



*/ Fluent in  
Banking & Finance*

*Austrian Insolvency Code*  
*English translation*

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# Introduction

The present English translation of the Austrian Insolvency Code provides the reader with an unabridged version of the Code, describing its various provisions in a coherent and professional manner.

This translation project was driven by the interest and needs of our foreign clients during the various stages of the insolvency and restructuring processes. What started out as case-by-case translations using various sections of the Code, gradually evolved into the final and complete translation of the Code. The translation was carried out by Uwe Rautner, Managing Partner at Rautner Attorneys-at-Law, who is qualified as an attorney-at-law in Austria and as a solicitor in England & Wales. The translation incorporates the extensive knowledge and expertise of a legal practitioner fluent in both the German and English languages.

This new English translation of the Code has proved to be a practical tool for advising foreign clients. We would like to thank our clients for the motivation to embark on this project and create what we believe is a clear and concise English translation of the Code. We also extend our sincere gratitude to Sherica Bryan and Olga Nather who provided valuable contributions in reviewing the text.

Rautner Attorneys-at-Law is an Austrian based international law firm specializing in the legal practice areas of banking & finance, corporate and mergers & acquisitions, insolvency & restructuring as well as capital markets. The firm has advised on many of the major Austrian insolvency and/or restructuring cases, including ALPINE BAU; ASAMER; BAUMAX; HYPO ALPE ADRIA (now HETA ASSET RESOLUTION AG).

Please note that the present translation refers to the Austrian Insolvency Code as of 1 May 2016. It is available free of charge at our website [www.rautner.com](http://www.rautner.com), with all rights reserved. The translation was made to the best of the author's knowledge and understanding of the Code and German and English languages. The author and our law firm assume no liability for any damages or loss of any kind that might arise from the use of, misuse of, or inability to use this English translation of the Austrian Insolvency Code.

We appreciate your suggestions and comments. Please send your feedback to: [office@rautner.com](mailto:office@rautner.com).

Faithfully yours

Rautner Attorneys at Law

Part One.  
Insolvency Law.  
Main Chapter One.  
Effects of Opening of Insolvency Proceedings.  
Chapter One.  
General Provisions.  
Insolvency Proceedings (Reorganization and Bankruptcy Proceedings).  
Section 1.

In the case of illiquidity or over-indebtedness (Sections 66 and 67) insolvency proceedings shall be opened upon filing a petition. The provisions of this Federal Act shall be applicable to reorganization proceedings and bankruptcy proceedings unless provided otherwise.

**Taking Effect, Insolvency Estate.**

**Section 2.**

- (1) The legal effects of insolvency proceedings shall commence at the start of the day following the publication of the content of the insolvency edict.
- (2) At the opening of insolvency proceedings, all of the assets subject to judicial enforcement that belong to the debtor at that time or that he acquired during the insolvency proceedings (insolvency estate), shall be withdrawn from the debtor's free disposal.
- (3) *(Note: repealed by Federal Law Gazette I No. 29/2010)*

**Legal Acts of the Debtor.**

**Section 3.**

- (1) Legal acts undertaken by the debtor after the opening of insolvency proceedings that relate to the insolvency estate shall be unenforceable against the insolvency creditors. The third party shall be repaid the consideration to the extent that the insolvency estate would be unjustifiably enriched by such consideration.
- (2) An obligated party shall not be discharged by payment of a debt to the debtor after the opening of insolvency proceedings, except to the extent that the benefit has been received by the insolvency estate or the obligated party was not aware of the opening of insolvency proceedings at the time of payment and such lack of knowledge was not caused by a failure to exercise due diligence (should have been known).

**Acquisition by Inheritance, Bequest or *Inter Vivos* Donation.**

**Section 4.**

- (1) The insolvency receiver may instead of the debtor, accept an inheritance subject to the creation of an inventory.
- (2) If he does not accept an inheritance or a bequest or he refuses to accept a gratuitous inter vivos donation, such right shall be segregated from the insolvency estate.

## Support for the Debtor and his Family.

### Section 5.

- (1) The debtor shall not be entitled to receive support from the estate. The debtor shall keep what he earns through his own efforts or what he gratuitously receives during the insolvency proceedings to the extent necessary for a modest living for him and for those who have a statutory claim to support from him.
- (2) Where nothing is to be left to the debtor, the insolvency receiver shall, with the creditors' committee's consent, grant to the debtor and his family what is necessary for a modest living; however, the debtor may not be supported by the estate to the extent that he has the capacity to earn a livelihood through his own efforts.
- (3) If the debtor lives on property that forms part of the insolvency estate, the provisions of Section 105 Enforcement Code shall apply accordingly to the conveyance of and eviction from the debtor's property.
- (4) The insolvency court shall leave the rental and other rights of use concerning the property to the debtor at his free disposal if they relate to a dwelling which is indispensable for the debtor and members of his family who maintain a joint household with the debtor.

## Effect on Litigation.

### Section 6.

- (1) Litigation, intended to enforce or secure claims against the assets belonging to the insolvency estate, may neither be brought nor continued against the debtor after the opening of insolvency proceedings.
- (2) Litigation concerning claims of preferential satisfaction and claims of segregation with respect to property not belonging to the insolvency estate may be brought and continued even after the opening of insolvency proceedings but only against the insolvency receiver.
- (3) Litigation concerning claims that do not at all affect assets belonging to the insolvency estate, in particular claims regarding the debtor's personal acts of performance, may also be brought and continued against or by the debtor during the insolvency proceeding.

## Stay and Resumption in Pending Litigation.

### Section 7.

- (1) All pending litigation in which the debtor is the plaintiff or defendant, except for litigation referred to in Section 6(3), shall be stayed upon the opening of the insolvency proceedings. The stay shall apply only to such of the debtor's joined parties who are co-litigants of the debtor (Section 14 Civil Procedure Code).
- (2) The proceeding may be initiated by the insolvency receiver, the debtor's co-litigants, and by the opposing party.
- (3) In litigation over claims that are subject to filing in the insolvency proceedings, the proceeding may not be resumed prior to completion of the examination hearing. Insolvency creditors, who have disputed the claim in the examination hearing, may also resume proceedings in place of the insolvency receiver.

## **Refusal of the Entry into Litigation.**

### **Section 8.**

- (1) If the insolvency receiver refuses to enter into litigation in which the debtor is the plaintiff or the claim for the segregation of property not belonging to insolvency estate is brought against the debtor, the claim or the property claimed by the plaintiff seeking such segregation shall be segregated from the insolvency estate.
- (2) If the insolvency receiver does not declare to enter into litigation on behalf of the debtor within a period of time specified by the trial court, the insolvency receiver shall be deemed having refused such an entry.
- (3) In this case the proceedings may be initiated by the debtor, the debtor's co-litigants and the opposing party.

## **Non-Adversarial Proceedings.**

### **Section 8a.**

The provisions relating to litigation within the meaning of this Federal Act shall apply to non-adversarial proceedings accordingly.

## **Statute of Limitation.**

### **Section 9.**

- (1) The statute of limitation of a filed claim shall be tolled upon the filing of such claim in the insolvency proceedings. The statute of limitation of the claim against the debtor shall resume with the end of the day on which the decision on the close of the insolvency proceeding takes effect.
- (2) If a claim is disputed at the examination hearing, the statute of limitations shall be tolled from the date the claim is filed until the expiration of the time period designated for asserting the claim.

## **Rights of Preferential Satisfaction and Equal Rights.**

### **Section 10.**

- (1) After the opening of insolvency proceedings, no judicial lien or right of satisfaction may be acquired concerning property belonging to the insolvency estate as a result of a claim against the debtor.
- (2) Rights of retention shall be treated as a lien in the insolvency proceedings.
- (3) Unless provided otherwise in the Insolvency Code, the provisions concerning creditors entitled to a right of segregation shall also apply to personal creditors who have acquired certain assets of the debtor to secure their claims, in particular accounts receivable.

## **Effect of the Opening of Insolvency Proceedings on Rights of Preferential Satisfaction and Segregation.**

### **Section 11.**

- (1) Rights of preferential satisfaction and rights of segregation concerning property not belonging to the insolvency estate shall not be affected by the opening of insolvency proceedings.
- (2) The fulfilment of a claim of segregation that could jeopardize the continuation of the debtor's business may not be demanded within six months from the opening of

insolvency proceedings; however, this shall not apply if the fulfilment is essential to avoid serious personal or economic disadvantages to the creditor and a judicial enforcement of other assets of the debtor has not resulted or is not expected to result in full satisfaction of the creditor. These provisions shall also apply to claims of preferential satisfaction from certain property.

- (3) The court competent for enforcement shall, upon application by the insolvency receiver or at the request of the insolvency court, defer an enforcement proceeding on the grounds of a claim of segregation or preferential satisfaction, except in cases where a judicial lien or right of satisfaction is established, so far and so long as the beneficiary may not demand satisfaction. The time period set forth in Section 256(2) Enforcement Code shall be extended by the period of deferment. The deferred enforcement proceeding shall be resumed only upon the application of the beneficiary after expiration of the deferment period.

## **Section 12.**

- (1) Preferential rights that have been newly acquired to satisfy or secure a claim by way of judicial enforcement in the last sixty (60) days prior to the opening of insolvency proceeding, except for preferential rights with respect to public duties, shall expire at the opening of insolvency proceedings; however, such preferential rights shall be renewed if the insolvency proceeding is closed pursuant to Section 123a. When a lien is created by judicial enforcement pursuant to Section 208 Enforcement Code, the day of the initiation of the proceeding concerning the judicial sale shall be determinative.
- (2) If judicial enforcement has been merely applied for on the basis of a preferential right, the judicial enforcement proceeding shall be stayed at the request of the insolvency court or upon the request of the insolvency receiver. The time period set forth in Section 256(2) Enforcement Code concerning the discharge of a lien shall be stayed in favor of the right of preferential satisfaction in cases of its renewal until the end of the day on which the decision on the close of the insolvency proceeding takes effect.
- (3) If proceeds have been received from judicial enforcement initiated prior to or after the opening of the insolvency proceeding, the portion attributable to such right of preferential satisfaction shall be included in the insolvency estate.

## **Income from Employment.**

### **Section 12a.**

- (1) Rights of segregation and rights of preferential satisfaction that were acquired prior to the opening of insolvency proceedings by way of assignment or pledge of a claim on income from employment or other recurring services that have an income replacement function shall expire two (2) years after the end of the calendar month in which the opening of insolvency proceedings took effect.
- (2) Only during the period referred to in subsection 1 may the third-party debtor set off a claim against the debtor for income from employment or other recurring services that have an income replacement function. Sections 19 and 20 shall remain unaffected.
- (3) Preferential rights that were acquired prior to the opening of insolvency proceedings to satisfy or secure a claim by way of judicial enforcement of the debtor's claim to income from employment or other recurring services that have an income replacement function shall expire at the end of the calendar month in which the insolvency proceeding is opened. If the insolvency proceeding is opened after the 15th day of the month, the preferential right shall not expire until the end of the next calendar month.

- (4) Rights of segregation and rights of preferential satisfaction pursuant to subsections 1 and 3 shall be renewed if
  1. the insolvency proceeding is closed pursuant to Sections 123a, 123b and 139 or
  2. the secured claim is renewed or
  3. the absorption proceeding is prematurely terminated or
  4. the residual debt discharge is not granted or revoked.
- (5) Rights of segregation and rights of preferential satisfaction pursuant to subsections 1 and 3 that have been acquired for the benefit of a claim excluded from the residual debt discharge shall be renewed after the granting of the residual debt discharge.
- (6) The court shall notify the third-debtor of the date of extinction and, at the request of the creditor, the renewal of the rights pursuant to subsections 1 and 3.

#### **Collateral for Claims from Equity-Replacing Acts of Performance.**

##### **Section 12b.**

Rights of segregation and rights of preferential satisfaction that were acquired from the debtor's assets for acts of performance rendered to the debtor that were equity replacing and rights of segregation and rights of preferential satisfaction that were acquired from the debtor's assets for services rendered in advance at a time where such services would have been equity replacing shall expire at the opening of insolvency proceedings. However, such rights shall be renewed where the insolvency proceeding is closed pursuant to Section 123a. Section 12(1) last sentence and subsections 2 and 3 shall apply accordingly.

##### **Eviction.**

##### **Section 12c.**

At the request of the insolvency receiver, eviction of the debtor due to non-payment of the lease for the premises where his business is operated shall be stayed prior to the opening of insolvency proceedings until:

1. the debtor's business is closed,
2. the debtor withdraws the reorganization plan or the court dismisses the debtor's application,
3. the reorganization plan is rejected during the hearing on the reorganization plan and such hearing is not extended,
4. the reorganization plan is denied confirmation or
5. the claim of the landlord is renewed pursuant to Section 156a.

If the claim is duly satisfied in the amount set forth in the reorganization plan, the eviction shall be terminated upon request. The lease remains in full force and effect.

##### **Forced Administration.**

##### **Section 12d.**

The forced administration of a business, real estate, a building on third party land ("Superädifikat") or a part of real estate shall expire at the end of the calendar month in which insolvency proceedings are opened. If the insolvency proceeding is opened after 15<sup>th</sup> day of the month, the forced administration shall expire at the end of the next calendar month.

### **Land Register Entries.**

#### **Section 13.**

The court may grant or approve entries of ownership and priority notices listed in the public registers for real property even after the opening of insolvency proceedings if the priority of the entry relates back to a date prior to the opening of insolvency proceedings.

### **Indefinite and Unmatured Claims.**

#### **Section 14.**

- (1) At the time of the opening of insolvency proceedings, claims to non-monetary payment, claims to sums of indefinite amount or claims to amounts not denominated in a domestic currency shall be brought by listing their estimated value in the domestic currency.
- (2) Unmatured claims shall be deemed payable in the insolvency proceeding.
- (3) Unmatured claims not carrying interest may be brought only in the amount that equals the full amount of the claim plus statutory interest for the time from the opening of insolvency proceedings until maturity of the claim.

### **Claims to Recurring Services.**

#### **Section 15.**

- (1) Claims to retirement, disability and subsistence allowance and other recurring payments of certain duration shall be combined and the interim interest referred to in Section 14(3) shall be deducted from the combined amount of such payments.
- (2) Claims of indefinite duration referred to in subsection 1 shall be brought according to their estimated value at the time of the opening of the insolvency proceedings.

### **Conditional Claims.**

#### **Section 16.**

- (1) Anyone having a claim subject to a condition may request payment for such claim be secured until the occurrence of the condition precedent or non-occurrence of the condition subsequent; however, if the condition is subsequent and he provides security against the occurrence of the condition, he may request payment.

### **Rights of Co-Debtors and Guarantors against the Insolvency Estate.**

#### **Section 17.**

- (1) To the extent that they are entitled to a recourse claim against the debtor, jointly and severally liable co-debtors and guarantors of the debtor may request reimbursement for payment of a creditor's claim on behalf of the debtor prior to or after the opening of insolvency proceedings.
- (2) Co-debtors or guarantors of the debtor shall have the right to file a claim in insolvency proceedings to the extent that they can be liable to a creditor in the future if such creditor does not file the claim in the insolvency proceeding.
- (3) After the opening of insolvency proceedings, the co-obligors may subrogate to the rights of the creditor or a legal successor who can take recourse against them.

## **Rights of Creditors' Against Co-Obligors.**

### **Section 18.**

- (1) If multiple parties are jointly and severally liable to the creditor for the same claim, the creditor may claim the entire amount outstanding at the time of the opening of insolvency proceedings from any debtor subject to the insolvency proceeding until full satisfaction of his claim.
- (2) If there is a surplus after the full satisfaction of the creditor, the right to take recourse shall apply up to such amount of the surplus pursuant to general statutory provisions.

## **Equity Replacing Shareholder Collateral.**

### **Section 18a.**

If the requirements of Section 16 Equity Replacement Act are met, the insolvency creditors can claim only the loss or, as long as such loss has not been determined, the alleged loss.

### **Set Off.**

### **Section 19.**

- (1) Claims that at the time of the opening of the insolvency proceedings were already subject to set off do not need to be filed in the insolvency proceeding.
- (2) The fact that the creditor's or debtor's claim was subject to a condition or not yet due at the time of the opening of insolvency proceedings, or that such creditor's claim was a non-monetary payment, does not exclude a set-off. The creditor's claim shall be calculated according to Sections 14 and 15 for the purpose of set-off. If the creditor's claim is subject to a condition, the court may make the permissibility of a set-off dependent on the posting of a security.

### **Section 20.**

- (1) A set-off shall not be permitted if an insolvency creditor has become a debtor of the insolvency estate after the opening of insolvency proceedings or if the claim against the debtor has been acquired after the opening of insolvency proceedings. The same applies if the debtor has acquired the counterclaim prior to the opening of insolvency proceedings but at the time of its acquisition knew or should have known of the debtor's illiquidity.
- (2) A set-off shall be permissible, however, if the debtor acquired the counterclaim earlier than six (6) months prior to the opening of insolvency proceedings or if he were obligated to assume the claim and at the time of the assumption of this obligation he had no knowledge nor should have had knowledge of the debtor's illiquidity.
- (3) Furthermore, claims may be set off that were established or renewed pursuant to Sections 21 through 25 or Section 41(2) after the opening of insolvency proceedings.
- (4) Claims may be set off that arise from contracts that have been dissolved due to the opening of the insolvency proceeding concerning
  1. special off-balance sheet transactions mentioned in Annex II to Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, including derivative instruments for the transfer of credit risks,
  2. sold interest rate, currency, precious metal, commodity, equity and other securities options and options on indices,

- 2a. commercial transactions with exchange-traded goods and commodities within the meaning of Section 1(4) Stock Exchange Act, Federal Law Gazette No. 555/1989, if they are not used to cover proprietary trading but are purely commercial transactions,
3. repurchase agreements (Section 50(1) Banking Act and Section 4(1) No. 83 of Regulation (EU) No. 575/2013), and
4. securities lending and securities borrowing transactions if it was agreed that these contracts will be dissolved upon the opening of insolvency proceedings over the assets of a contracting party or may be dissolved by the other party and that all mutual claims therefrom shall be offset.

## **Performance of Bilateral Transactions**

### **a) In general.**

#### **Section 21.**

- (1) If a bilateral contract has not yet been performed or has not been entirely performed by the debtor and the other party at the time of the opening of insolvency proceedings, the insolvency receiver may either perform the contract on behalf of the debtor and demand performance from the other party or rescind the contract.
- (2) The insolvency receiver shall make a statement concerning this choice within a time period to be determined by the insolvency court upon request of the other party, failing which, it shall be assumed that the insolvency receiver rescinded the contract. The time period to be determined by the insolvency court shall terminate at the earliest three (3) days after status hearing. In the case of a rescission, the other party may claim damages for losses incurred as an insolvency creditor. If the debtor is obligated to perform services on a contract pursuant to which he is in default, the insolvency receiver shall immediately declare his choice at the latest within five (5) working days after receipt of the request of the contracting party. If he does not declare rescission within this time period, it shall be assumed that he rescinds the contract.
- (3) If the other party is obligated to perform the contract in advance, he may deny his performance until provision or guarantee of the counter-performance if, at the time of the conclusion of the contract, he did not have to be aware of the debtor's adverse financial circumstances.
- (4) If the obligations are divisible and the creditor has already partly performed his obligations at the time of the opening of insolvency proceedings, the creditor shall be an insolvency creditor entitled to the prorated amount corresponding to his partial performance.

### **b) Fixed Transactions.**

#### **Section 22.**

- (1) If the delivery of goods that have a market or exchange-traded price is to be performed at a fixed point in time or within a fixed time period and the point in time or the expiration of the time period falls after the opening of insolvency proceedings, performance may not be demanded but damages for non-performance may be claimed.
- (2) The amount of damages for contracts with the agreed time of performance shall be the difference between the purchase price and the market or exchange-traded price that exists at the place of performance or at the relevant exchange for such goods on the second working day after the opening of insolvency proceedings.

### c) Lease Agreements.

#### Section 23.

If the debtor has leased property, the insolvency receiver may, without prejudice to a claim for damages, terminate the contract subject to compliance with the statutory or agreed shorter termination period.

#### Section 24.

- (1) If the debtor has leased out property, the insolvency receiver shall continue the contract. An advance payment of the lease that has not been entered into the public register may without prejudice to a claim for damages be contested against the insolvency receiver only for the duration of the lease assuming an immediate termination subject to compliance with the agreed or, failing such, statutory termination period.
- (2) Any sale of the leased property in the insolvency proceeding shall have the effect of required divestiture on the lease.

### d) Employment Contracts.

#### Section 25.

- (1) If the debtor is the employer, the insolvency receiver shall exercise the rights and obligations of the employer. If the employment relationship has already commenced, it may be
  1. in debt adjustment proceedings within one month after the opening of the debt adjustment proceeding,
  2. otherwise within one month after
    - a) the publication of the decision ordering, approving, or determining the closure of the debtor's business or a division, or
    - b) the status hearing unless the court has decided at such hearing that the debtor's business can continue operating, or
  3. in the fourth month after the opening of insolvency proceedings if, until then, no status hearing took place and the continuation of the debtor's business has not been published in the insolvency database,
  4. terminated by the employee through premature resignation, whereas the opening of insolvency proceedings shall be deemed as a good cause, and terminated by the insolvency receiver in compliance with a notice period imposed by law, a collective bargaining agreement or any shorter notice period in accordance with the statutory termination restrictions.
- (1a) For employees with special statutory protection against lay-off, the time period of subsection 1 shall be met if the complaint or request for approval of termination by the insolvency receiver has been filed on time. The same shall apply to the notification obligation set forth in Section 45a Labor Market Promotion Act.
- (1b) If closure of only one division but not the entire company is ordered, approved or confirmed, the right of withdrawal and the termination right set forth in subsection 1 shall only be available with respect to employees who are employed in the respective division. If at the status hearing the court has decided to continue the debtor's business, the insolvency receiver may only lay off employees who are employed in divisions that require a reduction in their workforce within one (1) month after the status hearing pursuant to subsection 1. Laid off employees shall be entitled to a right of withdrawal pursuant to subsection 1.
- (1c) Moreover, in the reorganization proceeding with self-administration, the debtor may lay off employees who are employed in divisions that require a reduction in workforce with the consent of the reorganization trustee pursuant to subsection 1 within one (1) month after the publication of the

order opening the insolvency proceeding if maintenance of the workforce could jeopardize the adoption or the fulfillment of the reorganization plan or the continuation of the debtor's business. Laid off employees shall be entitled to a right of withdrawal under subsection 1. Subsection 1a second sentence shall not apply.

- (2) If the employment relationship is terminated pursuant to subsection 1, the employee may file an insolvency claim for losses incurred.
- (3) After the opening of insolvency proceedings, an employee's resignation shall be ineffective if based solely on the fact that the employee's salary was unduly denied or paid only partially prior to the opening of insolvency proceedings.
- (4) The provisions of specific laws regarding the effect of the opening of insolvency proceedings on the employment relationship shall remain unaffected.

### **Termination of Contracts by the Debtor's Contracting Parties.**

#### **Section 25a.**

- (1) If termination of a contract could jeopardize the continuation of the debtor's business, the debtor's contracting parties may only terminate a contract entered into with the debtor for good cause for a period of six (6) months commencing at the opening of insolvency proceedings. Good cause shall not be deemed
  1. the deterioration of the debtor's economic situation and
  2. the debtor's default in fulfilling claims that became due prior to the opening of insolvency proceedings.
- (2) The restrictions of subsection 1 shall not apply
  1. if the termination of the contract is necessary to prevent severe personal or economic hardship to the contracting party,
  2. to claims for the disbursement of loans and
  3. to employment contracts.

### **Invalid Agreements.**

#### **Section 25b.**

- (1) The contracting parties may not enter into contractual arrangements pursuant to which the application of Sections 21 through 25a is excluded or limited in advance between the creditor and debtor.
- (2) A contractual provision rescinding or terminating a contract in the event of the opening of insolvency proceedings shall be unenforceable, except for contracts pursuant to Section 20(4).

### **Orders and Offers.**

#### **Section 26.**

- (1) An order placed by the debtor shall expire at the opening of insolvency proceedings.
- (2) Offers that have not been accepted by the debtor prior to the opening of insolvency proceedings shall remain valid unless a different intention of the offeror is apparent from the circumstances.
- (3) The insolvency receiver shall not be bound by offers made by the debtor that were not accepted prior to the opening of insolvency proceedings.

#### e) Transfer for Use by Shareholders.

##### Section 26a.

If a shareholder, subject to the Equity Replacement Act, transfers property to the debtor for use, the property may not be reclaimed prior to the expiration of one (1) year from the opening of insolvency proceedings if this would jeopardize the continuation of the debtor's business. Section 11(3) shall apply accordingly.

#### Chapter Two.

#### Avoidance of Legal Acts Undertaken prior to the Opening of Insolvency Proceedings.

##### Right of Avoidance.

##### Section 27.

Legal acts undertaken prior to the opening of insolvency proceedings concerning the debtor's assets may be challenged according to the provisions of this chapter and may be declared void against the insolvency creditors.

##### Avoidance.

#### a) Where the Intention is to Disadvantage Creditors

##### Section 28.

##### Voidable acts shall be:

1. all legal acts undertaken by the debtor within the last ten (10) years prior to the opening of insolvency proceedings with the intention, known to the other party, to disadvantage his creditors;
2. all legal acts that are disadvantageous to the debtor's creditors and that have been undertaken by the debtor within the last two (2) years prior to the opening of insolvency proceedings if the other party should have known of the debtor's intention to disadvantage creditors;
3. all legal acts that are disadvantageous to the debtor's creditors and that have been undertaken by the debtor within the last two (2) years prior to the opening of insolvency proceedings against his spouse – prior to or during marriage – or against other close relatives or for the benefit of such individuals unless the other party did not know or should not have known of the debtor's intention to disadvantage his creditors at the time of performance of the legal act;

#### b) due to the squandering of assets.

4. the purchase, barter, or supply agreements entered into by the debtor within the last year prior to the opening of insolvency proceedings if the other party was aware or should have been aware of the transaction as a squandering of assets to the creditors' disadvantage.

#### Avoidance of Gratuitous and Equal Disposal.

##### Section 29.

The following legal acts undertaken within the last two (2) years prior to the opening of bankruptcy proceedings are voidable:

1. gratuitous transfers from the debtor to the extent that they do not relate to the fulfillment of a statutory obligation, ordinary occasional gifts or disposals in a reasonable amount that were made for charitable purposes or to satisfy a moral obligation or considerations of decency;
2. the acquisition of the debtor's property pursuant to a judicial order if the consideration was disbursed from the funds of the debtor. If the property was acquired by close relatives of the debtor, it shall be assumed that the consideration was disbursed using the debtor's funds;
3. *(Note: repealed by Federal Law Gazette I No. 75/2009).*

#### **Avoidance Due to Preferential Treatment.**

##### **Section 30.**

- (1) The security or satisfaction acquired by a creditor after occurrence of illiquidity or after the filing of an insolvency petition or in the last sixty (60) days preceding such date shall be voidable:
  1. if the creditor has acquired a security or satisfaction that he was not entitled to claim at all, in this form, or at this time unless he was not unduly favored by this legal act against other creditors;
  2. if the security or satisfaction was acquired for the benefit of close relatives unless the intent of the debtor to unduly favor them against the other creditors was not and did not have to be known by them;
  3. if such legal acts were undertaken for the benefit of others than the individuals referred to in Section 30(1)2 and they knew or should have known of the debtor's intent to unduly favor them against the other creditors.
- (2) No avoidance is possible if the undue favoring had taken place more than one (1) year prior to the opening of insolvency proceedings.

#### **Avoidance due to Knowledge of Insolvency.**

##### **Section 31.**

- (1) The following legal acts undertaken after the occurrence of illiquidity or the filing of a petition to open the insolvency proceedings are voidable:
  1. legal acts pursuant to which a close relative of the debtor receives security or satisfaction for his insolvency claims and all legal transactions entered into by the debtor with these individuals to the creditors' disadvantage unless the close relative neither knew nor should have known of the illiquidity or filing for insolvency proceedings at the time of receiving such security or satisfaction or of a transaction constituting a direct disadvantage and the occurrence of such disadvantage was objectively not foreseeable;
  2. legal acts pursuant to which another creditor of the insolvency estate receives security or satisfaction and all transactions entered into by the debtor with these individuals to the creditors' direct disadvantage if the other party knew or should have known of the illiquidity or of the filing for insolvency.
  3. all legal transactions entered into by the debtor with other parties that are disadvantageous to the creditors if the other party knew or should have known of the illiquidity or filing of the petition for insolvency and the occurrence of such disadvantage for the insolvency estate was objectively foreseeable. Such an objective foreseeability shall be presumed where a reorganization plan was obviously unfit.
- (2) No avoidance is possible if the voidable legal acts were undertaken more than six (6) months prior to the opening of insolvency proceedings.

