolvency court by an appropriate person or member of a body recognised as appropriate within the meaning of subsection (1) No. 1. Section 174 (1) sentence 3 applies with the necessary modifications to representation of the creditor.

(5) In order to simplify consumer insolvency proceedings, the Federal Ministry of Justice and Consumer Protection is authorised to introduce forms for the parties concerned for the certificates, applications, and lists to be submitted in accordance with subsection (1) Nos 1 to 4 by means of statutory order issued with the approval of the *Bundesrat*. Insofar as forms are introduced pursuant to sentence 1, the debtor must use these forms. Different forms may be introduced for proceedings in courts where the proceedings are processed electronically and for proceedings in courts where the proceedings are not processed electronically.

Section 305a – Failure of Out-of-Court Debt Settlement

An attempt to reach an out-of-court debt settlement agreement with the creditors shall be deemed to have failed if a creditor pursues compulsory enforcement after the negotiations on out-of-court debt settlement have been initiated.

Section 306 – Suspension of Proceedings

(1) The proceedings relating to the application for commencement of insolvency proceedings shall be suspended until the decision on the debt settlement plan. This period shall not exceed three months. After hearing the debtor the court shall order the proceedings relating to the application for commencement of insolvency proceedings to be continued if the court, exercising its independent discretion, determines that the debt settlement plan is not likely to be accepted.

(2) Subsection (1) does not preclude the ordering of protective measures. If the proceedings are suspended, the debtor shall submit the number of copies of the debt settlement plan and statement of assets and liabilities required for service within two weeks of being requested to do so by the court. Section 305 (3) sentence 2 applies with the necessary modifications.

(3) If a creditor applies for commencement of proceedings, prior to its decision on the application the insolvency court shall give the debtor the opportunity to lodge an application as well. If the debtor lodges an application, subsection (1) shall also apply to the creditor's application. In this case the debtor shall, in the first place, attempt to reach an out-of-court agreement pursuant to section 305 (1) No. 1.

Section 307 – Service on the Creditors

(1) The insolvency court shall serve the debt settlement plan and statement of assets and liabilities on the creditors named by the debtor and at the same time request that the creditors comment on the lists specified in section 305 (1) No. 3 and the debt settlement plan within a strict time limit of one month; the creditors shall be informed that the lists have been deposited with the insolvency court for inspection. At the same time each creditor shall be given the opportunity within the time limit pursuant to sentence 1, with an express reference to the legal consequences of section 308 (3) sentence 2, to verify the details of its claim in the list of claims deposited for inspection with the insolvency court and if necessary to supplement the details. Section 8 (1) sentences 2 and 3 and subsections (2) and (3) do not apply to service pursuant to sentence 1.

(2) If a creditor's comments are not received by the court with the time limit stated in subsection (1) sentence 1, this creditor shall be deemed to have approved the debt settlement plan. This must be pointed out in the request for comments.

(3) After expiry of the time limit pursuant to subsection (1) sentence 1 the debtor shall be given the opportunity to amend or supplement the debt settlement plan within a time limit to be determined by the court, if this appears necessary based on the comments submitted by a creditor or expedient for facilitating a mutually agreed

debt settlement. Where necessary, the amendments or additions shall be served on the creditors. Subsection (1) sentences 1 and 3 and subsection (2) apply with the necessary modifications.

Section 308 – Acceptance of the Debt Settlement Plan

(1) If no creditor has raised objections to the debt settlement plan or if approval is substituted pursuant to section 309, the debt settlement plan is deemed to have been accepted; the insolvency court shall issue an order to this effect. The debt settlement plan has the effect of a settlement within the meaning of section 794 (1) No. 1 of the Code of Civil Procedure *[Zivilprozessordnung]*. An official copy of the debt settlement plan and the order pursuant to sentence 1 shall be served on the creditors and the debtor.

(2) The applications for commencement of insolvency proceedings and for the grant of discharge of residual debt are deemed to have been withdrawn.

(3) If claims are not included in the debtor's list and have also not been taken into consideration subsequently on realisation of the debt settlement plan, the creditors may demand fulfilment from the debtor. This shall not apply insofar as a creditor failed to add the details of its claims to the list of claims deposited for inspection with the insolvency court within the time limit set by the court, although the debt settlement plan was sent to this creditor and the claim arose prior to the expiry of the time limit; the claim is extinguished to this extent.

Section 309 – Substitution of Approval

(1) If the debt settlement plan has been approved by more than half of the named creditors and if the total of the claims of the assenting creditors amounts to more than half of the total of the claims of the named creditors, on application by a creditor or the debtor the insolvency court shall substitute the objections of a creditor to the debt settlement plan with approval. This shall not apply if
1. the creditor who raised objections does not receive a fair share in relation to the other creditors or
2. this creditor is likely to be placed in a worse economic position as a result of the debt settlement plan than would be the case if the proceedings relating to the applications for commencement of insolvency proceedings and for the grant of discharge of residual debt had been conducted; in case of doubt the income, assets and family circumstances of the debtor applicable at the time of the application pursuant to sentence 1 shall be taken as a basis throughout the duration of the proceedings.

(2) The creditor shall be heard prior to the decision. The reasons pursuant to subsection (1) sentence 2 opposing the substitution of the creditor's objections with approval must be demonstrated to the satisfaction of the court. The applicant and the creditor whose objections have been substituted with approval have the right of immediate appeal against the order. Section 4a (2) applies with the necessary modifications.

(3) If a creditor credibly establishes facts which give rise to serious doubts as to whether a claim stated by the debtor exists or is for a higher or a lower amount than stated and if the outcome of the dispute is decisive with regard to whether the creditor receives a fair share in relation to the other creditors (subsection (1) sentence 2 No. 1), the objections of this creditor cannot be substituted with approval.

Section 310 – Costs

The creditors do not have a claim against the debtor for reimbursement of the costs incurred by them in connection with the debt settlement plan.

Section 311 – Resumption of Proceedings Relating to the Application for Commencement of Insolvency Proceedings

If objections to the debt settlement plan are raised that are not substituted with court approval pursuant to section 309, the proceedings relating to the application for commencement of insolvency proceedings are resumed ex officio.

Section 312 (repealed)

Section 313 (repealed)

Section 314 (repealed)

Part Eleven – Special Types of Insolvency Proceedings

Chapter One – Insolvency Proceedings Relating to a Deceased's Estate

Section 315 – Local Jurisdiction

The insolvency court within whose district the deceased had his/her place of general jurisdiction at the time of his/her death has exclusive local jurisdiction in respect of insolvency proceedings relating to a deceased's estate. If the centre of a self-employed economic activity carried on by the deceased was located in a different place, the insolvency court within whose district this place is located has exclusive jurisdiction.

Section 316 – Admissibility of Commencement

(1) Commencement of insolvency proceedings is not excluded by reason of the fact that the heir has not yet accepted the inheritance or that he/she has unlimited liability for the liabilities of the estate.

(2) If there are several heirs, proceedings may also be commenced subsequent to division of the estate.

(3) Insolvency proceedings shall not take place in respect of a share in an inheritance.

Section 317 – Parties Entitled to Apply for Commencement

(1) Commencement of insolvency proceedings relating to a deceased's estate may be applied for by any heir, the administrator of the estate or any other curator of the estate, an executor entitled to manage the estate and any creditor of the estate.

(2) If the application is not submitted by all the heirs, it shall be admissible if the ground for commencement is demonstrated to the satisfaction of the court. The insolvency court shall hear the other heirs.

(3) Where an executor is entitled to manage the estate, if the heir applies for commencement of proceedings the executor shall be heard; if the executor applies for commencement of proceedings, the heir shall be heard.

Section 318 – Right of Application in case of Joint Marital Property

(1) If the deceased's estate forms part of the joint marital property of a community of property, both the spouse who is the heir and the spouse who is not the heir but who manages the joint marital property alone or jointly with the other spouse may apply for commencement of insolvency proceedings relating to the deceased's estate. The consent of the other spouse is not required. The spouses retain the right of application if the community of property ends.

(2) If the application is not submitted by both spouses, it shall be admissible if the ground for commencement is demonstrated to the satisfaction of the court. The insolvency court shall hear the other spouse.

(3) Subsections (1) and (2) apply with the necessary modifications to civil partners.

Section 319 – Time Limit for Application

An application by a creditor of the estate for commencement of insolvency proceedings is inadmissible if two years have elapsed since acceptance of the inheritance.

Section 320 – Grounds for Commencement

The grounds for commencement of insolvency proceedings relating to a deceased's estate are illiquidity and overindebtedness. If the heir, the administrator of the estate or any other curator of the estate or an executor applies for commencement of proceedings, imminent illiquidity is also a ground for commencement.

Section 321 – Compulsory Enforcement after Death of Deceased

Compulsory enforcement measures against the estate undertaken after the death of the deceased do not confer any right to separate satisfaction.

Section 322 – Avoidable Legal Acts by the Heir

If the heir has satisfied claims to a compulsory portion, legacies or testamentary burdens prior to commencement of insolvency proceedings, this legal act may be avoided in the same way as gratuitous performance by the heir.

Section 323 – Heir's Expenses

The heir has no right of retention on account of the expenses which are reimbursable to him/her out of the estate under sections 1978 and 1979 of the Civil Code *[Bürgerliches Gesetzbuch]*.

Section 324 – Preferential Liabilities

(1) In addition to the liabilities specified in sections 54 and 55, preferential liabilities are:
1. the expenses reimbursable to the heir out of the estate under sections 1978 and 1979 of the Civil Code *[Bürgerliches Gesetzbuch];*
2. the deceased's funeral costs;
3. the costs to the estate of proceedings for an official declaration of death in respect of the deceased;
4. the costs of opening a testamentary disposition by the deceased and the court costs of securing the estate, curatorship, public notice to the creditors of the estate and filing an inventory;
5. liabilities arising out of transactions undertaken by a curator or an executor;
6. liabilities which have arisen for the heir towards a curator, an executor or an heir who has disclaimed his/her inheritance from the management of the estate by such persons insofar as the creditors of the estate would be liable if the designated persons had had to undertake the transactions for them.

(2) In the event of a deficiency of assets, the liabilities specified in subsection (1) shall have the ranking of liabilities under section 209 (1) No. 3.

Section 325 – Liabilities of the Estate

In insolvency proceedings relating to a deceased's estate, only the liabilities of the estate may be claimed.

Section 326 – Claims of the Heirs

(1) The heir may assert the claims to which he/she is entitled against the deceased.

(2) If the heir has settled a liability of the estate, insofar as such settlement is not deemed to have been made for the account of the deceased's estate pursuant to section 1979 of the Civil Code *[Bürgerliches Gesetzbuch]*, he/she shall take the place of the creditor unless he/she has unlimited liability for the liabilities of the estate.

(3) If the heir has unlimited liability towards an individual creditor he/she may assert the creditor's claim in the event that the creditor does not assert the claim.

Section 327 – Subordinated Liabilities

(1) The following liabilities are subordinated to the liabilities specified in section 39 and shall be satisfied in the following order and in proportion to their respective amounts if they have equal ranking:
1. liabilities towards persons entitled to a compulsory portion;
2. liabilities arising out of legacies and testamentary burdens arranged by the deceased;
3. (repealed)

(2) A legacy through which the right of the beneficiary to the compulsory portion is excluded pursuant to section 2307 of the Civil Code *[Bürgerliches Gesetzbuch]* has the same ranking as the right to a compulsory portion insofar as it does not exceed the compulsory portion. If the deceased instructed by testamentary disposition that a legacy or testamentary burden should be satisfied before another legacy or testamentary burden, such legacy or testamentary burden shall have prior ranking.

(3) A liability due to a creditor excluded by means of the public notice procedure or having the same status as an excluded creditor pursuant to section 1974 of the Civil Code *[Bürgerliches Gesetzbuch]* shall be satisfied only after the liabilities specified in section 39 and, if this liability is included in the liabilities specified in subsection (1), only after the liabilities with which it would have equal ranking without the restriction. The restrictions shall not affect the order of ranking in other respects.

Section 328 – Returned Assets

(1) Assets returned to the insolvency estate as a consequence of the avoidance of a legal act undertaken by or in relation to the deceased may not be used for settlement of the liabilities specified in section 327 (1).

(2) Assets which have to be returned to the insolvency estate by the heir on the basis of sections 1978 to 1980 of the Civil Code *[Bürgerliches Gesetzbuch]* may by claimed by the creditors excluded by means of the public notice procedure or having the same status as an excluded creditor pursuant to section 1974 of the Civil Code *[Bürgerliches Gesetzbuch]* only insofar as the heir would also be liable to make restitution pursuant to the provisions on the restitution of unjust enrichment.

Section 329 – Subsequent Succession

Sections 323, 324 (1) No. 1 and section 326 (2) and (3) apply to the prior heirs even after the occurrence of subsequent succession.

Section 330 – Purchase of an Inheritance

(1) If the heir has sold the inheritance the purchaser shall take his/her place in the insolvency proceedings.

(2) The heir is entitled to apply for commencement of insolvency proceedings like a creditor of the deceased's estate with respect to a liability of the estate to be settled by the purchaser on the basis of the relationship between the heir and the purchaser. He/she shall also have the same right in respect of any other liability of the estate unless he/she has unlimited liability or an order subjecting the estate to administration is issued. Sections 323, 324 (1) No. 1 and section 326 shall apply to the heirs even after the sale of the inheritance.

(3) Subsections (1) and (2) shall apply with the necessary modifications in the event that a party sells an inheritance acquired by contract or has placed himself/herself under an obligation in another way to sell an inheritance which has devolved on him/her or which he/she has otherwise acquired.

Section 331 – Simultaneous Insolvency of the Heir

(1) In insolvency proceedings relating to the assets of the heir, sections 52, 190, 192, 198 and 237 (1) sentence 2 apply with the necessary modifications to creditors of the estate to whom the heir has unlimited liability if insolvency proceedings are also commenced in respect of the deceased's estate or if an order subjecting the estate to administration is issued.

(2) The same shall apply if one spouse is the heir and the deceased's estate forms part of the joint marital property which is managed by the other spouse alone, including in insolvency proceedings relating to the assets of the other spouse

and, if the joint marital property is jointly managed by the spouses, including in insolvency proceedings relating to the joint marital property and in insolvency proceedings relating to the other assets of the spouse who is not the heir. Sentence 1 applies with the necessary modifications to life partners.

Chapter Two – Insolvency Proceedings Relating to the Joint Marital Property of a Continued Community of Property

Section 332 – Reference to Insolvency Proceedings Relating to a Deceased's Estate

(1) In the case of continued community of property, sections 315 to 331 apply with the necessary modifications to insolvency proceedings relating to the joint marital property.

(2) Only those creditors whose claims already existed as obligations on the joint marital property when the continuation of community of property occurred are insolvency creditors.

(3) The descendants entitled to a share are not entitled to apply for commencement of proceedings. They shall, however, be heard by the insolvency court in relation to an application for commencement of insolvency proceedings.

Chapter Three – Insolvency Proceedings Relating to the Jointly Managed Joint Marital Property of a Community of Property

Section 333 – Right of Application. Grounds for Commencement

(1) Any creditor who can demand fulfilment of an obligation from the joint marital property is entitled to apply for commencement of insolvency proceedings relating to the joint marital property of a community of property that is jointly managed by the spouses.

(2) Each spouse is also entitled to submit an application. If the application is not submitted by both spouses it shall be admissible if the illiquidity of the joint marital property is demonstrated to the satisfaction of the court; the insolvency court shall hear the other spouse. If the application is submitted by both spouses, imminent illiquidity shall also constitute a ground for commencement of proceedings.

(3) Subsections (1) and (2) apply with the necessary modifications to life partners.

Section 334 – Personal Liability of the Spouses

(1) Where the fulfilment of obligations may be demanded from the joint marital property, the personal liability of the spouses or life partners for such obligations may be claimed only by the insolvency administrator or supervisor for the duration of the insolvency proceedings.

(2) In the case of an insolvency plan, section 227 (1) applies with the necessary modifications to the personal liability of the spouses or life partners.

Part Twelve – International Insolvency Law

Chapter One – General Provisions

Section 335 – Principle

Unless otherwise provided, the law applicable to insolvency proceedings and their effects shall be that of the state within the territory of which the proceedings have been commenced.

Section 336 – Contracts Relating to Immovable Property

The effects of insolvency proceedings on a contract relating to a right in rem in immovable property or a right to make use of immovable property shall be governed by the law of the state in which the immovable property is situated. In the case of an asset registered in the Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft, the applicable law shall be that of the state under the supervision of which the register is kept.

Section 337 – Employment Relationships

The effects of insolvency proceedings on an employment relationship shall be governed by the law applicable to the employment relationship under Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (Official Journal L 177 of 4.7.2008, p. 6).

Section 338 – Set-off

Commencement of insolvency proceedings shall not affect the right of set-off of an insolvency creditor if such set-off is permitted under the law applicable to the debtor's claim at the time of commencement of insolvency proceedings.

Section 339 – Avoidance in Insolvency

A legal act may be avoided if the requirements for the avoidance of legal acts in insolvency under the law of the state where the proceedings were commenced are met, unless the opposing party proves that the law of another state is applicable to the legal act and the legal act is not open to challenge in any way under this law.

Section 340 – Organised Markets. Repurchase Agreements

(1) The effects of the insolvency proceedings on the rights and obligations of a participant in an

organised market pursuant to section 2 (11) of the Securities Trading Act *[Wertpapierhandelsgesetz]* are governed by the law of the state which applies to this market.

(2) The effects of the insolvency proceedings on repurchase agreements within the meaning of section 340b of the Commercial Code *[Handelsgesetzbuch]*, and on contracts for novation and netting agreements, are governed by the law of the state which is applicable to these contracts.

(3) Subsection (1) applies with the necessary modifications to the participants in a system within the meaning of section 1 (16) of the Banking Act *[Kreditwesengesetz]*.

Section 341 – Exercise of Creditors' Rights

(1) Each creditor may file its claims in the main insolvency proceedings and in any secondary insolvency proceedings.

(2) The insolvency administrator is entitled to file a claim which has been filed in the proceedings for which he/she has been appointed in other insolvency proceedings relating to the debtor's assets. The creditor's right to decline or withdraw the filing of a claim is unaffected.

(3) The administrator is deemed to be authorised to exercise the voting right arising from a claim filed in the proceedings for which he/she has been appointed in other insolvency proceedings relating to the debtor's assets unless the creditor determines otherwise.

Section 342 – Return. Imputation

(1) If an insolvency creditor receives something through compulsory enforcement, through a payment by the debtor or in another way at the expense of the insolvency estate out of the assets that are not situated in the state where the insolvency proceedings were commenced, it shall return what it has obtained to the insolvency administrator. The provisions on the legal consequences of unjust enrichment apply with the necessary modifications.

(2) The insolvency creditor may retain what it has obtained in insolvency proceedings commenced in another state. However, it will be included in distributions only if the other creditors are put on an equal footing.

(3) On the request of the insolvency administrator the insolvency creditor shall provide information about what it has obtained.

Chapter Two – Foreign Insolvency Proceedings

Section 343 – Recognition

(1) The commencement of foreign insolvency proceedings shall be recognised. This shall not apply
1. if the courts of the state where the proceedings are commenced do not have jurisdiction under German law;
2. insofar as the effects of recognition would be manifestly incompatible with material principles of German law and, in particular, incompatible with basic rights.

(2) Subsection (1) applies with the necessary modifications to protective measures which are taken subsequent to the application for commencement of insolvency proceedings and to decisions issued in relation to the implementation or termination of recognised insolvency proceedings.

Section 344 – Protective Measures

(1) If a preliminary administrator has been appointed abroad prior to commencement of the main insolvency proceedings, on his/her application the competent insolvency court may order the measures pursuant to section 21 that appear necessary to secure the assets covered by domestic secondary insolvency proceedings.

(2) The preliminary administrator also has the right of immediate appeal against the order.

Section 345 – Publication

(1) If the requirements for recognition of the commencement of proceedings are fulfilled, on application by the foreign insolvency administrator the insolvency court shall publish the main content of the decision commencing insolvency proceedings and of the decision appointing the insolvency administrator domestically. Section 9 (1) and (2) and section 30 (1) apply with the necessary modifications. If the commencement of insolvency proceedings has been published, the termination of proceedings shall be published in the same manner.

(2) If the debtor has an establishment on domestic territory, publication takes place ex officio. The insolvency administrator or a permanent representative pursuant to section 13e (2) sentence 5 No. 3 of the Commercial Code *[Handelsgesetzbuch]* shall notify the insolvency court having jurisdiction in accordance with section 348 (1).

(3) The application is admissible only if it is credibly established that the factual requirements for recognition of the commencement of proceedings are present. An official copy of the order instructing publication shall be issued to the administrator. The foreign administrator has the

right of immediate appeal against the decision of the insolvency court refusing publication.

Section 346 – Land Register

(1) If the debtor's power of disposal is restricted as a result of the commencement of proceedings or the ordering of protective measures under section 343 (2) or section 344 (1), on application by the foreign insolvency administrator the insolvency court shall request the Land Registry to register the commencement of insolvency proceedings and the nature of the restriction of the debtor's power of disposal in the Land Register:
1. in respect of plots of land for which the debtor is registered as owner;
2. in respect of the debtor's registered rights in plots of land and in registered rights if there are concerns, based on the type of rights and in the circumstances, that the insolvency creditors would be disadvantaged in the absence of registration.

(2) An application under subsection (1) is admissible only if it is demonstrated to the satisfaction of the court that the factual requirements for recognition of the commencement of proceedings are present. The foreign administrator has the right of immediate appeal against the decision of the insolvency court. Section 32 (3) sentence 1 applies with the necessary modifications to the deletion of the entry.

(3) Subsections (1) and (2) apply with the necessary modifications to the registration of commencement of insolvency proceedings in the Register of Ships, Register of Ships under Construction and Register of Liens on Aircraft.

Section 347 – Proof of Appointment of Administrator. Notification of the Court

(1) The foreign insolvency administrator shall prove his/her appointment by means of a certified copy of the decision appointing him/her or by means of other certification issued by the competent agency. The insolvency court may require a translation which must be certified by a person authorised to do so in the state in which proceedings are commenced.

(2) The foreign insolvency administrator who has lodged an application pursuant to sections 344 to 346 shall inform the insolvency court about all significant changes to the foreign proceedings and about all other foreign insolvency proceedings known to him/her relating to the debtor's assets.

Section 348 – Competent Insolvency Court. Co-operation between Insolvency Courts

(1) The insolvency court within whose district the establishment is situated or, in the absence of an establishment, assets of the debtor are situated has exclusive jurisdiction for the decisions pursuant to sections 344 to 346. Section 3 (3) applies with the necessary modifications.

(2) If the requirements for recognition of foreign insolvency proceedings are fulfilled or if clarification is required as to whether the requirements are met, the insolvency court may co-operate with the foreign insolvency court and in particular pass on information of relevance to the foreign proceedings.

(3) In order for the proceedings to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to allocate the decisions pursuant to sections 344 to 346 for the districts of several insolvency courts to one of these by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

(4) The Federal States may agree that the decisions pursuant to sections 344 to 346 for several Federal States are allocated to the courts of one Federal State. If an application pursuant to sections 344 to 346 is received by a court without jurisdiction it shall forward the application without delay to the court with jurisdiction and inform the applicant accordingly.

Section 349 – Disposals of Immovable Assets

(1) If the debtor disposes of an asset in the insolvency estate that is registered domestically in the Land Register, Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft, or if the debtor disposes of a right in such an asset, sections 878, 892 and 893 of the Civil Code *[Bürgerliches Gesetzbuch]*, section 3 (3) and also sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction *[Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken]* and section 5 (3) and also sections 16 and 17 of the Act Governing Rights *[Gesetz über Rechte an Luftfahrzeugen]* in Aircraft shall apply.

(2) If a priority notice is registered domestically in the Land Register, Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft in order to secure a claim, section 106 remains unaffected.

Section 350 – Performance to the Debtor

Where performance is rendered to the debtor domestically in fulfilment of an obligation although the obligation had to be fulfilled for the benefit of the insolvency estate of the foreign insolvency proceedings, the party rendering performance shall be deemed to have discharged the obligation if it was unaware at the time of performance of the commencement of proceedings. If it rendered performance prior to the publication provided for in section 345, it shall be presumed to have been unaware of the commencement of proceedings.

Section 351 – Rights in Rem

(1) Commencement of the foreign insolvency proceedings shall not affect the right of a third party in an asset of the insolvency estate that was situated on domestic territory at the time of commencement of the foreign insolvency proceedings which grants entitlement to segregation or to separate satisfaction under domestic law.

(2) Notwithstanding section 336 sentence 2, the effects of foreign insolvency proceedings on the debtor's rights in immovable assets that are situated on domestic territory shall be determined in accordance with German law.

Section 352 – Interruption and Resumption of Court Proceedings

(1) Court proceedings pending at the time of commencement of foreign insolvency proceedings relating to the insolvency estate are interrupted by commencement of the foreign insolvency proceedings. The interruption shall continue until the court proceedings are taken up by a person who is authorised in accordance with the law of the state where the insolvency proceedings have been commenced to resume the court proceedings or until the insolvency proceedings are terminated.

(2) Subsection (1) applies with the necessary modifications where the power to manage and dispose of the debtor's assets has passed to a preliminary insolvency administrator through the ordering of protective measures pursuant to section 343 (2).

Section 353 – Enforceability of Foreign Decisions

(1) Compulsory enforcement based on a decision handed down in foreign insolvency proceedings may be pursued only if such compulsory enforcement is ruled admissible by a judgment for enforcement. Section 722 (2) and section 723 (1) of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.

(2) Subsection (1) applies with the necessary modifications to the protective measures specified in section 343 (2).

Chapter Three – Territorial Insolvency Proceedings Relating to Domestic Assets

Section 354 – Requirements for Territorial Insolvency Proceedings

(1) If a German court does not have jurisdiction to commence insolvency proceedings in respect of all the debtor's assets but the debtor has an establishment or other assets on domestic territory, on application by a creditor separate insolvency proceedings may be brought in respect of the debtor's domestic assets (territorial insolvency proceedings).

(2) If the debtor does not have an establishment on domestic territory, the application of a creditor for commencement of territorial insolvency proceedings is admissible only if this creditor has a particular interest in the commencement of proceedings, in particular if it is likely to be placed in a substantially worse position in foreign proceedings than in domestic proceedings. The particular interest must be demonstrated by the applicant to the satisfaction of the court.

(3) The insolvency court within whose district the establishment is situated or, in the absence of an establishment, assets of the debtor are situated has exclusive jurisdiction for the proceedings. Section 3 (3) applies with the necessary modifications.

Section 355 – Discharge of Residual Debt. Insolvency Plan

(1) The provisions on discharge of residual debt are not applicable in territorial insolvency proceedings.

(2) An insolvency plan providing for deferment, waiver or other restrictions on the creditors' rights may be confirmed in these proceedings only if all creditors affected have approved the plan.

Section 356 – Secondary Insolvency Proceedings

(1) Recognition of foreign main insolvency proceedings does not exclude secondary insolvency proceedings in respect of the domestic assets. Sections 357 and 358 are applicable in addition in respect of secondary insolvency proceedings.

(2) The foreign insolvency administrator is also entitled to apply for commencement of secondary insolvency proceedings.

(3) The proceedings shall be commenced without a ground for commencement having to be established.

Section 357 – Co-operation between Insolvency Administrators

(1) The insolvency administrator shall notify the foreign administrator without delay of all circumstances which may be of relevance for implementation of the foreign proceedings. He/she

shall give the foreign administrator the opportunity to submit proposals for the realisation or other use of the domestic assets.

(2) The foreign administrator is entitled to attend the creditors' meetings.

(3) An insolvency plan must be forwarded to the foreign administrator for comment. The foreign administrator is entitled to submit his/her own plan. Section 218 (1) sentences 2 and 3 apply with the necessary modifications.

