Act on the Stabilisation and Restructuring Framework for Businesses (Unternehmensstabilisierungs- und -restrukturierungsgesetz, StaRUG)

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as of 22 December 2020 (*BGBl.* [Federal Law Gazette] I 2020, p. 3256)
most recently amended by Article 34 Subsection 14
of the Act of 22 December 2023 (*BGBl.* I 2023, no. 411)

Schultze & Braun

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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 partnerships with 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.

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.

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.

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.

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 association without legal personality 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.

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.

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.

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.

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 be accompanied by the complete restructuring plan, together with attachments. 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 intra-group 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 4 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.

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.

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 a defect pursuant to subsection (1) number 2 arises from the fact that the requirements are not met for a cross-class cram-down under sections 26 to 28 because the enterprise was not valued correctly, refusal of confirmation may be based on this defect only if a party affected by the plan who is adversely impacted by the defect applies for refusal. 2The application is admissible only if the applicant objected to the plan in the voting proceedings. 3If voting took place outside of a court-supervised voting meeting, this applies only if the plan offer or, if a meeting of the parties affected by the plan took place, the notice convening the meeting made separate reference to the requirement for an objection and the consequences of failure to object.

(3) 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.

(4) 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.

(5) 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, how-

ever, 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.

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

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 (3) 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,

4. the practitioner also has the duty to assist the debtor and the creditors in drafting and negotiating the restructuring concept and the plan based on it.

(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 practi-

tioner 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.

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 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 sections 6 and 6a 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.

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.

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.