### **Section 32.**

- (1) Close relatives shall be considered the spouse and individuals, who are directly or up to the fourth degree collaterally related by blood or by marriage to the debtor or his spouse as well as adopted and foster children and individuals, who live with the debtor in form of unmarried cohabitation. Extra-marital relatives shall be treated as marital relatives.
- (2) If the debtor is a legal person, a partnership, or any other legal entity,
  1. the members of the managing or supervisory board,
  2. the general partners with unlimited liability, as well as
  3. the shareholders within the meaning of Section 5 Equity Replacement Act

shall be deemed close relatives of the debtor. The same shall apply to such individuals for whom this was true in the last year prior to the opening of insolvency proceedings as well as to close relatives listed in subsection 1 of all these individuals.

### **Bills of Exchange and Check Payments.**

#### **Section 33.**

- (1) Payments made on bills of exchange by the debtor cannot be reclaimed on the grounds of Sections 30 items 2 and 3, and Section 31 subsection 1, if, pursuant to the law on bills of exchange, the recipient was obligated to accept payment; if he foregoes his claim against other bill debtors.
- (2) However, the person entitled to challenge such legal act may claim reimbursement of the paid sum from the last recourse debtor or, if the bill of exchange was issued for the account of a third party, from the third party, if the last recourse debtor or the third party knew or should have known of the undue favoring, illiquidity or filing a petition for insolvency at the time he issued the bill of exchange or had the bill of exchange issued.
- (3) The foregoing provisions shall apply accordingly to check payments.

### **One-Time Sales.**

#### **Section 34.**

Any performance related to one-time sales of movable goods in the course of the debtor's commercial business may only be challenged under the conditions of Section 28 items 1 through 3.

### **Enforcement and Avoidance.**

#### **Section 35.**

A writ of execution that effects a voidable act or a writ of execution obtained as a result of a voidable act shall not prevent the avoidance of the legal act. If the legal act is declared void, the writ of execution shall cease to be valid against the insolvency creditors.

### **Avoidance of Omissions.**

#### **Section 36.**

The debtor's omissions shall also be considered as legal acts where, due to such omission, he loses a right or third parties establish, preserve, or secure pecuniary claims against him. The same shall apply to the disclaimer of an inheritance.

**Avoidance Power.**  
**Pending Legal Proceedings.**  
**Section 37.**

- (1) The insolvency receiver shall have the right to avoid legal acts.
- (2) Avoidance claims filed by creditors outside of the insolvency proceeding and judicial enforcement pursuant to a judgment that the creditors obtained for their avoidance claims may, during the insolvency proceeding, be pursued by the insolvency receiver only. The creditors shall be in advance reimbursed for litigation costs from the funds received by the insolvency estate in result of such claims.
- (3) If legal proceedings over actions for avoidance are still pending, they shall be stayed by the opening of insolvency proceedings. The insolvency receiver may, instead of the creditor, continue the legal proceeding or may refuse such continuation. The provision of Section 8(2) shall apply to the refusal of the continuation.
- (4) If the insolvency receiver refuses to continue the legal proceeding, such proceeding may be re-initiated or continued by the parties concerning the costs of the proceeding only. The insolvency receiver's right of avoidance pursuant to the provisions of the present Insolvency Code shall not be excluded by the refusal to continue legal proceeding.
- (5) The provisions of subsection 1 to 4 shall not apply to avoidance claims that entitle preferential creditors, pursuant to the Avoidance Code, to preserve their right to separate satisfaction and to dispute the claim of another preferential creditor in relation to the same asset.

**Opponents of Avoidance.**  
**Section 38.**

- (1) The grounds for avoidance against a testator shall also be permitted against the testator's heirs.
- (2) The grounds for avoidance against the legal predecessor shall only be permitted against a legal successor or transferee:
  1. if, at the time of his acquisition, he knew or should have known circumstances that constitute the right of avoidance against his predecessor;
  2. if his acquisition is based on a gratuitous disposal of his predecessor;
  3. if he is a close relative of the debtor, unless, at the time of his acquisition, he neither knew nor should have known the circumstances that constitute the right for avoidance against his predecessor.

**Content of the Avoidance Claim.**  
**Section 39.**

- (1) The debtor's assets that are unrecoverable, sold or abandoned due to a voidable act shall be transferred to the insolvency estate; however, if this is not feasible, compensatory damages shall be paid.
- (2) The person obligated to perform shall be considered as a dishonest possessor, however his heir is considered a dishonest possessor only if such heir knew or should have known the circumstances that constitute the right for avoidance against the testator.
- (3) The bona fide recipient of a gratuitous disposal shall return such gift only to the extent that he thereby enriched himself unless his acquisition was also voidable as a non-gratuitous acquisition.

## Section 40.

If third parties have acquired unavoidable rights on property that is to be returned to the debtor, the party who was in possession of such property at the time of its encumbrance shall, if his acquisition was voidable, be liable for damages to the insolvency estate. The provision of Section 39(3) shall apply.

### Claims of the Opponent for Avoidance Claims.

#### Section 41.

- (1) The party against whom an avoidance claim is brought may claim return of the consideration for the transaction at issue from the insolvency estate to the extent that it still exists and is distinguishable or the insolvency estate is enriched by its value.
- (2) Any further claim for return of the consideration and claims that have been renewed as a result of the refund of a voidable performance to the insolvency estate may only be claimed as an insolvency claim.

### Inadmissibility of Set-off.

#### Section 42.

A claim against the debtor may not be set off against a claim for avoidance.

### Exercise of a Right of Avoidance.

#### Section 43.

- (1) A right of avoidance may be enforced by filing a complaint or by asserting avoidance as a defense.
- (2) Avoidance by way of complaint shall be filed within one year after the opening of insolvency proceedings, otherwise the claim expires. The time period shall be tolled from the adoption of a composition proposal until taking effect of the court order with which the confirmation is denied.
- (3) The party entitled to avoidance may apply to the trial court for the entry of a notice of the complaint into the public registers where pursuit of such claim for avoidance requires such entries.
- (4) As a result of the entry of such notice, the judgment on an avoidance complaint shall also be effective against third parties who have acquired registered rights after the entry of such notice.
- (5) The insolvency court shall have exclusive jurisdiction to hear and decide on avoidance complaints if the right of avoidance is exercised by the insolvency receiver or the insolvency creditors pursuant to Section 189; however, this shall not apply if the insolvency receiver continues a pending legal proceeding (Section 37(3)).

## Main Chapter Two.

### Claims in Insolvency Proceedings.

#### Claims to Segregation.

#### Section 44.

- (1) If property is subject to the insolvency estate that the debtor does not wholly own, a right in rem or a personal right of segregation shall be assessed according to general principles of law.
- (2) If such property was sold after the opening of insolvency proceedings, the entitled party may, without prejudice to further claims for damages, demand segregation of the consideration from the insolvency estate that has already been paid; however, if the consideration has not yet been paid, he may demand the assignment of the right to the outstanding payment.
- (3) The party entitled to segregation shall simultaneously reimburse the debtor or the insolvency receiver for expenses incurred in relation to the property to be returned.

## Tracking Right.

### Section 45.

The seller or buying agent may re-claim goods that have been dispatched to the debtor but have yet to be paid in full unless they were delivered prior to the opening of insolvency proceedings and have been held in custody by the debtor or by a third person on behalf of him (tracking right).

## Post-Petition Claims.

### Section 46. Post-petition claims are:

1. costs of the insolvency proceeding;
2. all expenses concerning the maintenance, administration and management of the insolvency estate, including claims of funds and other collective organizations of employees and employers provided that their services inure to the employees' benefit as remuneration or the like as well as all taxes, fees, tariffs, social security contributions and any other public assessment concerning the insolvency estate if and to the extent that the facts and circumstances triggering any such obligation are established during the insolvency proceeding. This shall also include public assessments personal to the bankrupt; however, to the extent that such assessments relate, according to the administrative authority, to an income other than that of the insolvency estate after the opening of insolvency proceedings, such duties shall be segregated from the insolvency estate. The classification of the employee's claim shall be determinative to the extent to which the claims of funds and other collective organization referred to in the first sentence as well as official assessment attributable to such employees' claims (or the claims of individuals in a quasi-employment relationship) shall be post-petition claims in the insolvency of a business;
3. claims of employees (or the claims of individuals in a quasi-employment relationship) to recurring income (including bonuses) during the time period after the opening of insolvency proceedings;
- 3a. claims as a result of the termination of employment if
  - a) the employment relationship was entered into prior to the opening of insolvency proceedings and anytime thereafter, but not according to Section 25, was terminated by the insolvency receiver, or – if the termination is due to a legal act or other conduct of the insolvency receiver, in particular non-payment of the remuneration –by the employee (or individual in a quasi-employment relationship), this equally applies if no remuneration is paid after the lack of assets occurs;
  - b) the employment relationship is newly entered into by the insolvency receiver during the insolvency proceedings;
4. without prejudice to item 3 and Section 21(4), claims for the performance of bi-lateral contracts that the insolvency receiver has continued;
5. without prejudice to item 3, all claims arising from legal acts of the insolvency receiver;
6. claims against the insolvency estate asserting unjust enrichment;
7. the cost of a simple burial of the debtor;
8. the remuneration of privileged creditor protection associations.

### Section 47.

- (1) The post-petition claims shall be primarily satisfied from the insolvency estate, namely from the sub-estate to which they relate.

- (2) If post-petition claims cannot be satisfied in full, they have to be paid in the following successive order:
1. out-of-pocket expenses paid by the insolvency receiver in advance as set forth in Section 46(1) 1;
  2. all other costs of the proceeding pursuant to Section 46(1) 1;
  3. the deposits for costs rendered by third parties in advance if such deposit was required to cover the costs of the insolvency proceeding;
  4. the claims of employees (or individuals in a quasi-employment relationship) to recurring income to the extent that they are not subject to security pursuant to the Insolvency Payment Securing Act;
  5. termination claims of employees (individuals in a quasi-employment relationship) to the extent that they are not subject to security pursuant to the Insolvency Payment Securing Act; and
  6. all other post-petition claims.

The post-petition claims shall be satisfied on a pro rata basis within each group as set forth subsections 1 through 6 above. No refund of payments already made can be claimed.

- (3) In case of doubt as to whether post-petition claims relate to the common or to a sub-estate, the post-petition claims shall be included in the common estate. The insolvency court shall decide thereupon after conducting the necessary inquiry (Section 173(5)) by way of a final decision.

#### **Claims to Preferential Satisfaction.**

##### **Section 48.**

- (1) The claims of creditors, who have a claim to preferential satisfaction from the debtor's assets (creditors with a right to preferential satisfaction), shall be satisfied from the assets of the sub-estate before the other insolvency creditors. During the insolvency proceedings, accrued interest for the period until the expiration of six months from the opening of proceedings may be claimed only in the amount stipulated in the contract. If the payment of interest has not been contractually agreed upon, the statutory interest rate shall apply. The restrictions shall not apply if the insolvency proceeding is closed according to Section 123a.
- (2) The residual amount left over after satisfaction of the creditors with a right to preferential satisfaction from the sub-estate shall be made part of the common insolvency estate.
- (3) Creditors with a right to preferential satisfaction, who are also entitled to a personal claim against the debtor, may file their claims simultaneously as an insolvency creditor.
- (4) A lessor entitled to a lien pursuant to Section 1101 Civil Code may not claim payments under a lease for a period earlier than the last year prior to the opening of insolvency proceedings. This provision shall not apply to the lien of the lessor of agricultural property.

##### **Section 49.**

- (1) The costs of the special administration, liquidation and distribution concerning the sub-estate shall be paid from the use of and proceeds from the sub-estate with priority to the preferential creditors.
- (2) The provisions of the Enforcement Code shall apply to all disposals made during the insolvency proceedings concerning the priority of claims that are to be satisfied from the sub-estate.

#### **Common Insolvency Estate.**

##### **Section 50.**

To the extent that the assets of the insolvency estate are not used for the satisfaction of post-petition claims and preferential creditors, they shall form part of the common insolvency estate from which the claims against the insolvency estate without prejudice to Sections 56 and 57 shall be satisfied in proportion to their amounts.

### **Insolvency Claims.**

#### **Section 51.**

- (1) Insolvency claims shall be the claims of creditors, who have pecuniary claims against the debtor at the time of the opening of insolvency proceedings (insolvency creditors).
- (2) Insolvency claims shall also be
  1. statutory claims for support from the time after the opening of insolvency proceedings to the extent that the debtor is liable as heir of the person responsible for support;
  2. claims relating to the termination of the employment relationship
    - a) pursuant to Section 25, even if the employment relationship was terminated due to non-payment of salary during the notice period, or
    - b) if the notice of termination was issued as a matter of law or pursuant to a contract prior to the opening of insolvency proceedings, or
    - c) if the employment relationship is not terminated by the employee (or individuals in a quasi-employment relationship) after the opening of insolvency proceedings pursuant to Section 25 and the termination is not the result of a legal act or other conduct of the insolvency receiver.

#### **Section 52.**

*Note: Repealed by Federal Law Gazette 1982/370.*

#### **Section 53.**

*Note: Repealed by Federal Law Gazette 1982/370.*

### **Incidental Fees and Reimbursement Claims.**

#### **Section 54.**

- (1) Incidental fees incurred prior to the opening of insolvency proceedings shall rank *pari passu* with claims.
- (2) Claims for reimbursement concerning a debt paid for the debtor shall rank *pari passu* with the paid claim.

#### **Section 55.**

*Note: Repealed by Federal Law Gazette 2009/75.*

### **Claims of Business Creditors.**

#### **Section 56.**

The claims of business creditors to which rights of a spouse from a marriage contract pursuant to Section 36 Enterprise Act are subordinated shall be considered with the amount that is attributable to them without taking the marriage contract into account. Any additional amount that is thereby obtained by the business creditors shall be taken from the proceeds to which the debtor's spouse is entitled to claim from the marriage contract as an insolvency creditor.

**Claims of the Partnership's Creditors  
Against a Partner with Unlimited Liability.**

**Section 57.**

Creditors of a registered partnership shall be considered in the insolvency proceeding against a general partner with unlimited liability only to the amount that is not otherwise satisfied through enforcement if insolvency proceedings are also opened over the assets of the registered partnership. The rights that inure to the benefit of the partner with unlimited liability as a result of a reorganization plan shall be preserved.

**Subordinated Claims**

**Section 57a.**

- (1) The claims from equity replacing services shall be satisfied after the insolvency claims.
- (2) The subordinated claims shall be enforced in the same manner as insolvency claims. However, they shall only be filed if the insolvency court specifically orders the filing of such a claim. The insolvency court shall issue such an order as soon as it can be expected that there will be a satisfaction of subordinated claims even if only partial satisfaction. The specific order shall be published and served on the creditors who have subordinated claims and whose address is known. This subordinate position shall be referenced when filing such claims. The insolvency creditors' rights shall not be affected by the rights of the creditors with subordinate claims.

**Excluded Claims.**

**Section 58.**

The following cannot be claimed as insolvency claims:

1. Interest that has been accrued since the opening of insolvency proceedings and the costs that have been incurred by the individual creditors as result of participating in the insolvency proceeding;
2. Fines for criminal offenses of any kind;
3. Claims from donations and, in insolvency proceedings over a decedent's estate, claims from bequests.

**Main Chapter Three.**

**Effects of the Close of the Insolvency Proceedings.**

**Rights of the Debtor after the Close of the Insolvency Proceedings.**

**Section 59.**

To the extent that this Federal Act does not provide otherwise, the debtor shall be entitled to freely dispose of his assets if, by final decision, the insolvency court confirms the reorganization or payment plan, initiates absorption proceedings or closes the insolvency proceedings on any other grounds.

**Creditors' Rights after the Close of Insolvency Proceedings.**

**a) Right to File a Complaint.**

**Section 60.**

- (1) Insolvency creditors may enforce their outstanding claims against the debtor's assets that remain at his disposal or have been acquired after the close of the insolvency proceeding irrespective of whether such insolvency creditors have filed their claims in the insolvency proceeding or not. This

shall also apply to post-petition creditors if the insolvency proceeding was closed as a result of the confirmation of a reorganization plan (Section 152b (2)).

- (2) If the debtor has not expressly disputed an insolvency claim, the courts and, if not otherwise provided by specific laws, the administrative authorities shall be bound by its determination made during the insolvency proceeding. Complaints for specific performance concerning such claims shall be permitted; however, the losing defendant shall be reimbursed for the costs of the proceeding unless he has moved to dismiss the complaint or the plaintiff requires the judgment to enforce such claim in a country that does not recognize a certificate of the register of claims of an Austrian court as a writ of execution.

#### **b) Right of Enforcement.**

##### **Section 61.**

If a claim was acknowledged during insolvency proceedings and was not expressly disputed by the debtor, such a claim may be enforced against the debtor's assets that remain at his disposal or have been acquired after the close of the insolvency proceeding due to its entry in the register of claims. If for the same claim several writs of execution have been granted and with respect to one of them enforcement measures have been permitted, enforcement measures with respect to another writ of execution shall be prohibited during such enforcement proceeding; enforcement measures for additional proceedings nevertheless permitted shall be suspended *ex officio* or upon application without hearing the parties.

#### **Limitation for the Reorganization Plan.**

##### **Section 62.**

The provisions of Sections 59 through 61 shall not affect the legal consequences of the close of the insolvency proceeding due to a reorganization plan.

Part Two.  
Insolvency Proceedings.

Main Chapter One.  
General Provisions.

Chapter One.  
Jurisdiction in Insolvency Proceedings.

Competence.

Section 63.

- (1) The court of first instance (insolvency court) within which judicial district the debtor operates his business or, failing which, has his habitual residence shall have jurisdiction over the insolvency proceedings.
- (2) If the debtor does not operate a business domestically or does not have a habitual domestic residence, the court of first Instance shall have jurisdiction within which the debtor's establishment or, failing such establishment, where the debtor's assets are situated.
- (3) If multiple courts have jurisdiction, the time of the first opening of the insolvency proceedings shall be determinative of which court has jurisdiction.

Section 64.

The Vienna Commercial Court shall be the insolvency court for the judicial district of the Vienna Regional Court for Civil Law Matters.

Section 65.

If an insolvency proceeding over the personal assets of a partner with unlimited liability is opened during or simultaneously with the insolvency proceeding over the assets of the partnership, the court shall have jurisdiction where the insolvency proceeding concerning the partnership is pending.

Chapter Two.  
Opening of Insolvency Proceedings.

Sub-Chapter One.  
General Requirements.

Illiquidity.

Section 66.

- (1) The opening of insolvency proceedings presupposes that the debtor is illiquid.
- (2) Illiquidity shall, in particular, be presumed if the debtor ceases to make payments.
- (3) Illiquidity shall not presuppose that creditors have made attempts to collect on their claims. The fact that the debtor has satisfied claims of individual creditors in whole or in part or is still able to satisfy such claims shall not be a basis to presume he is solvent.

Over-Indebtedness.

Section 67.

- (1) The opening of insolvency proceedings over registered partnerships where no general partner with unlimited liability is an individual, over the assets of legal entities and over decedent's estates shall also take place in the case of over-indebtedness unless otherwise provided by specific laws.
- (2) The provisions relating to illiquidity pursuant to this Federal Act shall accordingly apply to over-indebtedness in such cases.
- (3) At the assessment as to whether calculative over-indebtedness exists, the liabilities, even those from equity replacing services, shall not be considered if the creditor declares that he will claim satisfaction only after removal of a negative equity (Section 225(1) Commercial Code) or, in the case of liquidation, after all other creditors and that in respect of these liabilities no insolvency proceedings need to be opened.

#### **Section 68.**

After the dissolution of a legal entity or a registered partnership, the opening of insolvency proceedings shall be permitted as long as the assets have not been distributed.

#### **Application of the Debtor.**

#### **Section 69.**

- (1) The insolvency proceeding shall be opened immediately upon the debtor's application. The debtor's notification to the court that he has ceased making payments shall be deemed an application. The court's decision to open insolvency proceedings shall in any case explain the existence of the conditions for its geographic jurisdiction.
- (2) If the conditions for the opening of insolvency proceedings (Sections 66 and 67) are met, the debtor shall apply for the opening of insolvency proceedings without undue delay but not later than sixty days after the date of illiquidity. The debtor shall not be deemed at fault for any delay to the application where the opening of a reorganization proceeding with self-administration has been diligently pursued.
- (2a) The time period of Section 69(2) shall be extended to 120 days if the illiquidity occurred as a result of a natural disaster (flood, avalanche, snow pressure, landslide, rockslide, hurricane, earthquake or similar disaster of comparable scale).
- (3) The obligation pursuant to Section 69(2) shall apply to individuals, who are partners with unlimited liability or liquidators of a registered partnership or the legal representatives of legal entities. If such a person does not have legal capacity to act, his/its legal representative shall be subject to these obligations. If a legal representative is in its turn a registered partnership or a legal person or the relationship continues in this manner, the first sentence shall apply accordingly.
- (3a) If a domestic or a foreign joint-stock company has no legal representatives, then the duties under subsection 2 are to be fulfilled by the shareholder with a participation of more than 50 percent of the capital. Subsection 3 last sentences applies accordingly.
- (4) If the application is not filed by all individuals, who are subject to the prerequisites pursuant to Section 69(3), the remaining individuals shall be heard on the application. If an agreement cannot be reached on the application or a timely hearing is not possible, insolvency proceedings shall be opened only if prima facie evidence has been provided for the illiquidity. The same shall apply if the opening of insolvency proceedings over a decedent's estate is not applied for by all heirs.
- (5) Only after the effective date of the close of the insolvency proceeding, the insolvency creditors may claim damages due to a deterioration of the insolvency quota as a result of a breach of the obligation pursuant to Section 69(2).

## Application of a Creditor.

### Section 70.

- (1) Insolvency proceedings shall be opened immediately upon application by a creditor if he provides prima facie evidence that he has, even if not yet due, an insolvency claim or a claim from equity replacing services and that the debtor is illiquid.
- (2) The application shall be served on the debtor. An instruction on the opening of a reorganization proceeding subject to the timely filing of a reorganization plan shall be enclosed. The court shall hear the debtor and other witnesses (Section 254(5)) if it is possible in due time, but the application must be dismissed immediately without a hearing if it is obviously without merit, especially if prima facie evidence has not been provided or the application has clearly been filed fraudulently. Hearings scheduled for the questioning of witnesses may only be extended ex officio but not for the adoption of a debt payment plan.
- (3) An application for the opening of insolvency proceedings that has been withdrawn by a creditor cannot be renewed for the same claim prior to the expiration of six months.
- (4) When deciding on an application for the opening of insolvency proceedings, the court shall not take into consideration the creditor's withdrawal of the application to open insolvency proceedings or the satisfaction of the creditor's claim after the application for the opening of insolvency proceedings. It shall not be deemed sufficient to refute the existence of illiquidity if the debtor provides evidence of such a satisfaction or of the existence of an agreement for the deferral of payments with the creditor. If the court nevertheless dismisses the application to open insolvency proceedings, the decision shall also be served on the privileged creditors' protection associations.

## Cost-Covering Assets.

### Section 71.

- (1) A further condition for the opening of insolvency proceedings shall be the existence of cost-covering assets.
- (2) Cost-Covering assets shall exist if the debtor's assets are at least sufficient to cover the initial costs of the insolvency proceeding. The assets neither have to be immediately realizable nor realizable without effort.
- (3) In determining whether cost-covering assets exist, the court may also seek opinions from privileged creditors' protection associations or instruct an executory officer to carry out investigations.
- (4) At his hearing, the debtor shall present a list of assets and sign it before the court (Sections 100a, 101). In such a list of assets, the debtor shall provide information on avoidance claims.

## Opening Despite Lack of Cost-Covering Assets.

### Section 71a.

- (1) If there is a lack of sufficient cost-covering assets for the insolvency proceeding, the insolvency proceeding shall still be opened if, by court order, the applicant makes a deposit determined by the court within a certain period of time to cover such costs. The decision on the cost-covering deposit shall be issued by way of court order which shall also be served on each privileged creditors' protection association. The order shall neither be appealable nor enforceable. The court may also order such a cost-covering deposit if the debtor's assets consist of avoidance claims or other claims and receivables.
- (2) If the cost-covering deposit is not made in a timely manner, the application shall be dismissed for a lack of cost-covering assets; the applicant shall be advised on these consequences in the court order.

- (3) The applicant may make a claim for the cost-covering deposit made in a timely manner only as a post-petition claim.

### **Dismissal Due to a Lack of Assets.**

#### **Section 71b.**

- (1) If the insolvency proceeding is not opened due to the lack of cost-covering assets, the court's order shall reference the lack of cost-covering assets and the debtor's illiquidity. The court order and its effective date shall be published. If another petition to open insolvency proceedings is filed within six months after the effective date of the court order, the applicant must provide evidence that sufficient assets are now available or agree to make a cost-covering deposit in advance pursuant to Section 71a.
- (2) The debtor shall provide a list of assets and sign it before the court upon the request of a creditor (Sections 100a, 101). If assets become apparent in such a list, an application for the opening of insolvency proceedings may again be filed irrespective of Section 71b (1) third sentence and Section 70 (3).
- (3) If the court order ruling that the insolvency proceeding is not to be opened as a result of a lack of cost-covering assets is amended so that the application to open insolvency proceedings is dismissed on appeal, the entry in the insolvency database shall be deleted.

### **Appeal.**

#### **Section 71c.**

- (1) Court decisions where insolvency proceedings are opened or applications for the opening of insolvency proceedings are dismissed may be appealed by all persons whose rights are affected and by the privileged creditors' protection associations.
- (2) Appeals brought against decisions concerning the opening of the insolvency proceeding have no suspensive effect.

### **Recourse.**

#### **Section 71d.**

- (1) Anyone, who has made a cost-covering deposit in advance, may claim such amount from any person who was required to file for the opening of the insolvency proceeding pursuant to Section 69 but has not made such filing as a result of his own fault. The claim shall expire three years after the close of the insolvency proceedings.
- (2) Anyone, who made a cost-covering deposit in advance, may, irrespective of the prerequisites set forth in Section 71d(1), claim such amount from any person who would have been obligated to make a cost-covering deposit pursuant to Sections 72a and 72d. Upon application, the insolvency court shall render its decision regarding the obligation for reimbursement of the cost-covering deposit pursuant to a court order. Section 72b (4) and (5) shall apply accordingly to this court order.

### **Sub-Chapter Two.**

#### **Special Provisions for Legal Entities.**

##### **Lack of Cost-Covering Assets.**

#### **Section 72.**

- (1) Where a legal entity lacks cost-covering assets, the insolvency proceeding shall still be opened if
1. the legal representatives of that legal entity make a cost-covering deposit in advance or
  2. it is established that the legal representatives have assets that are sufficient to cover the costs.

- (2) The creditor's application shall only be dismissed pursuant to Section 71a(2) if the legal representatives neither make a cost-covering deposit nor can assets be ascertained from which such cost-covering deposit can be made.

#### **Legal Representatives.**

##### **Section 72a.**

- (1) The legal representatives of a legal entity shall be jointly and severally liable to make a cost-covering deposit in advance for the initial costs up to a maximum amount of EUR 4000.
- (2) All persons, who were the debtor's legal representatives within the last three months prior to the filing of the application for the opening of insolvency proceedings, shall be obligated to make a deposit for costs except for the emergency managing directors.

#### **Cost-Covering Deposit and List of Assets of the Legal Representatives.**

##### **Section 72b.**

- (1) The court shall request the legal representatives to pay a court-determined amount and submit a list of assets regarding their financial standing within 14 days. The obligation to submit the list of assets shall not apply if the cost-covering deposit is made. The court shall provide notice of this to the legal representatives. The decision on the obligation to make a deposit shall be immediately enforceable.
- (2) The legal representatives shall sign the list of assets before the court upon its request.
- (3) If the legal representatives have assets that cover the initial costs of the legal entity's insolvency proceeding, the insolvency receiver shall collect the cost-covering deposit from them. The court may order interim measures pursuant to Section 73 to the detriment of these persons.
- (4) The order issued to the legal representative that requires him to make a cost-covering deposit and submit and sign the list of assets can only be appealed by him to the extent that he contests the obligation that results from his position as legal representative.
- (5) Appeals against decisions with which the legal representatives are ordered to make a cost-covering deposit and to submit and sign a list of assets shall have no suspensive effect.

