

German Insolvency Code

(Insolvenzordnung – InsO)

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“Insolvency and Restructuring in Germany – Yearbook 2013”

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Insolvency Code

of 5 October 1994 (*BGBI.* [Federal Law Gazette] I 1994, page 2866), as last amended by Article 19 of the Act of 20 December 2011 (*BGBI.* [Federal Law Gazette] I 2011, page 2854).

Contents

Part One – General Provisions	59	Part Nine – Consumer Insolvency Proceedings and other Minor Proceedings	113
Part Two – Commencement of Insolvency Proceedings. Assets Involved and Parties to the Proceedings	61	Chapter One – Scope of Application	113
Chapter One – Requirements for Commencement and Preliminary Insolvency Proceeding	61	Chapter Two – Debt Settlement Plan	113
Chapter Two – Insolvency Estate. Classification of Creditors	67	Chapter Three – Simplified Insolvency Proceedings	115
Chapter Three – Insolvency Administrator. Creditors’ Representative Bodies	71	Part Ten – Special Types of Insolvency Proceedings 115	
Part Three – Effects of Commencement of Insolvency Proceedings	74	Chapter One – Insolvency Proceedings Relating to a Deceased’s Estate	115
Chapter One – General Effects	74	Chapter Two – Insolvency Proceedings Relating to the Joint Marital Property of a Continued Community of Property	118
Chapter Two – Performance of Transactions. Co-operation of the Works Council	78	Chapter Three – Insolvency Proceedings Relating to the Jointly Managed Joint Marital Property of a Community of Property	118
Chapter Three – Avoidance in Insolvency	83	Part Eleven – International Insolvency Law	118
Part Four – Management and Realisation of the Insolvency Estate	87	Chapter One – General Provisions	118
Chapter One – Securing the Insolvency Estate	87	Chapter Two – Foreign Insolvency Proceedings	119
Chapter Two – Decision on Realisation	88	Chapter Three – Territorial Insolvency Proceedings Relating to Domestic Assets	121
Chapter Three – Assets Subject to Rights to Separate Satisfaction	89	Part Twelve – Entry into Force	121
Part Five – Satisfaction of the Insolvency Creditors. Discontinuation of Proceedings	91		
Chapter One – Acceptance of Claims	91		
Chapter Two – Distribution	93		
Chapter Three – Discontinuation of Proceedings	95		
Part Six – Insolvency Plan	97		
Chapter One – Preparation of the Plan	97		
Chapter Two – Acceptance and Confirmation of the Plan	100		
Chapter Three – Effects of the Confirmed Plan. Monitoring Implementation of the Plan	103		
Part Seven – Self-administration	107		
Part Eight – Discharge of Residual Debt	109		

Part One – General Provisions

Section 1 – Objectives of Insolvency Proceedings

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

Section 2 – Local Court as Insolvency Court

- (1) The local court within whose district a regional court is located has exclusive jurisdiction for insolvency proceedings as the insolvency court for the district of this regional court.
- (2) In order for the proceedings to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to designate other or additional local courts as insolvency courts and stipulate different districts for the insolvency courts by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

Section 3 – Local Jurisdiction

- (1) The insolvency court within whose district a debtor has its place of general jurisdiction has exclusive local jurisdiction. If the centre of a self-employed economic activity carried on by the debtor is located in a different place, the insolvency court within whose district this place is located has exclusive jurisdiction.
- (2) If more than one court has jurisdiction, the court to which application is first made for commencement of insolvency proceedings shall exclude the other courts.

Section 4 – Applicability of the Code of Civil Procedure

Unless otherwise specified in the present Code, the provisions of the Code of Civil Procedure [*Zivilprozeßordnung*] apply with the necessary modifications to insolvency proceedings.

Section 4a – Deferment of the Costs of Insolvency Proceedings

- (1) If the debtor is a natural person and has lodged an application for discharge of residual debt, on application he/she shall be permitted to defer the costs of the insolvency proceedings until

the discharge of residual debt is granted if it is likely that the debtor's assets will be insufficient to cover these costs. Deferment pursuant to sentence 1 also includes the costs of the debt settlement plan proceedings and the residual debt discharge proceedings. The debtor shall attach a declaration to the application stating whether one of the grounds for refusal pursuant to section 290 (1) Nos 1 and 3 applies. If such a ground applies, deferment is excluded.

- (2) If the debtor is permitted to defer the costs of the proceedings, on application he/she shall be assigned a lawyer of his/her choice who is willing to represent him/her, if representation by a lawyer appears necessary despite the duty of care incumbent on the court. Section 121 (3) to (5) of the Code of Civil Procedure applies with the necessary modifications.
- (3) The effect of deferment is that
 1. the Federal treasury or Federal State treasury may claim against the debtor for
 - a) the court costs in arrears and the court costs arising,
 - b) the claims of the lawyer assigned to the debtor or which pass to the treasury, only in accordance with the stipulations laid down by the court;
 2. the lawyer assigned to the debtor cannot assert claims for remuneration against the debtor.
 Deferment is granted separately for each stage of the proceedings. The effects specified in sentence 1 apply on an interim basis pending the decision on deferment. Section 4b (2) applies with the necessary modifications.

