

Self-Administration Proceeding

Application for self-administration order (sec. 270a InsO where appropriate in conj. with sec 4 (2) sent. 2 no. 2 or sec. 5 SanInsKG)

By the debtor

- Possible to connect with the application for commencement of insolvency proceeding, sec. 270 InsO (possible with an application for protective shield procedure*, sec. 270d InsO)
- Must be submitted at latest with the order opening insolvency proceedings by the insolvency court (sec.270 (1) sent. 1 InsO)
- To the application shall be attached the documents specified in sec. 270a InsO (adhere to sec 4 (2) no. 2 SanInsKG, if applicable)
- Access options and scope of the assessment regarding self-administration see page 2

Order for interim self-administration sec. 270b InsO

- Appointing a preliminary supervisor, sec. 270b (1) InsO
- Opportunity to make representations for preliminary creditor's committee, sec. 270b (3) InsO

Interim self-administration procedure (sec. 270c InsO where appropriate in conj. with sec 5 (2) sent. 5 SanInsKG)

If necessary termination of interim self-administration procedure, sec. 270e InsO

Commencement of insolvency proceeding (ss. 11-25, 270 (1) InsO)

Even if the debtor submits an application for self-administration at the same time as the application for the commencement of insolvency proceeding

Commencement order with decision on self-administration (ss. 27, 270 (1) sent. 1 InsO)

Order for self-administration (sec. 270f InsO)

- Court's obligation to investigate and debtor is entitled to self-administration in the absence of positive finding of reasons not to
- Self-administration shall be ordered, if the requirements for the interim self-administration procedure in sec. 270b InsO are still present and there are no grounds for terminating it as defined in sec. 270e InsO (sec. 270f (3) InsO)
- The preliminary creditors' committee must be given the opportunity to make representations prior to issuance of the decision (ss. 270f (3) in conjunction with 270b (3) sent. 1 InsO), provided that the delay does not preclude the duty to consult
- If preliminary creditors' committee votes unanimously in favour, order is deemed not prejudicial (ss. 270f (3), 270b (3) sent. 3 InsO)

Debtor's application is rejected

- Requirements in sec. 270f InsO are not met (anymore)

Insolvency proceeding** with self-administration

The commencement order has the following content

- Order for self-administration (sec. 270 InsO)
- Designation of debtor, supervisor and the time when the order was made (sec. 270 (2) InsO)
- Requesting the creditor for submission of claims; appointment of expiry time limit for filing claims (sec. 270f (2) sent. 2 InsO)
- Schedule of report and verification meeting (sec. 29 InsO)
- Appointment of supervisor (sec. 270f (2) sent. 1 InsO)
- Possibly establishment of creditors' committee (sec. 67, 276 InsO)

Ordered subsequently

Application by the first or any subsequent creditors' meeting (sec. 271 InsO)

Insolvency proceeding without self-administration**

Obligations of the debtor

- Managing the ongoing business and implement the insolvency proceedings without a supervisor (prepare a list of assets in the insolvency estate, the list of creditors and the statement of assets and liabilities, reporting, realise assets, decide whether to proceed with contracts not performed by either party, whether to initiate legal disputes, etc.)
- Debtor retains power to manage and dispose of the insolvency estate (sec. 270 (1) sent. 1, 274 et seq. InsO)
- Prepare an insolvency plan if debtor or supervisor is instructed by the creditors' meeting (sec. 284 (1) sent. 1 InsO) or the preliminary creditors' committee (sec. 284 (1) sent. 2 InsO)

Reservation of approval

- In the case of sec. 270 e (1) no. 4 InsO in conjunction with sec. 270b (3) in conjunction with (1) and (2) InsO by the preliminary creditors' committee
- The debtor's power to manage and dispose of assets is restricted (with effect for third parties), the supervisor must approve certain transactions undertaken by the debtor (sec. 277 InsO)

Legal position of the supervisor

- Duty to inspect and monitor debtor's financial position and management of the business (ss. 274 (2), 281, 283, 284 (2) InsO)
- Duties to notify and provide information to the insolvency court and the creditor (ss. 274 (3), 281, 283 InsO)
- In some cases, involvement in acts by the debtor, sometimes with no external effect, sometimes with effect for third parties (ss. 275, 279, 282 InsO)
- Assert claims for compensation for collective losses (sec. 92 et seq. InsO) and avoidance in insolvency (sec. 129 et seq., sec. 280 InsO)
- Prepare insolvency plan if instructed by creditors' meeting (sec. 284 (1) sent. 1 InsO) or the preliminary creditors' committee (sec. 284 (1) sent. 2 InsO)
- Notify the court of a deficiency of assets (sec. 285 InsO)

Revocation of self-administration, sec. 272 InsO

- Ex officio by court (sec. 272 (1) no. 1 and 2 InsO)
- Requested by the creditors' meeting (with majority per capita and by amount of claims, sec. 272 (1) no. 3 InsO)
- Requested by creditor (the requesting creditor must be at risk of individual detriment as a result of self-administration, sec. 272 (1) no. 4 InsO)
- Requested by creditor (sec. 272 (1) no. 5 InsO)
- Consequence: Insolvency proceeding without self-administration* (sec. 272 InsO)
- Together with termination of the insolvency proceeding (ss. 270 (1) sent. 2, 200 InsO)

*For the course of a protective shield procedure, see separate summary by Schultze & Braun

** For the course of insolvency proceeding without self-administration, see separate summary by Schultze & Braun

Self-Administration Proceeding

Options for accessing self-administration: 1) primary access, 2) reviewed access, 3) supported access

Self-administration strategy (sec. 270a (1) InsO; sec. 4 (2) no. 2 SanInsKG if applicable) and additional declarations (sec. 270a (2) InsO)