#### **Claim for Reimbursement of the Legal Representatives.**

##### **Section 72c.**

The legal representatives may make a claim for the amount paid as a cost-covering deposit only as a post-petition claim.

#### **Shareholder.**

##### **Section 72d.**

Besides the legal representatives, a shareholder, whose shares in the company amount to more than 50%, shall also be obligated to make a cost-covering deposit. Sections 72 through 72c shall apply accordingly to these shareholders.

**Sub-Chapter Three.**  
**Orders of the Court.**  
**Interim Measures.**  
**Section 73.**

- (1) If the insolvency proceedings cannot be opened immediately and the petition is not clearly without merit, the insolvency court shall order appropriate interim measures after having made investigations to secure the estate, in particular to prevent avoidable legal acts and ensure the continuation of the debtor's business.
- (2) The debtor may be prohibited entirely or without the consent of the judge or an interim trustee appointed by the judge from carrying out legal acts that are not part of the ordinary course of business, the sale or encumbrance of real property, the granting of rights of preferential satisfaction, the entering into guarantees and gratuitous disposals.
- (3) Interim measures shall be noted in the public books and registers. Any conflicting legal acts shall be unenforceable against the creditors if the third party knew or should have known of the restriction or if he has filed a petition for the opening of insolvency proceedings.
- (4) Interim measures shall be terminated if the insolvency proceeding is not opened or the circumstances have otherwise changed so that they are no longer required. Such interim measures shall expire with the opening of the insolvency proceedings unless the court maintains them as preservation measures (Section 78).
- (5) The court of second instance shall by way of final decision decide on appeals of decisions where interim measures have been ordered, amended or repealed.

**Publication of the Opening of Insolvency Proceedings.**  
**Section 74.**

- (1) The opening of insolvency proceedings shall be published by way of edict in which the proceeding shall expressly be referred to either as a bankruptcy or reorganization proceeding.
- (2) The edict shall contain:
  1. name of the court;
  2. individual name or company name and the debtor's habitual residence and the seat of the company or the establishment, where applicable, the company's number in the companies' register, the ZVR number and date of birth;
  3. name, address, telephone number, fax number and e-mail address of the insolvency receiver and, if a legal person has been appointed, the person who represents it in the exercise of the insolvency administration;
  - 3a. whether the debtor is entitled to self-administration;
  4. place, time and purpose of the first creditors' meeting and a request to the creditors to provide prima facie evidence of their claims;
  5. the request to the insolvency creditors to file their claims within a certain time period;
  - 5a. the request to the parties with a right of segregation or preferential satisfaction to file their claims of segregation or claims of preferential satisfaction relating to the debtor's income from employment or other recurring services that have an income replacement function within the filing period;
  6. a brief instruction about the consequences when missing the filing deadline; and

7. time and place of the general examination hearing.
- (3) In general, the court shall order that the first creditors' meeting be scheduled not later than 14 days after the opening of insolvency proceedings, the general examination hearing take place 60 to 90 days after the opening of insolvency proceedings and the filing period terminate 14 days prior to the general examination hearing.

#### **Section 75.**

- (1) Copies of the edict shall be served on:
  1. each insolvency creditor whose address is known;
  2. any representative body of the workforce established by the company;
  3. the Austrian National Bank in the fastest manner available by technical means if the insolvency proceeding was opened by the court of first instance.
- (2) If the debtor is operating a business, copies of the edict shall be served on the statutory interest group responsible for it/him and his employees. If the debtor has already submitted the list of assets and the balance sheet (Section 100), such documents shall be enclosed.

#### **Consultation with the Statutory Interest Groups and the Regional Employment Office.**

#### **Section 76.**

The statutory interest groups (Section 75(2)) and the Federal Office for Social Affairs and the Disabled and the Regional Office for the Employment Market Service may comment on the debtor's affairs as set forth in Section 81a(1) within three weeks. The insolvency receiver and the creditors' committee shall be put on notice of such comments. If the necessary copies are provided, the statements shall also be served on the creditors at the request of the parties entitled to make such statements.

#### **Entry of the Opening of Insolvency Proceedings.**

#### **Section 77.**

The insolvency court shall arrange for the opening of insolvency proceedings to be entered into the public books concerning real property and claims of the debtor and, if necessary, also in the ship and patent registers as well as in the minutes concerning the attachment hearing taken against the debtor by stating the day of the opening of insolvency proceedings.

#### **Entries in the Companies' Register.**

#### **Section 77a.**

- (1) If the debtor's business is registered in the Companies' Register, the insolvency court shall arrange for the following entries to be made in the Companies' Register:
  1. the opening of the bankruptcy or reorganization proceeding by stating whether the debtor is entitled to self-administration or not and the change in the title from reorganization proceedings to bankruptcy proceedings and the revocation of the self-administration, in each case stating the respective day;
  2. the close of the insolvency proceedings if it is not a case pursuant to Section 79;
  3. the manner in which the compliance with the reorganization plan is supervised;
  4. interim measures pursuant to Section 73;

5. the name of the reorganization trustee or bankruptcy receiver, the special administrator pursuant to Section 86 and the trustee;
  6. the non-opening of the insolvency proceeding due to a lack of cost-covering assets;
  7. the dismissal of the application to open insolvency proceedings pursuant to Section 63.
- (2) If the facts referred to in Sections 77a (1) items 3 through 5 change or the insolvency proceeding is closed pursuant to Section 79, the insolvency court shall arrange for the deletion of the entries in the Companies' Register. After the expiration of five years from the close of the insolvency proceeding or after a decision that excludes access to the insolvency database due to the fulfillment of the reorganization or payment plan, the court maintaining the Companies' Register shall delete any entries pursuant to Sections 77a (1) items 1 through 5 at the request of the debtor.

### **Preservation Measures and Notifications of the Opening of Insolvency Proceedings.**

#### **Section 78.**

- (1) Simultaneously with the opening of insolvency proceedings, the insolvency court shall take all appropriate measures to secure the estate and ensure the continuation of a business. The court shall hear the insolvency receiver, the creditors' committee and, if possible in due time, the debtor and other witnesses (Section 254(5)) prior to the closing of the business.
- (2) Simultaneously with the opening of insolvency proceedings, the court shall also provide notice of the opening of the insolvency proceeding to the postal and telegraph offices, the airports, railway stations and ship stations that come into consideration due to the location of the debtor's dwelling and business premises. As long as the court does not issue a contrary decision, these entities shall deliver to the insolvency receiver all mail that would otherwise be delivered to the debtor. This shall not apply to all judicial or other official correspondence delivered by mail if it is provided with an official endorsement indicating the admissibility of the delivery despite the mail redirection order.
- (3) The insolvency receiver may open the mail delivered to him. He shall return judicial and other official correspondence that does not relate to the estate with a note indicating the pendency of the insolvency proceeding. Otherwise, the insolvency receiver shall grant the debtor access to the mail directed to him and turn over any mail that does not relate to the estate immediately.
- (4) Credit institutions and depositaries at which the debtor, alone or together with third parties, has a deposit, a balance, an account or a safe deposit box shall be notified of the opening of insolvency proceedings with the instruction to carry out orders relating thereto only with the consent of the court.
- (5) If the debtor is in the public service, its supervisory service authority shall be notified of the opening of insolvency proceedings.

### **Notification of Employees.**

#### **Section 78a.**

The insolvency receiver shall inform the debtor's employees of the opening of the insolvency proceeding if they have not already been notified by the insolvency court or the opening of insolvency proceedings is not generally known.

### **Publication of the Close of the Insolvency Proceeding.**

#### **Section 79.**

- (1) If the decision opening the insolvency proceeding has been amended on appeal, this shall be published in the same manner as the opening of the insolvency proceedings.

- (2) The termination of the effects of the opening of insolvency proceedings shall be notified to the authorities and entities that have been informed pursuant to Sections 75 and 78 of the opening of the insolvency proceeding.
- (3) At the same time, it shall be arranged for the entries of the opening of insolvency proceedings completed pursuant to Section 77 and the entry in the insolvency database to be deleted and for all measures that restrict the free disposal of the debtor to be repealed.

### Chapter Three.

#### Entities of the Insolvency Proceeding.

##### Insolvency Receiver.

##### Section 80.

- (1) At the opening of the insolvency proceeding, the insolvency court shall appoint one insolvency receiver ex officio. If the appointed insolvency receiver declines to accept the charge, is removed from office, or is otherwise absent, the court shall appoint another person as insolvency receiver ex officio; the appointment of another insolvency receiver shall be published.
- (2) The person who is appointed as insolvency receiver shall be a person who is respectable, reliable and experienced in business and has knowledge of the insolvency system.
- (3) In insolvency proceedings concerning businesses, the candidate shall have sufficient knowledge of business law or business administration or have a reputation as an experienced business person. If the insolvency proceeding pertains to a business that is of economic importance due to its size, its location, its economic ties or other equally significant reasons, a very experienced person in the field of insolvency shall be appointed. Necessary inquiries of the court concerning these characteristics shall be answered immediately by the authorities and the competent statutory special interest groups.
- (4) The insolvency receiver shall receive a certificate of appointment.
- (5) A legal person may also be appointed as insolvency receiver. It shall notify the court of its representative in the furtherance of the insolvency administration.

##### Selection of the Insolvency Receiver.

##### Section 80a.

- (1) The insolvency court shall select one appropriate person for each particular case who ensures a swift implementation of the insolvency proceeding. Thereby, the court shall particularly take into consideration the existence of sufficient administrative capabilities and modern technical equipment and the exposure to pending insolvency proceedings.
- (2) When selecting, the court shall further take into consideration:
  1. any special skills, particularly in business administration and insolvency, tax and labor law,
  2. the prior activities of the candidate as an insolvency receiver and
  3. their professional experience.
- (3) If the persons included in the insolvency receiver list neither meet these requirements nor are willing to assume the insolvency administration, or a more suitable person is not included in the list, who is willing to assume the charge, the insolvency court may select a person who is not included in the insolvency receiver list.

## **Independence of the Insolvency Receiver.**

### **Section 80b.**

- (1) The insolvency receiver shall be independent from the debtor and the creditors. He shall not be a close relative (Section 32) and not be a competitor of the debtor and shall not have been a reorganization examiner in a previous business reorganization proceeding.
- (2) The insolvency receiver shall immediately notify the court of any circumstances that are likely to cast doubt on his independence. He shall notify the insolvency court in any case that he
  1. represents or advises the debtor, the debtor's close relatives (Section 32) or the debtor's legal representatives or has done so within five years prior to the opening of insolvency proceedings,
  2. represents or advises a creditor of the debtor or has advised a creditor against the debtor within three years prior to the opening of insolvency proceedings or
  3. represents or advises a direct competitor or a person materially affected by the proceeding.
- (3) If the insolvency receiver is a legal person, it shall notify the insolvency court of the existence of a representation or advisory activity pursuant to Section 80b (2) items 1 through 3 also in respect of its shareholders, legal representatives and persons with a material participation in this legal person.
- (4) The circumstances that have been notified by the insolvency receiver shall be discussed at the first creditors' meeting; a later notification shall be discussed in a creditor's meeting called by the court for this purpose.

## **Duties and Responsibilities of the Insolvency Receiver.**

### **Section 81.**

- (1) The insolvency receiver shall use the necessary due diligence for the purpose of his management duties (Section 1299 Civil Code) and render accurate accounts with respect to his administration.
- (2) He shall safeguard the common interests as opposed to the special interests of individual parties.
- (3) The insolvency receiver shall be liable to all interested parties for pecuniary disadvantages that he causes to them as a result of a breach of his duties.
- (4) The insolvency receiver shall carry out the activities assigned to him by on his own. For individual activities, in particular the examination of the books, the estimation of fixed and current assets and the forward-looking assessment of the prospects of a continuation of the debtor's business, he may engage third parties with court approval. Such approval may only be granted if the respective activity represents special difficulties, the entrusted person is suitable and reliable for the fulfillment of the task and a substantial reduction of the estate is unlikely. Subject to these conditions, the court may also order the inspection by experts ex officio or at the request of the insolvency receiver or the creditors' committee. No appeal shall be permitted against this decision.

## **Tasks of the Insolvency Receiver.**

### **Section 81a.**

- (1) The insolvency receiver shall immediately obtain detailed information about
  1. the economic situation,
  2. the previous management,
  3. the causes of the dwindling assets,
  4. the extent of the threat to employment,

5. the existence of third-party liability undertakings;
  6. all circumstances important for the creditors' resolution.
- (2) He shall also immediately determine the value of the estate, provide for the collection and securing of the assets and for the determination of the debt, particularly by way of examination of the filed claims, and conduct legal proceedings that relate to the estate in whole or in part.
  - (3) The insolvency receiver shall immediately examine whether the company may be continued or reopened. He shall examine until the status hearing at the latest whether
    1. a continuation is possible and
    2. a reorganization plan meets the common interests of the insolvency creditors and whether its fulfillment is likely possible.

### **Remuneration of the Insolvency Receiver.**

#### **Section 82.**

- (1) The insolvency receiver shall be entitled to a remuneration plus value added tax and a reimbursement for his out-of-pocket expenses. In general, the remuneration shall amount to
 

20% of the first EUR 22,000 of the assessment basis,  
 15% of the additional amount up to EUR 100,000,  
 10% of the additional amount up to 500,000,  
 8% of the additional amount up to EUR 1,000,000,  
 6% of the additional amount up to EUR 2,000,000,  
 4% of the additional amount up to EUR 3,000,000,  
 2% of the additional amount of up to EUR 6 million,  
 and 1% of the amount in excess thereof,  
 but at least EUR 2,000.
- (2) The assessment basis pursuant to Section 82(1) shall be the gross proceeds realized where the insolvency receiver was responsible for their collection, including the amounts received from the realization of a sub-estate of the insolvency estate after deduction of the amounts paid to the insolvency receiver or a third party (Section 81(4)) from such estate.
- (3) In the case of the continuation of the debtor's business, a special remuneration shall be due to the insolvency receiver upon presentation of the cost estimate within one month of the opening of insolvency proceedings at the latest, otherwise within one month of the presentation, that shall not exceed the amount set forth in Section 125a by more than 15%.
- (4) The insolvency receiver may claim reimbursement for expenses that have been incurred due to the engagement of third parties (Section 81(4)) only if the court has given its consent.

### **Remuneration in Case of a Reorganization Plan.**

#### **Section 82a.**

- (1) Upon adoption of a reorganization plan, the remuneration of the insolvency receiver shall, as a general rule, amount to 4% of the first EUR 50,000 necessary for the satisfaction of the insolvency creditors,
 

3% of the additional amount up to EUR 500,000,  
 2% of the additional amount up to EUR 1,500,000 and

1% of the amount in excess thereof

but at least EUR 2,000.

- (2) If also proceeds within the meaning of Section 82 were made, a remuneration pursuant to Section 82 shall be due to the insolvency receiver. However, he shall not be entitled to the minimum remuneration set forth in Section 82 (1).

#### **Increase of the Remuneration.**

##### **Section 82b.**

The standard remuneration pursuant to Sections 82 and 82a shall be increased to the extent necessary, taking into account exceptional circumstances, particularly with regard to

1. the size and difficulty of the proceeding,
2. risks associated with the handling of employment relationships,
3. the special efforts associated with the examination of rights of segregation and preferential satisfaction or
4. the exceptional results achieved for the insolvency creditors.

#### **Reduction of the Remuneration.**

##### **Section 82c.**

The standard remuneration pursuant to Sections 82 and 82a shall be reduced to the extent necessary, taking into account exceptional circumstances, particularly with regard to

1. the simplicity of the proceeding,
2. the small number of employees,
3. the fact that the insolvency receiver could rely on existing structures of the debtor's business or
4. the fact that the results were not achieved due to the activity of the insolvency receiver but rather due to the efforts of the debtor or third parties.

#### **Remuneration in the Case of the Realization of a Sub-Estate.**

##### **Section 82d.**

A special remuneration shall be due to the insolvency receiver for the special administration, realization and distribution of a sub-estate. As a general rule, it shall amount to

1. in the case of a judicial sale, 3% of the first EUR 250,000 of the proceeds that are not attributable to the common insolvency estate made by the realization of the sub-estate, 2% of the additional amount up to EUR 1,000,000, and 1% of the amount in excess thereof;
2. in the case of another form of realization, 4% of the first EUR 250,000 of the proceeds that are not attributable to the common insolvency estate made by the realization of the sub-estate, 2.75% of the additional amount up to EUR 1,000,000 and 1.5% of the amount in excess thereof.

Sections 82b and 82c shall apply accordingly.

## **Powers of Insolvency Receiver.**

### **Section 83.**

- (1) In relation to third parties, the insolvency receiver shall, except in the cases of Section 117, be authorized by virtue of his appointment to carry out all legal transactions and legal acts that are involved in the fulfillment of the duties under his charge to the extent that the insolvency court has not restricted the powers of the insolvency receiver and notified the third party.
- (2) If the insolvency receiver requires a special authorization to carry out a transaction or legal act, the insolvency court shall issue a certificate of authorization on a case-by-case basis.

## **Supervision of the Insolvency Receiver.**

### **Section 84.**

- (1) The insolvency court shall supervise the activities of the insolvency receiver. It may give him instructions in writing or orally, obtain reports and explanations, view invoices or other documents and carry out the necessary inquiries. The court may order that the insolvency receiver obtain instructions from the creditor's committee on certain questions.
- (2) If the insolvency receiver does not comply with his duties or does not timely comply with his duties, the court may order him to promptly fulfill his obligations by imposing fines and, in urgent cases, appoint a special trustee at his own expense and risk for the handling of individual transactions.
- (3) The insolvency court shall hear the complaints of a creditor or a member of the creditor's committee or the debtor concerning individual acts or the conduct of the insolvency receiver. Appeals against the court's decisions shall not be permitted.

## **Representative of the Insolvency Receiver.**

### **Section 85.**

For convenience, a representative may be appointed, who shall act as an agent of the insolvency receiver, in case the latter is prevented from carrying out his duties. The rules applicable to the insolvency receiver shall also apply to the representative.

## **Special Receiver.**

### **Section 86.**

- (1) The insolvency court may assign special receivers to the insolvency receiver if
  1. the scope of the business so requires,
    - a) for certain parts of the administration, particularly for the administration of immovable assets, and
    - b) for individual activities, particularly for those that require special knowledge or skills,
  2. the insolvency receiver lacks independence towards a creditor (Section 80b(2) item 2).

The rights and obligations of such receivers shall be subject to the scope of tasks assigned to them and in accordance to the applicable provisions for the insolvency receiver.

- (2) If, however, a sequestration was effected prior to the opening of insolvency proceedings, the sequestrator shall be appointed as special receiver unless predominant reasons require the appointment of another person.

- (3) If creditors with a right of preferential satisfaction have affected the sequestration only after the opening of insolvency proceedings, the existing special receiver shall be assigned the charge of the sequestrator.

### **Removal of the Insolvency Receiver.**

#### **Section 87.**

- (1) The insolvency court may remove the insolvency receiver for good cause ex officio or upon filing a motion.
- (2) A motion for removal may be brought at any time by the debtor or any member of the creditors' committee. At the first and any subsequent creditors' meeting called for a hearing on this subject matter (Section 91(1)), a motion may be filed for his removal. The motion shall contain a basis for removal.
- (3) Prior to rendering a decision, the court shall hear the members of the creditors' committee, and, if practicable, the insolvency receiver.

### **Remuneration of the Privileged Creditors' Protection Associations.**

#### **Section 87a.**

- (1) The privileged creditors' protection associations shall be entitled to receive a remuneration plus VAT for their activities in assisting the court, preparing a reorganization plan, identifying and securing assets for the benefit of all creditors. In general, this remuneration shall, for all privileged creditors' protection associations participating in the proceeding, amount to
  1. 10% of the net remuneration awarded to the insolvency receiver pursuant to Sections 82 through 82c if a distribution to insolvency creditors is achieved, and
  2. 15% of the net remuneration awarded to the insolvency receiver pursuant to Sections 82 through 82c upon adoption of a reorganization plan.
- (2) In general, the remuneration shall be divided among the privileged creditors' protection associations as follows:
  1. 30% of the remuneration shall be divided equally;
  2. 70% of the remuneration shall be divided according to the number of creditors represented by the respective privileged creditors' protection association among those privileged creditors' protection associations that do not mainly represent creditors whose claims have largely been transferred to a guarantee institution by operation of law.
- (3) The court may deviate from the standard remuneration by analogous application of Sections 82b and 82c.

### **Creditors' Committee.**

#### **Section 88.**

- (1) If the nature or particular scope of the debtor's business makes it appear necessary, the court shall promptly assign a creditors' committee consisting of three to seven members (one in favor of the employees' interests) to the insolvency receiver ex officio or upon a motion filed at the first or any subsequent creditors' meeting calling for a hearing on this subject matter (Section 91(1)). The court shall always assign a creditors' committee to the insolvency receiver where a sale or lease pursuant to Section 117(1) item 1 or 2 is intended. In this case, the proposals of the creditors, the members of the representative bodies of the workforce established by the company as well as the creditors' statutory and voluntary interest groups (including the privileged creditors' protection association) shall be taken into consideration if practicable. In any case, the representatives of the workforce and the statutory interest groups shall be heard if possible in a timely manner; the statutory interest

groups shall promptly respond to the court's necessary inquiries. The appointment of a creditors' committee and the names of its members shall be published.

- (2) As members of the creditors' committee may also be appointed natural and legal persons, who/which are not creditors, and the departments of local authorities. Any member may be represented by another person in the fulfillment of his duties at his own risk and expense.
- (3) The court shall remove members of the creditors' committee for good cause ex officio or upon a motion brought by the first or any subsequent creditors' meeting called for the hearing regarding this issue (Section 91(1)), particularly if they fail to fulfill their duties or do so in a timely manner.
- (4) If a member of the creditors' committee declines to assume the activity, is removed from his charge or otherwise absent, the court shall appoint another person as a member of the creditors' committee.

### **Duties, Responsibilities and Remuneration of the Creditors' Committee.**

#### **Section 89.**

- (1) The creditors' committee shall have the duty to supervise and assist the insolvency receiver. It shall inspect the insolvency receiver's accounts by at least two of its members from time to time and every time the insolvency court so orders.
- (2) The members of the creditors' committee may acquire property pertaining to the insolvency estate themselves or through third parties by means other than through a motion for acquisition or at a public auction only with the permission of the creditors' meeting. Members of the creditors' committee shall be liable to all involved parties for the pecuniary losses that they have caused by violation of this rule or any other duty and may be ordered to promptly fulfill their duties through the imposition of fines by the insolvency court.
- (3) The creditors' committee shall be called by the insolvency court or the insolvency receiver in writing where in the cases of Section 117 the debtor shall be notified with the instruction that he is free to attend the meeting. Any member may bring a motion to convene the creditors' committee by providing grounds; the creditors' committee shall be convened particularly if the majority of the creditors' committee has brought a motion. In order to issue a resolution, a majority of the votes of all members of the creditors' committee is required. The vote can take place in writing. No one shall be entitled to vote when he/it has a personal interest in the outcome.
- (4) Each member of the creditors' committee, whose proposal is not passed by the majority, may prepare a minority report and submit it to the court for additional consideration.
- (5) The members of the creditors' committee shall not be entitled to a remuneration but to the reimbursement of necessary out-of-pocket expenses. However, if special tasks are assigned to them by order of the insolvency court or resolution by the creditors' committee, they may be granted a special remuneration subject to the approval of the insolvency court.

### **Rights of the Insolvency Court in the Absence of a Creditors' Committee.**

#### **Section 90.**

As long as a creditors' committee is not appointed, the insolvency court shall fulfill the duties assigned to the creditors' committee. If the consent of the creditors' committee is prescribed, the insolvency court can obtain approval of the creditors' meeting.

## **Creditors' Meeting.**

### **Section 91.**

- (1) The creditors' meeting is convened and chaired by the insolvency court. It shall be called particularly if a motion stating the agenda items is filed by the insolvency receiver, the creditors' committee or by at least two insolvency creditors, whose claims amount to a quarter of the insolvency claims as estimated by the insolvency court.
- (2) The calling of the creditors' meeting shall be published stating the agenda items. Publication shall not be required if, in a creditors' meeting, the continuation of the meeting is ordered by determining place, date and hour.
- (3) Resolutions cannot be made on items the negotiation of which has not been published in this manner except for a resolution on a motion for the calling of a new creditors' meeting.

## **Status Hearing.**

### **Section 91a.**

The court shall call a creditors' meeting to determine how to further proceed (continuation or closure of the business, reorganization plan) if the company has not yet been closed. This hearing can be combined with the general examination hearing. It shall take place no later than 90 days after the opening of insolvency proceedings. It can also fulfil the purpose of the first creditors' meeting, in which case such meeting shall be cancelled. It shall be published in the edict if ordered simultaneously with the opening of insolvency proceedings or otherwise separately published.

## **Resolution Requirements for the Creditors' Meeting.**

### **Section 92.**

- (1) Resolutions and motions shall require the absolute majority of votes that shall be calculated based on the amount of claims.
- (2) Only the votes of the insolvency creditors attending the creditors' meeting shall be counted.
- (3) A vote pertaining to someone's personal interest in the outcome shall only be permitted for motions.

## **Voting Rights at the Creditors' Meeting.**

### **Section 93.**

- (1) The acknowledged insolvency claims shall be entitled to participate in the voting.
- (2) The right to vote shall only be granted for claims of preferential creditors and creditors of a registered partnership in the insolvency proceedings of a general partner with unlimited liability to the extent the creditor so requests and only for that portion of the claim which is expected not to be satisfied by other means of enforcement.
- (3) Creditors, whose claims have not yet been examined, have been contested or are subject to a condition, as well as creditors within the meaning of Section 93(2), shall participate initially in the voting.
- (4) If the result of the vote is different depending on whether and to what extent the vote casted by a creditor mentioned in Section 93(3) is counted, the insolvency court shall decide after a preliminary examination and hearing of the parties whether and to what extent the vote of the respective creditor shall be counted. An appeal of the decision is not permissible but the decision may be modified upon application during a later voting.

## Acquisition of Claims Through Assignment.

### Section 94.

Insolvency creditors, who have acquired a claim by way of contractual assignment after the opening of insolvency proceedings, shall not be entitled to vote unless they have acquired such claim based on a binding relationship entered into prior to the opening of insolvency proceedings.

## Repeal of Resolutions.

### Section 95.

- (1) The insolvency receiver shall immediately notify the insolvency court of the creditors' committee's resolutions.
- (2) The insolvency court shall repeal a creditors' committee's or the creditors' meeting's resolution ex officio or upon a motion of the insolvency receiver or any member of the creditors' committee within eight (8) days if such resolution conflicts with the common interests of the insolvency creditors or other equally important reasons exist.
- (3) In urgent cases, the court may replace the creditors' committee's or the creditors' meeting's resolution with another order to prevent an obvious disadvantage.

## Chapter Four.

### Determination of the Insolvency Estate.

#### Inventory and Appraisal.

### Section 96.

- (1) The insolvency receiver shall, if possible with the involvement of the debtor, take inventory of the estate. The insolvency court may issue the necessary orders to implement these measures; it may appoint an executory officer to take inventory ex officio or upon a motion of the insolvency receiver if it is expected that assets belonging to the estate can be appraised pursuant to Section 96(2).
- (2) In general, taking inventory shall be combined with the appraisal; however, the latter may be postponed by the insolvency court for reasons of expediency. The appointment of an appraiser for the purpose of appraisal shall be sufficient; this appointment may be disregarded if members of the creditors' committee carry out the appraisal themselves with the approval of the insolvency court. Furniture and fixtures and other objects of lesser and generally known value may be appraised by the executory officer entrusted with taking inventory.
- (3) The provisions of the Enforcement Code shall apply to the appraisal of immovable property accordingly.
- (4) (Note: repealed by Federal Law Gazette I No. 92/2003)

#### a) Third Party Property and Property in the Custody of Third Parties.

### Section 97.

- (1) In cases where it is doubtful whether the property belongs to the estate, such property shall be included in the inventory; the claims asserted by third parties shall be noted.
- (2) Anyone who has in his custody property that belongs to the insolvency estate shall so notify the insolvency receiver and permit the inventory and appraisal as soon as he obtains knowledge of the opening of insolvency proceedings, failing which, he shall be liable for the damages caused as a result of his own fault.