Section 4b – Repayment and Adjustment of Deferred Amounts

- (1) If, after discharge of residual debt has been granted, the debtor is not in a position to pay the deferred amount out of his/her income and assets, the court may extend the deferment and fix the monthly instalments to be paid. Section 115 (1) and (2) and section 120 (2) of the Code of Civil Procedure apply with the necessary modifications.
- (2) The court may vary the decision on deferment and the monthly instalments at any time if personal or financial circumstances relevant to the decision have significantly changed. The debtor is obliged to notify the court without delay of any significant change in these circumstances. Section 120 (4) sentences 1 and 2 of the Code of Civil Procedure apply with the necessary modifications. A change to the detriment of the debtor is excluded if four years have elapsed since termination of the proceedings.

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

Section 4c – Revocation of Deferment

The court may revoke the deferment if

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

Section 4d – Appeal

- (1) The debtor has the right of immediate appeal against the refusal of deferment or its revocation and against the refusal of the application for assignment of counsel.
- (2) If deferment is granted, the public treasury has the right of immediate appeal. The appeal can only be based on the fact that deferment should have been refused in view of the debtor's personal or financial circumstances.

Section 5 – Procedural Principles

- (1) The insolvency court shall ascertain ex officio all circumstances relevant to the insolvency proceedings. To this end it may, in particular, hear witnesses and experts.
- (2) If the debtor's financial circumstances are straightforward and the number of creditors or the amount of the debts is small, the insolvency court may order that the proceedings or individual parts of the proceedings are conducted in writing. The court may rescind or vary this order at any time. The order and its rescission or variation shall be published.
- (3) The court may issue its decisions without a hearing. If a hearing is held, section 227 (3) sentence 1 of the Code of Civil Procedure is not applicable.
- (4) Schedules and lists may be produced and processed electronically. The governments of the Federal States are authorised to lay down detailed provisions by statutory order regulating the maintenance of the schedules and lists, their electronic submission, as well as the electronic

submission of accompanying documents and their storage. They may also stipulate the data format requirements for electronic submission. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

Section 6 – Immediate Appeal

- (1) The decisions of the insolvency court are subject to appeal only in those cases in which this Code provides the right of immediate appeal. The immediate appeal shall be lodged with the insolvency court.
- (2) The period for lodging an appeal starts to run on the date on which the decision is pronounced, or if it not pronounced, on the date on which it is served.
- (3) The decision on the appeal shall be effective only when it becomes final and binding. The appeal court may, however, order that the decision is effective immediately.

Section 7 – (repealed)

Section 8 – Service

- (1) Service of documents is effected ex officio without the document to be served requiring certification. Service may be effected by posting the document to the address of the addressee for service; section 184 (2) sentences 1, 2 and 4 of the Code of Civil Procedure apply with the necessary modifications. If service is to be effected on domestic territory, the document shall be deemed to have been served three days after posting.
- (2) Service shall not be effected on persons whose place of residence is unknown. If such persons have a representative with authority to accept service, service shall be effected on that representative.
- (3) The insolvency court may instruct the insolvency administrator to carry out the service of documents pursuant to subsection (1). He/she may use third parties, in particular his/her own staff, for effecting and recording the service of documents. The insolvency administrator shall add the notes made by him/her in accordance with section 184 (2) sentence 4 of the Code of Civil Procedure to the court files without delay.

Section 9 – Public Announcements

- (1) Public announcements are made by means of centralised, national publication on the internet²; publication may be made in extract form. The announcement shall accurately identify the debtor, stating in particular its address and line of busi-

² www.insolvenzbekanntmachungen.de

ness; it shall be deemed to have been made when a further two days have elapsed since the day of publication.

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

Section 10 – Hearing of the Debtor

- (1) If this Code provides for the debtor to be granted a hearing, this may be omitted if the debtor resides abroad and the hearing would unduly delay the proceedings or if the debtor's place of residence is unknown. In this case a representative or relative of the debtor shall be heard.
- (2) If the debtor is not a natural person, subsection (1) applies with the necessary modifications in relation to the hearing of persons authorised to represent the debtor or who hold a participating interest in the debtor. If the debtor is a legal entity and the legal entity does not have a representative body (no management), the persons who hold a participating interest in the debtor may be heard; subsection (1) sentence 1 applies with the necessary modifications.