Section 358 – Surplus on Final Distribution

If all claims can be satisfied in full by the final distribution in the secondary insolvency proceedings, the insolvency administrator shall hand over any surplus remaining to the foreign administrator of the main insolvency proceedings.

Part Thirteen – Entry into Force

Section 359 – Reference to the Introductory Act

This Act comes into force on the day appointed by the Introductory Act to the Insolvency Code *[Einführungsgesetz zur Insolvenzordnung]*.

Extract of the Reconstruction Assistance Act 2021

(Auszug aus dem Aufbauhilfegesetz 2021 (AufbhG 2021))
Reconstruction Assistance Act 2021 of 10 September 2021 (BGBl. [Federal Law Gazette] I 2021, p. 4149)

Article 7
Act to Temporarily Suspend the Obligation to Apply for Commencement of Insolvency Proceedings due to Heavy Rainfall and Flooding in July 2021

Section 1 – Suspension of the obligation to apply for commencement of insolvency proceedings

If the occurrence of illiquidity or overindebtedness is a consequence of the effects of the heavy rainfall or flooding in July 2021, the obligation to file an application for commencement of insolvency proceedings under section 15a of the Insolvency Code (Insolvenzordnung) and section 42 (2) of the Civil Code (*Bürgerliches Gesetzbuch*) is suspended as long as the parties obligated to apply for commencement of insolvency proceedings are engaged in serious negotiations regarding financing or recovery and as long as these present reasonable prospects of recovery. The obligation to file an application for commencement of insolvency proceedings is suspended until 31 January 2022 at the latest.

Section 2 – Power to issue statutory orders

The Federal Ministry of Justice and Consumer Protection is authorised to suspend the obligation to apply for commencement of insolvency proceedings until 30 April 2022 at the latest by statutory order without the consent of the Bundesrat if this appears necessary due to continuing demand for available public aid, ongoing negotiations regarding financing or recovery, or other circumstances.

Act to Temporarily Suspend the Obligation to Apply for Commencement of Insolvency Proceedings and to Limit Directors' Liability in the Case of Insolvency Caused by the Covid-19 Pandemic (*COVID-19-Insolvenzaussetzungsgesetz,* COVInsAG)

of 27 March 2020 (Federal Law Gazette [*BGBl.*] I 2020, p. 569), most recently amended by Article 1 of the Act of 15 February 2021 (Federal Law Gazette [*BGBl.*] I 2021, p. 237)

Section 1 – Suspension of the Obligation to Apply for Commencement of Insolvency Proceedings

(1) The obligation to file an application for commencement of insolvency proceedings under section 15a of the Insolvency Code (*Insolvenzordnung*, InsO) and under section 42 (2) of the Civil Code (*Bürgerliches Gesetzbuch*) is suspended until 30 September 2020. This does not apply where material insolvency is not a consequence of the spread of the SARS-CoV-2 virus (Covid-19 pandemic) or where there are no prospects of remedying existing illiquidity. If the debtor was not illiquid on 31 December 2019, it is assumed that material insolvency is a consequence of the Covid-19 pandemic and that there are prospects of remedying existing illiquidity. If the debtor is a natural person, section 290 (1) No. 4 InsO applies, with the proviso that a refusal of discharge of residual debt may not be based on a delay in the commencement of insolvency proceedings in the period from 1 March 2020 to 30 September 2020. Sentences 2 and 3 apply mutatis mutandis.

(2) From 1 October 2020 to 31 December 2020, only the obligation to file an application for commencement of insolvency proceedings due to overindebtedness is suspended in accordance with subsection (1).

(3) From 1 January 2021 to 30 April 2021, the obligation to file an application for commencement of insolvency proceedings is suspended in accordance with subsection (1) for the managers of debtors that, during the period from 1 November 2020 to 28 February 2021, submitted an application for financial assistance as part of government aid programmes to mitigate the consequences of the Covid-19 pandemic. If for legal or factual reasons it was not possible to submit such application during that period, sentence 1 also applies to debtors that are eligible to apply for assistance under the terms of the government aid programme. Sentences 1 and 2 do not apply if there is clearly no prospect of receiving the assistance or the assistance obtainable is insufficient to remedy material insolvency.

Commentary:
Subsection (3) was amended with effect from 1 February 2021 by the Act extending the suspension of the obligation to file for commencement of insolvency proceedings and protection against avoidance for deferrals due to the pandemic and extending the deadline for submission of tax returns for taxpayers using the services of a tax advisor and extending the interest-free grace period for the 2019 assessment period *(Gesetz zur Verlängerung der Aussetzung der Insolvenzantragspflicht und des Anfechtungsschutzes für pandemiebedingte Stundungen sowie zur Verlängerung der Steuererklärungsfrist in beratenen Fällen und der zinsfreien Karenzzeit für den Veranlagungszeitraum 2019)* (Federal Gazette I 2021, p. 237).

Section 2 – Consequences of Suspension

(1) (1) Where the obligation to file an application for commencement of insolvency proceedings has been suspended in accordance with section 1 (1),
1. payments that are made in the ordinary course of business, in particular those payments which serve to maintain or resume business operations or to implement a restructuring concept, are deemed to be compatible with the due care of a prudent manager within the meaning of section 64 sentence 2 of the Act Concerning Limited Liability Companies *(Gesetz betreffend die Gesellschaften mit beschränkter Haftung)*, section 92 (2) sentence 2 of the Stock Corporation Act *(Aktiengesetz)*, section 130a (1) sentence 2, also in conjunction with section 177a sentence 1, of the Commercial Code *(Handelsgesetzbuch)* and section 99 sentence 2 of the Cooperative Societies Act *(Genossenschaftsgesetz);*
2. the repayment on or before 30 September 2023 of a new loan that was granted during the suspension period, as well as the provision of collateral to secure such a loan during the suspension period, is deemed not prejudicial to creditors; this also applies to the repayment of shareholder loans and payments on claims arising out of legal acts corresponding in economic terms to such a loan, but not to the provision of collateral for them; section 39 (1) No. 5 and section 44a InsO do

not apply to insolvency proceedings in respect of the debtor's assets that were applied for on or before 30 September 2023;
3. loans granted and collateral provided during the suspension period will not be considered as contributing to delay in the filing of an application for commencement of insolvency proceedings in a manner that is contra bonos mores;
4. legal acts that provided security to or enabled the satisfaction of the other party which such party had a right to claim in that manner and at that time may not be avoided in subsequent insolvency proceedings; this does not apply where the other party was aware that the debtor's recovery and financing efforts were not suited to remedying the illiquidity that had occurred. The same applies to
a) performance in lieu of that owed or assumption of another liability in lieu of performance;
b) payments by a third party at the debtor's instruction;
c) the provision of collateral different from that which was originally agreed upon, unless it is of greater value;
d) the shortening of the time allowed for payment;
5. payments toward claims made on or before 31 March 2022 on the basis of deferments granted on or before 28 February 2021 are deemed not prejudicial to creditors provided that insolvency proceedings in respect of the debtor's assets had not been commenced by the end of 18 February 2021.

(2) Subsection (1) Nos. 2 to 5 also applies to enterprises that are not subject to an obligation to apply for commencement of insolvency proceedings and to debtors that are neither illiquid nor overindebted.

(3) Subsection (1) Nos. 2 and 3 applies to loans granted by the Kreditanstalt für Wiederaufbau and its financing partners or by other institutions as part of government aid programmes launched on account of the Covid-19 pandemic, even where the loan is granted or collateral is provided for it after the end of the suspension period and without a time limit for its repayment.

(4) To the extent that the obligation to file an application for commencement of insolvency proceedings is suspended in accordance with section 1 (2) and the debtor is not illiquid, subsection (1) is applicable. Subsection (2) applies with the necessary modifications. Subsection (3) remains unaffected.

(5) If the obligation to file an application for commencement of insolvency proceedings is suspended in accordance with section 1 (3), subsections (1) to (3) apply with the necessary modifications; however, subsection (1) No. 1 applies with the proviso that section 15b subsection (1) to (3) InsO replaces the provisions referred to therein.

Commentary:
Subsection (5) was amended with effect from 1 January 2021 and subsections (1) and (2) were amended with effect from 19 February 2021 by the Act extending the suspension of the obligation to file for commencement of insolvency proceedings and protection against avoidance for deferrals due to the pandemic and extending the deadline for submission of tax returns for taxpayers using the services of a tax advisor and extending the interest-free grace period for the 2019 assessment period *(Gesetz zur Verlängerung der Aussetzung der Insolvenzantragspflicht und des Anfechtungsschutzes für pandemiebedingte Stundungen sowie zur Verlängerung der Steuererklärungsfrist in beratenen Fällen und der zinsfreien Karenzzeit für den Veranlagungszeitraum 2019)* (Federal Gazette I 2021, p. 237).

Section 3 – Grounds for Commencement of Insolvency Proceedings Upon Application by Creditors

In the case of applications for commencement of insolvency proceedings that are filed by creditors in the period from 28 March 2020 to 28 June 2020, the commencement of insolvency proceedings is conditional on the grounds for insolvency having already existed on 1 March 2020.

Section 4 – Forecast Period for the Overindebtedness Test

In derogation from section 19 (2) sentence 1 InsO, in the period from 1 January 2021 to 31 December 2021, a period of four months must be applied in place of the period of twelve months if the overindebtedness of the debtor is attributable to the Covid-19 pandemic. This is presumed if
1. the debtor was not illiquid on 31 December 2019;
2. the debtor generated a profit from ordinary business activities in the last financial year concluded before 1 January 2020; and
3. revenue from ordinary business activities fell by more than 30 per cent in the 2020 calendar year in comparison with the previous year.

Section 5 – Application of Former Law

(1) Unless otherwise provided in the following subsections and section 6, sections 270 to 285 InsO in the version in force until 31 December 2020

continue to apply to self-administration proceedings applied for in the period from 1 January 2021 to 31 December 2021 if the illiquidity or overindebtedness of the debtor is attributable to the Covid-19 pandemic.

(2) Material insolvency is deemed attributable to the Covid-19 pandemic if the debtor submits a statement issued by a tax advisor, certified public accountant, lawyer or other comparably qualified person experienced in insolvency matters attesting that
1. the debtor was neither illiquid nor overindebted on 31 December 2019;
2. the debtor generated a profit from ordinary business activities in the last financial year concluded before 1 January 2020; and
3. revenue from ordinary business activities fell by more than 30 per cent in the 2020 calendar year in comparison with the previous year.
Sentence 1 applies mutatis mutandis if the requirements to be attested to pursuant to sentence 1 numbers 2 and 3 are not satisfied or not satisfied in full, but the statement attests that by reason of special factors relating to the debtor or the sector to which it belongs or due to other circumstances or conditions, it can nevertheless be assumed that the material insolvency is attributable to the Covid-19 pandemic.

(3) Material insolvency is also deemed attributable to the Covid-19 pandemic if the debtor, in its application for commencement of proceedings, demonstrates that it has no liabilities which had already fallen due on 31 December 2019 and had not yet been disputed on that date. The declaration regarding the accuracy and completeness of information provided pursuant to section 13 (1) sentence 7 InsO must also relate to the information provided pursuant to sentence 1.

(4) If the court learns that the illiquidity or overindebtedness of the debtor is not attributable to the effects of the Covid-19 pandemic, it can also for this reason
1. appoint a preliminary insolvency administrator instead of the preliminary supervisor;
2. rescind the order in accordance with section 270b (1) InsO in the version in force until 31 December 2020 before expiry of the time limit; or
3. rescind the self-administration order.

(5) If the court orders interim self-administration or self-administration, it can simultaneously order that disposals by the debtor require the approval of the preliminary supervisor or the supervisor.

(6) Prejudice to the creditors cannot be assumed solely because the debtor has taken no arrangements in order to ensure its ability to meet its obligations under insolvency law.

(7) If the court orders interim self-administration or self-administration, the Insolvency Professionals' Fee Regulation (*Insolvenzrechtliche Vergütungsverordnung*) in the version in force until 31 December 2020 applies. The foregoing also applies if the interim self-administration or self-administration is terminated.

Section 6 – Simplified Access to Protective Shield Proceedings

The illiquidity of a debtor does not preclude application of section 270b InsO in the version in force until 31 December 2020 in the case of an application for commencement of insolvency proceedings filed during the period from 1 January 2021 to 31 December 2021 if in the statement pursuant to section 270b (1) sentence 3 InsO in the version in force until 31 December 2020 it is also attested that
1. the debtor was not illiquid on 31 December 2019;
2. the debtor generated a profit from ordinary business activities in the last financial year concluded before 1 January 2020; and
3. revenue from ordinary business activities fell by more than 30 per cent in the 2020 calendar year in comparison with the previous year.
Sentence 1 applies mutatis mutandis if the requirements to be attested to pursuant to sentence 1 numbers 2 and 3 are not satisfied or not satisfied in full, but the statement attests that by reason of special factors relating to the debtor or the sector to which it belongs or due to other circumstances or conditions, it can nevertheless be assumed that the illiquidity is attributable to the Covid-19 pandemic. Section 5 (7) applies mutatis mutandis.

Section 7 – Ensuring Equal Treatment of Creditors in Relation to Support Measures Launched on Account of the Covid-19 Pandemic

The fact that claims are connected to payments granted by the government under government programmes launched in response to the Covid-19 pandemic is on its own not a suitable criterion for inclusion in the restructuring plan pursuant to section 8 of the Act on the Stabilisation and Restructuring Framework for Businesses (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*) or for differentiation of groups pursuant to section 9 of the Act on the Stabilisation and Restructuring Framework for Businesses or section 222 InsO. Payments granted by the government within the meaning of sentence 1 means all financial assistance, including the granting of loans, the provision of accessory or non-accessory guarantees or other assumption of default risk with regard to the claims of third parties, provided by public institutions, public corporations or special public entities and entities majority-owned by the Federal Government, Federal States or municipal authorities. If default risk is assumed as part of a payment granted by the government payment, the secured claim is to be regarded as a claim connected with payments granted by the government in accordance with sentence 1.

Extract of the Introductory Act to the Insolvency Code

(Auszug aus dem Einführungsgesetz zur Insolvenzordnung, EGInsO),
Introductory Act to the Insolvency Code of 5 October 1994 (BGBl. [Federal Law Gazette] I 1994, page 2911), most recently amended by Article 36 the Act of 10. August 2021 (BGBl. I 2021, p. 3436)

Article 102 – Implementation of Council Regulation (EC) No 1346/2000 on insolvency proceedings

Section 1 – Local Jurisdiction

(1) If, in insolvency proceedings, the German courts are assigned international jurisdiction pursuant to Article 3 (1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ EC L 160 page 1) where no domestic jurisdiction would be established under section 3 of the Insolvency Code, the insolvency court within whose district the centre of a debtor's main interests is situated shall have exclusive jurisdiction.

(2) If the German courts have jurisdiction pursuant to Article 3 (2) of Council Regulation (EC) No 1346/2000, the insolvency court within whose district the establishment belonging to the debtor is situated shall have exclusive jurisdiction. Section 3 (2) of the Insolvency Code applies with the necessary modifications.

(3) Without prejudice to the jurisdiction under subsections (1) and (2), each domestic insolvency court within whose district assets of the debtor are situated shall have jurisdiction for decisions or other measures under Council Regulation (EC) No 1346/2000. In order for the proceedings to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to allocate the decisions and measures pursuant to Council Regulation (EC) No 1346/2000 for the districts of several insolvency courts to one court by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

Section 2 – Reasons for the Order Commencing Proceedings

If there is reason to believe that assets of the debtor are situated in another Member State of the European Union, the order of the court commencing proceedings shall describe in brief the factual findings and legal considerations substantiating the jurisdiction of the German courts pursuant to Article 3 of Council Regulation (EC) No 1346/2000.

Section 3 – Avoiding Conflicts of Jurisdiction

(1) Where the court of another Member State of the European Union has commenced main insolvency proceedings, as long as these insolvency proceedings are pending an application lodged with a domestic insolvency court for commencement of such proceedings in respect of the assets belonging to the insolvency estate is inadmissible. Any proceedings commenced in contravention of sentence 1 may not be continued. The administrator of the foreign main insolvency proceedings is also authorised to appeal against the commencement of the national proceedings.

(2) Where the court of another Member State of the European Union has refused to commence insolvency proceedings on the basis that the German courts have jurisdiction pursuant to Article 3 (1) of Council Regulation (EC) No 1346/2000, a German insolvency court may not refuse to commence insolvency proceedings on the basis that the courts of the other Member State have jurisdiction.

Section 4 – Discontinuation of Insolvency Proceedings in Favour of the Courts of another Member State

(1) If the insolvency court is not permitted pursuant to section 3 (1) to continue insolvency proceedings already commenced, it shall discontinue the proceedings ex officio in favour of the courts of the other Member State of the European Union. The insolvency court shall hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor prior to discontinuing the proceedings. If the insolvency proceedings are discontinued, each insolvency creditor has the right of appeal.

(2) Effects of the insolvency proceedings which had already occurred prior to their discontinuation and which are not limited to the duration of these proceedings shall persist even if they conflict with effects of insolvency proceedings commenced in another Member State of the European Union that extend to domestic territory under Council Regulation (EC) No 1346/2000. This also applies to any legal acts carried out during the discontinued proceedings by or with the insolvency administrator in the exercise of his/her office.

(3) Prior to discontinuing the proceedings pursuant to subsection (1) the insolvency court shall notify

the court of the other Member State of the European Union where the proceedings are pending of the imminent discontinuation of the proceedings, specifying how commencement of the discontinued proceedings was announced, in which public records and registers the commencement of the proceedings was registered and who the insolvency administrator is. The discontinuation order shall name the court of the other Member State in favour of which the proceedings are being discontinued. An official copy of the discontinuation order shall be sent to this court. Section 215 (2) of the Insolvency Code is not applicable.

Section 5 – Publication

(1) The application for publication of the main content of the decisions pursuant to Article 21 (1) of Council Regulation (EC) No 1346/2000 shall be addressed to the court having jurisdiction in accordance with section 1. The court may require a translation which must be certified by a person authorised to do so in one of the Member States of the European Union. Section 9 (1) and (2) and section 30 (1) of the Insolvency Code apply with the necessary modifications.

(2) If the debtor possesses an establishment on domestic territory, publication pursuant to subsection (1) takes place ex officio. If the commencement of insolvency proceedings has been published, the termination of proceedings shall be published in the same manner.

Section 6 – Registration in Public Records and Registers

(1) The application for registration pursuant to Article 22 of Council Regulation (EC) No 1346/2000 shall be addressed to the court having jurisdiction in accordance with section 1. The court shall request the agency responsible for maintaining the register to make the entry if, under the law of the state in which the main insolvency proceedings were commenced, the commencement of proceedings is likewise registered. Section 32 (2) sentence 2 of the Insolvency Code shall not apply.

(2) The form and content of the entry shall be in conformity with German law. If the law of the state in which the proceedings are commenced provides for entries unknown to German law, the insolvency court shall select an entry that comes closest to the entry of the state in which proceedings are commenced.

(3) If the application under subsection (1) or under section 5 (1) is received by a court that does not have jurisdiction, it shall forward the application without delay to the court with jurisdiction and advise the applicant accordingly.

Section 7 – Appeal

An immediate appeal may be brought against the decision of the insolvency court pursuant to section 5 or section 6. Sections 574 to 577 of the Code of Civil Procedure *[Zivilprozessordnung]* apply with the necessary modifications.

Section 8 – Enforcement on the basis of the Decision on Commencement of Proceedings

(1) If, under the law of the state in which insolvency proceedings are commenced, the administrator in the main insolvency proceedings is authorised on the basis of the decision on commencement of proceedings to enforce the surrender of items which are in the custody of the debtor by way of compulsory enforcement, Article 25 (1) subparagraph 1 of Council Regulation (EC) No 1346/2000 shall apply to the declaration of enforceability on domestic territory. Sentence 1 shall apply with the necessary modifications to the realisation of assets of the insolvency estate by way of compulsory enforcement.

(2) Section 6 (3) applies with the necessary modifications.

Section 9 – Insolvency Plan

If an insolvency plan provides for deferral, waiver or other restrictions on the creditors' rights, it may be confirmed by the insolvency court only if all creditors affected have approved the plan.

Section 10 – Stay of Liquidation

If, at the request of the administrator in the main insolvency proceedings, the liquidation of an asset in which a right to separate satisfaction exists is stayed in domestic secondary insolvency proceedings pursuant to Article 33 of Council Regulation (EC) No 1346/2000, the creditor shall continue to be paid the interest due out of the insolvency estate.

Section 11 – Provision of Information for Creditors

Along with the order commencing proceedings, notice must be served on creditors who have their habitual residence, domicile or registered office in another Member State of the European Union informing them of the consequences of late submission of claims pursuant to section 177 of the Insolvency Code. Section 8 of the Insolvency Code applies with the necessary modifications.

Article 102a –Insolvency Administrators from Other Member States of the European Union

Nationals of another Member State of the European Union or of a state which is a contracting party to the Agreement on the European Economic

Area and persons who have a professional establishment in one of these states may undergo the procedure for inclusion on a preselection list of insolvency administrators maintained by the insolvency court through a single agency in accordance with the provisions of the Administrative Procedure Act *[Verwaltungsverfahrensgesetz]*. Applications for inclusion on a preselection list must be decided within a time limit of three months in such cases. Section 42a (2) sentences 2 to 4 of the Administrative Procedure Act apply with the necessary modifications.

Article 102b – Implementation of Regulation (EU) No 648/2012

Section 1 – Default provisions of central counterparties

(1) The commencement of insolvency proceedings shall not prevent
1. implementation of the measures required in accordance with Article 48 (2), (4) and (5) sentence 3 and (6) sentence 3 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 of 27.7.2012, p. 1) for administering, closing out and other liquidation of the proprietary positions and the clients' positions of the defaulting clearing member;
2. implementation of the measures required in accordance with Article 48 (4) to (6) of Regulation (EU) No 648/2012 for the transfer of clients' positions and
3. the use and return of clients' collateral required in accordance with Article 48 (7) of Regulation (EU) No 648/2012.

(2) Subsection (1) applies with the necessary modifications in respect of the ordering of protective measures pursuant to section 21 of the Insolvency Code.

Section 2 – Incontestability counterparties

The measures permitted under section 1 are not subject to avoidance in insolvency.

Article 102c – Implementation of Regulation (EU) 2015/848 on insolvency proceedings

Part 1 – General Provisions

Section 1 – Local Jurisdiction; Power to Issue Statutory Orders

(1) If international jurisdiction in an insolvency proceeding corresponds to the German courts pursuant to Article 3 (1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19; L 349, 21.12.2016, p. 6), last amended by Regulation (EU) 2017/353 (OJ L 57, 3.3.2017, p. 19), without a place of jurisdiction having been established pursuant to section 3 of the Insolvency Code, the insolvency court shall have sole local jurisdiction within whose district the centre of the debtor's main interests is situated.

(2) If the German courts have jurisdiction pursuant to Article 3 (2) of Regulation (EU) 2015/848, the insolvency court shall have sole local jurisdiction within whose district the debtor's establishment is situated. Section 3 (2) of the Insolvency Code shall apply with the necessary modifications.

(3) Notwithstanding the jurisdictions laid down in this Article, any insolvency court shall have sole local jurisdiction for decisions or other measures pursuant to Regulation (EU) 2015/848 within whose district the debtor's assets are situated. In order for the proceedings to be appropriately facilitated or processed more rapidly under Regulation (EU) 2015/848, the governments of the Federal States are authorised for the districts of several insolvency courts to allocate these proceedings to one of these by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

Section 2 – Avoidance of Conflicts over Jurisdiction

(1) If a court in another Member State of the European Union has commenced insolvency proceedings, for as long as these insolvency proceedings are pending any application made to a German court for commencement of such proceedings relating to the assets forming part of the insolvency estate shall be inadmissible. Proceedings that have commenced contrary to sentence 1 shall be continued as secondary insolvency proceedings in accordance with Articles 34 to 52 of Regulation (EU) 2015/848 if the German courts have jurisdiction pursuant to Article 3 (2) of Regulation (EU) 2015/848; if the prerequisites for continuation have not been met, the proceedings shall be discontinued.

(2) If a court in another Member State of the European Union has refused to commence insolvency proceedings because the German courts have jurisdiction pursuant to Article 3 (1) of Regulation (EU) 2015/848, a German insolvency court may not refuse to commence insolvency proceedings on the grounds that the courts of another Member State have jurisdiction.

Section 3 – Discontinuation of Insolvency Proceedings in favour of another Member State

(1) The insolvency court shall hear the insolvency administrator, the creditors' committee, if one has

been appointed, and the debtor prior to discontinuation of insolvency proceedings that have already commenced pursuant to section 2 (1) sentence 2. If the insolvency proceedings are discontinued, each insolvency creditor shall be entitled to appeal.

(2) Any effects of the insolvency proceedings which have already occurred prior to the discontinuation of the proceedings and which are not limited to the duration of the proceedings shall also remain in place if they counteract the effects of insolvency proceedings that have commenced in another Member State of the European Union where those effects extend to the Federal Republic of Germany pursuant to Regulation (EU) 2015/848. This also applies to legal acts undertaken during the discontinued proceedings by or towards the insolvency administrator in exercise of his/her office.

(3) Prior to discontinuation pursuant to section 2 (1) sentence 2, the insolvency court shall inform the court of the other Member State of the European Union in which the proceedings are pending and the insolvency administrator appointed in the other Member State of the imminent discontinuation. This notification should state how the commencement of the proceedings about to be discontinued was announced, in which public books and registers commencement was registered, and who the insolvency administrator is. The court of the other Member State in whose favour the proceedings are discontinued shall be named in the discontinuation order. This court shall be sent a copy of the discontinuation order. Section 215 (2) of the Insolvency Code shall not apply.

Section 4 – Appeal pursuant to Article 5 of Regulation (EU) 2015/848

Notwithstanding section 21 (1) sentence 2 and section 34 of the Insolvency Code, the debtor and any creditor shall have the right of immediate appeal against the decision regarding commencement of the main insolvency proceedings pursuant to Article 3 (1) of Regulation (EU) 2015/848 if the lack of international jurisdiction to commence main insolvency proceedings should be challenged pursuant to Article 5 (1) of Regulation (EU) 2015/848. Sections 574 to 577 of the Code of Civil Procedure shall apply with the necessary modifications; in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal shall be effective only when it becomes final and binding.

Section 5 – Additional Information in the Application for Commencement of Proceedings by the Debtor

If there are indications to suggest that the international jurisdiction of another Member State of the European Union could also be established for commencement of the main insolvency proceedings pursuant to Article 3 (1) of Regulation (EU) 2015/848, the application for commencement of proceedings filed by the debtor should also contain the following information:

1. the date since which the registered office, principal place of business or the habitual residence have existed at the place specified in the application;
2. facts showing that the debtor normally conducts the administration of his/her interests in the Federal Republic of Germany;
3. in what other Member States creditors or significant parts of the assets are situated or significant parts of the activity are conducted, and
4. whether an application to commence proceedings has already be filed or the main insolvency proceedings already commenced in another Member State.

Sentence 1 shall not apply to the applications to be made in consumer insolvency proceedings pursuant to section 305 (1) of the Insolvency Code.

Section 6 – Local Jurisdiction for Ancillary Actions

(1) If, as a consequence of the commencement of insolvency proceedings, jurisdiction for actions pursuant to Article 6 (1) of Regulation (EU) 2015/848 corresponds to the German courts without local jurisdiction resulting from any other provisions, the place of jurisdiction shall be determined by the place of the insolvency court.

(2) For actions pursuant to Article 6 (1) of Regulation (EU) 2015/848 which are related to an action in civil and commercial matters against the same defendant pursuant to Article 6 (2) of the Regulation, the court that has jurisdiction for the action in civil and commercial matters shall also have local jurisdiction.