- (3) Anyone who has acquired the debtor`s accounts receivable in the last year prior to the opening of insolvency proceedings shall be obligated to provide a list of such receivables as well as a statement of account with respect to each amount received thereon at the request of the insolvency receiver.
- (4) The insolvency court may issue the necessary orders for the implementation of these measures.

#### **b) Inheritances.**

##### **Section 98.**

- (1) If the inheritance accrues to the debtor prior to the opening of the insolvency proceeding and has not been entered upon until the day of the opening of the insolvency proceeding, only what vests to the debtor after the close of the probate proceeding shall be included in the inventory of the insolvency estate.
- (2) If an insolvency proceeding is also opened over the decedent's estate, it shall be conducted as a separate insolvency proceeding.
- (3) The foregoing provisions shall also apply to an inheritance that accrues to the debtor only during the insolvency proceeding.

#### **Obligation of the Debtor.**

##### **Section 99.**

The debtor shall be obligated to provide the insolvency receiver with all the information necessary for the administration of the business.

#### **List of Assets and Balance Sheet.**

##### **Section 100.**

- (1) The insolvency court shall request a debtor who has not handed over a detailed list of assets prior to the opening of insolvency proceedings to immediately submit such a list. The list of assets shall be submitted in so many conformed copies (photocopies) that the notifications (Section 75) can be effected, a copy can be sent to the insolvency receiver and another copy can be retained for the court's records; the same shall apply to submitted balance sheets, if any.
- (2) (Note: repealed by Federal Law Gazette I No. 29/2010)
- (3) If the debtor has submitted a balance sheet, it shall be examined and corrected by the insolvency receiver. Otherwise, the insolvency court may order the insolvency receiver to draw up a balance sheet by himself subject to compliance with the provisions of Section 96(2).
- (4) The debtor shall personally sign the list of assets or the balance sheet presented by him and agree to confirm by his signature before the insolvency court that his statements on the assets and liabilities are accurate and complete and that he has not concealed any of his assets.
- (5) The debtor shall sign the list of assets before the insolvency court upon a motion of the insolvency receiver or an insolvency creditor or an order of the insolvency court as soon as the active balance has been verified through the inventory. The insolvency receiver, the members of the creditors' committee and the moving party shall be summoned to this hearing.
- (6) If a decedent's estate, a registered partnership or a legal person is the debtor, the insolvency court shall determine whether all or which of the heirs, partners with unlimited liability or liquidators or persons authorized to represent a legal person shall sign the list of assets before the insolvency court.

## Content of the List of Assets

### Section 100a.

- (1) The individual assets and liabilities shall be included in the list of assets by stating their amount or value. In the case of claims, the debtor and, in the case of liabilities, the creditor shall be stated; and, in both cases, the legal ground of the debt, the date of maturity and any existing security shall be stated. In the case of receivables, it shall be stated whether and to what extent such receivables are expected to be recovered. If a claim or a debt is disputed, this fact shall be stated. In the case of liabilities that confer a right of preferential satisfaction to the creditor, the amount of the alleged losses shall be stated. If a creditor or a debtor is a close relative (Section 32) of the insolvency debtor, it should be noted; likewise, if a creditor or debtor is an employee of the insolvent debtor or is in a corporate or other joint relationship with him; the corporate or other joint relationship shall be described in detail. The address of all creditors and debtors shall be stated.
- (2) The debtor shall enclose a statement as to whether a property settlement between him and his close relatives took place within the last two years prior to the filing of a petition and also whether and what assets he disposed of in favor of his close relatives within the last two years prior to the filing of a petition. Gratuitous disposals shall not be considered to the extent that they are excluded from avoidance pursuant to Section 29 item 1.

## Disciplinary Measures in Respect of the Debtor.

### Section 101.

- (1) The insolvency court may compel the debtor to appear before the court if he fails to comply with summons. Likewise, it may take the debtor into custody if he persistently and without reasonable grounds fails to fulfill his duties set forth in Section 99, if he does not comply with the order to submit the list of assets or to sign the same before the insolvency court, or if this is necessary to secure the estate or to avoid machinations by which the creditors may be harmed.
- (2) The debtor shall be placed into custody pursuant to the provisions of Sections 360 through 366 Enforcement Code. The total duration of custody imposed after the opening of insolvency proceedings shall not exceed six months. The costs of enforcement and boarding shall be treated as costs of the insolvency proceeding.
- (3) Prior to the decision regarding custody or the release from custody, the creditors' committee shall be heard to the extent practical.

## Chapter Five.

### Determination of the Claims.

#### Filing of Claims.

### Section 102.

The insolvency creditors shall file their claims pursuant to the following provisions in the insolvency proceeding even if a dispute is pending with respect to such claims.

## Content of the Filing.

### Section 103.

- (1) The filing shall state the amount of the claim, the basis of the claim, the demanded rank of such claim and the evidence available that can be furnished to prove the claim.
- (2) For claims over which litigation is pending, the filing shall also specify the trial court and the file number.

- (3) Creditors with a right of preferential satisfaction, who also file their claims as insolvency creditors, shall describe the facts specifying the asset subject to the right of preferential satisfaction and indicate the amount up to which their claims are expected to be secured by the right of preferential satisfaction.

### **Submission of and Procedure for Filings.**

#### **Section 104.**

- (1) The claims shall be filed with the insolvency court in writing or put on the record orally. The motion for insolvency compensation may be included in the written filing. The court shall immediately send such motion to the competent department of the Austrian insolvency contingency fund Insolvenz-Entgelt-Fonds-Service GmbH without further examination; the part of the filing of claims determined for submission to the department shall be included.
- (2) The filing in the insolvency proceeding of a registered partnership may be combined with the filing of the same claim in the insolvency proceeding of the individual partners.
- (3) Written, non-electronically submitted filings shall be made in duplicate. A copy of the attachments submitted as originals shall be included.
- (4) The second copy of the written filings and official transcripts of the filing put on the record or electronically submitted filings as well as copies of the attachments shall be served on the insolvency receiver
- (5) The parties may have access to the filings and their attachments.
- (6) The insolvency receiver shall enter claims according to their rank in a register that shall be submitted to the insolvency court.

### **Examination Hearing.**

#### **Section 105.**

- (1) The insolvency receiver and the debtor shall attend the examination hearing. The business books and records of the debtor shall be brought along to the extent practicable.
- (2) The claims filed shall be examined according to their rank; in the case of the same rank, examined in the order of their filing.
- (3) The insolvency receiver shall issue a statement as to the validity and rank of each filed claim; reservations of the insolvency receiver shall not be permitted.
- (4) The debtor may contest the validity but not the rank of claims filed.
- (5) Insolvency creditors, whose claims have been acknowledged or whose voting right has been acknowledged, may contest the validity and rank of claims filed.

#### **Section 106.**

- (1) As long as the examination hearing is not completed, the creditor may claim another rank for his claims filed.
- (2) Other motions for the extension or modification of the claims filed shall be permitted if they cause no disruption to the examination hearing.
- (3) Claims filed after the expiration of the filing period shall be included in the hearing to the extent practicable.

## **Subsequent Filings.**

### **Section 107.**

- (1) A special examination hearing shall be ordered for claims that were filed after the expiration of the filing period and that were not heard in the general examination hearing. Section 105(1) shall apply. Claims filed later than 14 days prior to the hearing on the examination of the final accounts shall not be considered.
- (2) The insolvency court shall summon the creditors to this special examination hearing individually or by way of publication. Each creditor, who has missed the filing deadline, shall reimburse the insolvency receiver with EUR 50 plus VAT for the costs associated with the summoning and the insolvency receiver's statement, unless an earlier application was not possible for the creditor. This shall be alleged by him in the filing and, at the latest, certified during the subsequent examination hearing.
- (3) Creditors whose claims are only heard during a special examination hearing cannot contest previously examined claims.

## **Filing Register.**

### **Section 108.**

- (1) The results of the examination hearing shall be filed in the applications register.
- (2) The register shall be deemed part of the examination hearing's minutes. The creditors may require certified extracts.

## **Determination of Claims.**

### **Section 109.**

- (1) A claim is deemed acknowledged in an insolvency proceeding if the insolvency receiver recognizes and accepts such claim and it has not been contested by a duly authorized insolvency creditor.
- (2) A contestation by a debtor shall be noted in the application register; however, this notation shall have no legal effect for the insolvency proceeding.
- (3) (Note: repealed by Federal Law Gazette I No. 29/2010)

## **Contested Claims.**

### **Section 110.**

- (1) Creditors, whose claims remained contested concerning validity or rank, may file an action seeking a determination against all contesting parties if recourse through the courts is permissible (Section 14 Civil Procedure Code). The moving party's claim may only be based on grounds that have been specified in the filing and at the examination hearing and may not be for a higher amount than specified therein.
- (2) If an enforceable claim is contested, the contesting party shall make his objection by way of legal action.
- (3) If recourse through the courts is not permissible, the competent court or authority, as the case may be, shall decide on the validity of the claim; the insolvency court shall decide on the rank of the claim.
- (4) The insolvency court shall determine the time periods within which the claim shall be asserted and shall indicate to the parties the consequences of a failure to comply with this time period (Section 123b(2), Section 131(3), Section 134(2)). The time period shall be at least one month.

- (5) The insolvency court shall notify the insolvency creditors, whose claims remain contested concerning validity or rank and who were not present at the examination hearing, to what extent their claims have been contested.

#### **Jurisdiction for Actions Concerning Contested Claims.**

##### **Section 111.**

- (1) The insolvency court shall have exclusive jurisdiction to decide litigation concerning the insolvency claims' validity and rank. This shall not apply to employment law matters pursuant to Section 50 Labor and Social Courts Act.
- (2) The general provisions on the jurisdiction of the courts regarding actions concerning claims of segregation, preferential satisfaction or on the grounds of post-petition claims shall not be affected.

#### **Effect of the Decision.**

##### **Section 112.**

- (1) Final decisions concerning the contested claims' validity and rank shall be effective against all insolvency creditors.
- (2) The litigation costs shall be treated as post-petition costs to the extent the insolvency receiver participated in contesting the claim. However, the trial court may order the insolvency receiver to reimburse the insolvency estate for the litigation costs if he wantonly contested a claim or engaged in litigation.
- (3) If the insolvency receiver did not participate in the legal dispute, the contesting creditors shall be entitled to a reimbursement for the costs by the insolvency estate to the extent that the insolvency estate has received a benefit from conducting the legal dispute.

#### **Applicability of the Rules to Pending Law Matters.**

##### **Section 113.**

The provisions of Sections 110 and 112 shall also apply throughout the continuation and with respect to the decision of the legal proceedings against the debtor that have been pending or stayed prior to the opening of the insolvency proceeding.

#### **Assertion of Rights of Segregation or Preferential Satisfaction Attaching to Income From an Employment Relationship.**

##### **Section 113a.**

- (1) Persons entitled to a right of segregation and creditors with a right of preferential satisfaction attached to a claim on income from employment or other recurring services that have an income replacement function shall assert their right of segregation or preferential satisfaction in writing or place it orally on the insolvency court's records. In doing so they shall state the amount of the claim related to the right of segregation or preferential satisfaction and the facts forming the basis for such claim and the right of segregation or preferential satisfaction and describe the evidence to prove the alleged claim or right of segregation or preferential satisfaction. Section 103(2) and Section 104(3) through (5) shall apply accordingly.
- (2) Rights of segregation and preferential satisfaction attached to a claim on income from employment or other recurring services that have an income replacement function shall lapse if they have not been asserted until the vote on a payment plan. If the hearing on the payment plan is to be extended due to the assertion of such a right, Section 107(2) shall apply accordingly with respect to costs.

**Chapter Six.**  
**Disposal of the Estate's Assets and Accounting.**  
**Management by the Insolvency Receiver.**  
**Section 114.**

- (1) The insolvency receiver shall administer and realize the assets belonging to the insolvency estate. Money that is not needed for the satisfaction of the post-petition claims shall be invested safely and fruitfully as best possible by the insolvency receiver. He shall obtain the creditors' committee's consent for all important measures, especially if they concern the voluntary sale of movable property where such sale is not caused by the continuation of the debtor's business, the judicial enforcement of receivables where their collectability is doubtful, the filing of an action of avoidance and the continuation of an action for avoidance pending at the time of the opening of insolvency proceedings, or the taking out of loans and credits. The debtor shall be heard if possible in a timely manner.
- (2) In urgent cases, the court may permit the insolvency receiver to take such measures without a hearing.
- (3) (Note: repealed by Federal Law Gazette I No. 114/1997)
- (4) (Note: repealed by Federal Law Gazette I No. 114/1997)

**Continuation of the Debtor's Business.**  
**Section 114a.**

- (1) The insolvency receiver shall continue the debtor's business until the status hearing unless it is obvious that a continuation of the debtor's business will lead to an increase of the loss suffered by the insolvency creditors. As long as the business is continued, it can only be sold as a whole, and only then, if the sale clearly complies with the common interests of the insolvency creditors.
- (2) The insolvency receiver may close or reopen the business or individual business units only after approval by the insolvency court. Prior to issuing a decision thereon, the court shall hear the creditors' committee and, if possible in a timely manner, the debtor and other witnesses (Section 254(5)). If the business or individual business units have already been closed at the time of the opening of the insolvency proceeding but employment relationships still exist and there has been no reopening, the court shall state this in an order.
- (3) Court orders on the closure, reopening and determination that a previously closed business will remain closed shall be published in the edict if taken simultaneously with the opening of insolvency proceedings or otherwise separately.
- (4) If a business or individual business units are not continued, the creditors' committee shall determine upon a proposal from the insolvency receiver and with the approval of the insolvency court the most favorable manner to realize the business or individual business units; in such a case, it shall always be considered whether a way of realization other than the liquidation of assets, in particular the sale of the entire business or individual business units, is more advantageous.

**Content of the Status Hearing.**  
**Section 114b.**

- (1) The insolvency receiver shall report during the status hearing whether the requirements for the immediate closure of the entire business or individual business units or, as the case may be, for a continuation of the business are met and whether a reorganization plan complies with the common interests of the insolvency creditors and whether its implementation is expected to be feasible. As

grounds for his report, the insolvency receiver shall respond to the market, business and financial condition in a manner appropriate to the size and importance of the case.

- (2) If the requirements for a continuation are met, the insolvency court shall declare, by way of an order, the continuation after having heard the insolvency creditors; moreover, if a reorganization plan, the implementation of which is expected to be feasible, complies with the common interests of the insolvency creditors, the court shall grant to the debtor upon his motion a time period for the filing of the reorganization plan. No appeal of this decision shall be permissible. The time period shall not exceed 14 days. Meanwhile, the business shall not be realized. The orders shall be published.

### **Proposal on the Reorganization Plan.**

#### **Section 114c.**

- (1) If the motion on the reorganization plan is filed in due time and permissible, the court shall order a hearing on the reorganization plan within no more than six weeks. The business shall be realized only if the reorganization plan proposal is not accepted within 90 days or if it is no longer in the common interests of the insolvency creditors, or if the requirements for a continuation are no longer met.
- (2) Thereafter, the realization of the business shall only be stayed if the reorganization plan proposal is also not in conflict with the debtor's economic situation and, in view of the previous results of the proceeding, especially the vote on the most recent reorganization plan proposal, it can be expected that it will be adopted by the creditors.

### **Closure and Reopening of the Business.**

#### **Section 115.**

- (1) The insolvency court shall order or approve the closure of a business (Section 78(1), Section 114a(2)) only if it is certain on the grounds of the court's inquiry that otherwise an increase of the loss suffered by the insolvency creditors is unavoidable. If, during the hearing, prima facie evidence is furnished that the requirements for the avoidance of a disadvantageous threat to the insolvency creditors will be met within fourteen days, in particular, that a statement pursuant to Section 115(2) will have been issued, the decision shall be tolled until the end of this time period.
- (2) In any case, the increase of the loss shall be deemed avoidable if, in a written statement submitted to the court, one or more persons expressly assume liability to the insolvency creditors in a sufficient amount and for an appropriate time period for the loss that they may suffer as a result of the continuation and if there are no objections against the compliance with these obligations. The obligation shall be deemed sufficient if it is based on a continuation period that terminates not prior to the end of the third month following the opening of the insolvency proceeding and if it corresponds to the proportionate amount for this period resulting from the calculation of the regular profits and losses of the last twelve months prior to the opening of the insolvency proceeding.
- (3) The reopening of a business may be ordered or approved by the insolvency court only if an increase of the expected loss is avoidable; Section 115(1) and (2) shall apply accordingly.
- (4) In any case, the insolvency court shall order or approve the closure of a business one (1) year after the opening of the insolvency proceeding if a reorganization plan has not been adopted within this time period. The time period shall be extended up to a maximum period of one (1) year upon a motion of the insolvency receiver if the closure conflicts with the common interests of the creditors or other equally important reasons exist. The time period may be extended repeatedly up to a maximum total of two (2) years.

## Transactions Requiring Notification to the Insolvency Court.

### Section 116.

- (1) The insolvency receiver shall notify the insolvency court of the following transactions together with the statement of the creditors' committee at least eight days in advance:
  1. the entering into settlement agreements,
  2. acknowledgment of contested claims of segregation, preferential satisfaction and set-off and contested post-petition claims,
  3. the filing of actions for avoidance and the continuation of litigation for avoidance pending at the time of the opening of the insolvency proceeding,
  4. the performance or cancellation of bilateral agreements that have not or have not fully been performed by the debtor and the other party at the time of the opening of insolvency proceedings.
- (2) The notice shall not be required if the value does not exceed EUR 100,000.

## Transactions Requiring Approval.

### Section 117.

- (1) The following transactions shall require the approval of the creditors' committee and the insolvency court without regard to the value of the subject matter:
  1. the sale or lease of the debtor's business or his interest in a business within the meaning of Section 228(1) and (2) Commercial Code,
  2. the sale or lease of the entire movable fixed and current assets or any part thereof required for the business and
  3. the voluntary sale or lease of an immovable property.
- (2) The insolvency receiver shall publish the intended sale or lease, in particular, by including it in the official database of court publications for 14 days.
- (3) The approval shall presuppose that at least fourteen (14) days have passed since the beginning of the publication of the intended sale or lease, or where the property subject to the sale would lose considerable value due to the approval's postponement, eight (8) days have passed.

## Statement of the Debtor.

### Section 118.

- (1) The insolvency receiver shall give the debtor opportunity to comment on the matters set forth in Sections 116 and 117 and notify the creditors' committee and the insolvency court of the result or the obstacles to such comment(s).
- (2) The insolvency court shall give the debtor opportunity to comment to the extent possible in a timely manner or required with respect to Section 118(1) (Section 259(3)).

## Judicial Sale.

### Section 119.

- (1) The assets belonging to the insolvency estate shall be judicially sold only if the insolvency court so orders upon a motion of the insolvency receiver.
- (2) The provisions of the Enforcement Code shall apply accordingly to judicial sales with the following exceptions:

1. the insolvency receiver acts as a petitioning creditor;
  2. Section 200 item 3 Enforcement Code pursuant to which a new public auction may not be applied for prior to the expiration of six months from the motion for discontinuation and the time period for a motion for amendment of the statutory requirements for public auctions pursuant to Section 146(2) Enforcement Code and the two-year period of Section 151(3) Enforcement Code shall not apply;
  3. compliance with the interim time periods for making the appraisal and the public auction set forth in Section 140(1) and Section 169(2) Enforcement Code shall not be required;
  4. the reimbursement of the insolvency receiver for costs concerning the sale of a sub-estate shall be governed by Section 82d.
- (3) In a judicial sale, the court competent for enforcement shall carry out the sale and distribution of the proceeds among creditors with a preferential right of satisfaction.
  - (4) The insolvency receiver may continue any existing enforcement proceedings against the debtor as a petitioning creditor.
  - (5) The creditors' committee may decide, with the approval of the insolvency court, to set aside the sale of receivables when their collection is not sufficiently promising and the sale of property with insignificant value and to leave such receivables and property to the debtor at his free disposal.

### **Sale of Property Subject to a Right of Preferential Satisfaction.**

#### **Section 120.**

- (1) If the debtor's property is encumbered with a lien, the insolvency receiver may redeem it at any time by paying the debt related to the lien and, in the case of immovable property, subrogate to the mortgage by paying the mortgage debt. This provision shall apply accordingly to other rights of preferential satisfaction.
- (2) Property subject to a right of preferential satisfaction may only be realized other than by way of judicial sale if the insolvency receiver has notified the person entitled to a right of preferential satisfaction of the intended sale and the beneficiary has not effectively objected within fourteen (14) days. The objection shall be effective if the person entitled to a right of preferential satisfaction provides prima facie evidence that the judicial sale would be considerably more beneficial to him. The insolvency court shall decide on the objection. In applying these provisions, the sale of a property that has a market or exchange price shall be deemed equal to the judicial sale if the sale takes place at the current price. In urgent cases, especially if devaluation of the property is reasonably anticipated, the insolvency receiver may realize such property other than by judicial sale with the approval of the insolvency court. The decisions made pursuant to this section shall not be appealed.
- (3) If such property is in the custody of creditors with a right of preferential satisfaction whose claims are due, the insolvency court may, upon motion of the insolvency receiver and after hearing the preferential creditors, determine a reasonable time period within which they shall realize the property. If the property is not realized within such time period, the insolvency court may order its surrender for realization. An appeal of this decision is impermissible.
- (4) The provisions of Section 120(3) shall also apply to creditors who are authorized to satisfy themselves from a lien without a judicial intervention; however, institutions that are so entitled on the grounds of their legally established or officially approved articles of association shall only be obligated to provide the information requested by the insolvency receiver.

## **Suspension of the Enforcement Proceeding.**

### **Section 120a.**

- (1) The court competent for enforcement shall suspend the enforcement proceeding upon a motion of the insolvency receiver or petition of the insolvency court if an alternative realization is contemplated (Section 120(2)), unless the continuation of the proceeding is necessary to avoid serious economic disadvantages for the preferential creditor. Any such motion or petition may be made with respect to an initiated enforcement proceeding only once. The time period of Section 256(2) Enforcement Code shall be extended to coincide with the duration of the suspension.
- (2) In the case of a sale of the property, the court competent for enforcement shall, upon a petition of the insolvency court, close the proceeding or otherwise, upon a preferential creditor`s objection acknowledged valid by the insolvency court or after a period of 90 days from the receipt of a motion for suspension of the insolvency court or the petition of the insolvency court upon application of a preferential creditor to the court competent for enforcement, continue the enforcement proceeding.

## **Accounting.**

### **Section 121.**

- (1) (The insolvency receiver shall render an account each time the insolvency court so orders but no later than upon the termination of his activity and, if necessary, provide an explanatory report to the account.
- (2) The insolvency court shall examine the account and, if necessary, order the insolvency receiver to correct or supplement the account. It can consult experts or individual members of the creditors' committee for the account examination.
- (3) A hearing for review of the account shall be scheduled and published; the insolvency receiver, its successor, the members of the creditor's committee, the debtor and all insolvency creditors shall be summoned to the hearing and informed that they may have access to the account and submit objections, if any, during the hearing or prior to that by written statement.

## **Approval or Objections.**

### **Section 122.**

- (1) The account shall be approved by the insolvency court if, according to the result of the examination, no concerns exist and no objections were made.
- (2) Otherwise, the insolvency court, after having made the necessary inquiries (Section 254(5)) decides on the account by way of a final decision.
- (3) The decision shall be published and served on the insolvency receiver and the debtor. A notification to the creditors shall take place only if objections have been approved. Otherwise, only the creditors shall be notified whose objections were rejected.

## **Chapter Seven.**

### **Close of the Insolvency Proceeding.**

#### **Publications and Notifications.**

### **Section 123.**

- (1) The decision on the close of the insolvency proceeding shall be published. The effective date of the decision concerning the close of the insolvency proceeding shall be entered in the insolvency database.

- (2) Incidentally, Section 79(2) and (3) shall apply to the close of the insolvency proceeding.

#### **Close of the Insolvency Proceeding Due to a Lack of Assets.**

##### **Section 123a.**

If it becomes apparent in the course of the insolvency proceeding that the assets are insufficient to cover the costs of the insolvency proceeding, the insolvency proceeding shall be closed. The close shall be obviated if an adequate deposit for costs is made.

#### **Close of the Insolvency Proceeding with the Approval of the Creditors.**

##### **Section 123b.**

- (1) The insolvency proceedings shall be closed if, after the expiration of the filing period, all insolvency creditors who have filed their claims and all post-petition creditors consent to the close.
- (2) A creditor's express consent shall not be required if his claim is satisfied or secured by the insolvency receiver or if, concerning contested claims, the time period for filing an action has expired and the action was not filed later than the day on which a motion for the close of the insolvency proceeding is brought.

#### **Satisfaction of Post-Petition Creditors.**

##### **Section 124.**

- (1) The post-petition creditors shall be satisfied without regard to the status of the proceeding as soon as their claims are determined and due.
- (2) The insolvency receiver shall ensure that the necessary funds are available in time.
- (3) Where payment is refused or delayed, the post-petition creditors may appeal to the insolvency court for relief or enforce their claims against the insolvency receiver by way of legal action.

#### **Insufficiency of the Estate.**

##### **Section 124a.**

- (1) If the insolvency estate is insufficient to satisfy the post-petition claims, the insolvency receiver shall immediately notify the insolvency court thereof and cease satisfying the post-petition creditors. However, he may carry out legal actions that are necessary for the estate's administration and realization. Post-petition claims resulting therefrom shall be satisfied immediately.
- (2) The insolvency court shall make public the insufficiency of the estate. From this point, a judicial lien or right of satisfaction can be acquired on property belonging to the insolvency estate only on the grounds of post-petition claims pursuant to Section 124a(1) third sentence.
- (3) After the realization, the insolvency receiver shall submit a proposal for distribution within the meaning of Section 47(2) to the insolvency court. After carrying out the distribution, the insolvency court shall close the insolvency proceeding (Section 123a).
- (4) If the post-petition claims can again be satisfied due to changed circumstances, the insolvency receiver shall notify the insolvency court thereof without delay. The insolvency receiver shall again proceed pursuant to Section 124(1) at the time the publication of the sufficiency of the estate is made. Section 124a(2) second sentence shall no longer be applicable.

**In Particular:**

**a) Claims of the Insolvency Receiver.**

**Section 125.**

- (1) The insolvency receiver shall submit his claim for remuneration and reimbursement for out-of-pocket expenses to the insolvency court at the conclusion of his activity, however, at the latest during the hearing for the examination of the final account, failing which, he loses his claim. Thereby, he shall describe the relevant circumstances for the assessment of his remuneration, including the basis for calculating the remuneration and the merit of his activity. The insolvency court may at any time instruct the insolvency receiver to submit his claims.
- (2) The insolvency court shall decide on the claims of the insolvency receiver after hearing the creditors' committee and the debtor. It shall determine the remuneration in accordance with the provisions of Sections 82, 82a, 82b and 82c in a lump sum. The court's decision shall be served on the insolvency receiver, the debtor and all members of the creditors' committee. They may appeal the court's decision. The written appeal or a copy of the minutes replacing such written appeal shall be served on the parties entitled to appeal. They may file a response within 14 days of service of the appeal. The court of second instance shall render the final decision.
- (3) The claims of the insolvency receiver may be paid in advance by the insolvency court after hearing the creditors' committee.
- (4) The insolvency receiver shall determine his costs that he has to submit at the occurrence of a judicial sale of property and the distribution of the proceeds to the court competent for enforcement.
- (5) Agreements between the insolvency receiver and the debtor or creditors on the amount of the remuneration and the reimbursement for out-of-pocket expenses shall be unenforceable.

**Anticipated Remuneration in the Case of the Continuation of the Business.**

**Section 125a.**

- (1) If the insolvency receiver intends to claim an additional remuneration for the continuation of the business, he shall no later than at the status hearing submit a cost estimate in which he shall state the necessary activities and the anticipated remuneration per month. If additional work is required and the insolvency receiver intends to claim a remuneration exceeding the previous cost estimate by more than 15%, he shall submit an additional cost estimate. Section 125(1) sentence 2 and Section 125(2) and (5) shall apply accordingly.
- (2) The creditors' committee shall be heard regarding the cost estimate if it is not discussed during the status hearing.

**b) Claims of the Members of the Creditors' Committee.**

**Section 126.**

The insolvency court shall decide on the amount claimed for out-of-pocket expenses or a special remuneration by the members of the creditors' committee (Section 89(5)) after hearing the insolvency receiver. Section 125(2) and (5) shall apply accordingly.