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

Chapter One – Requirements for Commencement and Preliminary Insolvency Proceedings

Section 11 – Admissibility of Insolvency Proceedings

- (1) Insolvency proceedings may be commenced in respect of the assets of any natural person or legal entity. An unincorporated association is equivalent to a legal entity in this respect.
- (2) Insolvency proceedings may further be commenced:
 1. in respect of the assets of a company without legal personality (general partnership, limited partnership, registered partnership, partnership

under the Civil Code [*Bürgerliches Gesetzbuch*], shipping partnership, European Economic Interest Grouping);

2. in accordance with sections 315 to 334, in respect of a deceased's estate, the joint marital property of a continued community of property or the joint marital property of a community of property jointly managed by the spouses.
- (3) After the dissolution of a legal entity or a company without legal personality the commencement of insolvency proceedings is permitted as long as the assets have not been distributed.

Section 12 – Legal Entities under Public Law

- (1) Insolvency proceedings may not be commenced in respect of the assets
 1. of the Federal Republic or a Federal State;
 2. of a legal entity under public law which is subject to the supervision of a Federal State, if the law of the Federal State so provides.
- (2) If a Federal State has declared insolvency proceedings to be inadmissible in respect of the assets of a legal entity in accordance with subsection (1) No. 2, in the event of its illiquidity or overindebtedness its employees may apply to the Federal State for the benefits which they would be able to claim from the Employment Agency pursuant to the provisions on insolvency pay contained in the Third Book of the Code of Social Security Law [*Drittes Buch Sozialgesetzbuch*] and from the statutory insolvency insurance institution pursuant to the provisions of the Act to Improve Occupational Pensions [*Gesetz zur Verbesserung der betrieblichen Altersversorgung*] if insolvency proceedings had been commenced.

Section 13 – Application for Commencement of Insolvency Proceedings

- (1) Insolvency proceedings shall only be commenced on written application. The creditors and the debtor are entitled to lodge the application. An application by the debtor shall be accompanied by a list of creditors and their claims. If the debtor has a business operation that has not been discontinued, the list shall indicate in particular
 1. the largest claims;
 2. the largest secured claims;
 3. the tax authorities' claims;
 4. the social security authorities' claims and
 5. claims arising under occupational pension schemes.
 In this case the debtor shall also give particulars of the total assets, the sales revenue and the average number of employees in the preceding business year. The particulars pursuant to sentence 4 are obligatory if

1. the debtor applies for self-administration;
2. the debtor fulfils the criteria specified in section 22a (1) or
3. an application has been made for the appointment of a preliminary creditors' committee.

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

- (2) The application may be withdrawn up until the court orders commencement of insolvency proceedings or the application is refused with final effect.
- (3) The Federal Ministry of Justice is authorised to introduce a form to be used by the debtor for lodging an application by means of statutory order issued with the approval of the Bundesrat. Insofar as a form is introduced pursuant to sentence 1, the debtor must use this form. Different forms may be introduced by the courts for proceedings that are processed electronically and for proceedings that are not processed electronically.

Section 14 – Application by a Creditor

- (1) An application by a creditor is admissible if the creditor has a legal interest in the commencement of insolvency proceedings and proves its³ claim and the grounds for commencement of insolvency proceedings to the satisfaction of the court. If an application for commencement of insolvency proceedings relating to the debtor's assets has already been lodged within the two years prior to the lodging of the application, the application shall not be inadmissible solely on account of the claim being satisfied. In this case the creditor shall also provide evidence of the earlier application to the satisfaction of the court.
- (2) If the application is admissible, the insolvency court shall hear the debtor.
- (3) If the creditor's claim is satisfied after the application has been lodged, the debtor must bear the costs of the proceedings if the application is rejected as unfounded.

Commentary:

In Section 14, sentences 2 and 3 were added to paragraph 1, while paragraph 3 was newly introduced by the Act Accompanying the Budget 2011 (*HBeglG 2011*) of 19 November 2010 (*BGBI.* [Federal Law Gazette] I 2010, 1885). The new rule applies for insolvency proceedings requested after 1 January 2011.

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

- (1) In addition to the creditors, any member of the representative body or, in the case of a company without legal personality or of a partnership limited by shares, any general partner, and also any liquidator is entitled to apply for commencement of insolvency proceedings relating to the assets of a legal entity or of a company without legal personality. In the case of a legal entity with no management, each shareholder, and in the case of a stock corporation or a cooperative, in addition each member of the supervisory board, is also entitled to apply for commencement of insolvency proceedings.
- (2) If the application is not lodged by all members of the representative body, all general partners, all shareholders of the legal entity, all members of the supervisory board or all liquidators, it shall be admissible if grounds for commencement of insolvency proceedings are demonstrated to the satisfaction of the court. In addition, if an application is lodged by shareholders of a legal entity or members of the supervisory board, the lack of management shall also be demonstrated to the satisfaction of the court. The insolvency court shall hear the remaining members of the representative body, general partners, shareholders of the legal entity, members of the supervisory board or liquidators.
- (3) If none of the general partners of a company without legal personality is a natural person, subsections (1) and (2) shall apply with the necessary modifications to the members of the representative body and the liquidators of the partners authorised to represent the company. The same shall apply if the connection between the companies continues in this form.