Section 7 – Publication

(1) The application for publication pursuant to Article 28 (1) of Regulation (EU) 2015/848 shall be addressed to the court with jurisdiction pursuant to section 1 (2).

(2) The application for publication pursuant to Article 28 (2) of Regulation (EU) 2015/848 shall be addressed to the insolvency court within whose district the significant part of the debtor's assets is situated. If the debtor has no assets in the Federal Republic of Germany, the application may be made with any insolvency court.

(3) The court may request a translation of the application, which shall be certified by a person authorised to do so in one of the Member States of the European Union. Section 9 (1) and (2) and section 30 (1) of the Insolvency Code shall apply with the necessary modifications. If the commencement of

insolvency proceedings has been published, their conclusion shall also be published ex officio in the same way

(4) If the application pursuant to subsection (1) is sent to a court without jurisdiction, that court shall forward the application without delay to the court that does have jurisdiction and shall inform the applicant thereof.

Section 8 – Registration in Public Books and Registers

(1) The application for registration pursuant to Article 29 (1) of Regulation (EU) 2015/848 shall be addressed to the court with jurisdiction pursuant to section 1 (2). This application shall be linked to the application pursuant to Article 28 (1) of Regulation (EU) 2015/848. The court shall ask the office in charge of keeping the register to make the registration. Section 32 (2) sentence 2 of the Insolvency Code shall not apply.

(2) The application for registration pursuant to Article 29 (2) of Regulation (EU) 2015/848 shall be addressed to the court with jurisdiction pursuant to section 7 (2). This application shall be linked to the application pursuant to Article 28 (2) of Regulation (EU) 2015/848.

(3) The form and content of the registration shall be determined in accordance with German law. If the law of the Member State of the European Union in which the insolvency proceedings have commenced provides for registrations that are unknown under German law, the insolvency court shall choose a registration that most closely matches that of the Member State in which proceedings have commenced.

(4) Section 7 (4) shall apply with the necessary modifications.

Section 9 – Appeal against a Decision pursuant to Section 7 or Section 8

A decision by the insolvency court pursuant to section 7 or section 8 may be immediately appealed. Sections 574 to 577 of the Code of Civil Procedure shall apply with the necessary modifications; in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal shall be effective only when it becomes final and binding.

Section 10 – Enforcement of a Decision Commencing Proceedings

If the administrator of the main insolvency proceedings under the laws of the Member State of the European Union in which the insolvency proceedings have commenced is authorised, based on the decision regarding commencement of proceedings, to enforce the return of property in the debtor's custody by way of compulsory enforcement, the first subparagraph of Article 32 (1) of Regulation (EU) 2015/848 shall apply to the enforcement in the Federal Republic of Germany. Sentence 1 shall apply with the necessary modifications to the realisation of assets belonging to the insolvency estate by way of compulsory enforcement.

Part 2 – Secondary Insolvency Proceedings

Chapter 1 – Main Insolvency Proceedings in the Federal Republic of Germany

Section 11 – Prerequisites for Giving an Undertaking

(1) If an undertaking pursuant to Article 36 of Regulation (EU) 2015/848 is intended to be given in insolvency proceedings pending in the Federal Republic of Germany, the insolvency administrator shall first obtain the consent of the creditors' committee or the preliminary creditors' committee pursuant to section 21 (2) sentence 1, number 1a of the Insolvency Code where such a committee has been appointed.

(2) If the insolvency court has ordered self-administration, subsection (1) shall apply with the necessary modifications.

Section 12 – Publication of the Undertaking

The insolvency administrator shall arrange for the publication of the undertaking and also for the date and procedure for its approval. The undertaking shall be served by the insolvency administrator on the known local creditors in particular; section 8 (3) sentences 2 and 3 of the Insolvency Code shall apply with the necessary modifications.

Section 13 – Notification regarding the Intended Distribution

Section 12 sentence 2 shall apply with the necessary modifications to the notification pursuant to Article 36 (7) sentence 1 of Regulation (EU) 2015/848.

Section 14 – Liability of the Insolvency Administrator for an Undertaking

Section 92 of the Insolvency Code shall apply with the necessary modifications to the liability of the insolvency administrator pursuant to Article 36 (10) of Regulation (EU) 2015/848 in insolvency proceedings pending in the Federal Republic of Germany.

Chapter 2 – Main Insolvency Proceedings in another Member State of the European Union

Section 15 – Insolvency Plan

If an insolvency plan in secondary insolvency proceedings that have commenced in the Federal Republic of Germany provides for a deferment, waiver or other limitations on the rights of creditors, this plan may be confirmed by the insolvency court only if all affected creditors have consented to the insolvency plan. Sentence 1 shall not apply to plan provisions impinging on rights to separate satisfaction.

Section 16 – Stay of the Process of Realisation

If on receipt of an application pursuant to Article 46 of Regulation (EU) 2015/848 from the administrator in the main insolvency proceedings, the process of realisation of an asset in which there is a right to separate satisfaction is stayed in secondary insolvency proceedings in the Federal Republic of Germany, the interest owed shall be paid on an ongoing basis to the creditor out of the insolvency estate.

Section 17 – Voting on the Undertaking

(1) The administrator in the main insolvency proceedings shall conduct the vote on the undertaking pursuant to Article 36 of Regulation (EU) 2015/848. Sections 222, 243, 244 (1) and (2), 245 and 246 of the Insolvency Code shall apply with the necessary modifications.

(2) As part of the notification pursuant to Article 36 (5) sentence 4 of Regulation (EU) 2015/848, the administrator in the main insolvency proceedings shall inform the local creditors what means of distance communication are allowed in the vote and what groups were formed for the vote. The administrator shall also point out that when filing their claims these creditors should enclose documents which show that they are local creditors within the meaning of Article 2 number 11 of Regulation (EU) 2015/848

Section 18 – Voting Right for the Vote on the Undertaking

(1) The holder of a claim filed to participate in the vote on the undertaking shall be deemed entitled to vote subject to sentence 2 even if the administrator in the main insolvency proceedings or another local creditor disputes that the claim exists or that the claim of a local creditor is at issue. If the result of the vote depends on votes corresponding to disputed claims, the administrator or the local creditor disputing the claim may seek a decision about the voting right granted by the disputed claims or part thereof at the court with jurisdiction pursuant to section 1 (2). Section 77 (2) sentence 2 of the Insolvency Code shall apply with the necessary modifications. Sentences 1 and 2 shall also apply to claims subject to a condition precedent. Section 237 (1) sentence 2 of the Insolvency Code shall apply with the necessary modifications.

(2) The Federal Employment Agency *(Bundesagentur für Arbeit)* shall be deemed a local creditor pursuant to Article 36 (11) of Regulation (EU) 2015/848 during a procedure regarding an undertaking.

Section 19 – Information about the Result of the Vote

Section 12 sentence 2 shall apply with the necessary modifications to the information provided pursuant to Article 36 (5) sentence 4 of Regulation (EU) 2015/848.

Section 20 – Appeals against Decisions regarding Commencement of Secondary Insolvency Proceedings

(1) If the commencement of secondary insolvency proceedings is refused with reference to the undertaking pursuant to Article 38 (2) of Regulation (EU) 2015/848, the applicant shall have the right of immediate appeal. Sections 574 to 577 of the Code of Civil Procedure shall apply with the necessary modifications; in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal shall be effective only when it becomes final and binding.

(2) If secondary insolvency proceedings are commenced in the Federal Republic of Germany, an appeal pursuant to Article 39 of Regulation (EU) 2015/848 shall be treated as an immediate appeal. Sections 574 to 577 of the Code of Civil Procedure shall apply with the necessary modifications; in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal shall be effective only when it becomes final and binding.

Chapter 3 – Measures to Comply with an Undertaking

Section 21 – Appeals and Applications pursuant to Article 36 of Regulation (EU) 2015/848

(1) The insolvency court at which the main insolvency proceedings are pending shall have exclusive local jurisdiction for decisions regarding applications pursuant to Article 36 (7) sentence 2 or (8) of Regulation (EU) 2015/848. The application pursuant to Article 36 (7) sentence 2 of Regulation (EU) 2015/848 must be filed with the insolvency court within a statutory time limit of two weeks. The statutory time limit shall commence when the notification about the intended distribution is served.

(2) The court pursuant to section 1 (2) shall have jurisdiction for the decision about applications pursuant to Article 36 (9) of Regulation (EU) 2015/848.

(3) Notwithstanding section 58 (2) sentence 3 of the Insolvency Code, the court shall rule by means of a decision that cannot be challenged.

Part 3 – Insolvency Proceedings relating to the Assets of the Members of a Group of Companies

Section 22 – Limited Applicability of section 56b and sections 269a to 269i of the Insolvency Code

(1) If companies belonging to a group of companies within the meaning of section 3e of the Insolvency Code also belong to a group of companies within the meaning of Article 2 number 13 of Regulation (EU) 2015/848:
1. section 269a of the Insolvency Code shall not apply where Article 56 of Regulation (EU) 2015/848 applies;
2. sections 56b (1) and 269b of the Insolvency Code shall not apply where Article 57 of Regulation (EU) 2015/848 applies.

(2) If companies belonging to a group of companies within the meaning of section 3e of the Insolvency Code also belong to a group of companies within the meaning of Article 2 number 13 of Regulation (EU) 2015/848, the initiation of coordination proceedings pursuant to sections 269d to 269i of the Insolvency Code shall be excluded if the implementation of coordination proceedings would restrict the validity of group coordination proceedings pursuant to Articles 61 to 77 of Regulation (EU) 2015/848.

Section 23 – Participation of Creditors

(1) If the administrator intends to apply for the initiation of group coordination proceedings pursuant to Article 61 (1) of Regulation (EU) 2015/848 and if the implementation of such proceedings is particularly important for the insolvency proceedings, the administrator shall obtain consent pursuant to sections 160 and 161 of the Insolvency Code. The documents specified in Article 61 (3) of Regulation (EU) 2015/848 shall be presented to the creditors' committee.

(2) Subsection (1) shall apply with the necessary modifications:
1. to the declaration of an objection pursuant to Article 64 (1) (a) of Regulation (EU) 2015/848 against the inclusion of the proceedings within group coordination proceedings;
2. to the application pursuant to Article 69 (1) of Regulation (EU) 2015/848 for the inclusion of the proceedings within group coordination proceedings which have already commenced, and
3. to the declaration of consent to such an application by an administrator appointed in proceedings relating to the assets of another company belonging to the group (Article 69 (2) (b) of Regulation (EU) 2015/848).

Section 24 – Stay of Realisation

Section 16 shall apply with the necessary modifications to a stay:
1. of the realisation upon application by the administrator of another company belonging to the group pursuant to Article 60 (1) (b) of Regulation (EU) 2015/848, and
2. of proceedings upon application by the coordinator pursuant to Article 72 (2) (e) of Regulation (EU) 2015/848.

Section 25 – Appeal against a Decision pursuant to Article 69 (2) of Regulation (EU) 2015/848

The reminder as a legal remedy shall be admissible against a decision of the coordinator pursuant to Article 69 (2) of Regulation (EU) 2015/848. Section 573 of the Code of Civil Procedure shall apply with the necessary modifications.

Section 26 – Appeal against the Decision on Costs pursuant to Article 77 (4) of Regulation (EU) 2015/848

Immediate appeal is admissible against the decision on costs in group coordination proceedings pursuant to Article 77 (4) of Regulation (EU) 2015/848. Sections 574 to 577 of the Code of Civil Procedure shall apply with the necessary modifications; in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal shall be effective only when it becomes final and binding.

Article 103 – Application of Previous Law

The previously applicable statutory provisions shall continue to apply to bankruptcy, composition and collective execution proceedings applied for prior to 1 January 1999 and to their effects. The same applies to follow-up bankruptcy proceedings in which the preceding application for composition proceedings was filed prior to 1 January 1999.

Article 103a – Transitional Provision

The statutory provisions which applied up to 1 December 2001 shall continue to apply to insolvency proceedings commenced prior to that date.

Article 103b – Transitional Provision relating to the Act to Implement Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements and to amend the Mortgage Bank Act [*Hypothekenbankgesetz*] and other Acts

The statutory provisions which applied up to 9 April 2004 shall continue to apply to insolvency proceedings commenced prior to that date.

Article 103c – Transitional Provision Relating to the Act to Simplify Insolvency Proceedings [*Gesetz zur Vereinfachung des Insolvenzverfahrens*]

(1) With the exception of sections 8 and 9 of the Insolvency Code and the Regulation on Publication on the Internet in Insolvency Proceedings *[Verordnung zu öffentlichen Bekanntmachungen in Insolvenzverfahren im Internet],* the previously applicable statutory provisions shall continue to apply to insolvency proceedings commenced before the entry into force on 1 July 2007 of the Act to Simplify Insolvency Proceedings of 13 April 2007 (Federal Law Gazette I, page 509). Without prejudice to subsection (2), all publications to be undertaken by the court in such insolvency proceedings shall be made only in accordance with section 9 of the Insolvency Code. Section 188 sentence 3 of the Insolvency Code shall also apply to insolvency proceedings commenced prior to the entry into force on 18 December 2007 of the Act Revising the Law on Legal Advice *[Gesetz zur Neuregelung des Rechtsberatungsrechts]* of 12 December 2007 (Federal Law Gazette I, page 2840).

(2) Up to 31 December 2008, in addition to electronic publication in accordance with section 9 (1) sentence 1 of the Insolvency Code, publication may also be made in a periodical published in the locality where the debtor resides or where the registered office of the debtor's business is located; publication may be made in extract form. Only publication on the internet in accordance with section 9 (1) sentence 1 of the Insolvency Code shall produce the legal effects of publication.

Article 103d – Transitional Provision Relating to the Act to Modernise the Law Governing Private Limited Companies and to Combat Abuses [*Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen*]

The previously applicable statutory provisions shall continue to apply to insolvency proceedings commenced before the entry into force on 1 November 2008 of the Act of 23 October 2008 (Federal Law Gazette I, page 2026). In relation to insolvency proceedings commenced after 1 November 2008, the provisions of the Insolvency Code applicable up to 1 November 2008 on the avoidance of legal acts shall apply to legal acts undertaken prior to that date insofar as they escaped avoidance or were subject to avoidance to a lesser extent under the previous law.

Article 103e – Transitional Provision Relating to the Budget Supplement Act [*Haushaltsbegleitgesetz*] 2011

The statutory provisions which applied up to 1 January 2011 shall continue to apply to insolvency proceedings in respect of which an application for commencement of proceedings was lodged prior to that date.

Article 103f – Transitional Provision Relating to the Act Amending Section 522 of the Code of Civil Procedure

The version of the Insolvency Code applicable up to 27 October 2011 shall continue to apply to decisions regarding the right of immediate appeal pursuant to section 6 of the Insolvency Code in relation to which the time limit specified in section 575 of the Code of Civil Procedure *[Zivilprozessordnung]* has not yet expired on 27 October 2011. Sentence 1 applies with the necessary modifications to decisions regarding the right of immediate appeal pursuant to Article 102 section 7 sentence 1 of the Introductory Act to the Insolvency Code *[Einführungsgesetz zur Insolvenzordnung].*

Article 103g – Transitional Provision relating to the Act for Further Facilitation of the Reorganisation of Companies [*Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen*]

The statutory provisions which applied up to 1 March 2012 shall continue to apply to insolvency proceedings in respect of which an application for commencement of proceedings was lodged prior to that date. Section 18 (1) No 2 of the Act on Senior Judicial Officers *[Rechtspflegergesetz],* as amended with effect from 1 January 2013, is applicable only to insolvency proceedings applied for with effect from 1 January 2013.

Article 103h – Transitional Provision Relating to the Act to Shorten Residual Debt Discharge Proceedings and to Strengthen Creditors' Rights

Subject to sentences 2 and 3, the previously applicable statutory provisions shall continue to apply to insolvency proceedings applied for prior to 1 July 2014. Sections 217 to 269 of the Insolvency Code are also applicable to insolvency proceedings that have been applied for prior to 1 July 2014 under the version of sections 304 to 314 of the Insolvency Code applicable prior to this date. Section 63 (3) and section 65 of the Insolvency Code, as amended with effect from 19 July 2013, are applicable to insolvency proceedings that have been applied for with effect from 19 July 2013.

Article 103i – Transitional Provision Relating to the Accounting Directive Implementation Act

Section 22a (1) of the Insolvency Code, as amended by the Accounting Directive Implementation Act of 17 July 2015 (Federal Law Gazette I p. 1245) will apply to proceedings commenced on the basis of applications brought after 31 December 2015.

Article 103j – Transitional Provision regarding the Act on the Improvement of Legal Certainty regarding Avoidance in Insolvency under the Insolvency Code and the Creditors' Avoidance of Transfers Act [*Gesetz zur Verbesserung der Rechtssicherheit bei Anfechtungen nach der Insolvenzordnung und nach dem Anfechtungsgesetz*]

(1) In respect of insolvency proceedings commenced prior to 5 April 2017, the provisions in force until then shall continue to apply subject to subsection (2).

(2) Claims to interest or the surrender of use that arise during avoidance in insolvency prior to 5 April 2017 shall be governed by the provisions in force until then. For the period starting from 5 April 2017, section 143 (1) sentence 3 of the Insolvency Code in version amended as of 5 April 2017 shall apply to these claims.

Article 103k – Transitional Provision Relating to Article 2 of the Act Further Shortening Residual Debt Discharge Proceedings and Amending Pandemic-Related Provisions of Company, Cooperative, Association and Foundation Law and the Law on Tenancies [*Gesetz zur weiteren Verkürzung des Restschuldbefreiungsverfahrens und zur Anpassung pandemiebedingter Vorschriften im Gesellschafts-, Genossenschafts-, Vereins- und Stiftungsrecht sowie im Miet- und Pachtrecht*]

(1) In respect of insolvency proceedings applied for prior to 1 October 2020, the provisions in force until then shall continue to apply, subject to subsection (2).

(2) In respect of insolvency proceedings applied for during the period from 17 December 2019 up to and including 30 September 2020, the assignment period within the meaning of section 287 (2) of the Insolvency Code shall for each full month which elapsed between 16 July 2019 and the lodging of the application for commencement of insolvency proceedings, be shortened by the same period. Accordingly, the length of the assignment period is as follows:

Date application for commencement of insolvency proceedings was lodged:	Assignment period:
between 17 December 2019 and 16 January 2020	five years and seven months
between 17 January 2020 and 16 February 2020	five years and six months
between 17 February 2020 and 16 March 2020	five years and five months
between 17 March 2020 and 16 April 2020	five years and four months
between 17 April 2020 and 16 May 2020	five years and three months
between 17 May 2020 and 16 June 2020	five years and two months
between 17 June 2020 and 16 July 2020	five years and one month
between 17 July 2020 and 16 August 2020	five years
between 17 August 2020 and 16 September 2020	four years and eleven months
between 17 September 2020 and 30 September 2020	four years and ten months

In proceedings in accordance with sentence 1, any other assignment period specified in the declaration of assignment is irrelevant in this regard.

(3) If the debtor was last granted discharge of residual debt under the provisions in force up to and including 30 September 2020, section 287a (2) sentence 1 number 1 of the Insolvency Code in the version in force up to and including 30 September 2020 shall continue to apply.

(4) If an application for commencement of consumer insolvency proceedings is filed between 31 December 2020 and 30 June 2021, the certificate to be submitted by the debtor satisfies the requirements specified in section 305 (1) number 1 of the Insolvency Code if it states that an unsuccessful attempt was made to reach an out-of-court debt settlement agreement with the creditors on the basis of a plan within the last twelve months prior to the application for commencement of insolvency proceedings.

Article 103l – Transitional Provision Relating to Article 6 of the Act Further Shortening Residual Debt Discharge Proceedings and Amending Pandemic-Related Provisions of Company, Cooperative, Association and Foundation Law and the Law on Tenancies [*Gesetz zur weiteren Verkürzung des Restschuldbefreiungsverfahrens und zur*

***Anpassung pandemiebedingter Vorschriften im Gesellschafts-, Genossenschafts-, Vereins- und Stiftungsrecht sowie im Miet- und Pachtrecht*]**

In respect of insolvency proceedings applied for prior to 31 December 2020, the provisions in force until then shall continue to apply.

Article 103m – Transitional Provision Relating to the Act on the Advancement of Restructuring and Insolvency Law [*Sanierungs- und Insolvenzrechtsfortentwicklungsgesetz*]

In respect of insolvency proceedings applied for prior to 1 January 2021, the provisions in force until then shall continue to apply.Section 15b of the Insolvency Code as amended by the Act on the Advancement of Restructuring and Insolvency Law of 22 December 2020 (Federal Gazette I, page 3256) shall apply to payments made after 31 December 2020. The statutory provisions in force until 31 December 2020 shall continue to apply to payments made before 1 January 2021.

Commentary:
Sentences 2 and 3 were inserted with effect from 18 August 2021 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Gazette I 2021, p. 3436).

Article 104 – Application of the New Law

In insolvency proceedings applied for after 31 December 1998, the Insolvency Code and this Act shall also apply in respect of legal relationships and rights created prior to 1 January 1999.

Article 105 – Financial Futures Transactions

(1) If a specific date or a specific period of time was agreed for financial services with a market or exchange price and the date or expiry of the period occurs only after the commencement of bankruptcy proceedings, performance of the contract cannot be claimed; only a claim for non-performance can be asserted. Financial services include, in particular, the following:
1. the delivery of precious metals;
2. the delivery of securities or similar rights, provided the acquisition of a participating interest in a company is not intended to bring about a durable link to this company;
3. cash payments to be made in foreign currency or in a unit of account;
4. cash payments, the amount of which is determined directly or indirectly by means of the exchange rate of a foreign currency or unit of account, the interest rate on claims or the price of other goods or services;
5. options and other rights to deliveries or cash payments within the meaning of numbers 1 to 4.
If transactions for financial services are combined in a master agreement in which agreement is reached that it can only be terminated in its entirety in the event of breaches of contract, all these individual transactions shall be regarded as a single reciprocal contract.

(2) The claim for non-performance is based on the difference between the agreed price and the market or exchange price applicable at the place of performance for a contract with the agreed fulfilment date on the second business day after commencement of bankruptcy proceedings. The other party may assert such a claim only as a creditor in bankruptcy.

(3) The provisions stipulated in subsections (1) and (2) in the event of the commencement of bankruptcy proceedings apply with the necessary modifications in the event of the commencement of composition or collective enforcement proceedings.

Article 105a – Transitional Provision regarding the Act amending the Insolvency Code and the Introductory Act to the Code of Civil Procedure [*Gesetz zur Änderung der Insolvenzordnung und zur Änderung des Gesetzes, betreffend die Einführung der Zivilprozessordnung*]

(1) In respect of insolvency proceedings applied for prior to 10 June 2016, section 104 of the Insolvency Code shall apply in the version in force until that time.

(2) In respect of insolvency proceedings applied for prior to 29 December 2016, section 104 of the Insolvency Code shall apply in the version in force until that time.

Article 106 – Avoidance in Insolvency

The provisions of the Insolvency Code on the avoidance of legal acts are applicable to legal acts undertaken prior to 1 January 1999 only insofar as they were not excluded from avoidance or subject to avoidance to a lesser extent under the previous law.

Article 107 – Evaluation Provision Relating to the Act to Shorten Residual Debt Discharge Proceedings and to Strengthen Creditors' Rights

(1) The Federal Government shall report to the *Deutscher Bundestag* by 30 June 2018 as to the number of cases in which discharge of residual debt could be granted after three years. The report must also contain information on the level of the satisfaction quota that was achieved in the insolvency and residual debt discharge proceedings.

(2) If the need for legislative measures emerges from the report, the Federal Government shall propose such measures.

Article 107a – Evaluation Provision Relating to the Act Further Shortening Residual Debt Discharge Proceedings and Amending Pandemic-Related Provisions of Company, Cooperative, Association and Foundation Law and the Law on Tenancies [*Gesetz zur weiteren Verkürzung des Restschuldbefreiungsverfahrens und zur Anpassung pandemiebedingter Vorschriften im Gesellschafts-, Genossenschafts-, Vereins- und Stiftungsrecht sowie im Miet- und Pachtrecht*]

(1) The Federal Government shall report to the Deutscher Bundestag by 30 June 2024 on the effects of the shortening of residual debt proceedings on the behaviour of consumers with regard to applications, payments and finances. The report must also contain information on any obstacles to a fresh financial start following granting of discharge of residual debt resulting from the existing ability of credit agencies to store insolvency-related information.

(2) If the need for legislative measures emerges form the report, the Federal Government shall propose such measures.

Article 108 – Continuation of the Restriction on Enforcement

(1) In relation to compulsory enforcement against a debtor in respect of whose assets collective enforcement proceedings have been implemented, the restriction on enforcement contained in section 18 (2) sentence 3 of the Collective Enforcement Act *[Gesamtvollstreckungsordnung]* must be observed also after 31 December 1998.

(2) If insolvency proceedings are commenced in accordance with the provisions of the Insolvency Code in respect of the assets of such a debtor, the claims which are subject to the restriction on enforcement shall be settled in subordination to the claims specified in section 39 (1) of the Insolvency Code.

Article 109 – Bonds

Insofar as holders of bonds issued prior to 1 January 1963 by credit institutions other than mortgage banks have a preferential right to satisfaction from the credit institution's mortgages, charges on land or loans in accordance with the provisions of Federal State Law in conjunction with section 17 (1) of the Introductory Act to the Bankruptcy Code *[Einführungsgesetz zur Konkursordnung]*, this preferential right shall also be taken into consideration in future insolvency proceedings.

Article 110 – Entry into Force

(1) Unless otherwise provided, the Insolvency Code and this Act shall enter into force on 1 January 1999.

(2) Section 2 (2) and section 7 (3) of the Insolvency Code and also the power of the Federal States specified in section 305 (1) No. 1 of the Insolvency Code shall come into force on the day after promulgation. The same shall apply in respect of section 65 of the Insolvency Code and in respect of section 21 (2) No. 1, section 73 (2), section 274 (1), section 293 (2) and section 313 of the Insolvency Code, insofar as they declare section 65 of the Insolvency Code to be accordingly applicable.

(3) Insofar as Article 2 No. 9 of this Act orders the repeal of section 2 (1) sentence 2 of the Act on the Dissolution and Deregistration of Companies and Cooperative Societies *[Gesetz über die Auflösung und Löschung von Gesellschaften und Genossenschaften]*, Article 22, Article 24 No. 2, Article 32 No. 3, Article 48 No. 4, Article 54 No. 4 and Article 85 Nos 1 and 2e, Article 87 No. 8d and Article 105 of this Act shall enter into force on the day after promulgation.

Act on the Stabilisation and Restructuring Framework for Businesses (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*, StaRUG)

as of 22. December 2020 (*BGBl*. I 2020, p. 3256), most recently amended by Article 38 of the Act of 10 August 2021 (*BGBl*. I 2021, p. 3436)

Contents

Part 1 – Early Detection and Management of Crises

Section 1 – Early Detection of Crises and Management of Crises in the Case of Legal Entities and Companies without Legal Personality

(1) The members of the body of a legal entity appointed as the management (managers) shall continuously keep track of developments that may jeopardise the continued existence of the legal entity. If they identify such developments, they shall take appropriate counter-measures and report without delay to the bodies appointed to supervise the management board (supervisory bodies). If the measures to be taken affect the responsibilities of other bodies, the managers shall promptly solicit their involvement.

(2) In the case of companies without legal personality within the meaning of section 15a (1) sentence 3 and (2) of the Insolvency Code [*Insolvenzordnung*], subsection (1) applies with the necessary modifications to the managers of the partners appointed as the management.

(3) More extensive obligations that result from other laws remain unaffected.