**c) Claims of the Privileged Creditors' Protection Associations.**

**Section 127.**

- (1) The insolvency court shall decide on the claims of the privileged creditors' protection associations after hearing the insolvency receiver and the creditors' committee. Section 125(1), (2) and (5) shall

apply accordingly with the proviso that the standard remuneration (Section 87a(1) and (2)) can be claimed without a specifically calculated request.

- (2) The decision shall be served on the privileged creditors' protection association, the debtor, the insolvency receiver and all members of the creditors' committee. They may contest the decision by appeal and the court of second instance shall render a final decision.

## **Main Part Two.**

### **Distribution.**

#### **Satisfaction of the Insolvency Creditors.**

##### **Section 128.**

- (1) The satisfaction of creditors may be started only after the general examination hearing.
- (2) Distributions to the insolvency creditors shall take place whenever sufficient assets of the estate exist.
- (2a) If an insolvency creditor receives a quota of his claim in the course of a foreign insolvency proceeding, he shall take part in the distribution only if the other insolvency creditors have received the same quota.
- (3) The insolvency receiver shall undertake the distribution after consultation with the creditors' committee and obtaining the approval of the insolvency court.

#### **Informal Distribution and Distribution Proposal.**

##### **Section 129.**

- (1) In simple cases, the insolvency court may approve the distribution proposed by the insolvency receiver with the consent of the creditors' committee without prior notification of the creditors.
- (2) If the insolvency court has reservations regarding such distribution or if the distribution is difficult, in particular considering insolvency creditors who are to be satisfied only with the losses of their claims, the insolvency receiver shall submit a distribution proposal approved by the creditors' committee.
- (3) The distribution proposal shall reference all claims in their order of priority, the assets available for distribution and the amounts that apply to each individual claim.

#### **Decision on the Distribution Proposal.**

##### **Section 130.**

- (1) The insolvency court shall publish the submission of the distribution proposal after its review and possible correction and the distribution quota provided therein and notify the debtor and the creditors that they may have access to the distribution proposal and submit their objections thereto within 14 days. At the same time, they and the insolvency receiver and the members of the creditors' committee shall be notified of the hearing in which possible objections will be discussed.
- (2) The distribution proposal shall be approved by the insolvency court if, according to the results of the examination, no reservations against the proposal exist and objections have not been submitted or have been withdrawn at the hearing.
- (3) Otherwise, the insolvency court decides after conducting the necessary inquiries (Section 254(5)) by way of a final decision without recourse through the courts.
- (4) (The decision shall be published and served on the insolvency receiver and the debtor. A notification to the creditors shall take place only if objections have been approved. Otherwise, only the creditors shall be notified, whose objections have been rejected.

- (5) Amounts, the payment of which is dependent on the decision on the objections, shall be deposited with the court until the decision becomes effective.

#### **Consideration of Contested Claims at the Distribution.**

##### **Section 131.**

- (1) If claims are contested, distributions may take place to claims that have the same rank if the amount attributable to the contested claim is deposited with the court.
- (2) If the full amount of the contested claim has been deposited, distributions may take place to claims that are junior to such contested claim.
- (3) However, contested claims shall be considered only if the time period for bringing an action (Section 110(4)) is still open or if the action was brought no later than on the day on which the insolvency receiver filed a motion for distribution.
- (4) Enforceable claims shall only be deemed contested if the contesting party has made its objection within the time period by way of legal action.

#### **Consideration of Creditors with a Right of Preferential Satisfaction and Deficiency Creditors at the Distribution.**

##### **Section 132.**

- (1) Insolvency creditors, who are simultaneously creditors with a right of preferential satisfaction, shall be considered with the entire amount of their claims at distributions that have priority over the distribution from the proceeds of the special estate.
- (2) If it happens during the subsequent distribution from the proceeds of the special estate that the creditor has received more at the distribution than the amount of his portion to be calculated pursuant to the actual deficiency, the amount in excess thereof shall be directly returned from the special estate to the common estate.
- (3) The foregoing provisions shall apply accordingly to the claims of creditors in an insolvency proceeding of a registered partnership who have also filed their claims in the insolvency proceeding of a general partner with unlimited liability.
- (4) Insolvency creditors, who have acquired certain property of the debtor as security for their claims, particularly accounts receivables, or are entitled to a lien over the debtor's non-domestically situated immovable assets, shall only be considered with regard to the amount of their alleged deficiency. The amount of such deficiency shall be proven by providing prima facie evidence to the insolvency receiver by the expiration of the prescribed time period for the filing of objections and shall be approved by the insolvency court.
- (5) The provisions of Section 130(2) shall also apply to the insolvency creditors mentioned in Section 130(4). If they have received less at the distribution than the amount of the portion to be calculated according to the actual deficiency, they shall be paid the difference from the estate.
- (6) Interest accrued and costs incurred after the opening of the insolvency proceeding shall not be considered when calculating the deficiency.

#### **Deposit with the Court.**

##### **Section 133.**

- (1) Amounts attributable to contested claims and to claims that have only aimed at the provision of security or claims that are to be satisfied pursuant to Section 132(4) with the deficiency only shall be deposited with the court by the insolvency receiver.

- (2) The same shall apply to amounts attributable to conditional claims unless the condition is subsequent and the creditor provides security.

#### **Consideration of Untimely Filed Claims at the Distribution.**

##### **Section 134.**

- (1) Creditors, whose claims could not be taken into account due to an untimely filing, may request that they receive an amount upfront that corresponds to their same rank with other creditors at the following distribution.
- (2) The creditors, whose claims have not been considered at the distribution due to the filing of a time-barred legal action (Section 131(3)), shall not be entitled to such a claim.

#### **Consummation of the Distribution.**

##### **Section 135.**

The insolvency receiver shall prove the consummation of each distribution to the insolvency court.

#### **Final Distribution.**

##### **Section 136.**

- (1) If the entire estate has been realized and all contested claims have been finally decided, the final distribution shall be made after the determination of the insolvency receiver's claims and the approval of the final account.
- (2) The final distribution may take place only on the grounds of a distribution proposal within the meaning of Section 129(2) and (3).
- (3) The provisions of Sections 130 through 135 shall apply to the final distribution and the procedure.

##### **Section 137.**

- (1) The final distribution may not be postponed on the grounds that it is uncertain whether and to what extent deposited amounts to cover claims will revert back to the estate.
- (2) If the occurrence of a condition is so unlikely that the conditional claim does not currently have any asset value, the amount attributable to the claim shall not be deposited with the court.
- (3) Creditors, who are only to be satisfied with the deficiency of their claim pursuant to Section 132(4), shall only be considered at the final distribution if the amount of their deficiency has been proven prior to the expiration of the time period for the making of objections and approved by the insolvency court.

#### **Insolvency Assets Released or Revealed After the Final Distribution.**

##### **Section 138.**

- (1) If, after the consummation of the final distribution, amounts deposited with the court have been released or amounts paid otherwise revert back to the estate, they shall be distributed by the insolvency receiver on the grounds set forth in the proposal for the final distribution with the approval of the insolvency court. Evidence thereon shall be submitted to the insolvency court.
- (2) The same shall apply if, after the final distribution or close of the insolvency proceeding, assets are identified that belong to the insolvency estate.
- (3) The insolvency court may refrain from a subsequent distribution after having heard the insolvency receiver and the creditors' committee and surrender the available amount to the debtor if this

appears appropriate in view of the insignificance of the amount and the costs of a subsequent distribution.

- (4) Insolvency creditors, who would receive less than EUR 10, shall not be taken into consideration. This amount shall increase the amounts paid to the other insolvency creditors.

### **Close of the Insolvency Proceeding.**

#### **Section 139.**

If evidence is provided for the consummation of the final distribution, the insolvency court shall close the insolvency proceeding.

### **Main Chapter Three.**

#### **Reorganization Plan.**

##### **Chapter One.**

###### **General.**

#### **Application for the Adoption of a Reorganization Plan.**

##### **Section 140.**

- (1) The debtor may apply for the adoption of a reorganization plan at the time he files for the opening of insolvency proceedings or any time thereafter until the close of the insolvency proceeding. The application shall specify the manner in which creditors will be satisfied or secured.
- (2) If the application is not dismissed by the insolvency court as inadmissible, the insolvency court may, after hearing the insolvency receiver and the creditors' committee, order the liquidation of the insolvency estate to be suspended until the vote of the creditors' meeting.

#### **Content and Inadmissibility of the Reorganization Plan.**

##### **Section 141.**

- (1) The insolvency creditors shall be offered to be paid the quota within a maximum of two years from the date of the adoption of the reorganization plan. The quota shall be at least 20% of the claims. Individuals, who are not operating a business, may claim a payment period of over two years; however, this payment period shall not exceed five years.
- (2) The application shall not be permissible:
  1. as long as the debtor is evading the police;
  2. where the debtor was finally convicted of fraudulent bankruptcy after the occurrence of illiquidity;
  3. as long as the debtor has not submitted the list of assets and not signed such list before the insolvency court despite being requested to do so;
  4. where the content of the proposal is in violation of Sections 149 through 151 or mandatory rules;
  5. where the debtor fraudulently proposes a reorganization plan, particularly if the application appears to be for the purpose of delaying the filing of an insolvency petition;
  6. where fulfilment of the reorganization plan is clearly impossible, whereby claims from equity replacing acts of performance shall not be taken into account.
- (3) If the debtor is a legal person, subsection 2 shall be applied with the specificity that
  1. the requirements of subsection 2 item 1 and 3 shall relate to all of its representatives and

2. the requirement of subsection 2 item 2 shall relate to at least one of its representatives.

### **Preliminary Examination**

#### **Section 142.**

The insolvency court may dismiss the application for a reorganization plan after having heard the insolvency receiver and the creditors' committee:

1. where an insolvency proceeding was opened over the debtor's assets in the last five years or the insolvency proceeding was not opened within this period due to a lack of cost-covering assets;
2. where, due to the nature or lack of the debtor's business records, it is impossible to gain a sufficient overview of its financial standing;
3. where a reorganization plan was rejected by the creditors or withdrawn by the debtor after the publication of the hearing on the reorganization plan or the court did not approve the reorganization plan.

### **Voting Rights.**

#### **Section 143.**

- (1) Creditors, whose rights are not affected by the content of the reorganization plan, shall not be entitled to vote.
- (2) Incidentally, the provisions of Section 93 on the voting right shall apply.

### **Joint Claims.**

#### **Section 144.**

- (1) Multiple insolvency creditors who are entitled to a claim jointly or whose claims formed a unified claim at the opening of insolvency proceedings shall be entitled to one vote only. If a creditor's claim is subject to a lien, this provision shall apply accordingly.
- (2) The persons shall find an agreement on the exercise of the voting right.
- (3) A creditor who has filed multiple claims shall have one vote only. A creditor who has acquired a claim by way of assignment after the opening of insolvency proceedings shall be entitled to the vote of the creditor who was entitled to the claim prior to the opening of insolvency proceedings to the extent he is entitled to vote according to Section 94.

### **Hearing on the Reorganization Plan**

#### **Section 145.**

- (1) The hearing on the negotiation and adoption of the reorganization plan may not take place prior to the examination hearing. It shall be combined with the hearing on the rendering of accounts (Section 121(3)).
- (2) The hearing shall be published. In addition, the debtor and the persons who agree to assume liability for its obligations as well as the insolvency receiver, the members of the creditors' committee and the other insolvency creditors who are entitled to vote, shall each be summoned. At the same time, each insolvency creditor shall be served with a copy of the application for the adoption of the reorganization plan to be furnished by the debtor and the essential content of the reorganization plan shall be published.
- (3) The debtor shall personally attend the hearing. His representation by power of attorney is permissible only if he is unavailable for serious reasons and the insolvency court declares its

absence as justified. Otherwise the application for the adoption of the reorganization plan shall be deemed withdrawn.

### **Modification of the Reorganization Plan.**

#### **Section 145a.**

If the debtor modifies the reorganization plan at the hearing or submits a new proposal, the insolvency court shall, where not all of the insolvency creditors entitled to vote are present, permit for a vote only if the modified or new proposal is not less favourable for the insolvency creditors.

### **Specifics of Accounting.**

#### **Section 145b.**

- (1) The insolvency receiver shall
  1. render an account to the insolvency court no later than 14 days prior to the hearing on the reorganization plan, and
  2. complete the account in the hearing on the reorganization plan.
- (2) The insolvency receiver shall only be required to supplement the account for the period ending on the date on which the confirmation of the reorganization plan takes effect upon application by the debtor in the hearing on the reorganization plan or at the request of the insolvency court within four weeks from the date on which the confirmation takes effect. The court shall only decide on this supplementary account if the debtor claims deficiencies within 14 days of its submission. A hearing on the supplemental account may be omitted.

### **Report of the Insolvency Receiver.**

#### **Section 146.**

Prior to the vote, the insolvency receiver shall report on the economic standing and the existing management of the debtor as well as on the causes for the dwindling of his assets and the expected results of the insolvency proceedings.

### **Requirements for the Adoption of the Reorganization Plan.**

#### **Section 147.**

- (1) The reorganization plan can be adopted if the majority of the creditors present at the hearing and entitled to vote approves the proposal and if the total sum of the claims of the approving insolvency creditors constitutes more than half of the total sum of the claims of the insolvency creditors entitled to vote who are present at the hearing. The adoption of the reorganization plan and its essential content shall be published.
- (2) If only one of the majorities is reached, the debtor may request at the end of the hearing that a new hearing be held in order for the reorganization plan to be voted again.
- (3) In the case of a new hearing, the creditors shall not be bound by their statements at the first hearing.

### **Close Relatives.**

#### **Section 148.**

The debtor's close relatives (Section 32) as well as legal successors, who have not acquired their claims earlier than six months prior to the opening of insolvency proceedings, shall only be counted in calculating the majority of the insolvency creditors and the total sum of their claims if they vote against the proposal.

This provision shall not apply if they have acquired the claim after the occurrence of the debtor's illiquidity from someone who is not a close relative of the debtor.

#### **Extension of the Hearing on the Reorganization Plan.**

##### **Section 148a.**

- (1) The hearing on the reorganization plan may be extended
  1. in the case of Section 147(2) or
  2. (where the court did not allow a vote on the modified or new permissible proposal at the hearing or
  3. where it is expected that the extension of the hearing will result in the adoption of the proposal.
- (2) The new hearing shall be immediately scheduled, announced orally and published by the insolvency court. If, during the new hearing, a modified or new proposal is voted on, the modified or new proposal and its essential content shall be referenced in the publication.

#### **Rights of Parties entitled to a Right of Segregation and Creditors with a Right of Preferential Satisfaction.**

##### **Section 149.**

- (1) The claims of parties entitled to a right of segregation and creditors with a right to preferential satisfaction shall not be affected by the reorganization plan. If the reorganization plan is approved, the secured claims shall be limited to the value of the property which is subject to a right of preferential satisfaction. Creditors, whose claims are partly subject to a right to preferential satisfaction, shall participate with the remaining amount (Section 132(6)) in the reorganization plan proceeding; as long as this remaining amount has not been finally determined, the anticipated loss shall be considered in the fulfilment of the reorganization plan.
- (2) Section 125 shall apply to the claims of the insolvency receiver.

#### **Rights of Post-petition Creditors and Insolvency Creditors'**

##### **Section 150.**

- (1) The post-petition creditors shall be fully satisfied.
- (2) Without prejudice to the corresponding application of Section 56, the insolvency creditors shall be treated equally in the reorganization plan. Unequal treatment shall only be permissible with the approval of the majority of the subordinated insolvency creditors entitled to vote and present at the hearing and the total sum of the claims of the approving insolvency creditors amounts to at least three-quarters of the total sum of the claims of the subordinated insolvency creditors present at the hearing.
- (3) Amounts attributable to contested claims shall be secured to the same extent and under the same conditions that have been determined for the payment of the undisputed claims in the reorganization plan if the time period for bringing an action has not expired or the action has been filed until the hearing on the reorganization plan.
- (4) Assets shall be secured to this extent even if the claim is only disputed by the debtor. The secured amount shall be released if the creditor has not brought an action due to the disputed claim or resumed the currently pending proceeding within the time period specified by the insolvency court.

## **Preferences.**

### **Section 150a.**

An agreement between the debtor or other persons with a creditor pursuant to which such creditor receives preferential treatment prior to the adoption of the reorganization plan or during the time between its adoption and the taking effect of the approval shall be invalid. Any payment made as a result of an invalid agreement or an agreement to conceal such a relationship, may, without prejudice to further claims for compensation, be recovered within three years. It shall not be regarded as a preferential treatment if a creditor is paid a fee for the assignment of his claim and such fee corresponds to the economic standing of the debtor immediately prior to the commencement of the insolvency proceedings or, if the claim was assigned at an earlier stage, it corresponds to the economic situation at the time of assignment.

## **Rights of Creditors against Co-obligors.**

### **Section 151.**

The reorganization plan may not impose limitations on the insolvency creditors' rights against guarantors or co-debtors of the debtor as well as against persons obligated pursuant to a recourse claim, unless holders of such rights give their express consent.

## **Approval of the Reorganization Plan by the Court.**

### **Section 152.**

- (1) The reorganization plan shall be approved by the insolvency court.
- (2) If the reorganization plan is approved, the court's decision shall state its essential provisions.
- (3) The approval shall be published and served on all insolvency creditors and other parties involved. Neither an action for nullification nor an action for resumption of proceeding shall be permitted against the decision.

## **Preconditions for the Approval.**

### **Section 152(a)**

- (1) The approval shall be granted only if
  1. the remuneration of the insolvency receiver and of the creditors' protection associations has been determined by the court and paid or secured by the insolvency receiver and
  2. all other due and acknowledged post-petition claims are paid and post-petition claims asserted with the court or an administrative authority and conveyed to the knowledge of the insolvency receiver are secured and
  3. the preconditions laid down in the reorganization plan for the approval are fulfilled.
- (2) The insolvency receiver shall report on the fulfilment of the preconditions listed in subsection 1 upon request of the insolvency court, he shall in any case report on these preconditions specified in subsection 1 item 1 and 2 during the hearing on the reorganization plan.

## **Close of the Insolvency Proceeding.**

### **Section 152 b**

- (1) If the reorganization plan is confirmed, the court shall decide on the approval of the account rendered by the insolvency receiver (Section 122).
- (2) The insolvency proceeding shall be closed on the date on which the confirmation takes effect. This shall be entered into the insolvency database together with the taking effect of the confirmation.

- (3) If not provided otherwise by the reorganization plan, the debtor regains the right to freely dispose of his assets.
- (4) Incidentally, Section 79(2) and (3) shall apply to the close of insolvency proceedings.

#### **Mandatory Denial of Approval.**

##### **Section 153.**

The approval shall be denied if

1. there are grounds according to which the application for the adoption of a reorganization plan is not permitted (Section 141),
2. the provisions applicable to the proceeding and to the adoption of the reorganization plan have not been fulfilled, except that these defects may be subsequently remedied or are not material to the facts,
3. the reorganization plan has been adopted in violation of § 150a by the preferential treatment of a creditor.

#### **Discretionary Denial of Confirmation.**

##### **Section 154.**

The confirmation may be denied if

1. the benefits granted to the debtor in the reorganization plan are in contradiction with his circumstances;
2. the reorganization plan conflicts with the common interest of the insolvency creditors; however, claims from equity replacing acts of performance shall not be taken into consideration;
3. the insolvency creditors receive less than 30% of their claims and this results from the debtor's dwindling of assets being caused or accelerated by dishonesty, recklessness or excessive burden to his cost of living or the delay in filing the application for the opening insolvency proceedings.

#### **Appeal.**

##### **Section 155.**

- (1) The confirmation of the reorganization plan may be appealed by
  1. any involved party who has not expressly given its consent to the reorganization plan,
  2. each co-debtor and guarantor of the debtor,
  3. post-petition creditors if the requirements set forth in Section 152a(1) items 1 and 2 are not fulfilled.
- (2) The denial of the approval of the reorganization plan may be appealed by:
  1. the debtor,
  2. any insolvency creditor who has not objected to the reorganization plan.

#### **Legal effects of the Reorganization Plan.**

##### **Section 156.**

- (1) Pursuant to the legally approved reorganization plan, the debtor shall be released from the obligation to subsequently compensate his creditors for the loss which they suffer or pay for

benefits otherwise granted, regardless of whether they participated in the insolvency proceeding or in the vote on the reorganization plan or voted against the reorganization plan or whether their right to vote has never been granted.

- (2) Similarly, the debtor shall be released vis-à-vis the guarantors and other parties entitled to a recourse claim.
- (3) Contrary provisions in the reorganization plan shall be valid only to the extent they do not contradict with the requirements of Section 150 concerning the equal treatment of creditors.
- (4) Creditors, whose claims remained out of consideration only due to the debtor's fault, may require the payment of their claims in full from the debtor after the close of the insolvency proceeding.
- (5) The claims referred to in Section 58 item 1 may no longer be asserted after the adoption of the reorganization plan. The claims referred to in Section 58 item 2 and 3 above shall not be affected by the reorganization plan.

#### **Default.**

##### **Section 156a.**

- (1) The relief and other benefits granted by the reorganization plan shall be invalid vis-à-vis creditors on whose claims the debtor defaults in performance of the reorganization plan.
- (2) Such default shall be construed only if the debtor has not paid a debt when due despite having received a payment notice addressed to him granting a grace period of a minimum of fourteen days. If the debtor is an individual, who is not operating a business, and the reorganization plan is to be paid in instalments exceeding a maturity of one year, the default shall be construed only if he has not paid a debt due for at least six weeks despite having received a payment notice addressed to him granting a grace period of a minimum of fourteen days.
- (3) The effect of the revival of claims shall not extend to claims which were fully satisfied with the amount determined in the reorganization plan at the time of the default; other claims shall be deemed satisfied with the fraction that corresponds to the ratio of the amount paid and the amount payable according to the reorganization plan. Rights conferred on creditors by virtue of the reorganization plan vis-à-vis the debtor or third persons shall not be affected.
- (4) The reorganization plan may not derogate from subsections 1 through 3 to the detriment of the debtor, however, it may derogate from the first sentence of subsection 3 if a reorganization plan was concluded in the last five years prior to the opening of insolvency proceedings.

#### **Preliminary Determination of the Amount of Claims Disputed and Partially Covered.**

##### **Section 156b.**

- (1) If the existence or amount of an insolvency claim or the amount of the loss of a partially covered claim is disputed and a decision according to Section 93 has not been rendered, the insolvency court shall, upon application of the debtor or the creditor, provisionally determine the alleged amount of the disputed claim or the loss. No appeal shall be allowed against this decision.
- (2) The legal consequences in case of a default in the fulfillment of the reorganization plan (Section 156a) shall not apply to the debtor if he
  1. until final determination of the claims' existence or amount secures these claims by way of depositing at the court an amount, which conforms with a decision issued by the insolvency court according to Subsection 1 or Section 93, or
  2. pays partially covered claims until the final determination of their amount of loss to the extent that such payment conforms with a decision rendered by the insolvency court according to Subsection 1 or Section 93.

- (3) After final determination of the amount of the disputed claim or of the loss, the debtor, who until then considered the claim to a lesser amount to fulfill the reorganization plan according to the decision of the insolvency court, shall pay the outstanding amount.
- (4) Default in the fulfillment of the reorganization plan shall be presumed only if the debtor has not paid the outstanding amount despite having received from the creditor an overdue notice addressed to him and granting a grace period of a minimum of fourteen days. If the final determination reveals that the debtor has overpaid, he shall be only entitled to the excess amount to the extent to which the creditor received from the debtor in excess of the total, even if not yet due, amount granted to the creditor under the reorganization plan.

#### **Enforcement.**

##### **Section 156c.**

- (1) If a claim was acknowledged in insolvency proceedings and was not expressly disputed by the debtor, such a claim may, after the legally binding confirmation of the reorganization plan and also due to its entry in the register of claims, be enforced to recover amounts due pursuant to the reorganization plan against persons who pledged as co-debtors or as guarantors and payers, if these persons in a written statement to the insolvency court expressed their explicit commitment to meet the liabilities they have assumed in avoidance of immediate foreclosure. Section 61, last sentence shall apply.
- (2) If the creditor asserts rights, which he is entitled to by virtue of the debtor's default, no proof of the debtor's default is needed to issue a writ of execution.
- (3) If enforcement measures can be carried out on the basis of an entry in the register of claims against as per Section 156c(1) obligated persons, Section 60(2) shall also apply to these persons.

#### **Chapter Two.**

##### **Supervision by a Trustee.**

##### **General Rule.**

##### **Section 157.**

- (1) If, in the reorganization plan, the debtor agreed to be subject to supervision by a person designated as trustee in the reorganization plan until the fulfillment of the latter or until the fulfillment of a condition prescribed therein, Sections 157a through 157f and, in the case of a transfer of assets to a trustee, additionally Sections 157g through 157m shall apply. In particular, the provisions on accounting may not be deviated from to the detriment of the debtor or the creditor.
- (2) The type of supervision shall be specified in the announcement on the confirmation of the reorganization plan. The insolvency court shall direct the type of supervision to be entered in the public books and registers (Section 77).

##### **Preservation Measures.**

##### **Section 157a.**

For the duration of supervision, the insolvency court may, upon application of the trustee or the debtor, adopt, alter or suspend measures to safeguard the assets of the debtor if necessary for the securing of the assets, the fulfillment of the reorganization plan or the continuation of the debtor's business. In particular, the court may entirely prohibit certain legal acts to be carried out by the debtor for the duration of the proceeding or make such acts subject to the trustee's consent.

**Trustee**  
**Section 157b.**

- (1) The position of the trustee is determined by Sections 171 and 172.
- (2) With respect to third parties, the trustee shall be entitled to carry out all legal transactions and legal acts, related to the fulfillment of his duties, unless, in individual cases, the insolvency court orders a restriction of the trustee`s powers and notifies the third party thereof.
- (3) The trustee may enter the business premises of the debtor and carry out investigations in these premises. The debtor shall grant the trustee access to the debtor`s books and documents, the debtor and his employees and agents shall provide all the necessary information to the trustee.
- (4) The trustee shall act with due care required by his management duties (Section 1299 Civil Code); Section 81(2) and (3) shall apply accordingly.
- (5) Sections 84 and 87 shall apply accordingly, Section 87 with the proviso that the removal from office may be applied for by any insolvency creditor. If the trustee declines to assume the position or is removed from office or otherwise absent, the insolvency court shall appoint another trustee. The appointment of another trustee shall be publicly announced. In appointing another trustee, Section 80(2), (3) and (5) and Section 80b are to be applied accordingly.

**Remuneration of the Trustee.**  
**Section 157c.**

- (1) The trustee shall be entitled to a remuneration plus value added tax and a reimbursement for his out-of-pocket expenses.
- (2) As a rule, the remuneration of the trustee usually amounts to 10% of the remuneration awarded to the insolvency receiver; Sections 82b, 82c and 125(1), (2), (3) and (5) are to be applied accordingly under particular consideration of whether the reorganization plan has been fulfilled.

**Termination.**  
**Section 157d.**

- (1) Upon application of the debtor or the trustee, the supervision shall be declared terminated by the insolvency court at the expense of the debtor if the debtor or the trustee provides prima facie evidence that the reorganization plan or a prescribed condition has been fulfilled.
- (2) The decision with which the proceeding is declared terminated shall be published; Sections 79(2) and (3) are to be applied accordingly. The date on which decision takes effect shall be entered into the insolvency database.
- (3) The court of second instance shall render the final decision on appeals regarding termination of supervision.

**Discontinuation**  
**Section 157e.**

- (1) The supervision shall be discontinued if
  1. within fourteen days after expiration of the last payment period specified in the reorganization plan no application according to § 157d was filed or if such application was declined;
  2. the debtor disregards restrictions on the disposal of assets to such an extent that the purpose of the supervision is jeopardized.

- (2) The supervision shall be further discontinued if it becomes evident that the supervision will not result in a termination; the trustee shall be obligated to report as soon as he anticipates occurrence of these discontinuation grounds.

#### **Decision on Discontinuation.**

##### **Section 157f.**

- (1) The decision by which the proceedings are discontinued, shall be published; Sections 79(2) and (3) shall be applied accordingly.
- (2) The insolvency court shall, immediately after the decision on discontinuation pursuant to Section 157e takes effect, ex officio decide (2) whether the insolvency proceeding shall be reopened. If the insolvency proceeding is reopened, the decision on the reopening shall be published together with the taking effect of the decision on discontinuation. Effects of the supervision shall, if insolvency proceedings are reopened ex officio, cease with the beginning of the day following the publication of the insolvency edict. If the insolvency proceeding is not reopened, the debtor shall be again entitled to freely dispose of his assets with the publication of the taking effect of the decision on discontinuation.