³) Unless a reference is specifically to a natural person or to a legal entity, all references to 'the creditor' and pronouns relating thereto should be construed as referring to male and female natural persons and legal entities.

Section 15a – Obligation of Legal Entities and

Companies without Legal Personality to Apply for Commencement of Insolvency Proceedings

- (1) If a legal entity becomes illiquid or overindebted, the members of the representative body or the liquidators must apply for commencement of insolvency proceedings without undue delay but in any event no later than three weeks after the occurrence of illiquidity or overindebtedness. The same shall apply to the members of the representative body of the partners authorised to represent the company or the liquidators in the case of a company without legal personality where none of the general partners is a natural person; this shall not apply if the general partners include another company which has a natural person as general partner.
- (2) In the case of a company within the meaning of subsection (1) sentence 2, subsection (1) shall apply with the necessary modifications if the members of the representative body of the partners authorised to represent the company are, in turn, companies in which none of the general partners is a natural person, or if the connection between the companies continues in this form.
- (3) In the event that a company with limited liability has no management, each shareholder, and in the event that a stock corporation or a co-operative has no management, each member of the supervisory board, is obliged to lodge an application for commencement of insolvency proceedings unless such person was unaware of the company's illiquidity and overindebtedness or lack of management.
- (4) Anyone who, contrary to subsection (1) sentence 1, also in conjunction with sentence 2 or subsection (2) or subsection (3), does not apply for commencement of insolvency proceedings or does not apply correctly or within the specified time limit shall be punished by imprisonment for up to three years or by a fine.
- (5) If the offender in the cases specified in subsection (4) acts negligently, the punishment shall be imprisonment for up to one year or a fine.

Section 16 – Ground for Commencement

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

Section 17 – Illiquidity

- (1) The general ground for commencement of proceedings is illiquidity.
- (2) The debtor is deemed illiquid if it is unable to meet its due payment obligations. Illiquidity shall generally be presumed if the debtor has stopped making payments.

Section 18 – Imminent Illiquidity

- (1) If the debtor applies for commencement of insolvency proceedings, imminent illiquidity is also a ground for commencement of proceedings.
- (2) The debtor faces imminent illiquidity if it is likely to be unable to meet existing payment obligations when they fall due.
- (3) In the case of a legal entity or a company without legal personality, if the application is not lodged by all members of the representative body, all general partners or all liquidators, subsection (1) shall only be applicable if the applicant or applicants is or are entitled to represent the legal entity or company.

Section 19 – Overindebtedness

- (1) In the case of a legal entity, overindebtedness is also a ground for commencement of proceedings.
- (2) Overindebtedness exists if the debtor's assets no longer cover its existing liabilities, unless the continued operation of the enterprise is substantially likely in the circumstances. Claims to repayment of shareholder loans or claims arising out of legal acts corresponding in economic terms to such loans which the creditor and debtor have agreed pursuant to section 39 (2) will be subordinated in insolvency proceedings to the claims specified in section 39 (1) Nos 1 to 5 are not to be taken into consideration in relation to the liabilities in terms of sentence 1.
- (3) If a company without legal personality does not have a natural person as general partner, subsections (1) and (2) shall apply with the necessary modifications. This shall not apply if the general partners include another company which has a natural person as general partner.

Commentary:

As a result of the Act to Facilitate the Restructuring of Companies (*FMStGÄndG*) of 24 September 2009 (*BGBI.* [Federal Law Gazette] I 2009, 3151), the regulation, initially enacted until 31 December 2010, was extended to 31 December 2013.

Note:

The time limit is being removed altogether by the Act on the Introduction of Instructions on the Right of Appeal in Civil Procedure (*Gesetz zur Einführung einer Rechtsbehelfsbelehrung im Zivilprozess*), promulgated by the *Bundestag* on 8 November 2012 [*BT-Drucks.* [Bundestag Printed Paper] 17/11385].

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

- (1) If the application is admissible, the debtor must provide the insolvency court with the information it requires to decide on the application and otherwise support the court in the performance of its duties. Sections 97, 98 and 101 (1) sentences 1 and 2 and (2) apply with the necessary modifications.
- (2) If the debtor is a natural person, he/she shall be informed that he/she may obtain discharge of residual debt pursuant to sections 286 to 303.