Commentary:

In subsection (2), the words "companies without legal personality" will be replaced with the words "partnerships with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Part 2 – Stabilisation and Restructuring Framework

Division 1 – Restructuring Plan

Chapter 1 – Modification of Legal Relationships

Section 2 – Legal Relationships Capable of Being Modified

(1) The following may be modified on the basis of a restructuring plan:

1. claims that are established against a person (debtor) able to be restructured (restructuring claims); and
2. rights in or to assets of the debtor that in the event of commencement of insolvency proceedings would entitle the creditor to separate satisfaction, unless such rights have to do with financial collateral within the meaning of section 1 (17) of the Banking Act [*Kreditwesengesetz*] or with collateral that was provided to the operator of a system pursuant to section 1 (16) of the Banking Act for the purpose of securing its claims arising from the system or to the central bank of a Member State of the European Union or to the European Central Bank (entitlements to separate satisfaction).

(2) If restructuring claims or entitlements to separate satisfaction are based on a multilateral legal relationship between the debtor and several creditors, the individual provisions in that legal relationship are also capable of being modified by the restructuring plan. Sentence 1 also applies in relation to the terms that are contained in debt securities within the meaning of section 2 (1) number 3 of the Securities Trading Act [*Wertpapierhandelsgesetz*] and in contracts that were concluded with multiple creditors under the same terms. If restructuring claims or entitlements to separate satisfaction are based on different legal relationships, and if the holders of the claims or entitlements have entered into agreements amongst themselves and with the debtor concerning the enforcement of the claims or entitlements relating to the debtor and concerning the relative ranking of the proceeds generated from enforcement, the terms of that agreement are also capable of being modified by the plan.

(3) If the debtor is a legal entity or a company without legal personality, the share or membership rights of the parties holding a participating interest in the debtor may also be modified by the restructuring plan, other provisions that are admissible under company law may be made and share or membership rights may be transferred.

(4) The restructuring plan may also modify the rights of holders of restructuring claims to which they are entitled because an affiliated enterprise within the meaning of section 15 of the Stock Corporation Act [*Aktiengesetz*] assumed liability as surety or co-debtor or on some other basis, as well as to assets of that business (intra-group third-party collateral); the alteration is to be compensated with appropriate damages. Sentence 1 sub-clause 2 applies with the necessary modifications to a limitation of the personal liability of a general partner of a debtor constituted as a company without legal personality.

(5) In relation to subsections (1) to (4), the decisive factor is the legal relationships at the time when the plan offer is made (section 17) and, in the case of a vote in court-supervised plan voting proceedings (section 45), those at the time the application is lodged. If the debtor had previously obtained a stabilisation order (section 49), the

time of the initial order takes the place of the plan offer or the application.

Commentary:
In subsection (3) and subsection (4) sentence 2, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 3 – Contingent and Unmatured Restructuring Claims; Claims arising under Reciprocal Contracts

(1) Restructuring claims are capable of being modified even if they are contingent or have not matured.

(2) Restructuring claims arising under reciprocal contracts are capable of being modified only to the extent that the performance owed by the other party has already been provided.

Section 4 – Excluded Legal Relationships

The following claims are not capable of being modified by a restructuring plan:
1. claims of employees arising under or in connection with the employment relationship, including rights arising under commitments associated with occupational pension schemes;
2. claims based on the commission of an intentional tort; and
3. claims under section 39 (1) number 3 of the Insolvency Code.

If the debtor is a natural person, this also applies in relation to claims and entitlements to separate satisfaction that are unrelated to his/her entrepreneurial activity.

Chapter 2 – Requirements for the Restructuring Plan

Section 5 – Structure of the Restructuring Plan

The restructuring plan consists of a declaratory part and a constructive part. It is to contain, at a minimum, the information required pursuant to the annex to this Act. The restructuring plan is to be accompanied by the attachments required pursuant to sections 14 and 15.

Section 6 – Declaratory Part

(1) The declaratory part is to describe the basis and effects of the restructuring plan. The declaratory part is to contain all information that is relevant for the decision of the parties affected by the plan on approval of the plan and for its confirmation by the court, including the causes of the crisis and the measures to be taken to overcome it. If provision is made for restructuring measures that are not able to be or are not intended to be implemented by means of the constructive part of the plan, they are to be highlighted separately in the declaratory part.

(2) The declaratory part is to include, in particular, a comparative analysis showing the effects of the restructuring plan on the prospects for satisfaction of the parties affected by the plan. If the plan provides for continued operation of the business, it is to be assumed that the business will continue to be operated when ascertaining the prospects for satisfaction without a plan. The foregoing does not apply if a sale of the business or its continuation in some other manner has no prospect of success.

(3) If the restructuring plan provides for altering the rights of creditors arising under intra-group third-party collateral (section 2 (4)), the declaratory part is also to include the relationships of the affiliated enterprise that granted the collateral and the effects of the plan on that enterprise.

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Section 7 – Constructive Part

(1) The constructive part of the restructuring plan is to specify how the plan intends to modify the legal status of the holders of restructuring claims, entitlements to separate satisfaction, rights arising from intra-group third-party collateral, and share or membership rights (parties affected by the plan).

(2) To the extent that restructuring claims or entitlements to separate satisfaction are to be modified, the constructive part is to specify the fraction by which they are to be reduced, the period of time for which they are to be deferred, how they are to be secured, and any other provisions to which they are to be subject. Sentence 1 applies with the necessary modifications to the modification of rights arising from intra-group third-party collateral (section 2 (4)).

(3) To the extent that ancillary contractual provisions or agreements are to be modified pursuant to section 2 (2), the constructive part must specify how these are to be modified.

(4) Restructuring claims may also be converted into share or membership rights in the debtor. Conversion against the wishes of the creditor concerned is excluded. The plan may, in particular, provide for a reduction or an increase in the registered capital, the provision of in-kind contributions, the exclusion of subscription rights or the payment of financial settlements to departing persons who hold a participating interest in the debtor. The plan may provide that share or membership rights

are to be transferred. In addition, any provision may be made that is admissible under company law. Section 225a (4) and (5) of the Insolvency Code applies with the necessary modifications.

Section 8 – Selection of the Parties Affected by the Plan

The selection of the parties affected by the plan is to be made in accordance with appropriate criteria, which are to be indicated and explained in the declaratory part of the plan. The selection is appropriate if

1. it is likely that the claims that are not included would also be satisfied in full in insolvency proceedings;
2. the differentiation set down in the selection appears reasonable in terms of the nature of the debtor's economic difficulties that are to be overcome and in terms of the circumstances, particularly if only financial liabilities and the collateral provided to secure them are to be modified or if the claims of minor creditors, in particular consumers and micro, small and medium-sized enterprises, remain unaffected; or
3. all claims are included, with the exception of the claims specified in section 4.

Section 9 – Classification of the Parties Affected by the Plan into Groups

(1) In determining the rights of the parties affected by the plan in the restructuring plan, insofar as it affects parties with differing legal status, groups are to be formed. A distinction is to be made between
1. the holders of entitlements to separate satisfaction;
2. the holders of claims that, in the case of commencement of insolvency proceedings, would have to be asserted as non-subordinated insolvency claims, together with interest and penalties for late payment incurred thereon (basic restructuring creditors);
3. the holders of claims that, in the case of commencement of insolvency proceedings pursuant to section 39 (1) number 4 or 5 or (2) of the Insolvency Code, would have to be filed as subordinated insolvency claims (subordinated restructuring creditors), whereby a group is to be formed for each ranking category; and
4. the holders of share or membership rights. If the constructive part of the restructuring plan provides for alteration of the rights of creditors arising under intra-group third-party collateral, the creditors affected by this form separate groups.

(2) The groups may be subdivided into further groups in accordance with economic interests. They must be appropriately distinguished from one another. The differentiation criteria are to be specified in the plan. Minor creditors are to be pooled into separate groups for the purposes of the groups to be formed pursuant to subsection (1).

Section 10 – Equal Treatment of the Parties Affected by the Plan

(1) Within each group, equal rights are to be extended to all parties affected by the plan.

(2) Any differing treatment of the parties affected by the plan in a group is permitted only with the approval of all parties affected by the plan who are adversely impacted by the differing treatment. In this case the restructuring plan is to be accompanied by the declaration of approval of each party affected by the plan who is adversely impacted by the differing treatment.

(3) Any agreement concluded by the debtor or third parties with individual parties affected by the plan that confers on the latter an advantage not provided for in the plan in exchange for their conduct during voting or otherwise in connection with the restructuring procedure is void.

Section 11 – Liability of the Debtor

If nothing to the contrary is specified in the restructuring plan, the debtor is discharged from its residual obligations to creditors from the restructuring claims and entitlements to separate satisfaction provided for in the constructive part of the plan by way of satisfaction of those creditors as provided for in the constructive part of the plan. If the debtor is a company without legal personality or a partnership limited by shares, sentence 1 applies with the necessary modifications to the personal liability of the general partners.

Commentary:

The words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 12 – New Financing

The restructuring plan may incorporate arrangements concerning the commitment of loans or other lending that is necessary in order to finance the restructuring on the basis of the plan (new financing). New financing is also considered to be the provision of collateral to secure it.

Section 13 – Modification of Relationships under Property Law

If rights in objects are to be created, modified, transferred or cancelled, the necessary declarations of intent by the parties concerned may be incorporated into the constructive part of the restructuring plan. If rights in a plot of land or in registered rights which are registered in the Land Register are involved, these rights are to be specified in compliance with section 28 of the Land Register Code [*Grundbuchordnung*]. Sentence 2 applies with the necessary modifications to rights registered in the Register of Ships, Register of Ships under Construction and Register of Liens on Aircraft.

Section 14 – Declaration Concerning Viability; Statement of Assets and Liabilities; Earnings and Financial Plan

(1) The restructuring plan is to be accompanied by a substantiated declaration concerning the prospects for eliminating the debtor's imminent illiquidity through the plan and for ensuring or restoring the debtor's viability.

(2) The restructuring plan is to be accompanied by a statement of assets and liabilities listing the values of the assets and liabilities which would be set against each other if the plan were to become effective. In addition, a list is to be provided of the outgoings and earnings to be expected for the period during which the creditors are to be satisfied and the sequence of income and expenditure which is intended to ensure the liquidity of the business during this period. In addition to the restructuring claims, the list must take into consideration the claims remaining unaffected by the plan and the claims henceforth to be established pursuant to the plan.

Section 15 – Additional Declarations to be Attached

(1) If the debtor is a company without legal personality or a partnership limited by shares, the restructuring plan is to be accompanied by a declaration by the persons who are to be the general partners of the business pursuant to the plan stating that they are willing to continue to operate the business on the basis of the plan.

(2) If creditors are to take over share or membership rights or participating interests in a legal entity, an unincorporated association or a company without legal personality, the restructuring plan is to be accompanied by the declaration of approval of each of these creditors.

(3) If a third party has agreed to assume obligations towards the creditors in the event that the restructuring plan is confirmed, the plan is to be accompanied by the declaration of the third party.

(4) If the restructuring plan provides for alteration of the rights of creditors arising under intra-group third-party collateral, the plan is to be accompanied by the approval of the affiliated enterprise that provided the collateral.

Commentary:

In subsections (1) and (2), the words “company without legal personality” will be replaced with the words “partnership with legal personality” with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships (Personengesellschaftsrechtsmodernisierungsgesetz) (Federal Law Gazette I 2021, p. 3436).

Section 16 – Checklist for Restructuring Plans

The Federal Ministry of Justice and Consumer Protection shall publish a checklist for restructuring plans that has been adjusted to meet the needs of small and medium-sized enterprises. The checklist is to be published on the website www.bmjv.bund.de.

Chapter 3 – Plan Voting

Subchapter 1 – Plan Offer and Plan Acceptance

Section 17 – Plan Offer

(1) The debtor's offer inviting the parties affected by the plan to accept the restructuring plan (plan offer) must clearly indicate that if the plan is accepted by a majority of the parties and confirmed by the court, it will also be effective with respect to parties affected by the plan who do not accept the offer. The plan offer is to be accompanied by the complete restructuring plan, together with attachments, and a description of the costs of the restructuring procedure already incurred and still expected, including the remuneration of the restructuring practitioner.

(2) The plan offer must set forth the claims or rights with which each party affected by the plan has been included in the restructuring plan, the groups to which the party affected by the plan has been assigned and the voting rights conferred by the claims and rights to which such party is entitled.

(3) If the debtor did not give all parties affected by the plan the opportunity to mutually discuss the plan or the restructuring concept intended to be implemented by the plan prior to submitting the plan offer, the plan offer must indicate that a meeting of the parties affected by the plan will be convened at the request of one or more parties affected by the plan for the purpose of discussing the plan.

(4) Unless agreed otherwise in relation to individual parties affected by the plan, the plan offer is

subject to written form. Unless the debtor specifies a different form in the plan offer, the plan acceptance is also subject to written form.

Section 18 – Interpretation of the Plan Offer

In case of doubt, it is to be presumed that the plan offer is subject to the condition that all parties affected by the plan approve it or that the plan is confirmed by the court.

Section 19 – Time Limit for Acceptance

The debtor shall set a time limit for acceptance of the restructuring plan. The time limit is to amount to at least 14 days. It may be shorter if the plan is based on a restructuring concept that has been available in text form to all parties affected by the plan for at least 14 days.

Section 20 – Voting at a Meeting of the Parties Affected by the Plan

(1) The debtor may put the restructuring plan to a vote at a meeting of the parties affected by the plan. The meeting is to be convened in writing. The notice period is to amount to 14 days. If the debtor provides for the possibility of electronic participation, the notice period is to amount to seven days. The notice convening the meeting is to be accompanied by the complete restructuring plan, together with attachments.

(2) The plan offer may provide that parties affected by the plan may also participate without being physically present at the place of the meeting and exercise all or some of their rights, either in whole or in part, by means of electronic communication (electronic participation).

(3) The debtor shall chair the meeting. He/she must provide information about the restructuring plan and the circumstances relevant for proper evaluation of the plan to each party affected by the plan upon request, as well as, in the case of section 2 (4) sentence 1, to each subsidiary concerned. Parties affected by the plan have the right to make proposals concerning modification of the plan. The proposals must be available to the debtor in text form at least one day prior to the start of the meeting.

(4) The plan may also be voted on at the meeting even where individual parts of it are modified in substance on the basis of the discussions at the meeting.

(5) Each group of parties affected by the plan is to vote separately. In all other respects, the debtor shall establish the specifics of voting. If parties affected by the plan exercise their voting rights electronically, they are to be given electronic confirmation of receipt of votes cast electronically. Votes may also be cast without participating in the meeting until such time as voting ends.

Section 21 – Discussion of the Restructuring Plan

(1) If a vote is not held at a meeting of the parties affected by the plan, then in accordance with the requirements of section 17 (3), a meeting of the parties affected by the plan is to be held at the request of a party affected by the plan in order to discuss the plan.

(2) The meeting is to be convened in writing. The notice period is to amount to at least 14 days. If the debtor provides for the possibility of electronic participation, the notice period is to amount to seven days.

(3) Section 20 (3) applies with the necessary modifications.

(4) If the meeting does not take place by the expiry of a time limit set for plan acceptance, such time limit is to be extended until the end of the day of the meeting or until the date that the debtor specifies by the end of the meeting. If a party affected by the plan had already made a declaration concerning the plan offer, it is not bound by this declaration if it makes a new declaration by the end of the extended time limit.

Section 22 – Documentation of Voting

(1) The debtor shall document the course of the plan acceptance procedure and record the result of the vote in writing without delay following expiry of the acceptance time limit or following the holding of the vote. If a dispute arises concerning the selection of parties affected by the plan, their classification into groups or the allocation of voting rights, a note of this is to be made in the documentation.

(2) The documentation is to be made available to the parties affected by the plan without delay.

Section 23 – Court-Supervised Plan Voting Proceedings

The debtor may put the restructuring plan to a vote in court-supervised proceedings, which are to be conducted pursuant to sections 45 and 46; in such case, sections 17 to 22 are not applicable.

Subchapter 2 – Voting Rights and Required Majorities

Section 24 – Voting rights

(1) Voting rights are to be determined as follows:

1. in the case of restructuring claims, based on their amount, unless specified otherwise in subsection (2);

2. in the case of entitlements to separate satisfaction and intra-group third-party collateral, based on their value; and

3. in the case of share or membership rights, based on the share of the subscribed capital or the debtor's assets; restrictions on voting rights, special voting rights and multiple voting rights are to be disregarded.

(2) For the purposes of determining the voting rights that are conferred by restructuring claims, the following applies:
1. contingent claims are to be set at the value that takes into consideration the likelihood that the contingency will occur;
2. non-interest-bearing claims are to be set at the amount that results after discounting on the date of plan submission in application of section 41 (2) of the Insolvency Code;
3. claims that are based on unspecified amounts of money or that are expressed in foreign currency or in a unit of account are to be set at the value to be specified pursuant to section 45 of the Insolvency Code; and
4. claims that are based on recurring performance are to be set at the value specified pursuant to section 46 of the Insolvency Code.

(3) Claims secured by entitlements to separate satisfaction and intra-group third-party collateral confer voting rights in a group of restructuring creditors only to the extent that the debtor is also personally liable for the secured claims and the holder of the entitlement to separate satisfaction waives the entitlement or would fail with separate satisfaction. So long as the amount of the shortfall has not been determined, the claim is to be taken into consideration at the level of the probable shortfall.

(4) If a dispute arises concerning the voting right allotted to a claim or a right, the debtor may base the vote on the voting rights that it allocated to the parties affected by the plan. It shall make a note in the documentation of voting concerning the extent to which the voting right is disputed and the reason for same.

Section 25 – Required Majorities

(1) Acceptance of the restructuring plan requires that, in each group, the members of the group who approve the plan account for a minimum of three-quarters of the voting rights in that group.

(2) Parties affected by the plan who are entitled to a claim or a right jointly are to be counted as one party affected by the plan in the vote. The same applies where a right is encumbered with a lien or a usufruct.

Section 26 – Cross-Class Cram-Down

(1) If the majority required by section 25 is not achieved in a group, the approval of that group is to be deemed to have been granted if
1. the members of that group are likely to be in no worse a position as a result of the restructuring plan than they would be in without a plan;
2. the members of that group participate to a reasonable extent in the economic value accruing to the parties affected by the plan on the basis of the plan (plan value); and
3. the majority of the voting groups approved the plan with the required majorities; if only two group were formed, it is sufficient if the other group approves; the approving groups may not be composed solely of shareholders or subordinated restructuring creditors.

(2) If the majority required by section 25 is not achieved in a group that is to be formed pursuant to section 9 (1) sentence 3, then subsection (1), section 27 (1) and section 28 apply for this group only if the envisaged compensation reasonably compensate the holders of the rights arising from intra-group third-party collateral for the suffered loss of rights or the loss of the liability of the general partner.

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Section 27 – Absolute Priority

(1) Participation by a group of creditors in the plan value is reasonable if
1. no other creditor affected by the plan receives economic value exceeding the full amount of its claim;
2. neither a creditor affected by the plan whose claim for satisfaction would rank behind the claims of the creditors in the group without a plan in insolvency proceedings, nor the debtor, nor any party holding a participating interest in the debtor receives economic value that is not fully compensated for through performance received into the debtor's assets; and
3. no creditor affected by the plan whose claim for satisfaction would rank equally with the claims of the creditors in the group in insolvency proceedings is placed in a better position than these creditors.

(2) For a group of persons holding a participating interest in the debtor, reasonable participation in the plan value exists if, pursuant to the plan,
1. no creditor affected by the plan receives economic value exceeding the full amount of its claim; and
2. subject to section 28 (2) number 1, no person holding a participating interest in the debtor who would be on an equal footing with the members of the group without a plan receives an economic value.

Section 28 – Exceptions to Absolute Priority

(1) The reasonable participation of a group of creditors affected by the plan in the plan value is not

precluded if a provision in derogation of section 27 (1) number 3 is appropriate in terms of the nature of the economic difficulties that are to be overcome and in terms of the circumstances. A provision in derogation of section 27 (1) number 3 is not appropriate if the outvoted group is allotted more than half of the voting rights of the creditors in the affected ranking category.

(2) Reasonable participation of a group of creditors affected by the plan in the plan value is not precluded if, notwithstanding section 27 (1) number 2, the debtor or a person holding a participating interest in the debtor continues to participate in the assets of the business, provided that
1. owing to special circumstances inherent in the debtor or in the person holding a participating interest in the debtor, his/her involvement in the continued operation of the business is essential in order to realise the plan value and the debtor or the person holding a participating interest in the debtor undertakes in the plan to furnish the required involvement as well as to transfer the economic value in the event that his/her involvement ends before five years or a shorter period specified for implementation of the plan have elapsed for reasons for which he/she is responsible; or
2. Alteration of the rights of creditors is negligible, particularly because the rights are not reduced and the dates on which they are due are not postponed by more than 18 months.

Division 2 Stabilisation and Restructuring Tools

Chapter 1 – General Provisions

Subchapter 1 – Tools of the Stabilisation and Restructuring Framework; Proceedings

Section 29 – Tools of the Stabilisation and Restructuring Framework

(1) The following procedural mechanisms of the stabilisation and restructuring framework (tools) may be used in order to permanently eliminate imminent illiquidity within the meaning of section 18 (2) of the Insolvency Code.

(2) Tools of the stabilisation and restructuring framework within the meaning of subsection (1) consist of:
1. the conducting of court-supervised plan voting proceedings (court-supervised plan voting);
2. the preliminary review by the court of issues of significance for the confirmation of the restructuring plan (preliminary review);
3. the ordering by the court of arrangements to restrict measures of individual enforcement of rights (stabilisation); and
4. the confirmation by the court of a restructuring plan (plan confirmation).

(3) Unless the provisions of this Act specify otherwise, the debtor may make use of the tools of the stabilisation and restructuring framework independently of one another.

Section 30 – Ability to be Restructured

(1) Subject to subsection (2), the tools of the stabilisation and restructuring framework may be used by any debtor with capacity for insolvency. For natural persons, this applies only to the extent that they engage in an entrepreneurial activity.

(2) The provisions of this division are not applicable to businesses in the financial sector within the meaning of section 1 (19) of the Banking Act.

Section 31 – Notice of the Restructuring Project

(1) Use of the tools of the stabilisation and restructuring framework is conditioned on notice of the restructuring project being given to the competent restructuring court.

(2) The notice is to be accompanied by:
1. the draft of a restructuring plan or, where it has not yet been possible to draw up and negotiate one in view of the status of the notified project, a concept for the restructuring that, based on a description of the nature, extent and causes of the crisis, outlines the objective of the restructuring (restructuring objective) and the measures envisaged to achieve the restructuring objective;
2. a description of the status of negotiations with creditors, persons holding a participating interest in the debtor and third parties concerning the envisaged measures; and
3. a description of the arrangements taken by the debtor in order to ensure its ability to meet its obligations under this Act.
In addition, the debtor must indicate in the notice whether the rights of consumers or of micro, small or medium-sized enterprises are to be affected, in particular because their claims or entitlements to separate satisfaction are to be modified by a restructuring plan or enforcement of these claims is to be temporarily prohibited by a stabilisation order. The debtor must also indicate whether it is likely that the restructuring objective will be able to be implemented only against the opposition of a group to be formed pursuant to section 9. In addition, earlier restructuring cases are to be indicated, including the court seised and the case number.

(3) The restructuring case becomes pending with the notice.

(4) The notice loses its effectiveness if
1. the debtor withdraws the notice;

2. the decision on plan confirmation becomes final;
3. the court terminates the restructuring case pursuant to section 33; or
4. six months have elapsed since the notice or, if the debtor had previously renewed the notice, 12 months have elapsed.

Section 32 – Obligations of the Debtor

(1) The debtor shall carry out the restructuring case with the due care of a prudent and conscientious reorganisation manager and in doing so protect the interests of all creditors. In particular, he/she shall refrain from taking measures that are incompatible with the restructuring objective or that jeopardise the prospects for the success of the envisaged restructuring. It is generally incompatible with the restructuring objective to settle claims or provide collateral for them if they are to be modified by the restructuring plan.

(2) The debtor shall notify the court about any significant change concerning the subject of the notified restructuring project or the description of the status of negotiations. If the debtor has obtained a stabilisation order pursuant to section 49, it shall also give notice of significant changes concerning the restructuring strategy without delay. If a restructuring practitioner has been appointed, the obligations under sentences 1 and 2 also apply with respect to the restructuring practitioner.

(3) While the restructuring case is pending, the debtor is obligated to notify the restructuring court without delay about the occurrence of illiquidity within the meaning of section 17 (2) of the Insolvency Code. If the debtor is a legal entity or a company without legal personality that does not have a natural person who is liable as a direct or indirect partner for its liabilities, illiquidity is equivalent to overindebtedness within the meaning of section 19 (2) of the Insolvency Code.

(4) The debtor is obligated to notify the court without delay if the restructuring project has no prospect of implementation, particularly if, as a consequence of serious and definitive refusal of the submitted restructuring plan by the parties affected by the plan that has become apparent, it cannot be assumed that the majorities required for plan acceptance can be achieved.

Commentary:
In subsection (3) sentence 2, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 33 – Termination of the Restructuring Case

The restructuring court shall terminate the restructuring case ex officio if

(1) 1. the debtor files an application for commencement of insolvency proceedings or insolvency proceedings are commenced in respect of the debtor's assets;
2. the restructuring court does not have jurisdiction over the restructuring case and the debtor does not file a referral application or withdraw the notice within a period specified by the restructuring court; or
3. the debtor seriously breaches the obligations of co-operation and disclosure that it owes to the court or a restructuring practitioner.

(2) The court shall also terminate the restructuring case if
1. the debtor has given notice of its illiquidity or overindebtedness pursuant to section 32 (3) or other circumstances are known indicating that the debtor is materially insolvent; the court may refrain from terminating the restructuring case if, in view of the progress made in the restructuring case, the commencement of insolvency proceedings would manifestly not be in the interest of all creditors; it may also refrain from termination if the illiquidity or overindebtedness results from a notice of termination of a claim or a claim otherwise being called due that is intended to be subjected to modification by the plan pursuant to the notified restructuring concept, provided that achievement of the restructuring objective is highly likely;
2. based on a notice pursuant to section 32 (4) or other circumstances, the notified restructuring project has no prospects for implementation;
3. it is aware of circumstances indicating that the debtor has seriously breached the obligations incumbent on it pursuant to section 32; or
4. in an earlier restructuring case,
a) the debtor obtained a stabilisation order or a plan confirmation or
b) termination took place pursuant to number 3 or subsection (1) number 3.
Sentence 1 number 4 is not applicable if the problem that led to the earlier restructuring case was

overcome through viable recovery. If less than three years have elapsed since the end of the period of the order or of the decision on the application for plan confirmation in the earlier restructuring case, it is to be assumed in case of doubt that viable recovery did not occur. The use of tools of the restructuring framework is equivalent to insolvency proceedings managed through self-administration.

(3) The restructuring case is not to be terminated as long as the court has refrained from terminating a stabilisation order pursuant to section 59 (3).

(4) The debtor has the right of immediate appeal against termination of the restructuring case pursuant to subsections (1) to (3).

Section 34 – Restructuring Court; Power to Issue Statutory Orders

(1) The local court within whose district a higher regional court is located has exclusive jurisdiction for decisions in restructuring cases as the restructuring court for the district of this higher regional court. If this local court does not have jurisdiction over standard insolvency matters, the competent local court is the one with jurisdiction over standard insolvency matters at the location of the higher regional court.

(2) In order for restructuring cases to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to issue statutory orders

1. stipulating, within a district, the jurisdiction of a different local court with jurisdiction over standard insolvency matters; or

2. extending the jurisdiction of a restructuring court within a Federal State to additionally cover the district of one or more other higher regional courts.

The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States by statutory order. Several states can agree to establish shared divisions for restructuring cases at a local court or to extend court districts for restructuring cases beyond Federal State borders.

Section 35 – Local Jurisdiction

The restructuring court within whose district a debtor has its place of general jurisdiction has exclusive local jurisdiction. If the centre of an economic activity carried on by the debtor is located in a different place, the restructuring court within whose district this place is located has exclusive jurisdiction.

