

Rehabilitation Mediation

Rehabilitation mediation sect. 94 – 100 StaRUG

Appointment by the restructuring court sect. 34 et seq.

to facilitate the restructuring case (**preparation of the rehabilitation concept**) and to reach agreement between the parties concerned (**rehabilitation settlement**)

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 negotiation
- **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