Section 21 – Interim Measures Order

- (1) Until the application has been decided the insolvency court shall take all measures which appear necessary to prevent any changes in the debtor's financial position to the prejudice of the creditors. The debtor has the right of immediate appeal against the ordering of the measure.
- (2) The court may in particular
 1. appoint a preliminary insolvency administrator to whom section 8 (3) and sections 56, 56a and 58 to 66 apply with the necessary modifications;
 - 1a. establish a preliminary creditors' committee to which section 67 (2) and sections 69 to 73 apply with the necessary modifications; persons who only became creditors upon commencement of proceedings may also be appointed as members of the creditors' committee;
 2. issue a general restraint order against the debtor prohibiting disposals of assets or order that disposals by the debtor require the approval of the preliminary insolvency administrator to be effective;
 3. order a prohibition or temporary suspension of compulsory enforcement measures against the debtor unless immovable assets are involved;
 4. issue an interim postal redirection order to which sections 99 and 101 (1) sentence 1 apply with the necessary modifications;
 5. order that assets which would be covered by section 166 or in respect of which segregation could be claimed in the event of commencement of proceedings may not be realised or collected by the creditor and that such assets may be used for the continued operation of the debtor's enterprise insofar as they are of substantial importance for this purpose; section 169 sentences 2 and 3 apply with the necessary modifications; the creditor shall be compensated for any loss in value resulting from such use by regular payments. The obligation to make compensation payments exists only insofar as the loss in value resulting from the use impairs the security of the

creditor entitled to separate satisfaction. If the preliminary insolvency administrator collects a debt assigned to secure a claim in place of the creditor, sections 170 and 171 shall apply with the necessary modifications.

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

- (3) If other measures are insufficient, the debtor may be compelled to appear before the court and be taken into custody after being heard. If the debtor is not a natural person the same shall apply with the necessary modifications to the members of its representative body. Section 98 (3) applies with the necessary modifications to the ordering of detention.

Section 22 – Legal Status of the Preliminary Insolvency Administrator

- (1) If a preliminary insolvency administrator is appointed and a general prohibition of disposal is imposed on the debtor, the right to manage and dispose of the debtor's assets vests in the preliminary insolvency administrator. In this event the preliminary insolvency administrator shall:
 1. secure and preserve the debtor's assets;
 2. continue an enterprise operated by the debtor until the decision on commencement of insolvency proceedings, unless the insolvency court consents to the closure of the enterprise in order to avoid a substantial reduction in the assets;
 3. investigate whether the debtor's assets will cover the costs of the proceedings; the court may in addition instruct the preliminary insolvency administrator as an expert to investigate whether there is a ground for commencement of proceedings and what prospects exist for the debtor's enterprise to continue.
- (2) If a preliminary insolvency administrator is appointed without a general prohibition of disposal being imposed on the debtor, the court shall de-

termine the duties of the preliminary insolvency administrator. Such duties are not permitted to exceed the duties pursuant to subsection (1) sentence 2.

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

Section 22a – Appointment of a Preliminary Creditors' Committee

- (1) The insolvency court shall establish a preliminary creditors' committee pursuant to section 21 (2) number 1a if the debtor has fulfilled at least two of the following three criteria in the previous business year:
 1. a balance sheet total of at least EUR 4 840 000 after deduction of any losses exceeding equity within the meaning of section 268 (3) of the Commercial Code [*Handelsgesetzbuch*];
 2. sales revenues of at least EUR 9 680 000 in the last 12 months prior to the balance sheet date;
 3. an annual average of at least fifty employees.
- (2) On application by the debtor, the preliminary insolvency administrator or a creditor, the court shall appoint a preliminary creditors' committee pursuant to section 21 (2) number 1a if the potential members of the preliminary creditors' committee are named and a declaration of consent by those persons is attached to the application.
- (3) A preliminary creditors' committee shall not be appointed if the debtor's business operations have ceased, if the establishment of a preliminary creditors' committee is disproportionate in view of the anticipated value of the insolvency estate or if the establishment of the committee would cause a delay leading to a prejudicial change in the debtor's financial position.
- (4) At the court's request, the debtor or the preliminary insolvency administrator shall name potential members of the preliminary creditors' committee.

Section 23 – Publication of Restrictions on Disposals

- (1) The decision ordering any of the restrictions on disposals specified in section 21 (2) No. 2 and the appointment of a preliminary insolvency administrator shall be published. It shall be served separately on the debtor, on persons who have liabilities towards the debtor and on the preliminary

insolvency administrator. The debtor's debtors shall be requested at the same time to pay their liabilities only in compliance with the decision.

- (2) If the debtor is registered in the Commercial Register, Register of Cooperatives, Register of Partnerships or Register of Associations, the insolvency court registry shall send an official copy of the decision to the registration court.
- (3) Sections 32 and 33 apply with the necessary modifications in respect of the registration of restrictions on disposals in the Land Register, the Register of Ships, the Register of Ships under Construction and the Register of Liens on Aircraft.

Section 24 – Effects of the Restrictions on Disposals

- (1) Sections 81 and 82 apply with the necessary modifications in relation to any breach of the restrictions on disposals specified in section 21 (2) No. 2.
- (2) If the right to dispose of an asset of the debtor has vested in a preliminary insolvency administrator, section 85 (1) sentence 1 and section 86 shall apply with the necessary modifications in relation to the resumption of pending court proceedings.