#### **Chapter Three.**

##### **Surrender of Assets.**

##### **Legal Status of the Trustee upon Surrender of Asset.**

##### **Section 157g.**

- (1) The debtor may not revoke the trustee's powers to administer and realize the debtor's assets until termination of the trustee's activity.
- (2) Civil and company law provisions on the liability of the transferee shall not be applicable to the trustee to whom assets are surrendered.
- (3) Legal acts conducted by the debtor with regard to the surrendered assets, shall be unenforceable towards the creditors, unless the trustee authorized the debtor to do so.
- (4) The trustee shall annually render account to the court at the time stipulated in the reorganization plan and at any time so requested by the court as well as after termination of his charge and, if necessary, produce an explanatory report to the account; Section 121(2) and (3) and Section 122 shall be applied accordingly. In the absence of a relevant provision in the reorganization plan, the trustee shall render account within 14 days of the end of each accounting year. The first accounting year shall extend until the end of the calendar month in which the trusteeship was appointed.

##### **Section 157h.**

- (1) Final decisions rendered in proceedings conducted by or against the trustee on matters that relate to the surrendered assets shall be also enforceable against the debtor.
- (2) An insolvency proceeding, which is opened during the supervision, shall not extend to the assets that have been surrendered to a trustee pursuant to the reorganization plan; however, such assets shall be subject to the insolvency proceeding if the supervision is terminated. Such assets shall be subject to judicial enforcement only to the extent they would be so during a pending insolvency proceeding; however, the time period of six months (Section 11(2)) shall commence again with the taking effect of the confirmation of the reorganization plan.
- (3) If the reorganization plan provides for a mortgage to secure its fulfillment, the mortgage shall be registered in a manner which designates the creditors as mortgagees without further specification. The sole entitlement of the respective trustee to dispose of the mortgage with effect for and against the creditors shall be noted. The insolvency court shall, upon the trustee's application and after

hearing the debtor, approve the judicial realization of the real estate; the trustee shall have the position of a petitioning creditor, Section 119(2) through (4) shall be applied accordingly.

#### **Chapter Four.**

#### **Reorganization Plan with the Surrender of Assets for Realization.**

#### **General Provisions.**

#### **Section 157i.**

- (1) The debtor may also propose in the reorganization plan to surrender his assets to a trustee for realization. In such a case, it may also be provided that the trustee shall enforce specifically designated claims from the proceeds of which the insolvency creditors shall be satisfied, in particular the enforcement of outstanding claims and avoidance claims.
- (2) If the debtor has surrendered assets to a trustee for their liquidation, the relevant payment period shall be two years from the date of the adoption of the reorganization plan. The insolvency court shall extend the period of supervision upon application of the trustee if this is in the major interest of the parties involved. The time period may be extended several times up to a maximum period of three years in total. The application must be filed prior to the expiration of the time period; the time period shall not expire prior to the taking effect of the decision on the application. The court shall hear the debtor prior to rendering a decision. The decision on the extension shall be published. The court of second instance shall render a final decision over appeals concerning decisions on the extension of the supervision.

#### **Vote.**

#### **Section 157j.**

The vote on the reorganization plan in the same hearing shall be also permitted if

1. the debtor modifies the proposal in the hearing in a manner that he surrenders all of his assets to a trustee of the insolvency creditors to satisfy their claims within a period to be specified in the reorganization plan,
2. it is expected that the insolvency creditors will, in aggregate, receive the quota last offered, and
3. according to the proposal the loss, which the insolvency creditors suffer (Section 156), if this quota is not achieved by the termination of the trustee's charge, does not include the missing amount to the quota.

#### **Remuneration of the Trustee.**

#### **Section 157k.**

- (1) The remuneration of the trustee shall be calculated in analogous application of Section 82(1).
- (2) Sections 82b, 82c and 125(1), (2), (3) and (5) shall be applied accordingly with particular consideration of whether the reorganization plan has been fulfilled.

#### **Discontinuation.**

#### **Section 157l.**

Section 157e(2) shall not apply to a reorganization plan containing the surrender of assets for realization.

## **Default in Fulfillment.**

### **Section 157m.**

The consequences of default according to Section 156a shall not apply if the debtor has surrendered his entire assets to the trustee within the time period specified in the reorganization plan, even if, after termination of the trustee's charge, the debtor is in default with the payment of the amount for which he continues to be liable due to failure to fulfill the quota.

## **Chapter Five.**

### **Annulment and Declaration of Invalidity of the Reorganization Plan.**

#### **Annulment of the Reorganization Plan.**

##### **Section 158.**

- (1) The conviction of the debtor on the grounds of fraudulent bankruptcy shall, if the decision takes effect within two years after the confirmation of the reorganization plan, annul the relief and other benefits granted to the debtor towards all creditors without affecting their rights towards the debtor or third parties pursuant to the reorganization plan.
- (2) The insolvency court shall determine ex officio or on application of an insolvency creditor the annulment of the reorganization plan. The decision shall be published. Where cost-covering assets exist or an adequate deposit is rendered (Section 71a(1)), the insolvency proceeding shall be reopened upon application of an insolvency creditor.
- (3) The provisions of Sections 74 through 78 on the publication and registration of the opening of insolvency proceedings as well as notification of the opening of insolvency proceedings shall apply to the reopening of the insolvency proceedings.

#### **Proceeding for Reopening of the Insolvency Proceedings.**

##### **Section 159.**

- (1) The creditors, whose claims came into existence between the close and the reopening of the insolvency proceeding shall also participate in the insolvency proceeding.
- (2) Insolvency creditors, whose claims were subject to the reorganization plan, shall participate in the reopened insolvency proceeding with the unsatisfied portion of their original claims.
- (3) The insolvency proceeding shall be, to the extent necessary, repeated. Previously verified claims shall not be examined again.

#### **Effect of the Reopening on Avoidance and Set-off.**

##### **Section 160.**

- (1) For the avoidance of legal acts, which took place between the close and the reopening of the insolvency proceeding as well as for claims to set-off that came into existence during that time, the day of the first judgement rendered by a criminal court containing the conviction of the debtor shall be regarded as the onset of illiquidity unless illiquidity occurred by that time.
- (2) The time period for bringing an action for avoidance shall be suspended for the time from the confirmation of the reorganization plan until the reopening of the insolvency proceedings.

#### **Annulment of the Reorganization Plan.**

##### **Section 161.**

- (1) If the reorganization plan was achieved fraudulently or by undue preferential treatment of individual creditors without the fulfillment of the conditions of Section 158, any insolvency creditor may bring

an action for payment of his loss or for the annulment of a preference granted without losing the rights he is entitled to pursuant to the reorganization plan towards the debtor or third persons within three years after the date on which the confirmation of the reorganization plan takes effect.

- (2) This claim shall be only available to insolvency creditors who did not participate in the fraudulent or illegal arrangements and were unable by no fault of their own to put forward and assert the claim-relevant facts in the confirmation proceedings.

#### **Jurisdiction.**

##### **Section 162.**

For the claim of the creditor against the debtor pursuant to Section 150a or 161 the insolvency court shall have jurisdiction.

#### **Reopened Insolvency Proceedings.**

##### **Section 163.**

- (1) If, prior to the complete fulfillment of the reorganization plan, a new insolvency proceeding is opened without the prerequisites of Section 158 being met, the former insolvency creditors are not obliged to repay what they obtained in good faith.
- (2) However, their claims shall be regarded as completely satisfied if they were satisfied with the amount set forth in the reorganization plan, failing which the claim shall be considered satisfied only with the portion equivalent to the ratio of the amount paid to the amount to be paid pursuant to the reorganization plan.

#### **Chapter Six.**

##### **Special Provisions for Registered Partnerships.**

##### **Insolvency Proceedings of a Registered Partnership or a Decedent's Estate.**

##### **Section 164.**

- (1) If the debtor is a registered partnership or a decedent's estate, the reorganization plan may be adopted only with the consent of all partners with unlimited liability or all heirs.
- (2) The legal effects of the reorganization plan, unless otherwise prescribed in the reorganization plan, shall apply to each such partner or heir towards the partnership's creditors or the creditors of the decedent's estate.

##### **Liability of a Former General Partner with Unlimited Liability.**

##### **Section 164a.**

The reorganization plan of a registered partnership or a debtor, who has acquired the business of such a company as a going concern with all assets and liabilities, shall also limit the scope of the statutory liability of an already resigned/former general partner with unlimited liability of a registered partnership. The reorganization plan may not deviate from this rule to the detriment of the former general partner.

##### **Reorganization Plan of a General Partner with Unlimited Liability.**

##### **Section 165.**

- (1) If insolvency proceedings are only opened over the private assets of a general partner with unlimited liability of a registered partnership, which results in the conclusion of a reorganization plan, the general partner shall be discharged of any further liability for the partnership's debts.

- (2) If insolvency proceedings are simultaneously opened over the partnership's assets and the private assets of a general partner with unlimited liability, the reorganization plan of the general partner shall affect the claims of the partnership's creditors only to the extent that such claims shall be considered in this insolvency proceeding pursuant to Section 57.

**Part Three.**  
**Reorganization Proceedings.**  
**Scope of Application.**  
**Section 166.**

If the debtor is an individual, who is operating a business, a legal entity, partnership, or a decedent's estate, the provision of this Part Three and of Part Four shall apply.

**Motion.**  
**Section 167.**

- (1) The insolvency proceeding shall be referred to as reorganization proceeding, if the debtor applies for
  1. its opening as well as
  2. the adoption of reorganization plan with an acceptable reorganization plan enclosed and the insolvency court does not decline such application simultaneously with the opening of insolvency proceedings.
- (2) The reorganization proceeding may also be opened in the event of imminent illiquidity but not during a bankruptcy proceeding over the assets of the debtor.
- (3) The title of proceedings shall be changed to bankruptcy proceedings if
  1. the insolvency receiver has stated that the insolvency estate will not suffice to satisfy the post-petition claims, or
  2. the debtor withdraws the reorganization plan or the court declines the application or
  3. the reorganization plan was rejected in the hearing on the reorganization plan and the hearing was not extended or
  4. the reorganization plan was denied confirmation by the court.
- (4) The change of the proceedings designation to bankruptcy proceedings shall be published. No appeal shall be possible against the proceedings designation and its change; however, the designation may be amended by the court upon application or *ex officio*.

**Scheduling of the Hearing on the Reorganization Plan.**  
**Section 168.**

- (1) With opening of proceedings the court shall simultaneously schedule the hearing on the reorganization plan to take place as a rule within 60 to 90 days from the opening. It may be combined with the examination hearing.
- (2) The company shall be liquidated only if the proposal on the reorganization plan is not accepted within 90 days after the opening of the proceeding.

## Part Four.

### Reorganization Proceedings with Self-administration under the Supervision of an Insolvency Receiver.

#### Prerequisites.

#### Section 169.

- (1) In the reorganization proceeding, the debtor shall be entitled to administer the insolvency estate under the supervision of an insolvency receiver (reorganization trustee) according to the provisions of Part Four (elf-administration), if, prior to its opening, he
  1. has submitted the following documents:
    - a) a reorganization plan in which the insolvency creditors are offered to be paid at least 30% of their claims within a maximum period of two years from the date of the adoption of the reorganization plan;
    - b) an accurate list of assets;
    - c) a current and complete overview of the assets and liabilities in which composition of the assets shall be disclosed and evaluated and the liabilities shall be listed and itemized together with information on their redemption amount (status);
    - d) a comparison of expected revenues and expenditures for the following 90 days showing the way the funds necessary for the continuation of the debtor's business and the payment of post-petition claims will be raised and used (financial plan), and
    - e) a list of persons to be notified according to Sections 75 and 145(2) and
  2. the application contains information on:
    - a) the way the funds necessary for the fulfillment of the reorganization plan will be raised,
    - b) the number of employees and on organs established in the company and
    - c) the reorganization measures necessary for the fulfillment of the reorganization plan, and financing activities in particular.
- (2) If the debtor is obliged under company law to prepare annual financial statements, he shall submit such statements. If he has been operating his business for more than three years, the submission of financial statements for the last three years shall be sufficient.
- (3) The debtor shall personally sign the list of assets and, at the same time, agree to confirm by his signature before the court that information he provided on the assets and liabilities is accurate and complete and that he has not concealed any of his assets.
- (4) The debtor shall, to the extent reasonable, provide evidence for the information according to subsection 1.
- (5) If the statutory prescribed statement is missing in the application or not all required documents are attached to it, the submitted pleading may be returned to the debtor for improvement. If the application is not improved within the requested time, reorganization proceedings according to Part Three or bankruptcy proceedings shall be opened.

#### Revocation of Self-administration.

#### Section 170.

- (1) The court shall revoke the self-administration and appoint an bankruptcy receiver, if
  1. circumstances are known according to which it can be expected that the self-administration will lead to disadvantages for the creditors, in particular if the debtor violates his duty of cooperation or disclosure, infringes the restrictions on the disposal of assets or acts contrary to the interests of the creditors, the requirements of Section 169 are not fulfilled, the financial

- plan cannot be complied with, the information on the status of the debtor is inaccurate or the debtor does not pay the post-petition claims when due;
2. the requirements of Section 167(3) are fulfilled;
  3. the reorganization plan was not accepted by the creditors within 90 days after the opening of proceedings or
  4. the debtor so requests.
- (2) The revocation of the self-administration shall be published; the legal effects shall come into force with the beginning of the day following the publication.

#### **Scope of Self-administration.**

##### **Section 171.**

- (1) In case of self-administration the debtor shall be entitled to perform all legal acts. The approval of the reorganization trustee shall be only required for legal act which are not carried out in the ordinary course of business as well as the rescission, termination or cancellation of contracts pursuant to Sections 21, 23 and 25. The debtor shall, however, refrain from a legal act in the ordinary course of business, if the reorganization trustee raises an objection.
- (2) Beginning with the opening of the proceeding the debtor may close or reopen his business only with approval of the court; Section 115 shall apply accordingly.
- (3) Legal acts, carried out by the debtor in violation of subsection 1 without the consent or against the objections of the reorganization trustee shall be unenforceable towards the creditors if the third party knew or should have known that these acts go beyond the ordinary course of business and that the reorganization trustee did not grant his consent or objected against these acts.

#### **Limitation of Self-administration.**

##### **Section 172.**

- (1) The reorganization trustee is entitled to the following:
  1. the avoidance of legal acts pursuant to Sections 27 through 43, whereas the loss incurred by the debtor's assets due to the avoidable legal act shall be paid to the reorganization trustee and used to satisfy the creditors,
  2. the proof of claims pursuant to Sections 102 ff,
  3. the notification of the transactions pursuant to Section 116,
  4. the conclusion of the transactions pursuant to Section 117,
  5. the judicial sale pursuant to Section 119,
  6. the sale of assets subject to a right of preferential satisfaction pursuant to Section 120 and
  7. the suspension of the enforcement proceeding pursuant to Section 120a.
- (2) The court may prohibit the debtor from carrying out certain legal acts or at least without the reorganization trustee's consent to the extent necessary to avoid disadvantages to the creditors. The restrictions shall be, if they are ordered simultaneously with opening of the reorganization proceedings, published with the opening and otherwise separately and registered in each case in the public books and registers. In urgent cases, the restrictions may be ordered by the reorganization trustee.
- (3) Where the debtor is not entitled to carry out legal acts, the reorganization trustee shall do so instead of the debtor. The realization of assets by the reorganization trustee is subject to the debtor's consent.

### **Litigation Authority.**

#### **Section 173.**

The debtor shall be entitled to engage in litigation and other proceedings in the matters of self-administration.

### **Post-petition Claims.**

#### **Section 174.**

Post-petition claims shall be – without prejudice to Section 46 - also claims originating from the debtor's legal acts to which he is entitled pursuant to Section 171.

### **Support.**

#### **Section 175.**

The debtor shall only use the funds available to the extent indispensable for a modest living for him and his family.

### **Special Provisions.**

#### **Section 176.**

In case of the debtor's self-administration the following shall apply:

1. The debtor shall be entitled to receive all mail pursuant to Sections 78(2); 78(4) shall not apply.
2. A list of assets does not need to be made.
3. Section 8 shall not apply in the matters of self-administration.
4. The reorganization trustee shall be obliged to render account only to the extent he does not only supervise the debtor's acts but also acts himself.

### **Powers of the Reorganization Trustee.**

#### **Section 177.**

- (1) In relation to third parties, the reorganization trustee shall be entitled to carry out all legal transactions and legal acts, pertaining to the fulfillment of his obligations in this capacity unless the insolvency court orders an restriction of his powers and notifies the third party accordingly.
- (2) The reorganization trustee shall perform his management duties with due care (Section 1299 Civil Code); Section 81(2) and(3) shall apply accordingly.
- (3) The reorganization trustee shall be entitled to a remuneration plus value added tax and be reimbursed for his out-of-pocket expenses. Sections 82, 82a, 82b, 82c, 82d as well as 125 and 125 shall apply, whereas the reorganization trustee shall receive a special compensation for the supervision of the debtor's business as a going concern according to Section 82(3). If the reorganization trustee is not obliged to render account and no hearing on the final account takes place, the hearing on the reorganization plan shall be decisive/ for the time period according to Section 125(1).

### **Duties of the Reorganization Trustee.**

#### **Section 178.**

- (1) Immediately after his appointment, the reorganization trustee shall begin the evaluation of the economic situation of the debtor and the monitoring of the debtor's management and living costs.

- (2) The reorganization trustee shall at latest by the first creditors' meeting or, if no separate first creditors' meeting takes place, until the status hearing, report on the economic situation of the debtor and on whether
  1. the financial plan can be fulfilled,
  2. the reorganization plan can be implemented
  3. any reasons for revocation of the self-administration exist.
- (3) Copies of written reports of the reorganization trustee shall be served on the members of the creditors' committee and, if necessary, on the creditors.
- (4) Third parties may not refer to their obligation of secrecy, existing for the benefit of the debtor, if the debtor gave his consent that the reorganization trustee may obtain information or if the insolvency court substituted such consent, if missing, by a relevant decision. The missing consent may only be replaced by the court decision if the reorganization trustee proves his legal interest for the information. The decision replacing the missing consent of the debtor cannot be appealed.

#### **Hearings.**

#### **Section 179.**

- (1) As a rule, the first creditors' meeting or the status hearing shall take place within 3 weeks from the opening of the reorganization proceeding.
- (2) Prior to the vote in the hearing on the reorganization plan, the debtor shall on request of the reorganization trustee or a creditor or by order of the court confirm by his signature before the court that his statements concerning the assets and liabilities in the list of assets are accurate and complete and that he has not concealed any of his assets.

Part Five.  
Bankruptcy Proceedings.  
Title of the Proceeding.  
Section 180.

- (1) If the requirements of Section 167(1) are not fulfilled, the insolvency proceeding shall be referred to as bankruptcy proceeding.
- (2) If no reorganization plan is adopted, the bankruptcy estate shall be used by the bankruptcy receiver for the collective satisfaction of the bankruptcy creditors.

**Immateriality of Bankruptcy Estate.**  
Section 180a.

If the assets belonging to the bankruptcy estate are expected not to exceed EUR 50.000 (minor bankruptcy), all matters to be resolved by the creditor's meeting may be heard simultaneously at the general examination hearing and, where appropriate, the distribution of the bankruptcy estate shall also be the subject of the hearing.

**Part Six.**  
**Special Provisions for Individuals.**  
**Main Chapter One.**  
**Insolvency and Debt Adjustment Proceedings**  
**Scope of Application.**  
**Section 181.**

If the debtor is an individual, the provisions of the general proceeding shall apply with the specifics set forth in Sections 182 through 216.

**Jurisdiction.**  
**Section 182.**

If the debtor is not operating a business, the insolvency court shall be the locally competent district court at the time the application is submitted. In Vienna it shall be the district court, which is competent to hear execution matters according to the Vienna District Court Organization Act (debt adjustment proceedings).

**Application of the Debtor.**  
**Section 183.**

- (1) If the debtor's assets are expected not to be sufficient to cover the costs of the insolvency proceeding, the bankruptcy petition shall not be dismissed on these grounds if the debtor:
  1. presents a detailed list of assets, personally signs the list of assets and agrees to confirm by his signature before the bankruptcy court that his statements on the assets and liabilities are complete and that he has not concealed any of his assets,
  2. submits an acceptable payment plan, requests its adoption, and certifies that he will abide by the terms of the payment plan, and
  3. certifies that his income is expected to cover the costs of the proceeding.
- (2) If the debtor is not operating a business, he must also certify that an extrajudicial settlement t, in particular one before an approved debt counseling agency or a privileged creditors' protection association has failed or would have failed.
- (3) Evidence required pursuant to subsections 1 and 2 must be provided in documentary form.
- (4) The court may grant additional time to the debtor for the presentation of the list of assets and the payment plan.
- (5) As long as the requirements of subsection 1 are met, Section 166 shall not apply.

**Procedural Costs.**  
**Section 184.**

- (1) If the costs of a proceeding opened according to Section 183 cannot be paid from the estate as soon as they are ascertained and due, such costs shall be temporarily paid out of public funds. The same applies to the costs of a proceeding which fulfils the requirements of Section 183 and for the costs of a proceeding continued according to Section 195a.
- (2) The Federal Government shall be directly reimbursed for amounts paid out of public funds
  1. from the insolvency estate and
  2. in the absorption proceeding from the amounts that the trustee acquired by way of assignment of the debtor's claims to income from employment or other recurring services that

serve an income replacement function, and from other services of the debtor or a third party. The assigned claims shall be treated in the same manner as their underlying original claims.

- (3) The debtor shall be obligated by way of court order to subsequently pay such amounts, which were temporarily paid out of public funds and for which the federal government has not yet been reimbursed, as and when he can do so without prejudice to his essential living expenses. Three years after the close or termination of the absorption proceeding the obligation to subsequently pay such amounts may no longer be imposed on the debtor.

#### **List of Assets.**

##### **Section 185.**

- (1) The individual assets and liabilities shall be included in the list of assets by stating their amount or value:
  1. For claims the list shall include information on the debtor, the legal ground, the date of maturity and any existing security. For claims such list shall inter alia state the income from employment or other recurring services that serve an income replacement function, its amount during the last three months (including special payments) as well as the deductible amounts for the calculation of the amount exempt from seizure pursuant to Section 291(1) Enforcement Code, support obligations and relevant circumstances for the aggregation, increase and reduction of the amount exempt from seizure. Furthermore, it shall be indicated whether and to what extent the receivables are expected to be recoverable. The relevant note shall be made if a claim is contested.
  2. For liabilities the list shall include information on the creditor, the legal ground, the date of maturity and any existing security. Such list for liabilities shall inter alia state the current liabilities, such as housing costs, support obligations and insurance premiums. For liabilities that give the creditor a right of preferential satisfaction, the amount of the expected loss shall be indicated. The relevant note shall be made if the debt is contested.
  3. Postal address of each creditor and debtor, the mailing address shall be included. A relevant note shall be made if a creditor or a debtor is a close relative (Section 32(1)) of the debtor.
- (2) The debtor shall additionally state in the list of assets whether a property settlement took place between him and his close relatives within the last ten years preceding the application, and also whether and of which assets he has disposed for the benefit of his close relatives within the last ten years preceding the application. Gratuitous disposals which are voidable according to Section 29 item 1 remain out of consideration.
- (3) The debtor shall, to the extent reasonable, provide evidence for the statements made according to subsection 1.

#### **Self-administration.**

##### **Section 186.**

- (1) In the debt adjustment proceeding, the debtor shall be entitled to administer the insolvency estate (self-administration), unless the court determines otherwise.
- (2) The court shall revoke the self-administration and appoint an insolvency receiver, if
  1. the financial situation of the debtor is not clear, especially due to the number of creditors and the amount of liabilities, or
  2. circumstances are known according to which it can be expected that the self-administration will lead to disadvantages for the creditors, or
  3. the debtor has not presented a detailed list of assets.

**Scope of Self-administration -  
the Debtor's Right of Disposal.**

**Section 187.**

- (1) The following shall apply to the debtor's self-administration:
  1. The debtor shall be entitled to receive all mail according to Section 78(2).
  2. The rules governing the performance of contracts shall apply with the proviso that the debtor replaces the insolvency receiver.
  3. Dispositions of the debtor's assets shall be only effective with consent of the insolvency court. Section 3(1) shall apply accordingly.
  4. Liabilities, incurred by the debtor after the opening of insolvency proceedings, shall be only satisfied from the insolvency estate if the insolvency court approves the incurrence of the liability. The same applies in the case of item 2.
  5. The debtor is not entitled to receive the seizable part of the income from employment or other recurring services that have an income replacement function. He may also not dispose of them.
  6. The debtor shall not have the right to carry out the forced sale or compulsory administration of immovable property of the bankruptcy estate.
- (2) Consent according to subsection 1 items 3 and 4 may be granted generally for specific types of legal acts.

**Acknowledgement of Claims.**

**Section 188.**

- (1) In case of self-administration, in the examination hearing the debtor shall submit for each lodged claim a clear statement on the accuracy of the respective claim; no reservations are allowed in such statements. The statements made by the debtor shall be noted by the court in the register of claims. A claim with regard to which the debtor fails to submit a statement shall be deemed acknowledged.
- (2) A claim shall be deemed acknowledged if it has been accepted by the debtor and has not been contested by a creditor entitled hereto.

**Bankruptcy Avoidance.**

**Section 189.**

Each insolvency creditor shall be entitled to challenge legal acts according to Sections 27 through 43. The insolvency creditor shall be as soon as possible reimbursed for the costs incurred from the amounts recovered. If the creditors' meeting has instructed the insolvency creditor to challenge a legal act, he shall be reimbursed for the costs incurred from the insolvency estate to the extent such costs cannot be covered by the amounts recovered.

**Appointment of an Insolvency Receiver.**

**Section 190.**

- (1) No insolvency receiver shall be appointed if the debtor is entitled to self-administration.
- (2) For some particularly difficult activities, the court may appoint ex officio or, at the request of an insolvency creditor or the debtor, an insolvency receiver whose duties are limited to these activities.
- (3) The court shall carry out the tasks assigned to the insolvency receiver according to this Act if an insolvency receiver is not appointed and the debtor is not authorized to carry out these tasks. In

particular, the insolvency court shall be entitled to sell immovable property of the insolvency estate or request the court competent for enforcement to initiate a judicial sale. With the establishment of the list of assets, Irrespective of the requirements of Section 96(1) the court may appoint an executory officer to take inventory.

#### **Remuneration of the Insolvency Receiver and the Privileged Creditors' Protection Associations.**

##### **Section 191.**

- (1) The remuneration of the insolvency receiver shall amount to at least 750 Euro.
- (2) For the remuneration of the privileged creditor's protection associations, Section 87a(1) sentence 1 shall apply.

#### **Representation of the Debtor by an Approved Debt Counseling Agency.**

##### **Section 192.**

In the debt adjustment proceeding, debtors may also be represented by an approved debt counseling agency. The approved debt counseling agency, if it is not represented by members of its body competent according to the articles of association, may only appoint as agent one of its employees or a representative authorized by applicable law to file an application for the opening of insolvency proceedings and in proceedings at first instance. If, when making an appeal, a debtor is represented by an approved debt counseling agency, the appeal shall be signed by an attorney.

#### **Main Chapter Two.**

##### **Payment Plan.**

##### **Application.**

##### **Section 193.**

- (1) The debtor may, in the course of insolvency proceedings, apply for the adoption of a payment plan. Unless otherwise ordered, the provisions on the reorganization plan shall apply accordingly.
- (2) The hearing on the negotiation and vote concerning the payment plan shall not take place prior to the realization of the debtor's assets. Items specified in Section 250(1) item 2 of the Enforcement Code shall be realized only after the payment plan has not been adopted or its confirmation has been denied. The hearing may be combined with the hearing on the distribution of the debtor's assets.

#### **Content and Inadmissibility of the Payment Plan.**

##### **Section 194.**

- (1) The debtor shall offer to the insolvency creditors at least a quota that corresponds to his income in the following five years. The payment period shall not exceed seven years.
- (2) An application for the adoption of a payment plan is inadmissible if
  1. the debtor is evading the police or
  2. the debtor has not presented or signed the list of assets before the insolvency court or
  3. the content of the payment plan is in violation of Sections 149 through 151 or mandatory provisions or
  4. a debt adjustment proceeding was initiated less than ten years ago.