Section 36 – Unified Jurisdiction

The division that had jurisdiction for the initial decision has jurisdiction for all decisions and measures in the restructuring case.

Section 37 – Place of Group Jurisdiction

(1) On application by a debtor that is a member of a corporate group within the meaning of section 3e of the Insolvency Code (group-affiliated debtor), the restructuring court seised of the restructuring case shall declare its jurisdiction over the other group-affiliated debtors (other group proceedings) if this debtor has lodged an admissible application in the restructuring case and if the debtor is manifestly not merely of secondary importance for the corporate group as a whole.

(2) Section 3a (1) sentences 2 to 4 and (2), section 3b, section 3c (1), section 3d (1) sentence 1 and (2) sentence 1 and section 13a of the Insolvency Code apply with the necessary modifications.

(3) On application by the debtor, the court with jurisdiction over other group proceedings in restructuring cases shall also declare its jurisdiction, in accordance with the requirements in subsection (1), over other group proceedings in insolvency matters pursuant to section 3a (1) of the Insolvency Code.

Section 38 – Applicability of the Code of Civil Procedure

Unless otherwise specified in this Act, the provisions of the Code of Civil Procedure [*Zivilprozessordnung*] apply with the necessary modifications to proceedings in restructuring cases. Section 128a of the Code of Civil Procedure applies with the proviso that notices of meetings are to make the participants aware of the obligation to refrain from deliberately recording sound and images and to ensure through appropriate measures that third parties cannot hear or view the transmission of sound and images.

Section 39 – Procedural Principles

(1) Unless specified otherwise in this Act, the restructuring court shall ascertain ex officio all circumstances relevant to the proceedings in the restructuring case. To this end it may, in particular, hear witnesses and experts.

(2) The debtor must provide the restructuring court with the information it requires to decide on the debtor's applications and otherwise support the court in the performance of its duties.

(3) The restructuring court may issue its decisions without a hearing. If a hearing is held, section 227 (3) sentence 1 of the Code of Civil Procedure is not applicable.

Section 40 – Appeal

(1) The decisions of the restructuring court are subject to appeal only in those cases in which this Act provides the right of immediate appeal. The immediate appeal is to be lodged with the restructuring court.

(2) The period for lodging an appeal starts to run on the date on which the decision is pronounced or, if it not pronounced, on the date on which it is served.

(3) The decision on the appeal becomes effective only when it becomes final and binding. The appeal court may, however, order that the decision is effective immediately.

Section 41 – Service

(1) Service of documents is effected ex officio without the document to be served requiring certification. Service may be effected by posting the document to the address of the addressee for service; section 184 (2) sentences 1, 2 and 4 of the Code of Civil Procedure applies with the necessary modifications. If service is to be effected on domestic territory, the document is to be deemed to have been served three days after posting.

(2) Service is not to be effected on persons whose place of residence is unknown. If such persons have a representative with authority to accept service, service is to be effected on that representative.

(3) If the court instructs the debtor to carry out the service of documents, this is to take place in accordance with sections 191 to 194 of the Code of Civil Procedure.

Subchapter 2 – Restructuring Law

Section 42 – Notice of Illiquidity and Overindebtedness; Penal Provision

(1) While the restructuring case is pending, the obligation to apply for commencement of insolvency proceedings pursuant to section 15a (1) to (3) of the Insolvency Code and section 42 (2) of the Civil Code [*Bürgerliches Gesetzbuch*] is suspended. However, the parties obligated to apply for commencement of insolvency proceedings must notify the restructuring court without undue delay about the occurrence of illiquidity within the meaning of section 17 (2) of the Insolvency Code or of overindebtedness within the meaning of section 19 (2) of the Insolvency Code.

(2) The lodging of an application for commencement of insolvency proceedings that satisfies the requirements of section 15a of the Insolvency Code is to be deemed timely fulfilment of the notification obligation pursuant to subsection (1) sentence 2.

(3) Anyone who, contrary to subsection (1) sentence 2, does not give notice of the occurrence of illiquidity or overindebtedness or does not give notice within the specified time limit is to be punished by imprisonment for up to three years or by a fine. If the offender acts with negligence, the punishment is imprisonment for up to one year or a fine. Sentences 1 and 2 are not applicable to associations and foundations to which the obligation pursuant to subsection (1) sentence 1 applies.

(4) If the notice of the restructuring case loses its effectiveness pursuant to section 31 (4), the obligations suspended pursuant to subsection (1) sentence 1 are revived.

Section 43 – Obligations and Liability of Representative Bodies

(1) If the debtor is a legal entity or a company without legal personality within the meaning of section 15a (1) sentence 3 and (2) of the Insolvency Code, its managers shall work to ensure that the debtor carries out the restructuring case with the due care of a prudent manager and protects the interests of all creditors. For breach of this obligation they are liable to the debtor for the loss suffered by the creditors, unless they were not responsible for the breach of obligation.

(2) If the debtor waives claims pursuant to subsection (1) sentence 2 or enters into a settlement in respect of such claims, the waiver or settlement is ineffective to the extent that the compensation is required in order to satisfy creditors. The foregoing does not apply if the party owing the compensation enters into a settlement with its creditors in order to avoid insolvency proceedings in respect of its assets, if the obligation to pay compensation is dealt with in an insolvency plan or if an insolvency administrator is acting for the party entitled to the compensation.

(3) Claims pursuant to subsection (1) sentence 2 become time barred after five years. If the legal entity is a quoted company at the time of the breach of obligation, the claims become time-barred after 10 years.

Commentary:

In subsection (1) sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 44 – Prohibition of Termination Clauses

(1) The pendency of the restructuring case or the use of tools of the stabilisation and restructuring framework by the debtor is not in and of itself justification
1. for terminating contracts to which the debtor is a party;
2. for accelerating the due date of payments or performance; or
3. for entitling the other party to refuse the payment or performance incumbent on it or demanding modification or renegotiation of the contract.
They also do not in and of themselves affect the effectiveness of the contract.

(2) Agreements that conflict with subsection (1) are ineffective.

(3) Subsections (1) and (2) do not apply to transactions pursuant to section 104 (1) of the Insolvency Code, to agreements on close-out netting pursuant to section 104 (3) and (4) of the Insolvency Code or to financial collateral within the meaning of section 1 (17) of the Banking Act. The foregoing also applies to transactions that are subject to the settlement of claims and performance as part of a system pursuant to section 1 (16) of the Banking Act.

Chapter 2 – Court-Supervised Plan Voting

Section 45 – Discussion and Voting Meeting

(1) On application by the debtor, the restructuring court shall schedule a meeting at which the restructuring plan and the voting rights of the parties affected by the plan can be discussed and for subsequent voting on the plan. The notice period for the meeting is to amount to at least 14 days.

(2) The application is to be accompanied by the complete restructuring plan, together with attachments.

(3) The parties affected by the plan are to be invited to the meeting. The meeting notice is to indicate that the meeting may be held and voting may take place even without the attendance of all parties affected by the plan. The court may instruct the debtor to carry out the service of meeting notices.

(4) Sections 239 to 242 of the Insolvency Code as well as sections 24 to 28 apply to the proceedings with the necessary modifications. If a dispute arises concerning the voting right that a claim, an entitlement to separate satisfaction, an intragroup third-party collateral or a share or membership right confers on a party affected by the plan, and if the parties concerned are unable to reach agreement on the dispute, the court shall determine the voting right.

Section 46 – Preliminary Review Meeting

(1) On application by the debtor, the court shall schedule a separate meeting for the preliminary review of the restructuring plan, which is to be held prior to the discussion and voting meeting. This preliminary review may cover any issue that is of significance for confirmation of the restructuring plan, including
1. whether the selection of the parties affected by the plan and the classification of parties affected by the plan into groups satisfies the requirements of sections 8 and 9;
2. which voting right is conferred by a restructuring claim, an entitlement to separate satisfaction or a share or membership right; and
3. whether the debtor faces imminent illiquidity.
Section 45 Subsection (3) applies with the necessary modifications. The notice period for the meeting is to amount to at least seven days.

(2) The court shall summarise the result of the preliminary review in a notice.

(3) The court may also schedule a preliminary review meeting ex officio if this is appropriate.

Chapter 3 – Preliminary review

Section 47 – Application

On application by the debtor, the restructuring court shall also conduct a preliminary review even where the restructuring plan is not intended to be put to a vote in court-supervised proceedings. Such preliminary review may cover any issue that is of significance for confirmation of the restructuring plan. In addition to the issues specified in section 46 (1) sentence 2, this review may also include the requirements for the plan voting proceedings pursuant to sections 17 to 22.

Section 48 – Proceedings

(1) The parties affected by the plan are to be heard if an issue in the preliminary review concerns them.

(2) The court shall summarise the result of the preliminary review in a notice. The notice should be issued within two weeks after the application is lodged or, if a hearing meeting is held, within two weeks of that meeting. Section 45 (3) and section 46 (1) sentence 3 apply with the necessary modifications to the notice of the hearing meeting.

Chapter 4 – Stabilisation

Section 49 – Stabilisation Order

(1) To the extent that this is necessary in order to ensure the prospects for the realisation of the

restructuring objective, the restructuring court shall on application by the debtor order that
1. compulsory enforcement measures against the debtor are prohibited or temporarily suspended (enforcement prohibition); and
2. rights in moveable assets that could be claimed as a right to separate satisfaction or to segregation in the event of commencement of insolvency proceedings may not be enforced by the creditor and that such assets may be used for the continued operation of the debtor's business insofar as they are of substantial importance for this purpose (realisation prohibition).

(2) Claims that pursuant to section 4 are not capable of being modified by a restructuring plan remain unaffected by an order pursuant to subsection (1) and its effects in terms of contract law. In addition, the order may also be addressed to a specific creditor, to several creditors or to all creditors.

(3) The order pursuant to subsection (1) may also prohibit creditors from enforcing rights arising from intra-group third-party collateral (section 2 (4)).

Section 50 – Application

(1) When applying for a stabilisation order pursuant to section 49 (1), the debtor must specify the content and duration of the order and the creditors to whom it is addressed.

(2) The debtor shall attach a restructuring strategy to the application covering
1. a draft of the restructuring plan that has been updated as of the date that the application is lodged or a concept for restructuring pursuant to section 31 (2) sentence 1 number 1 that has been updated as of that date; and
2. a financial plan that covers a period of six months and includes a detailed description of the financing sources through which the continued operation of the business is to be ensured during this period; financing sources that are incompatible with the restructuring objective are to be excluded.

(3) In addition, the debtor must declare
1. whether it is in default in satisfying liabilities under employment relationships or pension commitments, tax liabilities, or liabilities to social security authorities or suppliers and, if so, the extent of such liabilities and the creditors to whom they are owed;
2. whether enforcement or realisation prohibitions pursuant to this Act or pursuant to section 21 (2) sentence 1 number 3 or 5 of the Insolvency Code were ordered for its benefit during the last three years prior to the application and, if so, in what proceedings they were ordered; and
3. whether it has satisfied its obligations under sections 325 to 328 or 339 of the Commercial Code for the last three concluded financial years.

Section 51 – Requirements for a Stabilisation Order

(1) A stabilisation order is to be issued if the restructuring strategy submitted by the debtor is complete and coherent and no circumstances are known indicating that
1. the restructuring strategy or the declarations concerning section 50 (3) are based on inaccurate facts in material respects;
2. the restructuring no longer has any prospect of success because there is no likelihood that a plan implementing the restructuring concept would be accepted by the parties affected by the plan or confirmed by the court;
3. the debtor is not yet facing imminent illiquidity; or
4. the order applied for is not necessary in order to realise the restructuring objective.
The strategy is coherent unless it is clear that the restructuring objective cannot be achieved on the basis of the envisaged measures. If the restructuring strategy has defects that can be remedied, the court shall issue the order for a period of at most 20 days and instruct the debtor to remedy the defects within this period of time.

(2) If circumstances are known indicating that
1. there are substantial payment arrears owed to the creditors specified in section 50 (3) sentence 2 number 1; or
2. the debtor has breached its disclosure obligations under sections 325 to 328 or 339 of the Commercial Code for at least one of the last three concluded financial years,
the stabilisation order is to be issued only if, despite these circumstances, it may be expected that the debtor is willing and able to align its management with the interests of all creditors. The foregoing also applies if the enforcement or realisation prohibitions specified in section 49 (1) or interim protective orders pursuant to section 21 (2) sentence 2 number 3 or 5 of the Insolvency Code were ordered for the benefit of the debtor during the last three years prior to the lodging of the application, unless the problem that led to these orders was overcome through viable recovery.

(3) If a restructuring plan has not been received by the time of the stabilisation order, the court may set a time limit for the debtor to submit the restructuring plan.

(4) The stabilisation order is to be served on all creditors who are affected by it. In public restructuring cases (section 84), service may be dispensed

with if the order is addressed to all creditors, other than those specified in section 4.

(5) The restructuring court shall decide on the issuance of a stabilisation order by means of a court order. If the court rejects the application, the debtor has the right of immediate appeal against the court order.

Section 52 – Extended Order, Renewed Order

In accordance with the requirements in section 51 (1) and (2), a stabilisation order may be extended in terms of substance or time or to cover other creditors (extended order) or, if the duration of the order has already been exceeded, may be renewed (renewed order).

Section 53 – Duration of Order

(1) The stabilisation order may be issued for a duration of up to three months.

(2) Extended and renewed orders may be issued only for the maximum duration pursuant to subsection (1), other than where
1. the debtor has submitted a plan offer to the creditors; and
2. no circumstances are known indicating that acceptance of the plan is unlikely within one month.
In such case, the maximum duration of the order is to be extended by one month, and the order is to be addressed exclusively to parties affected by the plan.

(3) If the debtor has applied for court confirmation of the restructuring plan accepted by the parties affected by the plan, extended and renewed orders may be issued until the order confirming the plan becomes final, but at most for eight months following issuance of the initial order. The foregoing does not apply if the restructuring plan is clearly incapable of being confirmed.

(4) Subsection (3) is not applicable if, during a period of three months prior to the first use of tools of the stabilisation and restructuring framework, the centre of the debtor's principal interests was relocated to domestic territory from another Member State of the European Union and no public announcements are made pursuant to sections 84 to 86.

Section 54 – Consequences of a Realisation Prohibition

(1) If a realisation prohibition is issued, the creditor is to be paid the interest due, and the loss of value resulting from use is to be compensated for by regular payments to the creditor. The foregoing does not apply insofar as the creditor is unlikely to obtain satisfaction from the proceeds of realisation, taking into account the amount of the claim and other encumbrances on the asset.

(2) If in accordance with contractual agreements with the party entitled to them the debtor collects accounts receivable that were assigned to secure a claim, or if it sells or processes moveable objects subject to rights that could be claimed as rights to separate satisfaction or to segregation in the event of commencement of insolvency proceedings, the proceeds realised from this are to be paid out to the party entitled to them or held in safekeeping for it distinctly, other than where the debtor reaches a different understanding with the party entitled to the proceeds.

Section 55 – Effects under Contract Law

(1) If the debtor owes a creditor something under a contract at the time of a stabilisation order, the creditor may not, solely by virtue of the performance owed to it, refuse to provide its performance during the period of the order or claim rights to terminate or modify the contract; the foregoing does not affect the creditor's right to refuse to provide that portion of its performance that is attributable to the performance owed by the debtor. If extended or renewed orders are issued, the time of the initial order is decisive.

(2) Subsection (1) does not apply if the debtor is not reliant upon the creditor's performance for the continued operation of the business.

(3) If the creditor is obligated to perform in advance, it has the right to make its performance contingent on the posting of security or on the debtor providing its performance concurrently. Subsection (1) does not affect the right of lenders to terminate the loan contract prior to disbursement of the loan due to a deterioration in the debtor's financial circumstances or in the value of the collateral provided for the loan (section 490 (1) of the Civil Code). Sentence 2 also applies to other loan commitments.

Section 56 – Financial Collateral, Payment and Settlement Systems, Close-Out Netting

(1) A stabilisation order does not affect the validity of disposals of financial collateral pursuant to section 1 (17) of the Banking Act and the validity of the settlement of claims and performance under payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities brought into systems pursuant to section 1 (16) of the Banking Act. This applies even if a transaction of this type by the debtor is carried out and settled or financial collateral is provided on the day the order is made and the other party proves that it neither knew nor ought to have known of the court order; if the other party is a system operator or a participant in the system, the day on which the order is made is to be

determined in accordance with the meaning of business day in section 1 (16b) of the Banking Act.

(2) A stabilisation order and its effects have no impact on transactions that can form the subject of an agreement on close-out netting within the meaning of section 104 (3) and (4) of the Insolvency Code, as well as agreements on close-out netting. The claim resulting from close-out netting may be made subject to an enforcement prohibition and, to the extent permitted pursuant to subsection (1), also to a realisation prohibition.

Section 57 – Liability of Representative Bodies

If the debtor is a legal entity or company without legal personality within the meaning of section 15a (1) sentence 3 and (2) of the Insolvency Code, and if it obtains a stabilisation order on the basis of incorrect information that it provided intentionally or with negligence, the manager is obligated to compensate the loss that the affected creditors suffer as a result of the order. This foregoing does not apply if the manager was not at fault. Sentences 1 and 2 also apply to compensation of the loss that a creditor suffers from improper disbursement or safekeeping of the proceeds pursuant to section 54 (2). Section 43 (3) applies with the necessary modifications to claims pursuant to sentence 1 and sentence 3.

Commentary:
In sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 58 – Application for Commencement of Insolvency Proceedings

Proceedings concerning the application of a creditor for the commencement of insolvency proceedings in respect to the debtor's assets are suspended for the duration of the order.

Section 59 – Termination and Ending of the Stabilisation Order

(1) The court shall also terminate the stabilisation order if

1. the debtor applies for this;
2. the notice loses its effectiveness pursuant to section 31 (4) or the requirements are met for termination of the restructuring case pursuant to section 31 (4) number 3 and section 33;
3. the debtor fails to send the court the draft of a restructuring plan by the end of a reasonable time limit set for this purpose; or
4. circumstances are known indicating that the debtor is unwilling or unable to align its management with the interests of all creditors, in particular because
(a) the restructuring strategy is based on inaccurate facts in material respects; or
(b) the debtor's accounting and bookkeeping are so incomplete or flawed as to make it impossible to evaluate the restructuring strategy, particularly the financial plan; or

(2) On application by a creditor affected by the stabilisation order, the order is also to be terminated on the grounds specified in subsection (1) numbers 2 and 4 if the creditor demonstrates to the satisfaction of the court that the grounds for termination exist.

(3) The restructuring court may refrain from termination if continuation of the stabilisation order appears necessary in order to ensure an orderly transition to insolvency proceedings in the interest of all creditors. The court shall specify a period of at most three weeks within which the debtor must prove to the court that it has applied for the commencement of insolvency proceedings. The stabilisation order is to be terminated after this period expires.

(4) The stabilisation order ends if the restructuring plan is confirmed or plan confirmation is refused.

Chapter 5 – Plan Confirmation

Subchapter 1 – Confirmation Proceedings

Section 60 – Application

(1) On application by the debtor, the court shall confirm by court order the restructuring plan accepted by the parties affected by the plan. The application may also be lodged at the discussion and voting meeting. If plan voting did not take place in court-supervised proceedings (section 45), the debtor must include with the application for confirmation of the restructuring plan, in addition to the plan that was voted on and its attachments, the documentation concerning the result of the vote and all documents and other proof showing how the vote was held and the result that was reached.

(2) If the debtor is a company without legal personality or a partnership limited by shares, the application for confirmation of a restructuring plan that does not release the general partners from their liability for the claims and rights modified by the plan requires the approval of all general partners. The foregoing does not apply if the general partners are

1. legal entities; or
2. companies without legal personality where no general partner is a natural person and none of the general partners is itself a company without legal personality where a general partner is a natural person or the connection of companies continues in this manner.

Commentary:
In subsection (2) sentence 1, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechts-modernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436). In subsection (2) sentence 2 No. 2, the words "companies without legal personality" will be replaced with the words "partnerships with legal personality" and the words "company without legal personality" will be replaced by the words "partnership with legal personality" with effect from 1 January 2024.

Section 61 – Hearing

Prior to deciding on confirmation of the restructuring plan, the court may hear the parties affected by the plan. If plan voting did not take place in court-supervised proceedings, the court must convene a meeting to hear the parties affected by the plan. Section 45 (3) and section 46 (1) sentence 4 apply with the necessary modifications.

Section 62 – Conditional Restructuring Plan

If the restructuring plan provides that prior to its confirmation particular contributions are to be provided or other measures are to be put into effect, the plan may be confirmed only if these requirements are met and grounds for refusal do not exist.

Section 63 – Refusal of Confirmation

(1) Confirmation of the restructuring plan is to be refused ex officio if
1. the debtor is not facing imminent illiquidity;
2. the provisions concerning the content and procedural handling of the restructuring plan and the acceptance of the plan by the parties affected by the plan have not been observed in a material respect and the debtor cannot remedy the defect or does not do so within a reasonable period of time set by the restructuring court; or
3. the claims that are assigned to the parties affected by the plan in the constructive part of the plan and the claims of the other creditors who are unaffected by the plan clearly cannot be satisfied.

(2) If the restructuring plan provides for new financing, confirmation is to be refused if the restructuring concept underlying the plan lacks coherence or if circumstances are known indicating that the concept is not based on actual conditions or shows no prospect of success.

(3) If plan voting did not take place in court-supervised proceedings, doubts about whether the restructuring plan was properly accepted by the parties affected by the plan are to be interpreted to the detriment of the debtor. If a dispute exists about the voting right to which a party affected by the plan is entitled, the court shall base its decision on the voting right to be specified pursuant to section 24.

(4) Confirmation is also to be refused if acceptance of the restructuring plan was improperly obtained, in particular by the preferential treatment of a party affected by the plan.

Section 64 – Protection of Minorities

(1) On application by a party affected by the plan that voted against the restructuring plan, confirmation of the plan is to be refused if the applicant is likely to be placed in a worse position as a result of the restructuring plan than it would be in without a plan. If the debtor has obtained an enforcement or realisation prohibition against the holder of an entitlement to separate satisfaction that prevents it from realising the entitlement, reductions in the value of the entitlement that result during the period of the order are to be disregarded when determining the position that the holder of the entitlement would be in without a plan, unless the reduction in value would have resulted even without the order.

(2) The application pursuant to subsection (1) is admissible only if the applicant objected to the plan in the voting proceedings and asserted that it is likely to be placed in a worse position as a result of the plan than it would be in without a plan. If plan voting took place at a court-supervised discussion and voting meeting, the applicant must demonstrate to the satisfaction of the court, at the latest at this meeting, that it is likely to be placed in a worse position as a result of the plan.

(3) The application pursuant to subsection (1) is to be rejected if funds are made available in the constructive part of the restructuring plan in case a party affected by the plan proves less favourable treatment. Whether the applicant receives a settlement out of these funds is to be resolved outside the restructuring case.

(4) If neither a meeting of the parties affected by the plan (section 20) nor a discussion and voting

meeting (section 45) took place, subsection (2) sentence 1 applies only if the plan offer made special reference to the requirement that the likelihood of less favourable treatment as a result of the plan must be claimed in the voting proceedings. If a meeting of the parties affected by the plan took place, subsection (2) sentence 1 applies only if the notice convening the meeting made special reference to the requirement that the likelihood of less favourable treatment as a result of the plan must be claimed in the voting proceedings. Subsection (2) sentence 2 applies only if the meeting notice made special reference to the requirement that the likelihood of less favourable treatment as a result of the plan must be demonstrated to the satisfaction of the court at the latest at the discussion and voting meeting.

Section 65 – Publication of the Decision

(1) If the decision on the application for confirmation of the restructuring plan is not pronounced at the hearing meeting or at the discussion and voting meeting, it is to be pronounced at a special meeting to be scheduled as soon as possible.

(2) If the restructuring plan is confirmed, a copy of the plan or a summary of the main content is to be sent to the parties affected by the plan referring to its confirmation; the foregoing does not apply to shareholders or limited partners holding a participating interest in the debtor. Quoted companies shall make a summary of the main content of the plan available on their website. The sending of a copy of the plan or a summary of the main content pursuant to sentence 1 is not required if the plan sent prior to voting was accepted without change.

Section 66 – Immediate Appeal

(1) Every party affected by the plan has the right of immediate appeal against the order confirming the restructuring plan. The debtor has the right of immediate appeal if confirmation of the restructuring plan was refused.

(2) Immediate appeal against the confirmation of the restructuring plan is admissible only if the appellant

1. objected to the plan in the voting proceedings (section 64 (2));
2. voted against the plan; and
3. demonstrates to the satisfaction of the court that it will be placed in a substantially worse position as a result of the plan than it would be in without the plan and that this disadvantage cannot be compensated for by a payment out of the funds specified in section 64 (3).

(3) Subsection (2) numbers 1 and 2 apply only if the notice convening the meeting or the meeting notice made special reference to the necessity of an objection to and rejection of the plan. If neither a meeting of the parties affected by the plan (section 20) nor a discussion and voting meeting (section 45) took place, subsection (2) numbers 1 and 2 applies only if the plan offer made special reference to the necessity of an objection to and rejection of the plan.

(4) On application by the appellant, the court shall order that the appeal has suspensive effect if implementation of the restructuring plan is associated with serious disadvantages for the appellant, particularly those that cannot be undone, that are disproportionate to the advantages of immediate plan implementation.

(5) On application by the debtor, the appeal court shall refuse the appeal against confirmation of the restructuring plan without delay if it appears that giving final and binding effect to the plan confirmation as soon as possible deserves priority because the disadvantages of a delay in implementing the plan outweigh the disadvantages for the appellant; a redress procedure is not to take place. This does not apply in the event of a particularly serious infringement of the law. If the appeal court refuses the appeal pursuant to sentence 1, the debtor is obligated to compensate the appellant for the loss it suffers as a result of the implementation of the plan; damages cannot be claimed in the form of cancellation of the effects of the restructuring plan. The regional court which refused the appeal has exclusive jurisdiction for actions claiming compensation pursuant to sentence 3.

Subchapter 2 – Effects of the Confirmed Plan; Monitoring Implementation of the Plan

Section 67 – Effects of the Restructuring Plan

(1) With confirmation of the restructuring plan, the effects set out in the constructive part become binding. This also applies in relation to the parties affected by the plan who voted against the plan or who did not take part in the vote despite having been properly involved in the voting proceedings.

(2) If the debtor is a company without legal personality or a partnership limited by shares, a discharge of the debtor from liabilities also benefits its general partners, unless specified otherwise in the restructuring plan.

(3) The restructuring plan does not affect the rights of the restructuring creditors against co-debtors and sureties of the debtor, the rights of these creditors in objects which do not form part of the

debtor's assets or rights under a priority notice relating to such objects, with the exception of the rights arising from intra-group third-party collateral that are modified pursuant to section 2 (4). Under the plan the debtor is, however, discharged vis-à-vis its co-debtors, sureties or any other party holding a right of recourse as it is discharged vis-à-vis its creditors.

(4) If a creditor receives satisfaction exceeding the amount it could claim under the restructuring plan, this does not give rise to a duty on the part of the recipient to make restitution.

(5) If restructuring claims are converted into share or membership rights in the debtor, following court confirmation of the restructuring plan the debtor cannot assert any claims against the former creditors on account of an overvaluation of the claims in the plan.

(6) When confirmation of the restructuring plan become final and binding, defects in the proceedings for plan voting and defects in consent to the plan offer and plan acceptance are to be deemed cured.

Commentary:

In subsection (2), the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 68 – Other Effects of the Restructuring Plan

(1) If rights in objects are to be created, amended, transferred or cancelled or if shareholdings in a company with limited liability are to be transferred, the declarations of intent by the parties affected by the plan and by the debtor that are recorded in the restructuring plan are to be deemed to have been made in the prescribed form.