Section 25 – Revocation of the Protective Measures

- (1) If the protective measures are revoked, section 23 shall apply with the necessary modifications to the public announcement of the revocation of a restriction on disposals.
- (2) If the right to dispose of the assets of the debtor has vested in a preliminary insolvency administrator, the preliminary insolvency administrator shall discharge the costs incurred and fulfil the obligations entered into by him/her out of the assets administered by him/her prior to the revocation of his/her appointment. The same shall apply in respect of liabilities arising out of contracts for continuing obligations insofar as the preliminary insolvency administrator has claimed counter-performance in respect of the assets administered by him/her.

Section 26 – Refusal of Application due to Insufficient Assets

- (1) The insolvency court shall refuse the application for commencement of insolvency proceedings if the debtor's assets are likely to be insufficient to cover the costs of the proceedings. The application shall not be refused if sufficient funds are advanced or if the costs are deferred pursuant to section 4a. The order shall be published without delay.
- (2) The court shall keep a register of debtors whose applications for commencement of proceedings have been refused due to insufficient assets (list of debtors). The provisions relating to the list of

debtors contained in the Code of Civil Procedure apply with the necessary modifications; the entry shall, however, be deleted after a period of five years.

Commentary:

As a result of the Act to Reform the Clarification of Facts in Enforcement (*ZwVoll-StärÄndG*) of 29 July 2009 (*BGBI.* [Federal Law Gazette] I 2009, 2258), Section 26 will read as follows with effect as of 1 January 2013:

“(2) The court shall order that any debtor for whom an application to commence insolvency proceedings has been refused for insufficiency of assets be entered in the record of debtors under Section 882b of the Code of Civil Procedure and shall immediately transmit the order electronically to the central enforcement court under Section 882h (1) of the Code of Civil Procedure. Section 882c (3) of the Code of Civil Procedure shall apply mutatis mutandis.”

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

Section 26a – Remuneration of the Preliminary Insolvency Administrator

- (1) If insolvency proceedings are not commenced, the insolvency court shall make an order against the debtor determining the preliminary insolvency administrator’s remuneration and reimbursable

expenses. The order shall be served separately on the preliminary administrator and the debtor.

- (2) The preliminary administrator and the debtor have the right of immediate appeal against the order. Section 567 (2) of the Code of Civil Procedure applies with the necessary modifications.

Section 27 – Order Commencing Proceedings

- (1) If insolvency proceedings are commenced, the insolvency court shall appoint an insolvency administrator. Sections 270 and 313 (1) remain unaffected.
- (2) The order commencing proceedings shall contain:
 1. the debtor’s company name or surname and first names, date of birth, registration court, registration number under which the debtor is entered in the Commercial Register, branch of business or occupation and place of business or place of residence;
 2. name and address of the insolvency administrator;
 3. the time when the order was made;
 4. a reference as to whether the debtor has lodged an application for discharge of residual debt;
 5. the grounds on which the court did not follow a unanimous proposal from the preliminary creditors’ committee as to the person to be the appointed as administrator; the name of the proposed person shall not be mentioned.
- (3) If the time when the order commencing proceedings is made is not stated, it shall be deemed to have been made at midday on the day on which the order is issued.

Section 28 – Requests to Creditors and Debtors

- (1) In the order commencing proceedings the creditors shall be requested to file their claims with the insolvency administrator within a specified period in compliance with section 174. The period shall amount to not less than two weeks and not more than three months.
- (2) In the order commencing proceedings the creditors shall be requested to inform the administrator without delay of the security interests they claim to have in movable assets or rights of the debtor. Details must be provided of the asset in which the security interest is claimed, the nature and reason for the creation of the security interest and also the secured claim. Anyone who intentionally or negligently fails to provide or delays in providing such information shall be liable for the resulting damage.
- (3) In the order commencing proceedings, a request shall be made to persons who have liabilities towards the debtor that they should no longer ren-

der performance to the debtor but instead to the administrator.

Section 29 – Scheduling of Dates

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

Section 30 – Publication of the Order Commencing Proceedings

- (1) The insolvency court registry shall publish the order commencing proceedings immediately. If the debtor has filed an application pursuant to section 287, this must also be published insofar as no reference pursuant to section 27 (2) No. 4 is made.
- (2) The order shall be served separately on the debtor's creditors and debtors and on the debtor itself.
- (3) (repealed)

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

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

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

Section 32 – Land Register

- (1) Commencement of the insolvency proceedings shall be registered in the Land Register:
 1. in respect of plots of land for which the debtor is registered as owner;

2. in respect of the debtor's registered rights in plots of land and in registered rights if there are concerns, based on the type of rights and in the circumstances, that the insolvency creditors would be disadvantaged in the absence of registration.