## **Denial of Confirmation of the Payment Plan.**

### **Section 195.**

The confirmation of the payment plan shall be denied if

1. there is a reason according to which the adoption of the payment plan is not permitted (Section 194(2)), or
2. the provisions applicable to the proceeding and the adoption of the payment plan have not been fulfilled, unless these defects may be subsequently remedied or are not material to the facts, or
3. the payment plan has been adopted in violation of Section 150a through the preferential treatment of a creditor.

## **Improved Payment Plan.**

### **Section 195a.**

- (1) The insolvency proceeding shall be ordered to be continued following the rejection of a payment plan by the creditors upon the application of the debtor, if he certifies that
  1. his income is expected to cover the costs of the proceeding and
  2. his income is expected to improve over the next two years. This shall be presumed particularly if the debtor is currently on parental leave or in military service or alternative civilian service, if the completion of a professional (additional) training by the debtor is imminent or an unemployed debtor becomes entitled to retirement pay.
- (2) The debtor shall submit such application not later than during the hearing on the payment plan. In the decision on the continuation of the insolvency proceeding, a reasonable time period of not more than two years for the presentation of a revised or new payment plan shall be determined. The decision shall be publicly announced.

## **Close of the Insolvency Proceeding –Annulment of the Payment Plan.**

### **Section 196.**

- (1) The insolvency proceeding shall be closed with the date on which the confirmation of the payment plan takes effect. This shall be noted together with the effective date of the confirmation in the insolvency database.
- (2) If the debtor does not pay the post-petition claims within a reasonable period of time determined by the court and not exceeding three years, the payment plan shall be null and void. The annulment of the payment plan shall only take effect if the debtor has not paid the post-petition claims despite having received notice of a minimum grace period of four weeks. The notice shall contain a reference to these legal consequences.

## **Consideration of Non-registered Claims.**

### **Section 197.**

- (1) Insolvency creditors, who have not filed their claims until voting on the payment plan, are entitled to the quota payable according to the payment plan only to the extent corresponding to the income and financial situation of the debtor. Section 156(4) shall remain unaffected.
- (2) The insolvency court shall decide provisionally on application whether the quota payable on the subsequently asserted claim corresponds to the income and financial situation of the debtor (Section 156b).

- (3) (Execution may only take place for the benefit of an insolvency creditor, who did not file his claim until vote on the payment plan, when a decision according to subsection 2 has been issued. The creditor shall attach a copy of the decision according to subsection 2 together with a confirmation of its enforceability or provide evidence that he has filed the claim. An execution granted contrary to the first sentence shall be stopped ex officio or upon application without hearing the parties.

#### **Modification of the Payment Plan.**

##### **Section 198.**

- (1) If the debtor's income and financial situation changes by no fault of his own, which results in his inability to fulfill his obligations under the payment plan when due and this has not been contemplated by the payment plan, the debtor may within 14 days after having received notice of payment due from a creditor again apply for the voting on a payment plan and the initiation of an absorption proceeding. The following shall apply:
1. The time period set forth in Section 194(1) for the assessment of the appropriateness of the payment plan's quota shall be reduced by half of the elapsed time period of the payment plan;
  2. half of the existing time period of the payment plan shall be deducted from the duration of the absorption proceeding.
- (2) (The claims shall revive only if the confirmation of the payment plan is denied and the application for the initiation of the absorption proceeding is rejected.

#### **Main Chapter Three.**

#### **Absorption Proceeding with a Residual Debt Discharge.**

##### **Application of the Debtor.**

##### **Section 199.**

- (1) In the course of insolvency proceedings, the debtor may, no later than with the application for the adoption of a payment plan, file an application for the initiation of the absorption proceeding with a residual debt discharge.
- (2) The debtor shall attach to the application the declaration of assignment stating that he assigns to a court appointed trustee the seizable part of his right to income from employment or other recurring services that have an income replacement function for a period of seven years from the date on which the decision regarding the initiation of the absorption proceeding takes effect. If the debtor has previously assigned or pledged this right to a third party, it shall be noted in the statement.

#### **Decision of the Insolvency Court.**

##### **Section 200.**

- (1) The decision on the application for the initiation of the absorption proceeding shall be made only if the confirmation of the payment plan was denied even though the plan was permissible and in compliance with the regulations applicable to the proceeding. An application for the initiation of an absorption proceeding, on which the decision according to sentence 1 was adjourned, shall be deemed not filed as soon as the confirmation of the payment takes effect.
- (2) Immediately prior to the decision a hearing shall be conducted, which shall be publicly announced and to which the insolvency receiver, the members of the creditors' committee, the insolvency creditors and the debtor shall be summoned. At the hearing, the court has to report whether obstacles for the initiation of proceedings according to Section 201(1) item 1, 5 and 6 exist. This hearing shall be combined with the hearing on the discussion and vote concerning the payment plan.

- (3) The decision shall be publicly announced and served on the insolvency receiver, the members of the creditors' committee, the insolvency creditors and the debtor.
- (4) The insolvency proceeding shall be closed on the date on which the decision, with which the absorption proceeding is initiated, takes effect. This shall be noted in the insolvency database together with the taking effect of the decision with which the absorption proceeding is initiated. In all other respects Section 79 shall apply to the close of the insolvency proceeding.

### **Obstacles to Initiation of Proceedings.**

#### **Section 201.**

- (1) The application for the initiation of the absorption proceeding shall be dismissed only if
  1. the debtor was convicted for an offense according to Section 156, 158, 162 or 292a of the Criminal Code and this sentence neither has been served nor is it subject to restricted divulgence from the penal record or
  2. the debtor violates willfully or grossly negligently his obligation to provide information and to cooperate according to this Act during the insolvency proceeding, or
  3. the debtor willfully or by gross negligence frustrates or impairs the satisfaction of the insolvency creditors by establishing excessive liabilities or squandering assets within three years preceding the application for insolvency proceedings, or
  4. the debtor willfully or negligently provided false or incomplete information in writing about his economic circumstances or the economic circumstances of the legal person he represents to obtain a benefit underlying an insolvency claim and the creditors have not willfully assisted, or
  5. the confirmation of the payment plan according to Section 195 item 3 has been denied or
  6. an absorption proceeding was initiated within less than 20 years prior to the application for the opening of insolvency proceeding.
- (2) The court shall reject the application for the initiation of the absorption proceeding only upon the request of an insolvency creditor. The insolvency creditor shall furnish evidence representing prima facie grounds for a rejection of the application.

### **Initiation of the Absorption Proceeding.**

#### **Section 202.**

- (1) If no grounds for rejection of the application exist and the costs of the absorption proceeding are expected to be covered by the amounts to be received by the trustee, the court shall open the absorption proceeding.
- (2) At the same time, the court shall appoint a trustee for the duration of the absorption proceeding to whom the seizable part of the debtor's right to income from employment or other recurring services that have an income replacement function shall be transferred in accordance with the declaration of assignment (Section 199(2)).
- (3) A privileged creditor protection association may also be appointed as trustee.

### **Legal Status of Trustee.**

#### **Section 203.**

- (1) The trustee shall notify the third party debtor of the assignment. He shall keep separate from his assets the assigned amounts and other benefits received from the debtor or third parties, invest them profitably and distribute them to the creditors within eight weeks at the end of a calendar year. In this case,

1. the post-petition claims,
2. the costs of the absorption proceeding, and then
3. the claims of insolvency creditors

shall be satisfied in accordance with the provisions applicable to the insolvency proceedings.

- (2) The court may, upon request of the creditors' meeting, assign to the trustee the additional task of adequately verifying whether the debtor fulfills his obligations. The costs incurred thereby must be expected to be covered or payed in advance. The trustee shall notify the insolvency creditors immediately if he finds an infringement of these obligations.
- (3) The trustee shall
  1. annually,
  2. after expiry of the declaration of assignment and
  3. upon termination of his activitiesrender an account to the court and to the debtor if he so requests.
- (4) Sections 84 and 87 shall apply accordingly, but Section 87 with the proviso that the trustee's removal from office may be requested by each insolvency creditor.

#### **Trustee's Remuneration.**

##### **Section 204.**

- (1) As a general rule, the trustee's remuneration shall amount to  
6% of the first EUR 44,000 of the amounts received from the assignment or other seized assets,  
4% of the additional amount up to EUR100,000,  
and 2% of the amount in excess of that,  
but at least EUR 10 per month plus VAT. The trustee may withhold such remuneration from the amounts received according to Section 203(1).
- (2) Sections 82b and 82c shall be applied. The remuneration may be increased if the trustee was assigned the task of adequately verifying whether the debtor fulfills his obligations. The insolvency court shall decide on an increase or decrease of the remuneration upon a relevant application. Section 125 shall be applied.

#### **Modification of the Non-seizable Amount of Income from Employment.**

##### **Section 205.**

- (1) Upon the application of the trustee, an insolvency creditor or the debtor, the insolvency court shall aggregate the rights of the debtor to income from employment or other recurring services that have an income replacement function according to Section 292 of the Enforcement Code, increase the amount exempt from seizure according to Section 292a of the Enforcement Code or reduce it according to 292b of the Enforcement Code.
- (2) The decision according to subsection 1 shall be publicly announced and served on the trustee, the third party debtor, the debtor and the applicant.

#### **Equal Treatment of Insolvency Creditors.**

##### **Section 206.**

- (1) Enforcement measures by individual insolvency creditors on the debtor's assets shall not be permitted during the absorption proceeding.

- (2) An agreement between the debtor or another person and an insolvency creditor, which grants a preference to such creditor, shall be invalid. Any amounts paid on the basis of an invalid agreement or an evasive transaction concealing such agreement may be without prejudice to further claims for damages reclaimed within three years after the close or termination of the absorption proceeding.
- (3) The third party debtor may set-off a claim against the debtor with his claim to income covered by the declaration of assignment only if such third party debtor were also entitled to a set-off according to Sections 19 and 20 at the continuation of the insolvency proceeding.

#### **Consideration of Non-registered Claims During the Absorption Proceeding.**

##### **Section 207.**

- (1) Insolvency creditors, who have not lodged their claims, shall be considered at the distribution of assets only if their claims have been ascertained and notified to the trustee.
- (2) The insolvency creditors shall compensate the trustee for the examination of their claims according to subsection 1 with an amount of 50 EUR plus VAT. The trustee may withhold such compensation from the amount to be paid to the respective insolvency creditor.

#### **Opening of Insolvency Proceedings during the Absorption Proceeding.**

##### **Section 208.**

If during the absorption proceeding insolvency proceedings are opened, the assets that are covered by the absorption proceeding shall not be considered part of the insolvency estate. Furthermore, these assets shall not be subject to enforcement measures to the extent the debtor releases such assets to the trustee. Upon the application of the debtor, enforcement measures shall be stopped, if he agrees that the asset subject to enforcement measures shall be surrendered to the trustee.

#### **Parties Entitled to a Right of Segregation and Creditors with a Right to Preferential Satisfaction.**

##### **Section 209.**

- (1) As long as the loss to a right of segregation or preferential satisfaction to future maturing receivables is not determined, the insolvency creditor shall submit to the trustee a summary of the outstanding receivables 14 days prior to the end of the calendar year; otherwise he shall not be considered for this distribution. Section 132(2) shall apply only after the expiration of the right of segregation or preferential satisfaction.
- (2) After the expiration of the right of segregation or preferential satisfaction, the trustee shall disregard the claim of the insolvency creditor until he receives a summary of the loss. The third party debtor shall notify the insolvency creditors and the trustee of the premature expiration of the right of segregation or preferential satisfaction according to Section 12a.

#### **Obligations of the Debtor.**

##### **Section 210.**

- (1) The debtor shall, during the validity of the declaration of assignment,
  1. engage in appropriate gainful employment or, if he is unemployed, seek such employment and refrain from rejecting any reasonable offers of employment;
  2. surrender any assets, which he acquires by reason of death or with respect to a future inheritance or through any gratuitous disposals;
  3. immediately notify the court and the trustee of any change of his place of residence or the identity of the third party debtor;

4. not conceal any income subject to the declaration of assignment or assets referred to in item 2 or refrain from their acquisition;
  5. upon request inform the court and the trustee on his employment or his efforts to obtain such employment as well as on his income and assets;
  6. make payments for the satisfaction of creditors' claims only to the trustee;
  7. not grant a preference (Section 206(2)) to any insolvency creditor;
  8. not incur any new debt which he cannot repay at maturity.
- (2) If the debtor is self-employed, he is obliged to satisfy the creditors in the same way as if he were gainfully employed. However, the amount free from seizure in the case of self-employment may not be higher than the relevant amount in the case of employment.

### Duty to Disclose Fulfillment of Obligations.

#### Section 210a.

- (1) The trustee shall request the debtor to report on his employment in the event of a significant reduction of the amounts received from the assignment.
- (2) If the debtor has not provided the trustee upon his request with the information according to subsection 1 or Section 210(1) items 3 and 5, the court shall, on notice from the trustee, hear the debtor. The debtor shall provide information about the fulfillment of his obligations.
- (3) If the duly summoned debtor does not appear for the hearing without sufficient excuse or refuses to provide information, the proceeding shall be terminated prematurely *ex officio* regardless of whether the conditions of Section 211(1) items 2 are met. The summons shall reference these legal consequences. If the debtor provides information on the fulfillment of his obligations, the court shall submit a copy of the hearing minutes to the trustee.

### Premature Termination of the Absorption Proceeding.

#### Section 211.

- (1) At the request of a creditor, the court shall prematurely terminate the absorption proceeding, if the debtor
  1. was convicted of a criminal offense according to Sections 156, 158, 162 or 292a of the Criminal Code and the sentence relating to this conviction neither has been served is it subject to restricted divulgence from the penal record or violates the obligation according Section 210(1) item 8 or
  2. violates one of his obligations and thereby impairs the satisfaction of the insolvency creditors' claims, this shall not apply if the debtor is not at fault.

The application for premature termination may be made only within one year after the date on which the conviction or the breach of the obligation became known to the insolvency creditor. The application shall be dismissed if no *prima facie* evidence for the conditions of item 2 is provided.

- (2) Prior to rendering a decision on the application according to subsection 1 item 2, the court shall hear the trustee and the debtor. The debtor must provide information about the fulfillment of its obligations. If the duly summoned debtor does not appear at the hearing without sufficient excuse or refuses to provide information, the proceeding shall be terminated prematurely. The summons shall reference these legal consequences.
- (3) The court shall prematurely terminate the absorption proceeding *ex officio* in case of death of the debtor.
- (4) The decision on the premature termination of the proceeding shall be published.

- (5) With the taking effect of the decision, the validity of the declaration of assignment, the office of the trustee and the restrictions on the rights of the insolvency creditors shall cease.

### Reopening of the Insolvency Proceeding.

#### Section 212.

If the absorption proceeding is terminated prematurely and sufficient assets exist or an adequate amount for costs is deposited, the insolvency proceeding shall be reopened upon the request of an insolvency creditor.

### Close of the Absorption proceeding - Decision on the Residual Debt Discharge.

#### Section 213.

- (1) The court shall declare the absorption proceeding closed if
1. three years of the term of the declaration of assignment have passed and the insolvency creditors have received at least 50% of their claims during the insolvency and absorption proceeding or
  2. 1. the term of the declaration of assignment has expired and the insolvency creditors received at least 10% of their claims during the insolvency and absorption proceeding.

At the same time, /the court shall declare that the debtor is discharged from all outstanding obligations towards the insolvency creditors. If a request of an insolvency creditor for the premature close of the proceeding is pending, the decision on the discharge shall be suspended until the date on which the decision on the termination takes effect. In the case of item 1, with the taking effect of the decision, the validity of the declaration of assignment and the charge of the trustee shall cease.

- (2) If the term of the declaration of assignment expires without the insolvency creditors having received at least 10% of their claims during the insolvency and absorption proceeding, the court shall make a reasonable decision upon the request of the debtor as to whether the absorption proceeding is terminated and the debtor discharged from all outstanding obligations towards the insolvency creditors. This may be especially declared if the insolvency creditors received only insignificantly less than 10% of their claims during the insolvency and absorption proceeding or this quota has been reduced only because of the costs of the proceeding.
- (3) If discharge of the debtor from all outstanding obligations towards the insolvency creditors according to subsection 2 is inequitable, the court may declare the absorption proceeding closed, suspend the decision on the residual debt discharge for up to three years and determine the extent to which the debtor shall fulfill the outstanding amount of any or all debts under the 10% quota so that he is discharged from the outstanding obligations. The decision shall particularly consider whether
1. the insolvency creditor has received a portion of its claim before the opening of insolvency proceedings or received it from a co-debtor or guarantor,
  2. the payments have reached the amount of principal exclusive of interest and costs,
  3. the benefits underlying the insolvency claim have not conferred a pecuniary advantage on the debtor or the company represented by him,
  4. the insolvency creditor, when granting the credit or agreeing on the installment sale transaction knew or should have known that the debtor will not be able to repay the debt at maturity.

Enforcement measures by the insolvency creditors shall be allowed only to this extent until the court's decision on the residual debt discharge. Upon proof of timely payments, the court shall

declare that the debtor is discharged from all outstanding liabilities under the proceeding towards the insolvency creditors.

- (4) If it is not reasonable to render a decision according to subsection 3, the court may extend the absorption proceeding by a maximum of three years if the debtor makes a declaration according to Section 199(2) for the term of extended duration. After the expiration of this time period, the court shall declare the absorption proceeding closed and, at the same time declare that the debtor is discharged from his outstanding obligations under the proceeding towards insolvency creditors if the requirements of subsection 1 are met.
- (5) Prior to the decision according to subsections 2 through 4, the court shall hear the trustee and the insolvency creditors.
- (6) The decision on the closing the absorption proceeding and stating the amount of residual debt discharge shall be publicly announced.

### **Effect of the Residual Debt Discharge.**

#### **Section 214.**

- (1) If the residual debt discharge is granted, it is effective against all insolvency creditors. This also applies to creditors who have not lodged their claims and for claims according to Section 58 item 1.
- (2) The rights of creditors against guarantors or co-debtors as well as persons subject to a recourse claim will not be affected by the residual debt discharge. However, the debtor is released towards the guarantors and others entitled to right of recourse in the same manner as towards the insolvency creditors.
- (3) If an insolvency creditor is satisfied, although he was not entitled to satisfaction due to the residual debt discharge, it shall create no obligation to return what has been obtained.

### **Excluded Claims.**

#### **Section 215.**

The granting of the residual debt discharge shall not affect

1. liabilities of the debtor from a willfully committed unlawful act or a willfully committed criminal omission and
2. liabilities, which have not been taken into account due to the fault of the debtor.

### **Revocation of the Residual Debt.**

#### **Section 216.**

- (1) At the request of an insolvency creditor, the court shall revoke the granting of a residual debt discharge, if it becomes subsequently evident that the debtor intentionally violated his duties and, as a consequence, significantly impaired the satisfaction of the insolvency creditors.
- (2) The application may be filed only within two years after the date on which the decision on the residual debt discharge took effect. The application shall be dismissed, unless prima facie evidence is provided that the conditions of subsection 1 are met and that the insolvency creditors had no knowledge of them until the end of the term of the declaration of assignment.
- (3) The court shall hear the trustee and the debtor prior to rendering a decision on the application.
- (4) The decision revoking the residual debt discharge shall be published.

Part Seven  
International Insolvency Law.  
Main Chapter One.  
International Law and Acts of the European Communities.  
Chapter One.  
General Provisions.  
Basic Principle.  
Section 217.

The provisions of Part Four of the Insolvency Code shall apply only to the extent that international law or legal acts of the European Communities, in particular Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (the EU Insolvency Regulation), do not provide otherwise.

Chapter Two.  
Supplementary Provisions on the EU Insolvency Regulation.  
EU Insolvency Regulation – Insolvency Edict.  
Section 218.

- (1) Publications under Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (the EU Insolvency Regulation) shall be transmitted to the Vienna Commercial Court that shall include the published data in the insolvency database.
- (2) The publication of the opening of insolvency proceedings shall include:
  1. the name of the court opening the proceeding including its address;
  2. the name (of the company) and the debtor's place of residence, seat of the company (office) and, where appropriate, the company's register number and the debtor's date of birth;
  3. the material content of the decision opening the proceedings thereby specifying whether the jurisdiction rule applied is that pursuant to Section 3(1) or Section 3(2) of the EU Insolvency Regulation;
  4. name, address, telephone number, fax number and e-mail address of the insolvency receiver and, if a legal person has been appointed, the person who represents it in the exercise of administration of the estate;
  5. a request to creditors to lodge their claims within a specified period of time.

**Mandatory Publication and Registration in a Public Register.**  
Section 219.

- (1) If a main insolvency proceeding is opened abroad pursuant to the EU Insolvency Regulation and the debtor has a domestic office, the opening of the main insolvency proceeding shall be domestically published.
- (2) If the debtor has domestic real estate or a domestic office, the insolvency receiver appointed in the course of the main insolvency proceeding or the authority competent under the law of the state of the opening of the proceeding shall notify the respective courts maintaining the land register and the companies' register of the opening of proceedings. The courts maintaining the land register and companies' register shall register the opening of proceedings.
- (3) The insolvency receiver appointed in the course of a foreign main insolvency proceeding shall be liable to all parties involved for the loss that they incur due to a breach of his duties under subsections 1 and 2.

## **Jurisdiction for Preservation Measures.**

### **Section 220.**

Courts referred to in Section 63 shall have jurisdiction over preservation measures as set forth in Article 38 of the EU Insolvency Regulation.

## **Main, Particular or Secondary Proceedings.**

### **Section 220a.**

Within the scope of the EU Insolvency Regulation the court shall specify in the decision on the opening of insolvency proceedings, whether it is a main, particular or secondary proceeding within the meaning of the EU Insolvency Regulation. This shall be published in the insolvency edict.

## **Main Chapter Two.**

### **General Provisions.**

#### **Chapter One.**

#### **Applicable Law.**

#### **Basic Principle.**

### **Section 221.**

- (1) Unless otherwise provided in Sections 222 to 235, the law applicable to insolvency proceedings, the conditions for their opening and their effects, shall be the law of the state in which such proceedings are opened.
- (2) The law of the state of the opening of proceedings shall determine in particular:
  1. against which debtors insolvency proceedings may be brought on account of their capacity;
  2. assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceeding;
  3. the respective powers of the debtor and the insolvency receiver;
  4. the conditions under which set-offs may be invoked;
  5. the effects of the opening of insolvency proceedings on current contracts to which the debtor is party;
  6. the effects of the opening of insolvency proceedings on proceedings brought by individual creditors, with the exception of the effects on lawsuits pending pursuant to Section 231;
  7. the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;
  8. the rules governing the lodging, verification and admission of claims in the insolvency proceedings;
  9. the rules governing the distribution of proceeds from the realization of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off.
  10. the conditions for and the effects of closure of insolvency proceedings, in particular by adoption of a reorganization plan;
  11. creditors' rights after the closure of insolvency proceedings;
  12. who is to bear the costs and expenses incurred in the insolvency proceedings;

13. the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

### **Third Parties' Rights in Rem.**

#### **Section 222.**

- (1) The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.
- (2) The rights referred to in subsection. 1 shall in particular mean
  1. the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
  2. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
  3. the right to demand the assets from, and/or to require restitution by (to demand surrender of the assets), anyone having possession or use of them contrary to the wishes of the party so entitled;
  4. a right in rem to the beneficial use of assets.
- (3) The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of subsection 1 may be obtained, shall be considered a right in rem.

#### **Set-off.**

#### **Section 223.**

The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

### **Reservation of Title.**

#### **Section 224.**

- (1) The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings.
- (2) The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

### **Contracts Relating to Immoveable Property.**

#### **Section 225.**

The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.

## **Regulated Markets.**

### **Section 226.**

- (1) For the effects of an insolvency proceeding on the rights and obligations of the parties to a regulated market and for transactions on a regulated market in the sense of Article 4(1) No. 21 of Regulation 2014/65/EU shall be governed solely by the law of the Member State applicable to the relevant market and transactions.
- (2) Subsection 1 shall not preclude any action for voidness, voidability or unenforceability according to Section 221(2) item 13 which may be taken to set aside payments or transactions under the law applicable to the relevant market.

## **Employment Contracts.**

### **Section 227.**

The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the state applicable to the contract of employment.

## **Effects on Rights Subject to Registration.**

### **Section 228.**

The effects of insolvency proceedings on the rights of the debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

## **Detrimental Acts.**

### **Section 229.**

- (1) Should the person who benefited from an act detrimental to all the creditors provides proof that:
  1. the said act is subject to the law of another Member State, and
  2. that law does not allow any means of challenging that act in the relevant case,Section 221(2) item 13 shall not apply.
- (2) Section 222(1), Section 223 and 224 shall not preclude actions for voidness, voidability or unenforceability pursuant to Section 221(2) item 13.

## **Protection of Third-Party Purchasers.**

### **Section 230.**

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:

1. an immoveable asset, or
2. a ship or an aircraft subject to registration in a public register, or
3. securities or any other financial instrument within the meaning of Section 4(1) No. 50 litera b of Regulation (EU) No. 575/2013, existence or transfer of which presupposes registration in a register or ledger or with a central depository laid down by law,

the validity of that act shall be governed by the law of the state within the territory of which the immoveable asset is situated or under the authority of which the register, ledger or depository is kept.

## Effects of Insolvency Proceedings on Pending Lawsuits.

### Section 231.

The effects of insolvency proceedings on a pending lawsuit concerning an asset or a right of which the debtor has been divested (belonging to the insolvency estate) shall be governed by the law of the state in which the lawsuit is pending.

## The Right of the Situated Property.

### Section 232.

The exercise of property or other rights to the instruments within the meaning of Section 4(1) No. 50 litera b of Regulation (EU) No. 575/2013, the existence or transfer of which requires their registration in a register or an account or at a central depository, shall be governed by the law of the state of domicile of the register, account or centralized deposit system, in which the respective rights have been registered.

## Netting Agreements.

### Section 233.

Netting agreements shall be governed solely by the law which is to be applied to such agreements.

## Repurchase Transactions.

### Section 234.

Repurchase transactions shall be governed solely by the law which is to be applied to the relevant repurchase agreement.

## Payments after the Opening of Insolvency Proceedings.

### Section 235.

- (1) Any party making a payment to a party,, over whose assets insolvency proceedings have been opened in another state although the respective payment should have been made to the insolvency receiver of the insolvency proceeding, shall not be considered at fault if not aware of the opening of the proceeding.
- (2) Where the payment occurs before the publication in the state of the performance, it shall be presumed until the contrary is proven that the opening of the insolvency proceeding was not known by the paying party. Where the payment occurs after the notice, it shall be presumed until the contrary is proven that the opening was known by the paying party. In liquidation proceedings of credit institutions (Section 243) the publication pursuant to Section 247 shall be decisive.

## Chapter Two.

### Austrian Insolvency Proceedings.

#### Exercise of Creditors' Rights.

### Section 236.

Any creditor shall have the right to lodge claims in the insolvency proceeding (Section 102).

#### Foreign Assets.

### Section 237.

- (1) The effects of insolvency proceedings opened in Austria also extend to assets situated abroad, unless

1. the center of main interests of the debtor is situated in another state,
  2. an insolvency proceeding has been opened in this state and
  3. the foreign assets are included in this insolvency proceeding.
- (2) The debtor shall assist the insolvency receiver in the realization of the foreign assets to which the effects of bankruptcy extend.
- (3) Where a creditor obtains satisfaction after the opening of insolvency proceedings through realization of the assets situated abroad, he shall surrender to the estate, subject to the Sections 222 and 224, the assets reduced by the necessary costs incurred to appropriately pursue his claims.

### **Representatives of the Insolvency Receiver.**

#### **Section 238.**

The insolvency receiver may appoint persons to represent him in tasks related to the insolvency proceedings abroad.

### **Coordination.**

#### **Section 239.**

- (1) The insolvency court or the insolvency receiver shall immediately notify the foreign insolvency receiver of all the circumstances which may have relevance to the conduct of the foreign proceeding.
- (2) The insolvency court or the insolvency receiver shall give the foreign insolvency receiver the opportunity to submit proposals for the realization or other use of the domestic assets. A reorganization plan shall be sent to the foreign insolvency receiver for comment for his opinion.