(2) Resolutions and other declarations of intent by the parties affected by the plan and by the debtor that are recorded in the restructuring plan are to be deemed to have been made in the prescribed form. Notices of meetings, announcements and other measures required under company law in preparation for resolutions of the parties affected by the plan are to be deemed to have been effected in the prescribed form.

(3) The same applies with the necessary modifications to the undertakings recorded in the restructuring plan on which a measure pursuant to subsection (1) or subsection (2) is based.

Section 69 – Revival of Deferred or Waived Claims

(1) If restructuring claims are deferred or partially waived on the basis of the constructive part of the restructuring plan, the deferment or waiver will cease to be binding on a creditor against whom the debtor significantly defaults in implementing the plan. Significant default will only be considered to have occurred when the debtor has not paid a liability that is due despite having received a written reminder from the creditor granting a period of grace of at least two weeks.

(2) If insolvency proceedings are commenced in respect of the debtor's assets before the restructuring plan has been implemented in full, the deferment or waiver of claims within the meaning of subsection (1) ceases to be binding on all the creditors.

(3) The restructuring plan may provide otherwise in departure from subsection (1) or (2). However, subsection (1) cannot be departed from to the detriment of the debtor.

Section 70 – Disputed Claims and Shortfall Claims

(1) Disputed restructuring claims are subject to the arrangement in the restructuring plan applicable to them in terms of the amount subsequently determined for them but not in excess of the amount on which the plan was based.

(2) If a restructuring claim was disputed in the voting proceedings or if the amount of the shortfall claim of the holder of an entitlement to separate satisfaction has not yet been determined, default in the implementation of the restructuring plan within the meaning of section 69 (1) will not be considered to have occurred if, until final determination of the amount, the debtor takes account of the claim to the extent corresponding to the decision on the voting right at the vote on the plan. If the restructuring court has not yet decided on the voting right, on application by the debtor or the creditor the restructuring court shall make a subsequent determination of the extent to which the debtor must take account of the claim on a provisional basis.

(3) If the final determination of the claim results in the debtor having paid an insufficient amount, it shall make retrospective payment of the amount outstanding. Significant default in the implementation of the restructuring plan will only be considered to have occurred when the debtor does not make retrospective payment of the amount outstanding despite having received a written reminder from the creditor granting a period of grace of at least two weeks.

(4) If the final determination of the claim results in the debtor having paid an excessive amount, it may claim repayment of the excess only insofar

as the excess also exceeds the unmatured part of the claim to which the creditor is entitled under the restructuring plan.

Section 71 – Enforcement based on the Restructuring Plan

(1) Restructuring creditors whose claims are not listed as disputed in the confirmation order may pursue compulsory enforcement against the debtor based on the confirmed, final and binding restructuring plan as under an enforceable judgment. Section 202 of the Insolvency Code applies with the necessary modifications.

(2) Subsection (1) also applies to compulsory enforcement against a third party who assumed obligations for the implementation of the plan alongside the debtor by means of a written declaration submitted to the restructuring court without reserving the defence of failure to pursue remedies.

(3) If a creditor asserts the rights to which it is entitled in the event of significant default by the debtor in the implementation of the plan, the creditor has to satisfy the court in relation to the reminder and the expiry of the period of grace in order to obtain the issue of the court certificate of enforceability in respect of these rights and for the purpose of carrying out compulsory enforcement but is not required to produce any further evidence in respect of the debtor's default.

(4) If enforceable title had already been obtained for a claim subject to an arrangement in the plan, it is superseded by the confirmed, final and binding restructuring plan; further enforcement under the earlier title is impermissible in this regard.

Section 72 – Plan Monitoring

(1) Provision may be made in the constructive part of the restructuring plan for monitoring fulfilment of the claims to which the creditors are entitled pursuant to the constructive part of the plan.

(2) Monitoring is to be assigned to a restructuring practitioner.

(3) If the restructuring practitioner ascertains that claims which are being monitored for fulfilment are not or cannot be met, he/she must notify the restructuring court accordingly without delay, along with the creditors who are entitled to claims against the debtor pursuant to the constructive part of the plan.

(4) The restructuring court shall order termination of monitoring if
1. the claims whose fulfilment is subject to monitoring are fulfilled or if it is guaranteed that they will be fulfilled;
2. three years have elapsed since the restructuring plan became final and binding; or
3. insolvency proceedings are commenced in respect of the debtor's assets or commencement is refused due to insufficient assets.

Division 3 – Restructuring Practitioner

StaRUG

Chapter 1 – Appointment Ex Officio

Section 73 – Appointment Ex Officio

(1) The restructuring court shall appoint a restructuring practitioner if
1. as part of the restructuring, the rights of consumers or of micro, small or medium-sized enterprises are to be affected, because their claims or entitlements to separate satisfaction are to be modified through a restructuring plan or enforcement of these claims or entitlements to separate satisfaction is to be temporarily prohibited by a stabilisation order;
2. the debtor applies for a stabilisation order that is to be addressed to all or essentially all creditors, with the exception of the claims excluded pursuant to section 4; or
3. the restructuring plan provides for monitoring fulfilment of the claims to which the creditors are entitled (section 72).
The court may refrain from making an appointment in a given case if one is not necessary in order to preserve the rights of the parties concerned or is clearly disproportionate for this purpose.

(2) The court shall also make an appointment if it is foreseeable that the restructuring objective will be able to be achieved only against the wishes of holders of restructuring claims or entitlements to separate satisfaction, without whose approval of the restructuring plan confirmation of the plan is possible only under the conditions in section 26. The foregoing does not apply if the restructuring involves solely financial sector enterprises as parties affected by the plan. A party affected by the plan is equivalent to a financial sector enterprise if it is the legal successor to a claim established by a financial sector enterprise or is affected by claims under instruments traded on money markets or capital markets. Unsecuritised instruments are equivalent to instruments traded on money markets or capital markets if they are issued at identical terms.

(3) The court may appoint a restructuring practitioner in order to perform investigations as an expert, particularly
1. concerning the requirements for confirmation pursuant to section 63 (1) number 1 and (2) and section 64 (1); or

2. concerning the reasonableness of compensation in the event of alteration of intra-group third-party collateral or a limitation of the liability of general partners.

Section 74 – Appointment

(1) The individual appointed as the restructuring practitioner is to be a tax advisor, certified public accountant, lawyer or other comparably qualified natural person experienced in restructuring and insolvency matters, chosen from among all those persons willing to undertake the office, who is suitable in respect of the individual case and is independent of the creditors and the debtor.

(2) In choosing a restructuring practitioner pursuant to section 73 (1) and (2), the restructuring court shall take into account the proposals of the debtor, the creditors and the persons holding an interest in the debtor. If the debtor has presented a substantiated statement from a tax advisor, certified public accountant, lawyer or other comparably qualified person experienced in restructuring and insolvency matters attesting that the debtor satisfies the requirements of section 51 (1) and (2), the court may deviate from the debtor's proposal only if the proposed person is clearly unsuitable; this is to be substantiated. If a joint proposal is made by parties affected by the plan to whom more than 25 per cent of the voting rights are allotted or are likely to be allotted in each of the groups of holders of restructuring claims and entitlements to separate satisfaction that have been or are to be formed pursuant to section 9, and if the court is not bound by sentence 2, the court may deviate from the joint proposal of the parties affected by the plan only if the proposed person is clearly unsuitable; this is to be substantiated.

(3) If the restructuring court accepts a proposal of the debtor pursuant to subsection (2) sentence 2 or of the parties affected by the plan pursuant to subsection (2) sentence 3, it may appoint an additional restructuring practitioner and assign its duties to him/her; the foregoing does not apply to the duties pursuant to section 76 (2) number 1 sub-clauses 1 and 2.

Section 75 – Legal Status

(1) The restructuring practitioner is subject to the supervision of the restructuring court. The court may request that the restructuring practitioner provide specific information or a status report at any time.

(2) The restructuring court may remove the restructuring practitioner from office for good cause. Such dismissal may occur ex officio or on application by the restructuring practitioner, the debtor or a creditor. Dismissal is to occur on application by the debtor or a creditor only if the practitioner is not independent; the applicant must substantiate this. The court shall hear the restructuring practitioner prior to its decision.

(3) The restructuring practitioner has the right of immediate appeal against his/her dismissal. The applicant has the right of immediate appeal against the refusal of the application.

(4) The restructuring practitioner shall fulfil his/her duties with the required care and diligence. He/she shall perform his/her duties impartially. If he/she intentionally or negligently breaches the duties incumbent on him/her, he/she is obligated to pay damages to the parties affected. The time-barring of the right to claim damages arising from a breach of duty on the part of the restructuring practitioner is governed by the provisions on the standard limitation period under the Civil Code. The claim becomes time-barred at the latest three years from the date on which the pendency of the restructuring case ended. If plan monitoring was ordered, the conclusion of plan monitoring takes the place of the end of the pendency of the restructuring case.

Section 76 – Duties

(1) If the restructuring practitioner ascertains circumstances justifying termination of the restructuring case pursuant to section 33, he/she shall notify the restructuring court thereof without delay.

(2) If the requirements set out in section 73 (1) number 1 or 2 or (2) are met,
1. the restructuring practitioner is entitled to decide how the restructuring plan is put to a vote; if the vote does not take place in court-supervised proceedings, the practitioner shall chair the meeting of the parties affected by the plan and document the vote; the practitioner shall verify the claims, entitlements to separate satisfaction, intra-group third-party collateral and share and membership rights of the parties affected by the plan; if a restructuring claim, entitlement to separate satisfaction, intra-group third-party collateral or share and membership right is disputed or uncertain in terms of its basis or amount, he/she shall notify the other parties affected by the plan of this circumstance and work toward clarifying the voting rights by means of a preliminary review pursuant to sections 47 and 48;
2. the court may assign to the practitioner the power
a) to review the debtor's economic position and monitor its management; and

b) to demand from the debtor that incoming funds may be accepted only by the practitioner and payments may be made only by the practitioner; and

3. the court may instruct the debtor to notify the practitioner about payments and to make payments outside of normal business operations only if the practitioner approves them.

(3) If a stabilisation order is issued for the benefit of the debtor,

1. the practitioner shall review on an ongoing basis whether the requirements for the order continue to exist and whether there are grounds for terminating it; for this purpose, the practitioner shall investigate the debtor's circumstances; and

2. the practitioner has the right to assert the grounds for terminating the order.

(4) If the debtor presents a restructuring plan for confirmation, the practitioner shall comment on the declaration pursuant to section 14 (1). If the practitioner is appointed prior to the vote on the plan, the comment is to be provided to the parties affected by the plan as a further attachment. The report pursuant to sentence 1 is also to describe the doubts about the existence or amount of a restructuring claim, an entitlement to separate satisfaction, intra-group third-party collateral or a share or membership right pursuant to subsection (2) number 1 sub-clause 4 or a dispute in this respect.

(5) The debtor is obligated the provide the practitioner with the necessary information, to permit him/her to inspect its books and records and to support him/her in the performance of his/her duties.

(6) The restructuring court may instruct the restructuring practitioner to carry out the service of documents incumbent upon the court. The practitioner may use third parties, in particular his/her own staff, for effecting and recording the service of documents. He/she shall add the notes made by him/her in accordance with section 184 (2) sentence 4 of the Code of Civil Procedure to the court files without delay.

Chapter 2 – Appointment on Application

Section 77 – Application

(1) On application by the debtor, the restructuring court shall appoint a restructuring practitioner for the purpose of facilitating negotiations between the parties concerned (optional restructuring practitioner). Creditors are entitled to this right jointly if they are allotted or are likely to be allotted more than 25 per cent of the voting rights in a group and if they undertake to assume joint and several liability for the costs of the appointment.

(2) The application may also request that the practitioner be assigned one or more additional duties pursuant to section 76.

Section 78 – Appointment and Legal Status

(1) Section 74 (1) applies with the necessary modifications to the appointment of the optional restructuring practitioner.

(2) If creditors who collectively represent all groups likely to be included in the restructuring plan make a proposal as to the person to be appointed as the optional restructuring practitioner, the court may deviate from this only if the person is clearly unsuitable or, where the practitioner is to be appointed solely for the purpose of facilitating negotiations between the parties concerned, if the debtor opposes the proposal; a deviation is to be substantiated.

(3) Section 75 applies with the necessary modifications to the legal status of the optional restructuring practitioner.

Section 79 – Duties

The optional restructuring practitioner shall assist the debtor and the creditors in drafting and negotiating the restructuring concept and the plan based on it.

Chapter 3 – Remuneration

Section 80 – Entitlement to Remuneration

The restructuring practitioner is entitled to remuneration (fee and expenses) pursuant to the following provisions. Agreements on remuneration are effective only if the following provisions are observed concerning the permissible content and the procedure.

Section 81 – Standard Remuneration

(1) To the extent that he/she personally carries out work, the restructuring practitioner is to be paid a fee on the basis of reasonable hourly rates.

(2) If it is necessary for qualified employees to provide assistance, the restructuring practitioner is also to be paid a fee for their work on the basis of reasonable hourly rates.

(3) In calculating the hourly rates, the restructuring court shall consider the size of the business, the nature and extent of the debtor's economic difficulties and the qualifications of the restructuring practitioner and the qualified employees. In the standard case, the hourly rate for the personal work of the restructuring practitioner is to amount to not more than EUR 350 and for the

work of the qualified employees not more than EUR 200.

(4) The restructuring court shall set the hourly rates when the restructuring practitioner is appointed. At the same time, it shall specify a maximum amount for the fee based on time budgets, which are to appropriately take into account the likely time expenditure and the qualifications of the practitioner and the qualified employees. In addition, the restructuring court shall hear the person to be appointed and the parties that are liable for the expenses pursuant to number 9017 of the cost schedule attached to the Act on Court Costs [*Gerichtskostengesetz*] (parties liable for expenses).

(5) An optional restructuring practitioner should first be appointed after payment of the court fee for the appointment pursuant to number 2513 of the cost schedule attached to the Act on Court Costs and an advance payment against the expenses pursuant to number 9017 of the cost schedule attached to the Act on Court Costs. If the appointment is made ex officio, the restructuring court shall also first decide on every application by the debtor for use of a tool of the stabilisation and restructuring framework after payment of the court fee for the appointment pursuant to number 2513 of the cost schedule attached to the Act on Court Costs and an advance payment against the expenses pursuant to number 9017 of the cost schedule attached to the Act on Court Costs.

(6) If the time budgets applied when calculating the maximum amount are insufficient for proper performance of the duties and powers, the practitioner shall explain to the court without delay the reason for and extent of the need to increase the budgets. In such case, after hearing the parties liable for expenses, the restructuring court shall decide on a modification of the budgets without delay. Subsection (5) applies with the necessary modifications.

(7) Section 5 (2) sentence 1 number 2 and sections 6, 7 and 12 (1) sentence 2 number 4 of the Judicial Remuneration and Compensation Act [*Justizvergütungs- und -entschädigungsgesetz*] apply with the necessary modifications to the reimbursement of expenses.

Section 82 – Fixing of Remuneration

(1) On application by the restructuring practitioner, the restructuring court shall fix the remuneration by order when the office of the restructuring practitioner ends.

(2) In fixing remuneration pursuant to subsection (1), the restructuring court shall also decide on which parties are to bear the expenses pursuant to number 9017 of the cost schedule attached to the Act on Court Costs and on the extent to which they are to bear them. The expenses are to be imposed on the debtor. In deviation from sentence 2, the expenses associated with the appointment on application by creditors of an optional restructuring practitioner are to be imposed on the creditors who applied for the appointment, unless the expenses were incurred for activities that the restructuring court had assigned to the restructuring practitioner ex officio or on application by the debtor.

(3) The restructuring practitioner and each party liable for expenses has the right of immediate appeal against the fixing of the hourly rate pursuant to section 81 (4), against the specification or modification of the maximum amount pursuant to section 81 (4) and (6) and against the fixing of remuneration.

(4) On application by the restructuring practitioner, reasonable advance payment is to be paid if he/she has incurred or is likely to incur substantial expenses or if the expected remuneration for work already performed exceeds the amount of EUR 10,000.

Section 83 – Remuneration in Special Cases

(1) In special cases, hourly rates that exceed the maximum amounts specified in section 81 (3) may be fixed as the basis for the fee, in particular if

1. all parties likely to be liable for expenses approve;

2. no other suitable person is willing to accept the appointment; or

3. under the special circumstances of the restructuring case, the duties assigned to the restructuring practitioner approximate the duties of a supervisor in insolvency proceedings that are managed through self-administration, particularly because a general stabilisation order is issued or because, with the exception of the creditors to be excluded pursuant to section 4, all or essentially all creditors and the persons holding a participating interest in the debtor are included in the restructuring plan.

In the case of sentence 1 number 3, remuneration is also possible in accordance with other principles, particularly calculation on the basis of the value of the claims against the debtor that are included in the restructuring plan or on the basis of the value of the business assets.

(2) If the restructuring practitioner is appointed on application by and at the proposal of all parties likely to be liable for expenses, and if the restructuring practitioner and all parties liable for expenses present an agreement on remuneration,

the court shall base the calculation of remuneration on that agreement, unless the agreement results in unreasonable remuneration.

Division 4 – Public Restructuring Cases

Section 84 – Application and Initial Decision

(1) In proceedings involving restructuring cases, public announcements are to be made only if the debtor applies for this. The application is to be lodged prior to the initial decision in the restructuring case and may be withdrawn only up to the time of the initial decision. Article 102c section 5 of the Introductory Act to the Insolvency Code [*Einführungsgesetz zur Insolvenzordnung*] applies to the application with the necessary modifications.

(2) If the debtor's application requested that public announcements are to be made in the proceedings concerning the restructuring case, the initial decision issued in the restructuring case is to indicate
1. the grounds on which the court's international jurisdiction is based; and
2. whether jurisdiction is based on Article 3 (1) or (2) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19; OJ L 349, 21.12.2016, p. 6), as amended.
The information specified in Article 24 (2) of Regulation (EU) 2015/848 is to be made publicly available. Article 102c section 4 of the Introductory Act to the Insolvency Code is to be applied with the necessary modifications.

Section 85 – Special Provisions

(1) In addition to the information specified in section 84 (2) sentence 2, the following information is to be made publicly available:
1. place and time of court-supervised meetings;
2. the appointment and dismissal of a restructuring practitioner; and
3. all court decisions that are issued in the restructuring case.

(2) If public announcements are made pursuant to subsection (1), it is not necessary to serve notices of meetings on shareholders, limited partners and bondholders. If the debtor is a quoted stock corporation, section 121 (4a) of the Stock Corporation Act applies with the necessary modifications.

Section 86 – Public Announcements; Power to Issue Statutory Orders

(1) Public announcements are to be made by means of centralised, national publication on the internet; publication may be made in extract form. An announcement is to be deemed to have been made when a further two days have elapsed since the day of publication.

(2) The Federal Ministry of Justice and Consumer Protection is authorised to regulate the details of the centralised, national publication on the internet by statutory order issued with the approval of the Bundesrat. It is to stipulate, in particular, time limits for deletion and provisions ensuring that publications
1. are not tampered with and are complete, factually correct and up-to-date; and
2. can be traced to their source at any time.

(3) Public announcement suffices as proof of service on all parties concerned even if this Act prescribes separate service in addition.

Section 87 – Restructuring Forum; Power to Issue Statutory Orders

(1) In the restructuring forum of the Federal Gazette, parties affected by the plan may call upon other parties affected by the plan to exercise their voting right in a certain way when voting on the plan, to grant a voting proxy or to support a proposal to amend the presented restructuring plan.

(2) The request must include the following information:
1. the name of and an address for the party affected by the plan;
2. the debtor;
3. the restructuring court and the reference number of the restructuring case;
5. the proposal for exercising the voting right, for granting the voting proxy or for amending the plan; and
6. the date of the meeting of the parties affected by the plan or of the expiry of the time limit for acceptance of the plan offer.

(3) The request may make reference to reasoning provided on the website of the requesting party and to its email address.

(4) In the restructuring forum of the Federal Gazette, the debtor may make reference to a comment on its website concerning the request.

(5) The Federal Ministry of Justice and Consumer Protection is authorised to regulate the outward appearance of the restructuring forum and other details by statutory order issued without requiring the approval of the Bundesrat, in particular, details concerning the request, the reference, the fees, the deletion time limits, the entitlement to deletion, cases of misuse, and inspection of documents.

Section 88 – Applicability of Article 102c of the Introductory Act to the Insolvency Code

Article 102c sections 1, 2, 3 (1) and (3), 6, 15, 25 and 26 of the Introductory Act to the Insolvency Code is applicable with the necessary modifications.

Commentary:

The Act on the Stabilisation and Restructuring Framework for Businesses (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen,* StaRUG) entered into force on 1 January 2021, but sections 84 to 88 will not take effect until 17 July 2022.

Division 5 – Avoidance and Liability Law

Section 89 – Legal Acts Undertaken While the Restructuring Case is Pending

(1) It may not be presumed that there was a contribution to delay in filing an application for insolvency proceedings in a manner contrary to public policy or that a legal act was undertaken with the intent to prejudice creditors solely because one of the parties involved in the legal act was aware of the fact that the restructuring case was pending or that the debtor had used a tools of the stabilisation and restructuring framework.

(2) If, following notice of illiquidity or overindebtedness, the court does not terminate the restructuring case pursuant to section 33 (2) number 1, subsection (1) also applies to knowledge of illiquidity or overindebtedness.

(3) If the debtor has given notice of illiquidity or overindebtedness pursuant to section 32 (3), then until termination of the restructuring case pursuant to section 33 (2) number 1, every payment made in the ordinary course of business, particularly payments that are necessary for continuing normal business activities and for preparing and implementing the notified restructuring project, is to be deemed consistent with the due care of a prudent manager. The foregoing does not apply to payments that may be withheld until the restructuring court's forthcoming decision, provided that this does not jeopardise the continuation of the restructuring project.

Section 90 – Consequences of the Plan and Implementation of the Plan

(1) Other than claims with the ranking specified in section 39 (1) number 5 of the Insolvency Code and the provision of security that can be avoided pursuant to section 135 of the Insolvency Code or section 6 of the Avoidance Act [*Anfechtungsgesetz*], the arrangements in a restructuring plan that has been confirmed with final and binding effect and legal acts that are undertaken in implementation of such a plan may, until viable recovery is achieved, be avoided only if confirmation was based on incorrect or incomplete information provided by the debtor and the other party was aware of this.

(2) If the constructive part of the restructuring plan provides for the transfer of the debtor's entire assets or substantial parts thereof, subsection (1) applies only if it is assured that, compared with the parties affected by the plan, the creditors that are not affected by the plan have priority to satisfy their claims from the proceeds, which must be commensurate with the value of the transferred asset.

Section 91 – Computation of Time Limits

The period of the pendency of the restructuring case is not to be counted in the time limits specified in sections 3 to 6a of the Avoidance Act and sections 88 and 130 to 136 of the Insolvency Code.

Division 6 – Employee Participation

Section 92 – Participation Rights under the Works Constitution Act

The debtor's obligations to employee representative bodies and their rights of participation under the Works Constitution Act [*Betriebsverfassungsgesetz*] remain unaffected by this Act.

Section 93 – Creditors' Advisory Committee

(1) If in a restructuring case the claims of all creditors other than the claims specified in section 4 are to be modified through a restructuring plan and if the restructuring case has features similar to those of collective insolvency proceedings, the court can appoint a creditors' advisory committee. Section 21 (2) sentence 1 number 1a of the Insolvency Code applies with the necessary modifications. Creditors not affected by the plan can also be represented in the advisory committee.

(2) If a creditors' advisory committee is established, the unanimous resolution of the creditors' advisory committee takes the place of the joint proposal of the parties affected by the plan pursuant to section 74 (2) sentence 3.

(3) The members of the advisory committee support and monitor the debtor in the management of its business. The debtor shall give the advisory committee notice of the use of tools of the stabilisation and restructuring framework.

(4) The members of the advisory committee are entitled to remuneration for their activities and to reimbursement of reasonable expenses. The amount of the remuneration is governed by

section 17 of the Insolvency Professionals' Fee Regulation [*Insolvenzrechtliche Vergütungsverordnung*].

Part 3 – Rehabilitation Mediation

Section 94 – Application

(1) On application by a debtor able to be restructured, the court shall appoint a suitable natural person as rehabilitation mediator, particularly one who is experienced in business matters and independent of the creditors and of the debtor. The foregoing does not apply if the debtor is clearly illiquid. If the debtor is a legal entity or an entity without legal personality that does not have a natural person who is liable as a direct or indirect partner for its liabilities, sentence 2 also applies in the case of clear overindebtedness.

(2) The following information is to be included in the application:
1. the object of the business; and
2. the nature of the economic and financial difficulties.

The application is to be accompanied by a list of creditors and a list of assets, as well as the declaration of the debtor that it is not illiquid. If the debtor is a legal entity or an entity without legal personality that does not have a natural person who is liable as a direct or indirect partner for its liabilities, the declaration must also state that no overindebtedness exists.

(3) The application is to be addressed to the court with jurisdiction over restructuring cases.

Commentary:
In subsection (1) sentence 3 and subsection (2) sentence 3, the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 95 – Appointment

(1) The rehabilitation mediator is to be appointed for a period of up to three months. On application by the mediator, which requires the approval of the debtor and the creditors involved in the negotiations, the appointment period may be extended by up to an additional three months. If confirmation of a rehabilitation settlement pursuant to section 97 is applied for during this period, the appointment is to be extended until the decision on confirmation is issued.

(2) The appointment is not to be published.

Section 96 – Rehabilitation Mediation

(1) The rehabilitation mediator shall liaise between the debtor and its creditors for the purpose of obtaining a solution for overcoming the economic and financial difficulties.

(2) The debtor shall permit the mediator to inspect its books and records and provide him/her with the appropriate information he/she requests.

(3) The rehabilitation mediator shall report to the court in writing once a month on the progress of the rehabilitation mediation. The report is to contain, at a minimum, information about
1. the nature and causes of the economic and financial difficulties;
2. the group of creditors and other participants involved in the negotiations;
3. the subject of the negotiations; and
4. the objective and likely progress of the negotiations.

(4) The rehabilitation mediator shall give the court notice if he/she becomes aware of the illiquidity of the debtor. If the debtor is a legal entity or a company without legal personality where no general partner is a natural person, the foregoing also applies to overindebtedness of the debtor.

(5) The rehabilitation mediator is subject to the supervision of the restructuring court. The restructuring court may remove the rehabilitation mediator from office for good cause. The court shall hear the rehabilitation mediator prior to its decision.

Commentary:
In subsection (4), the words "company without legal personality" will be replaced with the words "partnership with legal personality" with effect from 1 January 2024 by the Act to Modernise the Law on Partnerships *(Personengesellschaftsrechtsmodernisierungsgesetz)* (Federal Law Gazette I 2021, p. 3436).

Section 97 – Confirmation of a Rehabilitation Settlement

(1) On application by the debtor, the restructuring court may confirm a rehabilitation settlement that the debtor enters into with its creditors, which may also include the involvement of third parties. Confirmation is to be refused if the rehabilitation concept underlying the settlement
1. is not coherent or is not based on actual circumstances; or
2. has no reasonable prospect of success.

(2) The rehabilitation mediator shall comment in writing on the prerequisites specified in subsection (1) sentence 2.

(3) A rehabilitation settlement confirmed pursuant to subsection (1) may be avoided only under the conditions specified in section 90.

Section 98 – Remuneration

(1) The rehabilitation mediator is entitled to reasonable remuneration. It is to be calculated based on the expenditure of time and materials for the duties associated with rehabilitation mediation.

(2) Sections 80 to 83 apply with the necessary modifications.

Section 99 – Dismissal

(1) The rehabilitation mediator is to be dismissed
1. on his/her own application or on application by the debtor; or
2. ex officio if the restructuring court was notified by the mediator of the debtor's material insolvency.