- (2) If the insolvency court is aware of such plots of land or rights it shall request the Land Registry ex officio to make the registration. The insolvency administrator may also request the Land Registry to make the registration.
- (3) If the administrator releases or sells a plot of land or a right in respect of which commencement of insolvency proceedings has been registered, on application the insolvency court shall request that the Land Registry delete the entry. The insolvency administrator may also request that the Land Registry delete the entry.

Section 33 – Ships and Aircraft Registers

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

Section 34 – Appeal

- (1) If commencement of insolvency proceedings is refused, the applicant and, if the application is refused pursuant to section 26, the debtor, has the right of immediate appeal.
- (2) If insolvency proceedings are commenced, the debtor has the right of immediate appeal.
- (3) Once the decision revoking the order commencing proceedings becomes final, termination of the proceedings shall be published. Section 200 (2) sentence 2 applies with the necessary modifications. The effects of legal acts which have been carried out by or with the insolvency administrator shall be unaffected by termination of the proceedings.

Chapter Two – Insolvency Estate. Classification of Creditors

Section 35 – Definition of Insolvency Estate

- (1) Insolvency proceedings cover all of the assets which belong to the debtor at the time when the proceedings are commenced and which the debtor acquires during the proceedings (insolvency estate).
- (2) If the debtor pursues an activity as a self-employed person or intends to pursue such an activ-

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

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

Section 36 – Objects Exempted from Attachment

- (1) Objects not subject to compulsory enforcement do not form part of the insolvency estate. Sections 850, 850a, 850c, 850e, 850f (1), sections 850g to 850k, 851c and 851d of the Code of Civil Procedure apply with the necessary modifications.
- (2) However, the insolvency estate includes
 1. the debtor's business records; statutory obligations governing the retention of documents remain unaffected;
 2. the objects exempted from compulsory enforcement under section 811 (1) Nos 4 and 9 of the Code of Civil Procedure.
- (3) Objects which constitute normal household goods and which are used in the debtor's household shall not form part of the insolvency estate if it is readily apparent that their disposal would only yield proceeds out of all proportion to their value.
- (4) The insolvency court has jurisdiction to decide whether an object is liable to compulsory enforcement under the provisions specified in subsection (1) sentence 2. The insolvency administrator may file the request in place of a creditor. Sentences 1 and 2 apply with the necessary modifications to preliminary insolvency proceedings.

Commentary:

As a result of the Act to Reform the Protection of Bank Accounts from Attachment (*KtoPfRefG*) of 7 July 2009 (*BGBl.* [Federal Law Gazette] I 2009, 1707), Section 36 (1) sentence 2 was again amended with effect as of 1 January 2012, whereby "850l" was changed to "850k".

Section 37 – Joint Marital Property in a Community of Property

- (1) If, under the marital property regime of community of property, the joint marital property is managed by only one spouse and insolvency pro-

ceedings are commenced against this spouse, the joint marital property shall form part of the insolvency estate. No partitioning of the joint marital property shall take place. The joint marital property shall not be affected by insolvency proceedings commenced against the other spouse.

- (2) If the spouses both manage the joint marital property, insolvency proceedings commenced against one spouse shall not affect the joint marital property.
- (3) Subsection (1) applies to a continued community of property, provided that the surviving spouse takes the place of the spouse who managed the joint marital property alone and the late spouse's descendants take the place of the other spouse.

Section 38 – Definition of Insolvency Creditor

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

Section 39 – Subordinated Insolvency Creditors

- (1) The following claims are subordinated to all other claims of the insolvency creditors; they shall be satisfied in the following order and in proportion to their respective amounts if they have equal ranking:
 1. the interest and penalties for late payment accruing on the claims of the insolvency creditors since commencement of the insolvency proceedings;
 2. the costs incurred by the individual insolvency creditors through their participation in the proceedings;
 3. fines, administrative fines, administrative penalties and periodic penalty payments, and also the incidental legal consequences of a criminal or administrative offence resulting in liability for a monetary payment;
 4. claims to gratuitous performance by the debtor;
 5. pursuant to subsections (4) and (5) claims for repayment of a shareholder loan or claims arising out of legal acts corresponding in economic terms to such a loan.
- (2) Claims which creditor and debtor have agreed will be subordinated in insolvency proceedings shall be satisfied, in case of doubt as to their ranking, after the claims specified in subsection (1).
- (3) The interest on the claims of subordinated insolvency creditors and the costs incurred by these creditors through their participation in the proceedings rank equally with the claims of these creditors.

- (4) Subsection (1) No. 5 applies to companies that have neither a natural person nor a company in which a general partner is a natural person as general partner. If a creditor acquires shares upon imminent or existing illiquidity of the company or its overindebtedness for the purpose of its restructuring, until the viable restructuring of the company has been achieved this shall not lead to the application of subsection (1) No. 5 to the creditor's claims arising out of existing or newly granted loans or claims arising out of legal acts corresponding in economic terms to such a loan.
- (5) Subsection (1) No. 5 shall not apply to the non-executive partner of a company within the meaning of subsection (4) sentence 1 who holds 10% or less of the company's liable equity capital.