### **Chapter Three.**

#### **Recognition of Foreign Proceedings.**

##### **Basic Principle.**

#### **Section 240.**

- (1) The effects of insolvency proceedings opened in another state and the decisions rendered in such proceedings shall be recognized in Austria, if
1. the center of main interests of the debtor is in that other state and
  2. the insolvency proceeding is comparable to such proceeding in Austria, in particular Austrian creditors are treated in the same manner as creditors in the state where the proceedings have been opened.
- (2) The recognition shall be denied if
1. in Austria insolvency or composition proceedings have been opened or interim measures have been ordered or
  2. recognition leads to a result that clearly conflicts with the basic values of Austrian law.
- (3) A foreign insolvency proceeding does not preclude the opening and conduct of an Austrian insolvency or composition proceeding.
- (4) Issuance of a writ of execution as a result of acts and deeds, which are
1. necessary to conduct the insolvency proceeding,
  2. enforceable in another state and
  3. recognized in Austria under subsections 1 and 2,

presupposes that they have been declared enforceable in Austria in a proceeding pursuant to Sections 82 through 86 Enforcement Code. For other acts and deeds, the issuance of a writ of execution shall be governed by Sections 79 et seq. Enforcement Code.

### **Foreign Insolvency Receivers.**

#### **Section 241.**

- (1) The insolvency receivers and their representatives may exercise all the powers in Austria to which they are entitled in the state in which the insolvency proceeding has been opened.
- (2) In exercising their powers, insolvency receivers shall observe Austrian law, in particular with regard to the procedures for the realization of assets and the notification of employees. The powers shall not include the use of coercive measures or the right to rule on legal proceedings or other disputes.
- (3) The insolvency receiver must prove his authority by a certified copy of the decision by which he is appointed, or by another certificate issued by an authority or court of the state of appointment; translation of such document in the German language may be requested.

### **Publications and Registrations in a Public Register.**

#### **Section 242.**

- (1) Sections 218 and 219 shall be applied accordingly to foreign insolvency proceedings, the effects of which are to be recognized pursuant to Section 240. The administrator, desiring announcement or registration, must prove the compliance with the recognition requirements of Sections 240(1) item 1 by a public deed. If the debtor claims that the requirements for recognition are not met, the court referred to in Section 63 shall decide.
- (2) The continuation of the debtor's business shall be published by the Vienna Commercial Court upon the request of the foreign insolvency receiver.

### **Main Chapter Three.**

#### **Special Provisions for Credit Institutions and Insurance Undertakings.**

##### **Chapter One.**

##### **Austrian Cross-border Insolvency Proceedings**

##### **Scope of Application.**

#### **Section 243.**

- (1) Sections 244 and 246 through 251 shall apply to credit institutions and insurance undertakings, which are licensed in a contracting state of the European Economic Area (EEA State) in accordance with Articles 4 to 11 of Directive 2000/12/EC and Article 14 of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (as amended), Official Journal of the European Union No. K 335 dated 17.12.2009 p. 1, last amended by the Directive 2014/51/EC, Official Journal of the European Union No, L 153 dated 22.05.2014 p.1 respectively. The term credit institution refers also to investment firms within the meaning of Section 4(1) No. 2 of Regulation (EU) No. 575/2013 and their branch offices located in a member state other than their company seat.
- (2) Sections 244 to 251 shall apply to credit institutions and insurance undertakings having their seat outside the EEA if, in such undertakings have a branch or an office in at least one EEA State.

### **International Jurisdiction.**

#### **Section 244.**

- (1) For the opening of insolvency proceedings over the assets of credit institutions or insurance undertakings licensed in the EEA, the Austrian courts shall only have jurisdiction if the credit

institution is licensed pursuant to Section 1(1) Banking Act (BWG) and the insurance undertaking is licensed pursuant to Section 6(1) of the Insurance Supervision Act (VAG) 2016, Federal Law Gazette I No. 34/2015 in Austria respectively.

- (2) The Austrian courts shall only have jurisdiction over the opening of insolvency proceedings over the assets of credit institutions and insurance undertakings situated outside the EEA, if the latter have a branch or an office in Austria.

#### **Coordination.**

##### **Section 245.**

If a insolvency proceeding is opened in Austria and a liquidation proceeding is opened in another EEA state over the assets of a bank or insurance undertaking established outside the EEA and having offices or branches in both of the EEA states, the Austrian insolvency court and the insolvency receiver shall coordinate their actions with the foreign authorities, court and liquidators.

#### **Service of the Insolvency Edict.**

##### **Section 246.**

- (1) A copy of the insolvency edict shall be immediately served on the Financial Market Authority (FMA). The FMA shall immediately notify, in case of insolvency proceedings over the assets of an insurance undertaking (Section. 13 No. 10 of Directive 2009/138/EC), the supervisory authorities of all other EEA countries and, in case of insolvency proceedings over the assets of a credit institution, immediately notify the competent authorities (Section 2 4 graduation of Directive 2001/24/EC) of EEA countries, where the credit institution has a branch or provides services, of the opening of insolvency proceedings and its effects. However, in insolvency proceedings over the assets of a credit institution established outside the EEA, only the competent authorities of those EEA countries where the credit institution has a branch office shall be notified.
- (2) A copy of the insolvency edict shall be served on the creditors who are known to the court and have their habitual residence, domicile or seat in another EEA country even if the requirements of Section 257(3) are met. An instruction with the heading "Invitation to lodge a claim. Time limits to be observed!" shall be attached to the insolvency edict in all official languages of the EEA. The instruction shall specify whether the privileged creditors or creditors with claims secured by a right in rem must lodge their claims. The instruction shall further include a reference to the insolvency database.
- (3) If the creditor is the holder of an insurance claim, the instruction shall be in the official language of the EEA country where the creditor has his habitual residence, domicile or seat, and shall also indicate the general effects of insolvency proceedings on insurance contracts. In particular, it shall indicate the date as of which the insurance contracts or transactions are no longer legally binding and the rights and obligations of the insured in relation to the respective contract or transaction.

#### **Publication Abroad.**

##### **Section 247.**

The insolvency receiver shall publish the insolvency edict in the Official Journal of the European Union. Additionally, in insolvency proceedings over the assets of credit institutions the publication shall be made in at least two national newspapers in each country where the credit institution has a branch or provides services. In insolvency proceedings over the assets of credit institutions situated outside the EEA, the insolvency edict shall be published only in the Official Journal of the European Union. The publication in insolvency proceedings over the assets of insurance undertakings shall indicate that Austrian law is applicable.

### **Registration in a Public Register.**

#### **Section 248.**

The insolvency receiver shall be entitled to require the registration of the opening of insolvency proceedings in the land register, the trade register and any other public register of other EEA countries.

### **Language of the Claims Lodged.**

#### **Section 249.**

Any creditor who has his habitual residence, domicile or seat in another EEA state may lodge and explain his claim in the official language of that country. In such a case, the filing must bear the heading "Lodgement of claim" in the German language. In insolvency proceedings over the assets of a credit institution, the creditor may be requested to provide a translation of the filing.

### **Chapter Two.**

#### **Recognition of Foreign Proceedings.**

##### **Basic principle.**

#### **Section 250.**

The decision of an EEA country to open a proceeding for the liquidation of a credit institution or an insurance undertaking shall be recognized in Austria regardless of requirements of Section 240. Once the decision becomes effective in the country of the opening of proceedings, it shall have effect in Austria.

#### **Publication and Registrations in a Public Register.**

#### **Section 251.**

The opening of liquidation proceedings shall be entered in the Land Register and the Companies Register upon the application of the receiver, the liquidator or at the request of any administrative or judicial authority of the home Member State. Sections 218 and 219 shall be applied accordingly.

## Part Eight.

### General Procedural Provisions.

#### Application of Procedural Laws.

##### Section 252.

Unless this Federal Act provides otherwise, the Jurisdiction Norm, the Civil Procedure Code and their adoption laws shall be applied to the proceedings accordingly.

#### Jurisdiction and Representation.

##### Section 253.

- (1) The jurisdiction in proceedings before the insolvency court of first instance shall be exercised by a single judge.
- (2) Agreements relating to the jurisdiction of the courts are unenforceable.
- (3) Creditors may also be represented by a privileged creditor protection association. The reliance on the power of attorney granted shall replace its documentary evidence. To file an application for insolvency proceedings and in proceedings at first instance, the creditor protection association, if it is not represented by members of its body competent according to the articles of association, may only appoint as agent one of its employees or a representative authorized by applicable law. If, for making an appeal, a creditor is represented by a creditor protection association, the appeal must be signed by an attorney. Members of the body competent according to the articles of association of the privileged creditor protection association and their agents shall be, even if a power of attorney by a creditor is not established, allowed to inspect the insolvency files (Section 219(2) Civil Procedure Code) without having to prove a plausible legal interest.
- (4) A creditor may be represented by an agent of its statutory representative body or its voluntary eligible collective bargaining professional association to the same extent as by a privileged creditor protection association if a lawsuit over the claim were a labor law case pursuant to Section 50 Labor and Social Courts Act.

##### Section 254.

- (1) The following provisions shall not be applicable:
  1. costs of the proceedings,
  2. the requirement for the provision of security,
  3. the suspension of the proceedings,
  4. the suspension of time periods and the extension of hearings pursuant to Section 222 Civil Procedure Code,
  5. the service between attorneys pursuant to Section 112 Civil Procedure Code for written filings of claims and applications for adoption of a reorganization plan and
  6. the representation by attorneys, unless Section 253(3) fourth sentence provides otherwise.
- (2) Motions can be filed in writing or placed on the court's records orally. Sections 432 and 435 Civil Procedure Code shall apply.
- (3) For hearings, Section 59 Enforcement Code shall apply.
- (4) Unless this Federal Act provides otherwise, the judicial decisions may be taken without a prior hearing.
- (5) The court shall collect and determine all relevant facts for its assessment ex officio, it shall carry out all appropriate inquiries, particularly through questioning of witnesses and gather evidence. Any

workforce body established in the company may function as a witness; the provisions on the representation of such bodies in judicial proceedings shall apply.

- (6) Court orders are enforceable.

#### **Publication.**

##### **Section 255.**

The publication of documents and decisions shall be made by entry in the insolvency database.

#### **Insolvency Database.**

##### **Section 256.**

- (1) All data to be published pursuant to this Federal Act shall be entered into the official database of court publications (insolvency database).
- (2) The inspection of the insolvency database shall no longer be granted if one year has elapsed after the following:
  1. the cancellation of the insolvency proceeding under Sections 123a, 123b and 139,
  2. the expiration of the payment period provided in the reorganization plan if its fulfillment is not monitored,
  3. the termination or cessation of the monitoring of the reorganization plan,
  4. the expiry of the payment period provided in the payment plan or
  5. the premature cessation or termination of the absorption proceeding.
- (3) Upon application of the debtor, the inspection of the insolvency database shall no longer be granted, if the confirmed and final reorganization plan or payment plan has been fulfilled. The debtor has to document the fulfillment. To examine fulfillment, the court may appoint an expert whose costs shall be borne by the debtor. The court shall decide on granting the inspection by means of a non-appealable decision.
- (4) No inspection of entries relating to insolvency proceedings, which have not been opened due to a lack of assets, shall be granted three years after the entry.

#### **Notifications.**

##### **Section 257.**

- (1) The notification of individual persons may also take place by circular letter.
- (2) If beside the public announcement a specific service is prescribed, the legal consequences of the service shall occur by public announcement even if service has not taken place.
- (3) In insolvency proceedings for businesses with an unusually large number of creditors, the specific service to the creditors can be omitted at the discretion of the court if the substantive content of the document is published; however, if the matter is a decision, the creditors who request it shall be serviced a copy.

#### **Service when Residence is Unknown.**

##### **Section 258.**

- (1) If a place for service cannot be determined, service upon a legal entity registered in the Companies' Register and its bodies may be made by entry in the official database of court publications without having to appoint an agent authorized to receive service (Section 115 Civil Procedure Code). All

further service may also be made by entry in the official database of court publications. This shall be referred to in the announcement.

- (2) If the decision shall be publicly announced in the insolvency database (Section 255), the additional entry in the official database of court publications may be omitted. The announcement in the insolvency database shall be referred to in the official database of court publications.
- (3) If data of a proceeding is entered in the insolvency database, the data entered pursuant to subsection 1 in the official database of court publications shall be deleted as soon as the inspection in the insolvency database is no longer to be granted; in other cases it shall be deleted one year after its entry.

#### **Time Periods, Default.**

##### **Section 259.**

- (1) The time periods specified in this Federal Act may not be extended.
- (2) Applications, declarations and objections which must be presented in a hearing may not be subsequently submitted by the persons properly summoned and absent at the hearing.
- (3) The court may request the involved parties to respond to a application within a reasonable period of time and, in case of failure to do so, assume that such involved party does not raise any objections. The request shall contain a reference to these legal consequences.
- (4) The restitutio in integrum can neither be claimed by failure to attend a hearing nor by failure to comply with a time period.

#### **Appeal.**

##### **Section 260.**

- (1) The time period for appeal is 14 days.
- (2) In appeals, new facts, to the extent they had already emerged at the time of the decision at first instance, and new evidence may be presented.
- (3) The court may grant an appeal itself if the order or decision may be changed without the disadvantage of a party involved, except for the cases referred to in Section 522 Civil Procedure Code.
- (4) Section 521a of Civil Procedure Code is – unless this Federal Act provides otherwise – not applicable.
- (5) The decision of appeal shall be publicly announced if the decision of the insolvency court was to be publicly announced and has not entirely been confirmed.
- (6) If the appellate proceeding is multilateral, the appeal document or a copy of its replacing protocol shall be served on the debtor and the insolvency receiver by the insolvency court. The filing of the appeal shall be publicly announced in the insolvency database. The opposing party may file a response with the insolvency court within 14 days of the announcement.

#### **Criminal Complaint.**

##### **Section 261.**

The insolvency court shall file a complaint to the prosecutor if

1. the debtor, the legal representatives of a legal person or the shareholders according to Section 72d refuse to submit the list of assets (Sections 71 and 100) or to sign it before the insolvency court or
2. the debtor is evading the police or

3. the debtor is otherwise under the suspicion of having committed a criminal offense.

### **Legal Proceedings – Jurisdiction.**

#### **Section 262.**

The following can may be brought before the insolvency court:

1. Actions concerning rights of segregation and rights to preferential satisfaction;
2. actions concerning post-petition claims;
3. actions for claims due to misconduct of an insolvency receiver, a member of the creditor's committee, an expert and a trustee, irrespective of whether the insolvency proceeding is pending or not;
4. actions for claims from statements made by third parties by which they have assumed the liability for losses which may attach to the creditors of the debtor's estate from failure to close down a business.

### **Procedure.**

#### **Section 263.**

For legal disputes, which belong before the insolvency court or are brought before it pursuant to Section 262, the following deviations shall apply:

1. In proceedings at first instance, without regard to the value in dispute, one member of the court shall decide as a single judge;
2. the provisions relating to proceedings before the district courts shall apply, unless the claim would also otherwise fall within the subject matter jurisdiction of a court of first instance;
3. Sections 252-261 shall not be applicable.

Part Nine.  
Accompanying Rules.  
Petition for Preliminary Ruling.  
Section 264.

A petition for preliminary ruling has no suspensive effect.

**Assignment of Business in Insolvency Matters.**  
Section 265.

- (1) In each case, the following shall be combined in a single department:
  1. Restructuring proceedings, bankruptcy proceedings, applications for the opening of insolvency proceedings and reorganization proceedings pursuant to the Company Reorganization Act;
  2. Legal disputes which belong before the insolvency court or may be brought before it pursuant to Section 262.
- (2) The matters referred to in subsection 1 shall be assigned in each case to more than one department only if such departments are already working to capacity; the use of an additional number of departments should be limited. If multiple departments need to be involved, the workload shall be distributed among them so that
  1. there shall be not distinction between the type of insolvency proceeding (subsection 1 item 1); however, the allocation by the name of the debtor or locally designated areas is permitted;
  2. all legal disputes related to the insolvency proceeding (subsection 1 item 2) shall be allocated to the same department. A distinction as to whether the legal disputes are related to a bankruptcy or restructuring proceeding shall be inadmissible.
- (3) The once assumed allocation reasons for the matters referred to in subsection 2 shall be maintained, if possible.
- (4) In the courts of second instance, the workload referenced in subsection 1 shall be allocated according to the same principles as in the courts of first instance.

**Official Assignment of Prerogatives to a Creditors' Protection Association.**  
Section 266.

- (1) As needed, the Federal Minister of Justice shall grant to associations upon their request by way of ordinance the position of a privileged creditors' protection association, thereby specifically taking into consideration the requirements of a comprehensive and effective protection of creditor interests and their appropriate recognition in the proceedings according to insolvency laws and the support of the court in connection therewith.
- (2) A creditors' protection association shall be reliable in its operation, conduct its business throughout all of Austria and be able to exercise the functions under subsection 1; it shall not be profit oriented. It shall have numerous members who belong or have members who, without being profit orientated themselves, represent the interests of a large number of creditors.
- (3) If a new creditors' protection association is assigned the privileged status, the ordinance with which such assignment is granted shall provide for a six-month period before the ordinance takes effect.
- (4) The assigned prerogatives expire with the dissolution of the creditors' protection association. The Federal Minister of Justice shall determine the expiry by way of ordinance.
- (5) The Federal Minister of Justice shall revoke the assigned prerogatives by way of ordinance if the conditions under which they were granted cease to exist.

## Official Acknowledgement of a Debt Counseling Agency.

### Section 267.

- (1) A debt counseling agency shall be assigned the privileged status upon request as an approved debt counseling agency by way of order if it
  1. is not profit oriented,
  2. offers its services free of charge,
  3. is reliable, especially financially secure and of permanent duration,
  4. advises a sufficient number of debtors to employ at least three full-time debt advisers on average in a fiscal year,
  5. has an organization which is focused on the needs of a modern quality management, and
  6. has operated successfully in the area of debt handling advice free of charge for debtors for at least two years.

The president of the Higher Regional Court in which district the debt counseling agency has its seat shall decide on the assignment of prerogatives. Prior to making a decision, a statement from the umbrella organization of debt counseling agencies shall be obtained. The umbrella organization has a right to appeal against the granting of the status acknowledgement.

- (2) If a debt counseling agency is approved as an approved debt counseling agency, it shall
  1. grant, in the review of complaint cases, the umbrella organization of debt counseling agencies access to the documents kept for each respective case with the consent of the debtor,
  2. continuously collect statistical information of their activity, in particular, make available the number of first contacts and initial consultations, the distribution by sex of client, the debt level of clients, the work situation, the number and the outcome of extrajudicial settlement and debt settlement proceedings applied for and the survey results of the umbrella organization of debt counseling agencies, and
  3. use the debt advisory logo (Section 268).
- (3) The President of the Court of Appeal shall revoke the status approval of a debt counseling agency when it no longer meets the requirements of subsection 1 or violates a requirement of paragraph 2. The umbrella organization of debt subsection agencies shall report to the President of the Court of Appeal without delay circumstances that would justify revocation.
- (4) The prerogative expires with the liquidation of the debt counseling agency. The President of the Court of Appeals has to determine the expiration by way of administrative decision.
- (5) The President of the Court of Appeals shall notify the Federal Ministry of Justice of the granting, revocation or expiry of the prerogative immediately after becoming effective for announcement in the official database of court publications.
- (6) The granting, revocation and expiry of the status approval shall become effective upon the expiry of the day of announcement.

### Debt Counseling Logo.

#### Section 268.

- (1) The debt counseling logo consists of the emblem of the Republic of Austria (the Federal coat of arms) and the phrase "State-approved debt counseling"; it is defined in Appendix A.
- (2) The sign may only be used by debt counseling agencies that are assigned prerogative as approved debt counseling agencies pursuant to Section 267(1), and by the umbrella organization of the debt

counseling agencies. When using the debt counseling logo, the umbrella organization shall add additional information that indicates its function as an umbrella organization.

- (3) Anyone who uses a debt counseling logo without authorization (subsection 2), commits an administrative offense and shall be subject to a fine of up to € 3,000. An administrative offense has not been committed if the act constitutes an element of a criminal act or is fined pursuant to other administrative criminal sanctions with a stricter sentence.

#### List of Insolvency Receivers.

##### Section 269.

- (1) The list of insolvency receivers shall contain text boxes for the following information:
1. Name, address, telephone and fax number as well as e-mail address;
  2. education;
  3. career;
  4. registration in a professional list (since when) and type of professional experience (since when);
  5. special expertise (in economic affairs);
  6. special knowledge of the industry;
  7. organizational infrastructure
    - a) total number of employees,
    - b) number of employees with insolvency practice,
    - c) number of staff with legal training,
    - d) number of employees with managerial training,
    - e) IT insolvency program,
    - f) third party liability insurance as insolvency receiver;
  8. Experience as insolvency receiver (in particular the number of appointments and turnover, employee number and duration of continued operation of businesses in insolvency proceedings);
  9. targeted geographical area of activity;
  10. for legal entities
    - a) Representation in the exercise of insolvency administration, including information on items 1 through 6,
    - b) Shareholders and parties with economic interest.
- (2) The list of the insolvency receivers shall be maintained as a generally accessible database by the Linz Court of Appeals for the entirety of Austria.
- (3) The persons interested in the insolvency receivership shall register themselves with the insolvency receiver list. They can also change the entries themselves at any time.
- (4) Section 89j(5) Court Organisation Act(GOG) shall apply.

**Part Ten.**  
**Final and Transitional Provisions.**  
**Enforcement.**  
**Section 270.**

The Federal Minister of Justice is entrusted with the enforcement of this Act.

**References.**  
**Section 271.**

Where reference is made in this Federal Act to provisions of other federal acts, these are in each case applicable in the currently valid version.

**Entry into Force.**  
**Section 272.**

- (1) Sections 72(3), 75(3) item 6 and 7, Sections 76 and 104(1) as amended by Federal Law Gazette No. 314/1994 shall enter into force on 1 July 1994.
- (2) Section 20(4) as amended by Federal Law Gazette No. 753/1996 shall enter into force on 1 January 1997.
- (3) Section 104(1) as amended by Federal Law Gazette I No. 88/2001 shall enter into force on 1 August 2001.
- (4) Sections 56, 57, 65, 67(1), 68, 69(3), 93(3), 100(6), 104(2), 132(3), 157e(2), 164(1), 164 and 165(1) as amended by the Trade Law Amendment Act, Federal Law Gazette I No 120/2005 shall enter into force on 1 January 2007.
- (5) Section 183(2) and 192 as amended by Federal Law Gazette I No. 73/2007 shall enter into force on 1st January 2008.
- (6) Section 104(1) as amended by Federal Law Gazette I No. 82/2008 shall enter into force on 1 July 2008.
- (7) Section 176(4) as amended by Federal Law Gazette I No 30/2009 shall enter into force on 1 April 2009. The provision is applicable if the date of the first instance decision falls after 31 March 2009.
- (8) Sections 29 item 3 and Section 55 as repealed by Federal Law Gazette I No. 75/2009 shall enter into force on 1 January 2010; § 29 Z 3 shall continue to apply to legal acts which are carried out before 1 January 2010, Section 55 on dowries granted before that date.
- (9) Section 70(2), first sentence of Section 254(1) and(4) as amended by the Budget Implementation Act 2011, Federal Law Gazette I No. 111/2010 shall enter into force on 1 May 2011. Section 70(2), first sentence shall apply, if the document to be served is dispatched after 30 April 2011.
- (10) Section 243(1) and Section 244(1) as amended by Federal Law Gazette I No. 34/2015 shall enter into force on 1 January 2016.
- (11) Sections 226, 230, 232 through 234 and Section 243 as amended by the Federal Act on the Recovery and Resolution of Banks published in Federal Law Gazette I No. 98/2014 shall enter into force on 1 January 2015.

**Provisions on Entry into Force and Transitional Provisions to  
the Insolvency Law Amendment Act 2010 (IRAG 2010).**

**Section 273.**

- (1) Amendments to this federal act by the Insolvency Law Amendment Act 2010, Federal Law Gazette I No. 29/2010, shall enter into force on 1 July 2010. Unless otherwise stipulated in the following subsections, they shall be applied to insolvency proceedings (bankruptcy proceedings, reorganization proceedings) opened or resumed after 30 June 2010 (Section 158(2)).
- (2) Unless otherwise provided in subsections 5 and 6, provisions hitherto applicable shall continue to be applied to the bankruptcy proceedings following composition proceedings opened prior to 1 July 2010.
- (3) Section 69, 70, 71, 71b, 71d and 72d as amended by the Insolvency Law Amendment Act 2010 shall be applied to applications for the opening of insolvency proceedings received by the court after 30 June 2010.
- (4) Section 31 as amended by the Insolvency Law Amendment Act 2010 shall be applied to legal acts and legal transactions carried out or entered into after 30 June 2010.
- (5) Sections 140 through 146 and 148 through 165 as amended by the Insolvency Law Amendment Act 2010 shall be applied if the application for adoption of a reorganization plan was received by the court after 30 June 2010. Section 142 item 2 in its version valid hitherto shall continue to be applied to proceedings opened prior to 1 July 2015.
- (6) Sections 92 through 94, 147 and 193(2) as amended by the Insolvency Law Amendment Act 2010 shall be applied if the hearing takes place after 30 June 2010. Section 77a(2) last sentence and Section 256(3) as amended by the Insolvency Law Amendment Act 2010 shall be applied to applications for exclusion of access which were received by the court after 30 June 2010.
- (7) Section 25b as amended by the Insolvency Law Amendment Act 2010 shall be also applied to agreements entered into prior to 1 July 2010.
- (8) Section 115(4), Sections 242 and 252 through 263 as amended by the Insolvency Law Amendment Act 2010 shall be also applied to proceedings pending on 30 June 2010.

#### **Survival of Prerogatives.**

##### **Section 274.**

- (1) The prerogatives established by virtue of Section 11 of the Law Implementing the Insolvency Code (IEG) remain valid as prerogatives pursuant to Section 266 as amended by the Insolvency Law Amendment Act 2010.
- (2) The prerogatives established by virtue of Section 12 of the Law Implementing the Insolvency Code (IEG) remain valid as prerogatives pursuant to Section 267 as amended by the Insolvency Law Amendment Act 2010. Appendix A to the Law Implementing the Insolvency Code (IEG) is incorporated as Appendix to the Insolvency Code.

#### **Replaced Terms and References.**

##### **Section 275.**

- (1) In provisions of the present Act which remained unchanged by the Insolvency Law Amendment Act 2010 the following terms used in the present Federal Act (including the headings) shall be replaced by the term specified below in its respective grammatically correct form and with a respectively suitable definite or indefinite article:
  1. Opening of bankruptcy proceedings by opening of insolvency proceedings,
  2. bankruptcy estate by insolvency estate,
  3. bankruptcy creditors by insolvency creditors
  4. bankruptcy and bankruptcy proceedings by Insolvency and insolvency proceedings,

5. bankruptcy court by insolvency court,
  6. bankruptcy claim by insolvency claim,
  7. bankruptcy assets by insolvency assets,
  8. bankruptcy application and application for the opening of bankruptcy proceedings by application for the opening of insolvency proceedings,
  9. close of bankruptcy proceeding by close of insolvency proceeding,
  10. bankruptcy quota by insolvency quota,
  11. bankruptcy edict by insolvency edict,
  12. partnership bankruptcy by insolvency proceeding concerning the partnership,
  13. filing an application for bankruptcy by filing an application for insolvency,
  14. bankruptcy receiver by insolvency receiver,
  15. bankruptcy administration by insolvency administration,
  16. bankruptcy proceedings over a decedent's estate by insolvency proceedings over a decedent's estate,
  17. forced composition by reorganization plan,
  18. proposal on forced composition by proposal on the reorganization plan,
  19. application for forced composition by application for a reorganization plan,
  20. hearing on the forced composition by hearing on the reorganization plan,
  21. fulfillment of the forced composition by fulfillment of the reorganization plan,
  22. custodian by trustee,
  23. bankrupt by debtor,
  24. personally liable general partner by general partner with unlimited liability,
  25. Bankruptcy Code by Insolvency Code.
- (2) In references to provisions of the Bankruptcy Code made in other federal acts and regulations the quotation "Bankruptcy Code" is replaced by the quotation "Insolvency Code" and the quotation "BC" is replaced by the quotation "IC".

**Provisions on Entry into Force to the Company Law Amendment Act 2013 (GesRAG 2013).**

**Section 276.**

Section 69(3a) as amended by the Company Law Amendment Act 2013 (GesRAG 2013) published in Federal Law Gazette I No. 109/2013 enters into force on 1 July 2013.

Provisions on Entry into Force to the Enforcement Code as Amended in 2014.

Section 277.

Section 20(4) as amended by the Enforcement Code Amendment Act 2014, Federal Law Gazette I No. 69/2014, enters into force on 1 January 2014.

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