(2) If the mediator is dismissed pursuant to subsection (1) number 1, the court shall appoint another mediator on application by the debtor.

Section 100 – Transition to the Stabilisation and Restructuring Framework

(1) If the debtor makes use of the tools of the stabilisation and restructuring framework, the rehabilitation mediator is to remain in office until such time as the appointment period expires, he/she is dismissed pursuant to section 99 or a restructuring practitioner is appointed.

(2) The restructuring court may appoint the rehabilitation mediator as the restructuring practitioner.

Part 4 – Early Warning Tools

Section 101 – Information about Early Warning Tools

Information about the availability of the sets of tools supplied by public authorities for the purpose of early identification of crises is to be provided by the Federal Ministry of Justice and Consumer Protection on its website www.bmjv.bund.de.

Section 102 – Notification and Warning Obligations

When preparing annual financial statements for a client, tax advisors, tax accountants, certified public accountants, sworn auditors and lawyers must make the client aware of the existence of possible grounds for insolvency pursuant to sections 17 to 19 of the Insolvency Code and of the obligations that this places on managers and members of supervisory bodies if there are obvious indications of such grounds and if they have reason to assume that the client is unaware of possible material insolvency.

Annex (to section 5 sentence 2)

Information Required to be Contained in the Restructuring Plan

In addition to the information required by sections 5 to 15, the restructuring plan must contain, at a minimum, the following information:

1. the debtor's company name or surname and first names, date of birth, registration court, registration number under which the debtor is entered in the Commercial Register, branch of business or occupation and place of business or place of residence and, in the case of several places of business, the principal place of business;
2. the debtor's assets and liabilities at the time of presentation of the restructuring plan, including a valuation of the assets, a description of the economic situation of the debtor and the position of employees and a description of the causes and extent of the debtor's economic difficulties;
3. the parties affected by the plan, who are either to be named or be described through a sufficiently specific designation of the claims or rights;
4. the groups into which the parties affected by the plan have been divided for the purpose of acceptance of the restructuring plan and the voting rights allotted to their claims and rights;
5. the creditors, holders of entitlements to separate satisfaction and holders of share or membership rights that have not been included in the restructuring plan, together with an explanation of the reasons for non-inclusion; a description that makes reference to categories of similar creditors, holders of entitlements to separate satisfaction and holders of share or membership rights suffices unless this hampers the review of appropriate differentiation pursuant to section 8;
6. the name and address of the restructuring practitioner, provided that one has been appointed;
7. the effects of the restructuring project on employment relationships, dismissals and arrangements concerning short-time working and the methods for notifying and hearing employee representatives; and
8. if the restructuring plan provides for new financing (section 12), the reasons for the need for such financing.

REGULATION (EU) 2015/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on insolvency proceedings (as of 15 december 2021)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof, Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1], Acting in accordance with the ordinary legislative procedure[2],

Whereas:

(1) On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000[3]. The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.

(2) The Union has set the objective of establishing an area of freedom, security and justice.

(3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. This Regulation needs to be adopted in order to achieve that objective, which falls within the scope of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty.

(4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Union law. The insolvency of such undertakings also affects the proper functioning of the internal market, and there is a need for a Union act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

(5) It is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).

(6) This Regulation should include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. This Regulation should also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation should lay down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.

(7) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council[4]. Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012.

(8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross- border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.

(9) This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A. In respect of the national procedures contained in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.

1 OJ C 271, 19.9.2013, p. 55.

2 Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 12 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

3 Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

4 (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(10) The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. It should, in particular, extend to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self- employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor. Since such proceedings do not necessarily entail the appointment of an insolvency practitioner, they should be covered by this Regulation if they take place under the control or supervision of a court. In this context, the term 'control' should include situations where the court only intervenes on appeal by a creditor or other interested parties.

(11) This Regulation should also apply to procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and, if no agreement on a restructuring plan can be reached, should be preliminary to other procedures covered by this Regulation.

(12) This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the opportunity to challenge the jurisdiction of the court which has opened the proceedings.

(13) Accordingly, insolvency proceedings which are confidential should be excluded from the scope of this Regulation.
While such proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects throughout the Union.

(14) The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.

(15) This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis. Although labelled as 'interim', such proceedings should meet all other requirements of this Regulation.

(16) This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provision for payment to creditors.

(17) This Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay its debts as they fall due. The time frame relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases in which the debtor is faced with non-financial difficulties threatening the status of its business as a going concern and, in the medium term, its liquidity. This may be the case, for example, where the debtor has lost a contract which is of key importance to it.

(18) This Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union.

(19) Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings covered by Directive 2001/24/EC of the European

Parliament and of the Council[5] and collective investment undertakings should be excluded from the scope of this Regulation, as they are all subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.

(20) Insolvency proceedings do not necessarily involve the intervention of a judicial authority. Therefore, the term 'court' in this Regulation should, in certain provisions, be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened.

(21) Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under national law, be appropriately regulated and authorised to act in insolvency proceedings. The national regulatory framework should provide for proper arrangements to deal with potential conf licts of interest.

(22) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope.

(23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.

(24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.

(25) This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union.

(26) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State should be established by the national law of the Member State concerned.

(27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.

(28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the adminis tration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.

5 Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

(29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

(30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.

(31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.

(32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.

(33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.

(34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.

(35) The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law.

(36) The court having jurisdiction to open the main insolvency proceedings should be able to order provisional and protective measures as from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings. In that connection, this Regulation should provide for various possibilities. On the one hand, the court competent for the main insolvency proceedings should also be able to order provisional and protective measures covering assets situated in the territory of other Member States. On the other hand, an insolvency practitioner temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those Member States.

(37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.

(38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.

(39) This Regulation should provide for rules to determine the location of the debtor's assets, which should apply when determining which assets belong to the main or secondary insolvency proceedings, or to situations involving third parties' rights in rem. In particular, this Regulation should provide that European patents with unitary effect, a Community trade mark or any other similar rights, such as Community plant variety rights or Community designs, should only be included in the main insolvency proceedings.

(40) Secondary insolvency proceedings can serve different purposes, besides the protection of local interests. Cases may arise in which the insolvency estate of the debtor is too complex to administer as a unit, or the differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening of proceedings to the other Member States where the assets are located. For that reason, the insolvency practitioner in the main insolvency proceedings may request the opening of secondary insolvency proceedings where the efficient administration of the insolvency estate so requires.

(41) Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.

(42) First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors. When assessing those interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.

(43) For the purposes of giving an undertaking to local creditors, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main insolvency proceedings should respect the priority rights that creditors would have had if secondary insolvency proceedings had been opened in that Member State.

(44) National law should be applicable, as appropriate, in relation to the approval of an undertaking. In particular, where under national law the voting rules for adopting a restructuring plan require the prior approval of creditors' claims, those claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.

(45) Second, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings, in order to preserve the efficiency of the stay granted in the main insolvency proceedings. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the general interest of local creditors. In such a case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.

(46) In order to ensure effective protection of local interests, the insolvency practitioner in the main

insolvency proceedings should not be able to realise or re-locate, in an abusive manner, assets situated in the Member State where an establishment is located, in particular, with the purpose of frustrating the possibility that such interests can be effectively satisfied if secondary insolvency proceedings are opened subsequently.

(47) This Regulation should not prevent the courts of a Member State in which secondary insolvency proceedings have been opened from sanctioning a debtor's directors for violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.

(48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner should be able to propose a restructuring plan or composition or apply for a suspension of the realisation of the assets in the secondary insolvency proceedings. When cooperating, insolvency practitioners and courts should take into account best practices for cooperation in cross-border insolvency cases, as set out in principles and guidelines on communication and cooperation adopted by European and international organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (Uncitral).

(49) In light of such cooperation, insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form, in that they may be written or oral, and in scope, in that they may range from generic to specific, and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may ref lect an agreement between the parties to take, or to refrain from taking, certain steps or actions.

(50) Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualifi cation and licensing of the insolvency practitioner.

(51) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

(52) Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in those proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary insolvency proceedings relating to the same debtor. Cooperation between the insolvency practitioners should not run counter to the interests of the creditors in each of the proceedings, and such cooperation should be aimed at finding a solution that would leverage synergies across the group.

(53) The introduction of rules on the insolvency proceedings of groups of companies should not limit the possibility for a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State. In such cases, the court should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.

(54) With a view to further improving the coordination of the insolvency proceedings of members of a group of companies, and to allow for a coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency proceedings of members of a group of companies. Such coordination should strive to ensure the efficiency of the

coordination, whilst at the same time respecting each group member's separate legal personality.

(55) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of a group of companies should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, that insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify the essential elements of the coordination, in particular an outline of the coordination plan, a proposal as to whom should be appointed as coordinator and an outline of the estimated costs of the coordination.

(56) In order to ensure the voluntary nature of group coordination proceedings, the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period. In order to allow the insolvency practitioners involved to take an informed decision on participation in the group coordination proceedings, they should be informed at an early stage of the essential elements of the coordination. However, any insolvency practitioner who initially objects to inclusion in the group coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of the request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the opportunity of challenging that decision before the court which has opened the group coordination proceedings.

(57) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and to have a generally positive impact for the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of those criteria prior to opening group coordination proceedings.

(58) The advantages of group coordination proceedings should not be outweighed by the costs of those proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share of those costs that each group member will bear, are adequate, proportionate and reasonable, and are determined in accordance with the national law of the Member State in which group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling those costs from an early stage of the proceedings. Where the national law so requires, controlling costs from an early stage of proceedings could involve the insolvency practitioner seeking the approval of a court or creditors' committee.

(59) Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in costs compared to the initially estimated costs and, in any case, where the costs exceed 10% of the estimated costs, the coordinator should be authorised by the court which has opened the group coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the group coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to allow them to communicate their observations on the appropriateness of the coordinator's request.

(60) For members of a group of companies which are not participating in group coordination proceedings, this Regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. It should only be possible to request such a stay if a restructuring plan is presented for the members of the group concerned, if the plan is to the benefit of the creditors in the proceedings in respect of which the stay is requested, and if the stay is necessary to ensure that the plan can be properly implemented.

(61) This Regulation should not prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the national jurisdiction and that their application would not impair the efficiency of the rules laid down by this Regulation.

(62) The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.

(63) Any creditor which has its habitual residence, domicile or registered office in the Union should

have the right to lodge its claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. This Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure the equal treatment of creditors, the distribution of proceeds should be coordinated. Every creditor should be able to keep what it has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.

(64) It is essential that creditors which have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council[6] should not apply where this Regulation refers to the obligation to inform creditors. The use of standard forms available in all official languages of the institutions of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State. The consequences of the incomplete filing of the standard forms should be a matter for national law.

(65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.

(66) This Regulation should set out, for the matters covered by it, uniform rules on conf lict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of proceedings should be applicable (lex concursus). This rule on conflict of laws should be valid both for the main insolvency proceedings and for local proceedings. The lex concursus determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

(67) Automatic recognition of insolvency proceedings to which the law of the State of the opening of proceedings normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provision should be made for a number of exceptions to the general rule.

(68) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since such rights are of considerable importance for the granting of credit. The basis, validity and extent of rights in rem should therefore normally be determined according to the lex situs and not be affected by the opening of insolvency proceedings. The proprietor of a right in rem should therefore be able to continue to assert its right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the lex situs in one Member State but the main insolvency proceedings are being carried out in another Member State, the insolvency practitioner in the main insolvency proceedings should be able to request the opening of secondary insolvency proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If secondary insolvency proceedings are not opened, any surplus on the sale of an asset covered by rights in rem should be paid to the insolvency practitioner in the main insolvency proceedings.

(69) This Regulation lays down several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights in rem of creditors or third parties.

6 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

(70) If a set-off of claims is not permitted under the law of the State of the opening of proceedings, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off would acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.

(71) There is also a need for special protection in the case of payment systems and financial markets, for example in relation to the position-closing agreements and netting agreements to be found in such systems, as well as the sale of securities and the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council[7]. For such transactions, the only law which is relevant should be that applicable to the system or market concerned. That law is intended to prevent the possibility of mechanisms for the payment and settlement of transactions, and provided for in payment and set-off systems or on the regulated financial markets of the Member States, being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules laid ,down in this Regulation.

(72) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment should be determined by the law applicable to the relevant employment agreement, in accordance with the general rules on conflict of laws. Moreover, in cases where the termination of employment contracts requires approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State. Any other questions relating to the law of insolvency, such as whether the employees' claims are protected by preferential rights and the status such preferential rights may have, should be determined by the law of the Member State in which the insolvency proceedings (main or secondary) have been opened, except in cases where an undertaking to avoid secondary insolvency proceedings has been given in accordance with this Regulation.

(73) The law applicable to the effects of insolvency proceedings on any pending lawsuit or pending arbitral proceedings concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. However, this rule should not affect national rules on recognition and enforcement of arbitral awards.

(74) In order to take account of the specific procedural rules of court systems in certain Member States flexibility should be provided with regard to certain rules of this Regulation. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State should include, where a Member State's procedural rules so require, an order by that judicial body directing that notice be given.

(75) For business considerations, the main content of the decision opening the proceedings should be published, at the request of the insolvency practitioner, in a Member State other than that of the court which delivered that decision. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.

(76) In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross- border insolvency cases in a publicly accessible electronic register. In order to facilitate access to that information for creditors and courts domiciled or located in other Member States, this Regulation should provide for the interconnection of such insolvency registers via the European e-Justice Portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.

(77) This Regulation should determine the minimum amount of information to be published in the insolvency registers. Member States should not be precluded from including additional information. Where the debtor is an individual, the insolvency registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. That registration number should be understood to be the unique registration number of the debtor's independent business or professional activity published in the trade register, if any.

(78) Information on certain aspects of insolvency proceedings is essential for creditors, such as time

7 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

limits for lodging claims or for challenging decisions. This Regulation should, however, not require Member States to calculate those time-limits on a case-by-case basis. Member States should be able to fulfil their obligations by adding hyperlinks to the European e-Justice Portal, where self-explanatory information on the criteria for calculating those time-limits is to be provided.

(79) In order to grant sufficient protection to information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, address, date of birth or the district of the competent court, or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.

(80) Member States should also be able not to include in their insolvency registers information on individuals not exercising an independent business or professional activity. In such cases, Member States should ensure that the relevant information is given to the creditors by individual notice, and that claims of creditors who have not received the information are not affected by the proceedings.

(81) It may be the case that some of the persons concerned are not aware that insolvency proceedings have been opened, and act in good faith in a way that conflicts with the new circumstances. In order to protect such persons who, unaware that foreign proceedings have been opened, make a payment to the debtor instead of to the foreign insolvency practitioner, provision should be made for such a payment to have a debt-discharging effect.

(82) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[8].

(83) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.

(84) Directive 95/46/EC of the European Parliament and of the Council[9] and Regulation (EC) No 45/2001 of the European Parliament and of the Council[10] apply to the processing of personal data within the framework of this Regulation.

(85) This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council[11].

(86) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a legal framework for the proper administration of cross-border insolvency proceedings, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(87) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(88) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(89) The European Data Protection Supervisor was consulted and delivered an opinion on 27 March 2013[12] ,

8 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

9 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

10 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

11 Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

12 OJ C 358, 7.12.2013, p. 15.

HAS ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1 Scope

1. This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:
   (a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;
   (b) the assets and affairs of a debtor are subject to control or supervision by a court; or
   (c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).
   Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.
   The proceedings referred to in this paragraph are listed in Annex A.
2. This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:
   (a) insurance undertakings;
   (b) credit institutions;
   (c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or
   (d) collective investment undertakings.

Article 2 Definitions

For the purposes of this Regulation:

(1) 'collective proceedings' means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;

(2) 'collective investment undertakings' means undertakings for collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC of the European Parliament and of the Council[13] and alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council[14];

(3) 'debtor in possession' means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;

(4) 'insolvency proceedings' means the proceedings listed in Annex A;

(5) 'insolvency practitioner' means any person or body whose function, including on an interim basis, is to:
(i) verify and admit claims submitted in insolvency proceedings;
(ii) represent the collective interest of the creditors;
(iii) administer, either in full or in part, assets of which the debtor has been divested; (iv) liquidate the assets referred to in point (iii); or
(v) supervise the administration of the debtor's affairs.

The persons and bodies referred to in the first subparagraph are listed in Annex B;

(6) 'court' means:
(i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;
(ii) in all other articles, the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

(7) 'judgment opening insolvency proceedings' includes:
(i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and
(ii) the decision of a court to appoint an insolvency practitioner;

(8) 'the time of the opening of proceedings' means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;

13 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

14 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

(9) 'the Member State in which assets are situated' means, in the case of:
(i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;
(ii) financial instruments, the title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ('book entry securities'), the Member State in which the register or account in which the entries are made is maintained;
(iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;
(iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;
(v) European patents, the Member State for which the European patent is granted;
(vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;
(vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;
(viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);

(10) 'establishment' means any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;

(11) 'local creditor' means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;

(12) 'foreign creditor' means a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States;

(13) 'group of companies' means a parent undertaking and all its subsidiary undertakings;

(14) 'parent undertaking' means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council[15] shall be deemed to be a parent undertaking.

Article 3 International jurisdiction

1. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ('main insolvency proceedings'). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.
   In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.
   In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.
   In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.
2. Where the centre of the debtor's main interests is situated within the territory of a Member

15 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19)

State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.
4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where
(a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or
(b) the opening of territorial insolvency proceedings is requested by:
(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or
(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.
When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

Article 4 Examination as to jurisdiction

1. A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).
2. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

Article 5 Judicial review of the decision to open main insolvency proceedings

1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.
2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.

Article 6 Jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.
2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) No 1215/2012.
The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.
3. For the purpose of paragraph 2, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 7 Applicable law

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (the 'State of the opening of proceedings').
2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. In particular, it shall determine the following:
(a) the debtors against which insolvency proceedings may be brought on account of their capacity;

(b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
(c) the respective powers of the debtor and the insolvency practitioner;
(d) the conditions under which set-offs may be invoked;
(e) the effects of insolvency proceedings on current contracts to which the debtor is party;
(f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;
(g) the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings;
(h) the rules governing the lodging, verification and admission of claims;
(i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
(j) the conditions for, and the effects of closure of, insolvency proceedings, in particular by composition;
(k) creditors' rights after the closure of insolvency proceedings;
(l) who is to bear the costs and expenses incurred in the insolvency proceedings;
(m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

Article 8 Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.
2. The rights referred to in paragraph 1 shall, in particular, mean:
(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
(c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
(d) a right in rem to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, based on which a right in rem within the meaning of paragraph 1 may be obtained shall be considered to be a right in rem.
4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 9 Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.
2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 10 Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of the opening of proceedings.
2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.
3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 11 Contracts relating to immoveable property

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property shall be governed solely by the law of the Member State within the territory of which the immoveable property is situated.
2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:
(a) the law of the Member State applicable to those contracts requires that such a contract

may only be terminated or modified with the approval of the court opening insolvency proceedings; and
(b) no insolvency proceedings have been opened in that Member State.

Article 12 Payment systems and financial markets

1. Without prejudice to Article 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.
2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

Article 13 Contracts of employment

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.
2. The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.
The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

Article 14 Effects on rights subject to registration

The effects of insolvency proceedings on the rights of a debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

Article 15 European patents with unitary effect and Community trade marks

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).

Article 16 Detrimental acts

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:
(a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and
(b) the law of that Member State does not allow any means of challenging that act in the relevant case.

Article 17 Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, a debtor disposes, for consideration, of:
(a) an immoveable asset;
(b) a ship or an aircraft subject to registration in a public register; or
(c) securities the existence of which requires registration in a register laid down by law;
the validity of that act shall be governed by the law of the State within the territory of which the immoveable asset is situated or under the authority of which the register is kept.

Article 18 Effects of insolvency proceedings on pending lawsuits or arbitral proceedings

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.

CHAPTER II
RECOGNITION OF INSOLVENCY PROCEEDINGS

Article 19 Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.
The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States.
2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

Article 20 Effects of recognition

1. The judgment opening insolvency proceedings as referred to in Article 3(1) shall, with no further formalities, produce the same effects in any

other Member State as under the law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

Article 21 Powers of the insolvency practitioner

1. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on it, by the law of the State of the opening of proceedings, in another Member State, as long as no other insolvency proceedings have been opened there and no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 8 and 10, the insolvency practitioner may, in particular, remove the debtor's assets from the territory of the Member State in which they are situated.
2. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. The insolvency practitioner may also bring any action to set aside which is in the interests of the creditors.
3. In exercising its powers, the insolvency practitioner shall comply with the law of the Member State within the territory of which it intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.

Article 22 Proof of the insolvency practitioner's appointment

The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which it intends to act may be required. No legalisation or other similar formality shall be required.

Article 23 Return and imputation

1. A creditor which, after the opening of the proceedings referred to in Article 3(1), obtains by any means, in particular through enforcement, total or partial satisfaction of its claim on the assets belonging to a debtor situated within the territory of another Member State, shall return what it has obtained to the insolvency practitioner, subject to Articles 8 and 10.
2. In order to ensure the equal treatment of creditors, a creditor which has, in the course of insolvency proceedings, obtained a dividend on its claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

Article 24 Establishment of insolvency registers

1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published ('insolvency registers'). That information shall be published as soon as possible after the opening of such proceedings.
2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following ('mandatory information'):
(a) the date of the opening of insolvency proceedings;
(b) the court opening insolvency proceedings and the case reference number, if any;
(c) the type of insolvency proceedings referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;
(d) whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4);
(e) if the debtor is a company or a legal person, the debtor's name, registration number, registered office or, if different, postal address;
(f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;
(g) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings;
(h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit;
(i) the date of closing main insolvency proceedings, if any;
(j) the court before which and, where applicable, the time limit within which a challenge of the

decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.

3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency.
4. Member States shall not be obliged to include in the insolvency registers the information referred to in paragraph 1 of this Article in relation to individuals not exercising an independent business or professional activity, or to make such information publicly available through the system of interconnection of those registers, provided that known foreign creditors are informed, pursuant to Article 54, of the elements referred to under point (j) of paragraph 2 of this Article.
   Where a Member State makes use of the possibility referred to in the first subparagraph, the insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in the first subparagraph.
5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55(6).

Article 25 Interconnection of insolvency registers

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing acts. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal.
2. By means of implementing acts in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by 26 June 2019:
   (a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;
   (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;
   (c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;
   (d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;
   (e) the means and the technical conditions of availability of services provided by the system of interconnection; and
   (f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

Article 26 Costs of establishing and interconnecting insolvency registers

1. The establishment, maintenance and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.
2. Each Member State shall bear the costs of establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

Article 27 Conditions of access to information via the system of interconnection

1. Member States shall ensure that the mandatory information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnection of insolvency registers.
2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnection of insolvency registers.
3. Member States may make access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in point (c) of Article 25(2).
4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by

means of a standard form via the European e-Justice Portal. Where a legitimate interest is required, it shall be permissible for the requesting person to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.
The requesting person shall not be obliged to provide translations of the documents justifying his request, or to bear any costs of translation which the competent authority may incur.

Article 28 Publication in another Member State

1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).
2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that Member State.

Article 29 Registration in public registers of another Member State

1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.
2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State where the register is kept allows such registration.

Article 30 Costs

The costs of the publication and registration provided for in Articles 28 and 29 shall be regarded as costs and expenses incurred in the proceedings.

Article 31 Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.
2. Where such an obligation is honoured before the publication provided for in Article 28 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings. Where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 32 Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 19 and which concern the course and closure of insolvency proceedings, and compositions approved by that court, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 39 to 44 and 47 to 57 of Regulation (EU) No 1215/2012.
   The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.
   The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.
2. The recognition and enforcement of judgments other than those referred to in paragraph 1 of this Article shall be governed by Regulation (EU) No 1215/2012 provided that that Regulation is applicable.

Article 33 Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

CHAPTER III
SECONDARY INSOLVENCY PROCEEDINGS

Article 34 Opening of proceedings

Where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. Where the main insolvency proceedings required that the debtor be insolvent, the debtor's insolvency shall not be re-examined in the Member State in which secondary insolvency proceedings may be opened. The effects of secondary insolvency proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State in which those proceedings have been opened.

Article 35 Applicable law

Save as otherwise provided for in this Regulation, the law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.

Article 36 Right to give an undertaking in order to avoid secondary insolvency proceedings

1. In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking (the 'undertaking') in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, it will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which it is based, in particular in respect of the value of the assets located in the Member State concerned and the options available to realise such assets.
2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary insolvency proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment at which the undertaking is given.
3. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary insolvency proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place in which secondary insolvency proceedings could have been opened.
4. The undertaking shall be made in writing. It shall be subject to any other requirements relating to form and approval requirements as to distributions, if any, of the State of the opening of the main insolvency proceedings.
5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply to the adoption of restructuring plans under the law of the Member State where secondary insolvency proceedings could have been opened shall also apply to the approval of the undertaking. Creditors shall be able to participate in the vote by distance means of communication, where national law so permits. The insolvency practitioner shall inform the known local creditors of the undertaking, of the rules and procedures for its approval, and of the approval or rejection of the undertaking.
6. An undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary insolvency proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main insolvency proceedings shall transfer any assets which it removed from the territory of that Member State after the undertaking was given or, where those assets have already been realised, their proceeds, to the insolvency practitioner in the secondary insolvency proceedings.
7. Where the insolvency practitioner has given an undertaking, it shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If that information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main insolvency proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such cases, no distribution shall take place until the court has taken a decision on the challenge.
8. Local creditors may apply to the courts of the Member State in which main insolvency proceedings have been opened, in order to require the insolvency practitioner in the main insolvency

proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the State of the opening of main insolvency proceedings.

9. Local creditors may also apply to the courts of the Member State in which secondary insolvency proceedings could have been opened in order to require the court to take provisional or protective measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.
10. The insolvency practitioner shall be liable for any damage caused to local creditors as a result of its non- compliance with the obligations and requirements set out in this Article.
11. For the purpose of this Article, an authority which is established in the Member State where secondary insolvency proceedings could have been opened and which is obliged under Directive 2008/94/EC of the European Parliament and of the Council[16] to guarantee the payment of employees' outstanding claims resulting from contracts of employment or employment relationships shall be considered to be a local creditor, where the national law so provides.

Article 37 Right to request the opening of secondary insolvency proceedings

1. The opening of secondary insolvency proceedings may be requested by: (a) the insolvency practitioner in the main insolvency proceedings; (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.
2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary insolvency proceedings shall be lodged within 30 days of having received notice of the approval of the undertaking.

Article 38 Decision to open secondary insolvency proceedings

1. A court seised of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give it an opportunity to be heard on the request.
2. Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.
3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding 3 months, provided that suitable measures are in place to protect the interests of local creditors.
   The court referred to in paragraph 1 may order protective measures to protect the interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay, unless this is incompatible with the national rules on civil procedure.
   The stay of the opening of secondary insolvency proceedings shall be lifted by the court of its own motion or at the request of any creditor if, during the stay, an agreement in the negotiations referred to in the first subparagraph has been concluded.
   The stay may be lifted by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded, or if the insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.
4. At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

Article 39 Judicial review of the decision to open secondary insolvency proceedings

The insolvency practitioner in the main insolvency proceedings may challenge the decision to

16 Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).

open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.

Article 40 Advance payment of costs and expenses

Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

Article 41 Cooperation and communication between insolvency practitioners

1. The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.
2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:
(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor, or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;
(b) explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan;
(c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings.
3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in any territorial insolvency proceedings concerning the same debtor and open at the same time, the debtor remains in possession of its assets.

Article 42 Cooperation and communication between courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, shall cooperate with any other court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings. For that purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.
2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:
(a) coordination in the appointment of the insolvency practitioners;
(b) communication of information by any means considered appropriate by the court; (c) coordination of the administration and supervision of the debtor's assets and affairs; (d) coordination of the conduct of hearings;
(e) coordination in the approval of protocols, where necessary.

Article 43 Cooperation and communication between insolvency practitioners and courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened in respect of the same debtor:
(a) an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;
(b) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and
(c) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate

and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;
to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest.

2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means, such as those set out in Article 42(3).

Article 44 Costs of cooperation and communication

The requirements laid down in Articles 42 and 43 shall not result in courts charging costs to each other for cooperation and communication.

Article 45 Exercise of creditors' rights

1. Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.
2. The insolvency practitioners in the main and any secondary insolvency proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served by doing so, subject to the right of creditors to oppose such lodgement or to withdraw the lodgement of their claims where the law applicable so provides.
3. The insolvency practitioner in the main or secondary insolvency proceedings shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

Article 46 Stay of the process of realisation of assets

1. The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings. In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary insolvency proceedings and of individual classes of creditors. Such a request from the insolvency practitioner may be rejected only if it is manifestly of no interest to the creditors in the main insolvency proceedings. Such a stay of the process of realisation of assets may be ordered for up to 3 months. It may be continued or renewed for similar periods.
2. The court referred to in paragraph 1 shall terminate the stay of the process of realisation of assets:
(a) at the request of the insolvency practitioner in the main insolvency proceedings;
(b) of its own motion, at the request of a creditor or at the request of the insolvency practitioner in the secondary insolvency proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings.

Article 47 Power of the insolvency practitioner to propose restructuring plans

1. Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.
2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary insolvency proceedings, such as a stay of payment or discharge of debt, shall have no effect in respect of assets of a debtor that are not covered by those proceedings, without the consent of all the creditors having an interest.

Article 48 Impact of closure of insolvency proceedings

1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.
2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until any other insolvency proceedings concerning the same debtor have been closed, or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.

Article 49 Assets remaining in the secondary insolvency proceedings

If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.

Article 50 Subsequent opening of the main insolvency proceedings

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 41, 45, 46, 47 and 49 shall apply to those opened first, in so far as the progress of those proceedings so permits.

Article 51 Conversion of secondary insolvency proceedings

1. At the request of the insolvency practitioner in the main insolvency proceedings, the court of the Member State in which secondary insolvency proceedings have been opened may order the conversion of the secondary insolvency proceedings into another type of insolvency proceedings listed in Annex A, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.
2. When considering the request referred to in paragraph 1, the court may seek information from the insolvency practitioners involved in both proceedings.

Article 52 Preservation measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of a debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that Member State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

CHAPTER IV
PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

Article 53 Right to lodge claims

Any foreign creditor may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.

Article 54 Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the insolvency practitioner appointed by that court shall immediately inform the known foreign creditors.
2. The information referred to in paragraph 1, provided by an individual notice, shall in particular include time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims and any other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims. The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.
3. The information referred to in paragraphs 1 and 2 of this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading 'Notice of insolvency proceedings' in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept, in accordance with Article 55(5), if it can be assumed that that language is easier to understand for the foreign creditors.
4. In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory if creditors are not required to lodge their claims in order to have their claims taken into account in the proceedings.

Article 55 Procedure for lodging claims

1. Any foreign creditor may lodge its claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading 'Lodgement of claims' in all the official languages of the institutions of the Union.
2. The standard claims form referred to in paragraph 1 shall include the following information:
(a) the name, postal address, e-mail address, if any, personal identification number, if any, and bank details of the foreign creditor referred to in paragraph 1;
(b) the amount of the claim, specifying the principal and, where applicable, interest and the date

on which it arose and the date on which it became due, if different;
(c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;
(d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;
(e) the nature of the claim;
(f) whether any preferential creditor status is claimed and the basis of such a claim;
(g) whether security in rem or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and
(h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.
The standard claims form shall be accompanied by copies of any supporting documents.

3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in point (a) of paragraph 2 is not compulsory.
4. When a creditor lodges its claim by means other than the standard form referred to in paragraph 1, the claim shall contain the information referred to in paragraph 2.
5. Claims may be lodged in any official language of the institutions of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.
6. Claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings. Where a Member State relies on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.
7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to a claim lodged in accordance with this Article, it shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.

CHAPTER V
INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

SECTION 1 Cooperation and communication

Article 56 Cooperation and communication between insolvency practitioners

1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conf lict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.
2. In implementing the cooperation set out in paragraph 1, insolvency practitioners shall:
(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;
(b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;
(c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan.
For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allo-

cation of tasks is permitted by the rules applicable to each of the proceedings.

Article 57 Cooperation and communication between courts

1. Where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conf lict of interest. For that purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.
2. In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:
   (a) coordination in the appointment of insolvency practitioners;
   (b) communication of information by any means considered appropriate by the court;
   (c) coordination of the administration and supervision of the assets and affairs of the members of the group;
   (d) coordination of the conduct of hearings;
   (e) coordination in the approval of protocols where necessary.

Article 58 Cooperation and communication between insolvency practitioners and courts

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:
(a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and
(b) may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed;
to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.

Article 59 Costs of cooperation and communication in proceedings concerning members of a group of companies

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

Article 60 Powers of the insolvency practitioner in proceedings concerning members of a group of companies

1. An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:
   (a) be heard in any of the proceedings opened in respect of any other member of the same group;
   (b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:
   (i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;
   (ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;
   (iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and
   (iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;
   (c) apply for the opening of group coordination proceedings in accordance with Article 61.
2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding 3 months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.

The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed 6 months.

SECTION 2 Coordination

Subsection 1 Procedure

Article 61 Request to open group coordination proceedings

1. Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.
2. The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.
3. The request referred to in paragraph 1 shall be accompanied by:
(a) a proposal as to the person to be nominated as the group coordinator ('the coordinator'), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;
(b) an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;
(c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;
(d) an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

Article 62 Priority rule

Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 63 Notice by the court seised

1. The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practi tioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:
(a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;
(b) no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and
(c) the proposed coordinator fulfils the requirements laid down in Article 71.
2. The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).
3. The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.
4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.

Article 64 Objections by insolvency practitioners

1. An insolvency practitioner appointed in respect of any group member may object to:
(a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed; or
(b) the person proposed as a coordinator.
2. Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article. The objection may be made by means of the standard form established in accordance with Article 88.
3. Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency prac-

titioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

Article 65 Consequences of objection to the inclusion in group coordination

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.
2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

Article 66 Choice of court for group coordination proceedings

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.
2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.
3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.
4. The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.

Article 67 Consequences of objections to the proposed coordinator

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

Article 68 Decision to open group coordination proceedings

1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:
(a) appoint a coordinator;
(b) decide on the outline of the coordination; and
(c) decide on the estimation of costs and the share to be paid by the group members.
2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.

Article 69 Subsequent opt-in by insolvency practitioners

1. In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in
Article 68, the inclusion of the proceedings in respect of which it has been appointed, where:
(a) there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings; or
(b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.
2. Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where
(a) he or she is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or
(b) all insolvency practitioners involved agree, subject to the conditions in their national law.
3. The coordinator shall inform the court and the participating insolvency practitioners of his or her decision pursuant to paragraph 2 and of the reasons on which it is based.
4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

Article 70 Recommendations and group coordination plan

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).
2. An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.
If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or

bodies that it is to report to under its national law, and to the coordinator.

Subsection 2 General pro visions

Article 71 The coordinator

1. The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.
2. The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

Article 72 Tasks and rights of the coordinator

1. The coordinator shall:
   (a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;
   (b) propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for:
   (i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;
   (ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions; (iii) agreements between the insolvency practitioners of the insolvent group members.
2. The coordinator may also:
   (a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;
   (b) mediate any dispute arising between two or more insolvency practitioners of group members;
   (c) present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;
   (d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and
   (e) request a stay for a period of up to 6 months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.
3. The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.
4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.
5. The coordinator shall perform his or her duties impartially and with due care.
6. Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10% of the estimated costs, the coordinator shall:
   (a) inform without delay the participating insolvency practitioners; and
   (b) seek the prior approval of the court opening group coordination proceedings.

Article 73 Languages

1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.
2. The coordinator shall communicate with a court in the official language applicable to that court.

Article 74 Cooperation between insolvency practitioners and the coordinator

1. Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.
2. In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

Article 75 Revocation of the appointment of the coordinator

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

(a) the coordinator acts to the detriment of the creditors of a participating group member; or
(b) the coordinator fails to comply with his or her obligations under this Chapter.

Article 76 Debtor in possession

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

Article 77 Costs and distribution

1. The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and ref lect reasonable expenses.
2. On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.
3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.
4. In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).
5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

CHAPTER VI DATA PROTECTION

Article 78 Data protection

1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

Article 79 Responsibilities of Member States regarding the processing of personal data in national insolvency registers

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with point (d) of Article 2 of Directive 95/46/EC, with a view to its publication on the European e-Justice Portal.
2. Member States shall ensure that the technical measures for ensuring the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.
3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with point (d) of Article 2 of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.
4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.
5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to the erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.

Article 80 Responsibilities of the Commission in connection with the processing of personal data

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation (EC) No 45/2001 in accordance with its respective responsibilities defined in this Article.
2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.
3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.
4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.

Article 81 Information obligations

Without prejudice to the information to be given to data subjects in accordance with Articles 11 and

12 of Regulation (EC) No 45/2001, the Commission shall inform data subjects, by means of publication through the European e-Justice Portal, about its role in the processing of data and the purposes for which those data will be processed.

Article 82 Storage of personal data

As regards information from interconnected national databases, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.

Article 83 Access to personal data via the European e-Justice Portal

Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice Portal for as long as they remain accessible under national law.

CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS

Article 84 Applicability in time

1. The provisions of this Regulation shall apply only to insolvency proceedings opened after 26 June 2017. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.
2. Notwithstanding Article 91 of this Regulation, Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017.

Article 85 Relationship to Conventions

1. This Regulation replaces, in respect of the matters referred to therein, and as regards relations between Member States, the Conventions concluded between two or more Member States, in particular:

(a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
(b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
(c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
(d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
(e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
(f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
(g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
(h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;
(i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
(j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
(k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;
(l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;
(m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;
(n) the Convention between the Federative People's Republic of Yugoslavia and the Italian Republic on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;
(o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial
Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;
(p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;

(q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;
(r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;
(s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;
(t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;
(u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;
(v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;
(w)the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal
Relations in Civil, Family, Labour and Criminal Matters, signed at Warsaw on 26 January 1993;
(x) the Convention between the Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;
(y) the Convention between the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;
(z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and
Criminal Matters, signed at Athens on 10 April 1976;
(aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;
(ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French
Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;
(ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on
11 July 1994;
(ad) the Treaty between Romania and the Republic of Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of Regulation (EC) No 1346/2000.
3. This Regulation shall not apply:
(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that Member State with one or more third countries before the entry into force of Regulation (EC) No 1346/2000;
(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time Regulation (EC) No 1346/2000 entered into force.

Article 86 Information on national and Union insolvency law

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC[17], and with a view to making the information available to the public, a short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).
2. The Member States shall update the information referred to in paragraph 1 regularly.
3. The Commission shall make information concerning this Regulation available to the public.

Article 87 Establishment of the interconnection of registers

The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

17 Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

Article 88 Establishment and subsequent amendment of standard forms

The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Article 27(4), Articles 54 and 55 and Article 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

Article 89 Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of
Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 90 Review clause

1. No later than 27 June 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
2. No later than 27 June 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
3. No later than 1 January 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.
4. No later than 27 June 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.

Article 91 Repeal

Regulation (EC) No 1346/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex D to this Regulation.

Article 92 Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 26 June 2017, with the exception of:

(a) Article 86, which shall apply from 26 June 2016;

(b) Article 24(1), which shall apply from 26 June 2018; and

(c) Article 25, which shall apply from 26 June 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 May 2015.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
Z. KALNIŅA-LUKAŠEVICA

ANNEX A

Insolvency proceedings referred to in Article 2, point (4)

BELGIQUE/BELGIË
- Het faillissement/La faillite,
- De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,
- De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,
- De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,
- De collectieve schuldenregeling/Le règlement collectif de dettes,
- De vrijwillige vereffening/La liquidation volontaire,
- De gerechtelijke vereffening/La liquidation judiciaire,
- De voorlopige ontneming van het beheer, als bedoeld in artikel XX.32 van het Wetboek van economisch recht/Le dessaisissement provisoire de la gestion, visé à l'article XX.32 du Code de droit économique,

БЪЛГАРИЯ
- Производство по несъстоятелност,
- Производство по стабилизация на търговеца,

ČESKÁ REPUBLIKA
- Konkurs,
- Reorganizace,
- Oddlužení,

DEUTSCHLAND
- Das Konkursverfahren,
- Das gerichtliche Vergleichsverfahren,
- Das Gesamtvollstreckungsverfahren,
- Das Insolvenzverfahren,
- Die öffentliche Restrukturierungssache,

EESTI
- Pankrotimenetlus,
- Võlgade ümberkujundamise menetlus,

ÉIRE/IRELAND
- Compulsory winding-up by the court,
- Bankruptcy,
- The administration in bankruptcy of the estate of persons dying insolvent,
- Winding-up in bankruptcy of partnerships,
- Creditors' voluntary winding-up (with confirmation of a court),
- Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,
- Examinership,
- Debt Relief Notice,
- Debt Settlement Arrangement,
- Personal Insolvency Arrangement,

ΕΛΛΑΔΑ
- Η πτώχευση,
- Η ειδική εκκαθάριση εν λειτουργία,
- Σχέδιο αναδιοργάνωσης,
- Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,
- Διαδικασία εξυγίανσης,

ESPAÑA
- Concurso,
- Procedimiento de homologación de acuerdos de refinanciación,
- Procedimiento de acuerdos extrajudiciales de pago,
- Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

FRANCE
- Sauvegarde,
- Sauvegarde accélérée,
- Sauvegarde financière accélérée,
- Redressement judiciaire,
- Liquidation judiciaire,

HRVATSKA
- Stečajni postupak,
- Predstečajni postupak,
- Postupak stečaja potrošača,
- Postupak izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku,

ITALIA
- Fallimento [until 15 May 2022],
- Liquidazione giudiziale [from 16 May 2022],
- Concordato preventivo,
- Liquidazione coatta amministrativa,
- Amministrazione straordinaria,
- Accordi di ristrutturazione,
- Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano) [until 15 May 2022],
- Liquidazione dei beni [until 15 May 2022],

- Ristrutturazione dei debiti del consumatore [from 16 May 2022],
- Concordato minore [from 16 May 2022],
- Liquidazione controllata del sovraindebitato [from 16 May 2022],

ΚΥΠΡΟΣ
- Υποχρεωτική εκκαθάριση από το Δικαστήριο,
- Εκούσια εκκαθάριση από μέλη,
- Εκούσια εκκαθάριση από πιστωτές,
- Εκκαθάριση με την εποπτεία του Δικαστηρίου,
- Διάταγμα παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,
- Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,
- Διορισμός Εξεταστή,
- Προσωπικά Σχέδια Αποπληρωμής,

LATVIJA
- Tiesiskās aizsardzības process,
- Juridiskās personas maksātnespējas process,
- Fiziskās personas maksātnespējas process,

LIETUVA
- Juridinio asmens restruktūrizavimo byla,
- Juridinio asmens bankroto byla,
- Juridinio asmens bankroto procesas ne teismo tvarka,
- Fizinio asmens bankroto procesas,

LUXEMBOURG
- Faillite,
- Gestion contrôlée,
- Concordat préventif de faillite (par abandon d'actif),
- Régime spécial de liquidation du notariat,
- Procédure de règlement collectif des dettes dans le cadre du surendettement,

MAGYARORSZÁG
- Csődeljárás,
- Felszámolási eljárás,
- Nyilvános szerkezetátalakítási eljárás [from 1 July 2022],

MALTA
- Xoljiment,
- Amministrazzjoni,
- Stralċ volontarju mill-membri jew mill-kredituri,
- Stralċ mill-Qorti,
- Falliment f'każ ta' kummerċjant,
- Proċedura biex kumpanija tirkupra,

NEDERLAND
- Het faillissement,
- De surseance van betaling,
- De schuldsaneringsregeling natuurlijke personen,
- De openbare akkoordprocedure buiten faillissement,

ÖSTERREICH
- Das Konkursverfahren (Insolvenzverfahren),
- Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),
- Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),
- Das Schuldenregulierungsverfahren,
- Das Abschöpfungsverfahren,
- Das Europäische Restrukturierungsverfahren,

POLSKA
- Upadłość,
- Postępowanie o zatwierdzenie układu,
- Postępowanie o zatwierdzenie układu na zgromadzeniu wierzycieli przez osobę fizyczną nieprowadzącą działalności gospodarczej,
- Przyspieszone postępowanie układowe,
- Postępowanie układowe,
- Postępowanie sanacyjne,

PORTUGAL
- Processo de insolvência,
- Processo especial de revitalização,
- Processo especial para acordo de pagamento,

ROMÂNIA
- Procedura insolvenței,
- Reorganizarea judiciară,
- Procedura falimentului,
- Concordatul preventiv,

SLOVENIJA
- Postopek preventivnega prestrukturiranja,
- Postopek prisilne poravnave,
- Postopek poenostavljene prisilne poravnave,
- Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja in postopek stečaja zapuščine,

SLOVENSKO
- Konkurzné konanie,
- Reštrukturalizačné konanie,
- Oddlženie,

SUOMI/FINLAND
- Konkurssi/konkurs,
- Yrityssaneeraus/företagssanering,
- Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

SVERIGE
- Konkurs,
- Företagsrekonstruktion,
- Skuldsanering.

ANNEX B

Insolvency practitioners referred to in Article 2, point (5)

BELGIQUE/BELGIË
- De curator/Le curateur,
- De gerechtsmandataris/Le mandataire de justice,
- De schuldbemiddelaar/Le médiateur de dettes,
- De vereffenaar/Le liquidateur,
- De voorlopige bewindvoerder/L'administrateur provisoire,

БЪЛГАРИЯ
- Назначен предварително временен синдик,
- Временен синдик,
- (Постоянен) синдик,
- Служебен синдик,
- Доверено лице,

ČESKÁ REPUBLIKA
- Insolvenční správce,
- Předběžný insolvenční správce,
- Oddělený insolvenční správce,
- Zvláštní insolvenční správce,
- Zástupce insolvenčního správce,

DEUTSCHLAND
- Konkursverwalter,
- Vergleichsverwalter,
- Sachwalter (nach der Vergleichsordnung),
- Verwalter,
- Insolvenzverwalter,
- Sachwalter (nach der Insolvenzordnung),
- Treuhänder,
- Vorläufiger Insolvenzverwalter,
- Vorläufiger Sachwalter,
- Restrukturierungsbeauftragter,

EESTI
- Pankrotihaldur,
- Ajutine pankrotihaldur,
- Usaldusisik,

ÉIRE/IRELAND
- Liquidator,
- Official Assignee,
- Trustee in bankruptcy,
- Provisional Liquidator,
- Examiner,
- Personal Insolvency Practitioner,
- Insolvency Service,

ΕΛΛΑΔΑ
- Ο σύνδικος,
- Ο εισηγητής,
- Η επιτροπή των πιστωτών,
- Ο ειδικός εκκαθαριστής,

ESPAÑA
- Administrador concursal,
- Mediador concursal,

FRANCE
- Mandataire judiciaire,
- Liquidateur,
- Administrateur judiciaire,
- Commissaire à l'exécution du plan,

HRVATSKA
- Stečajni upravitelj,
- Privremeni stečajni upravitelj,
- Stečajni povjerenik,
- Povjerenik,
- Izvanredni povjerenik,

ITALIA
- Curatore,
- Commissario giudiziale,
- Commissario straordinario,
- Commissario liquidatore,
- Liquidatore giudiziale,
- Professionista nominato dal Tribunale,
- Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore [until 15 May 2022],
- Organismo di composizione della crisi da sovraindebitamento [from 16 May 2022],
- Liquidatore,

ΚΥΠΡΟΣ
- Εκκαθαριστής και Προσωρινός Εκκαθαριστής,
- Επίσημος Παραλήπτης,
- Διαχειριστής της Πτώχευσης,
- Εξεταστής,
- Σύμβουλος Αφερεγγυότητας,

LATVIJA
- Maksātnespējas procesa administrators,
- Tiesiskās aizsardzības procesa uzraugošā persona,

LIETUVA
- Nemokumo administratorius,

LUXEMBOURG
- Le curateur,
- Le commissaire,
- Le liquidateur,
- Le conseil de gérance de la section d'assainissement du notariat,
- Le liquidateur dans le cadre du surendettement,

MAGYARORSZÁG
- Vagyonfelügyelő,
- Felszámoló,
- Szerkezetátalakítási szakértő [from 1 July 2022],
- MALTA
- Amministratur Proviżorju,
- Riċevitur Uffiċjali,
- Stralċjarju,
- Manager Speċjali,
- Kuraturi f'każ ta' proċeduri ta' falliment,
- Kontrolur Speċjali,

NEDERLAND
- De curator in het faillissement,
- De bewindvoerder in de surseance van betaling,
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,
- De herstructureringsdeskundige in de openbare akkoordprocedure buiten faillissement,
- De observator in de openbare akkoordprocedure buiten faillissement,

ÖSTERREICH
- Masseverwalter,
- Sanierungsverwalter,
- Restrukturierungsbeauftragter,
- Besonderer Verwalter,
- Einstweiliger Verwalter,
- Sachwalter,
- Treuhänder,
- Insolvenzgericht,
- Konkursgericht,

POLSKA
- Syndyk,
- Nadzorca sądowy,
- Zarządca,
- Nadzorca układu,
- Tymczasowy nadzorca sądowy,
- Tymczasowy zarządca,
- Zarządca przymusowy,

PORTUGAL
- Administrador da insolvência,
- Administrador judicial provisório,

ROMÂNIA
- Practician în insolvență,
- Administrator concordatar,
- Administrator judiciar,
- Lichidator judiciar,

SLOVENIJA
- Upravitelj,

SLOVENSKO
- Predbežný správca,
- Správca,

SUOMI/FINLAND
- Pesänhoitaja/boförvaltare,
- Selvittäjä/utredare,

SVERIGE
- Förvaltare,
- Rekonstruktör.'

List of Abbreviations

ABA	American Bar Association
ABI	American Bankruptcy Institute
AG	Joint-stock company *(= Aktiengesellschaft)*; Local Court *(= Amtsgericht)*
AI	artificial intelligence
AIRA	Association of Insolvency & Restructuring Advisors
ALI	American Law Institute
AufbhG	Reconstruction Assistance Act 2021 *(= Aufbauhilfegesetz)*
BBSR	Federal Office for Building and Regional Planning
BC	Bankruptcy Code (U. S.)
BGB	Civil Code *(= Bürgerliches Gesetzbuch)*
BGBl.	Federal Law Gazette *(= Bundesgesetzblatt)*
BGH	Federal Court of Justice *(= Bundesgerichtshof)*
BMJV	Federal Ministry of Justice *(= Bundesministerium der Justiz und für Verbraucherschutz)*
BRAO	Federal Lawyers Act *(= Bundesrechtsanwaltsordnung)*
BT-Drucks.	Printed matter by the German *Bundestag (= Bundestagsdrucksache)*
CEO	Chief Executive Officer
cf.	compare
CJEU	Court of Justice of the European Union
COMI	Center of Main Interest
COVInsAG	Act to Temporarily Suspend the Obligation to Apply for Commencement of Insolvency Proceedings and to Limit Directors' Liability in the Case of Insolvency Caused by the Covid-19 Pandemic *(= COVID-19-Insolvenzaussetzungsgesetz)*
CRO	Chief Restructuring Officer
DAV	German Lawyers' Association *(= Deutscher Anwaltverein)*
DStV	German Association of Tax Advisors *(Deutscher Steuerberaterverband)*
e.g.	exempli gratia (= for example)
e.V.	Registered association *(eingetragener Verein)*
ECB	European Central Bank
ECJ	European Court of Justice
ed.	edition
EGInsO	Introductory Act to the Insolvency Code *(= Einführungsgesetz zur Insolvenzordnung)*
EIR	European Insolvency Regulation
ESUG	Act for the Further Facilitation of the Restructuring of Companies *(= Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen)*
et al.	et alii (= and others)

et seq.	et sequentes (= and the following)
etc.	et cetera (= and so on)
EU	European Union
EUR	Euro
GG	German Constitution *(= Grundgesetz)*
GmbH	Limited liability company *(= Gesellschaft mit beschränkter Haftung)*
GmbHG	Limited Liability Company Act *(= GmbH-Gesetz)*
HGB	Commercial Code *(= Handelsgesetzbuch)*
i.e.	id est (= that is)
IBA	International Bar Association
IDW	German Institute of Public Auditors *(= Institut der Wirtschaftsprüfer)*
IFPPC	*Institut Français des Praticiens des Procédures Collectives*
IHK	Chamber of Commerce and Industry *(= Industrie- und Handelskammer)*
InsO	Insolvency Code *(= Insolvenzordnung)*
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
InsVV	Insolvency Administrator Compensation Ordinance *(= Insolvenzrechtliche Vergütungsordnung)*
IPRspr.	Journal for German case law in the field of private international law *(= Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts)*
IWIRC	International Women's Insolvency & Restructuring Confederation
KfW	*Kreditanstalt für Wiederaufbau*
KO	Bankruptcy Code *(= Konkursordnung)*
LL.B.	Bachelor of Laws
LL.M.	Master of Laws
LG	Regional Court *(= Landgericht)*
LLP	Limited liability partnership
M&A	Mergers & Acquisitions
n. a.	not available
NABT	National Association of Bankruptcy Trustees
NBC	National Bankruptcy Conference
NCBJ	National Conference of Bankruptcy Judges
NZG	*Neue Zeitschrift für Gesellschaftsrecht*
NZI	New Journal for Insolvency and Restructuring Law *(= Neue Zeitschrift für das Recht der Insolvenz und Sanierung)*
OHG	General commercial partnership *(= Offene Handelsgesellschaft)*

OLG	Higher Regional Court *(= Oberlandesgericht)*
p.	page
p.a.	per anno (= per year)
para.	paragraph
pp.	pages
Q&A	Questions and Answers
ReO	Austrian Restructuring Code *(= Restrukturierungsordnung)*
RP	Restructuring Practitioner
SanInsFoG	Act on the Advancement of Restructuring and Insolvency Law (= *Sanierungs- und Insolvenzfortentwicklungsgesetz)*
SCARP	Small Company Administrative Rescue Process
sec.	section
sent.	sentence
SMEs	Small and medium-sized enterprises *(= Mittelständische Unternehmen)*
ss.	sections
StaRUG	Act on the Stabilisation and Restructuring Framework for Businesses *(= Unternehmensstabilisierungs- und -restrukturierungsgesetz)*
TEU	Treaty on European Union
TMA	Turnaround Management Association
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
VID	German Association of Insolvency Practitioners *(= Verband Insolvenzverwalter Deutschlands e. V.)*
WHOA	Netherlands Act on the Confirmation of Out-of-Court Plans ‘ *(= Wet Homologatie Onderhands Akkoord)*
ZEW	Leibniz Centre for European Economic Research *(= Leibniz-Zentrum für Europäische Wirtschaftsforschung)*
ZIK	*Zeitschrift für Insolvenzrecht und Kreditschutz*
ZInsO	Insolvency Law Journal *(= Zeitschrift für das gesamte Insolvenzrecht)*
ZIP	*Zeitschrift für Wirtschaftsrecht*
ZPO	Code of Civil Procedure *(= Zivilprozessordnung)*
ZVI	Journal for Consumer and Personal Insolvency Law *(= Zeitschrift für Verbraucher- und Privat-Insolvenzrecht)*

Contact:

Ronja Erb
Eisenbahnstraße 19–23
D-77855 Achern
Germany
Telephone: +49 151 14634678
Email: RErb@schultze-braun.de