Section 40 – Maintenance Claims

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

Section 41 – Unmatured Claims

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

Section 42 – Claims Subject to a Condition

Subsequent

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

Section 43 – Liability of Several Persons

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

Section 44 – Rights of Joint Debtors and Guarantors

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

Section 44a – Secured Loans

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

Section 45 – Conversion of Claims

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

Section 46 – Recurring Performance

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

Section 47 – Segregation

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

Section 48 – Substitute Segregation

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

Section 49 – Separate Satisfaction from Immovable Assets

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

Section 50 – Separate Satisfaction of Pledges

- (1) In accordance with the provisions of sections 166 to 173, creditors who have a contractual lien, a lien acquired through levy of attachment or a statutory lien on an asset in the insolvency estate are entitled to separate satisfaction from the pledged asset in respect of their principal claim, interest and costs.
- (2) The statutory lien of a landlord or lessor cannot be claimed in insolvency proceedings in respect of rent covering a period earlier than the last twelve months prior to commencement of the insolvency proceedings, or in respect of damages payable as a consequence of the termination of the lease by the insolvency administrator. The lien of the lessor of an agricultural property is not subject to this restriction in respect of rent.

Section 51 – Other Creditors Entitled to Separate Satisfaction

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

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

Section 52 – Shortfall of Creditors Entitled to Separate Satisfaction

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

they waive the right to separate satisfaction or that separate satisfaction fails.

Section 53 – Preferential Creditors

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

Section 54 – Costs of the Insolvency Proceedings

The costs of the insolvency proceedings are:

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

Section 55 – Other Preferential Liabilities

- (1) Preferential liabilities are further:
 1. Liabilities that arise through the acts of the insolvency administrator or in any other way through the administration, realisation and distribution of the insolvency estate without forming part of the costs of the insolvency proceedings;
 2. Liabilities arising out of reciprocal contracts insofar as performance is demanded on behalf of the insolvency estate or if such a contract has to be performed after commencement of the insolvency proceedings;
 3. Liabilities resulting from unjust enrichment of the insolvency estate.
- (2) After commencement of the insolvency proceedings, liabilities created by a preliminary insolvency administrator in whom power of disposal over the debtor's assets has vested are deemed to be preferential liabilities. The same applies in respect of liabilities arising out of contracts for continuing obligations insofar as the preliminary insolvency administrator has claimed counter-performance in respect of the assets administered by him/her.
- (3) If justified wage claims pass to the Federal Employment Agency [*Bundesagentur für Arbeit*] under subsection (2), in accordance with section 169 of the Third Book of the Code of Social Security Law, the Federal Employment Agency may claim these only as an insolvency creditor. Sentence 1 applies with the necessary modifications in respect of the claims specified in section 175 (1) of the Third Book of the Code of Social Security Law insofar as these continue to exist against the debtor.

Commentary:

As a result of the Act to Improve the Chances of Integration in the Employment Market (*EinglVerbG*) of 20 December 2011 (*BGBI*, [Federal Law Gazette] I 2011, 2854), in Section 55 (3) sentence 1, “Section 187” was replaced by “Section 169”. In the second sentence, “Section 208 (1)” was replaced by “Section 175 (1)”. The changes came into force as of 1 April 2012.

- (4) After commencement of the insolvency proceedings, tax liabilities of the insolvency debtor created by a preliminary insolvency administrator or by the debtor with the consent of the preliminary insolvency administrator are deemed to be preferential liabilities.

Commentary:

In Section 55, the new paragraph 4 was introduced by the Act Accompanying the Budget 2011 (*HBeg/G 2011*) of 9 December 2010 (*BGBI*, [Federal Law Gazette] I 2010, 1885). The new rule applies for insolvency proceedings requested after 1 January 2011.

Chapter Three – Insolvency Administrator. Creditors’ Representative Bodies

Section 56 – Appointment of the Insolvency Administrator

- (1) The individual appointed as insolvency administrator shall be a natural person chosen from among all those persons willing to undertake insolvency administration work who is suitable in respect of the individual case, particularly experienced in business matters and independent of the creditors and of the debtor. Willingness to undertake insolvency administration work may be restricted to particular proceedings. The person’s requisite independence shall not be excluded merely by reason of the fact that the person
1. has been proposed by the debtor or by a creditor;
 2. advised the debtor in general terms on the course of insolvency proceedings and their consequences prior to the application for commencement of insolvency proceedings.
- (2) The insolvency administrator shall receive a certificate of appointment. When his/her office terminates, he/she must return the certificate to the insolvency court.

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

- (1) Prior to the appointment of the insolvency administrator the preliminary creditors’ committee shall be given the opportunity to make representations concerning the criteria for the appointment and the person of the insolvency administrator unless this will clearly lead to a prejudicial change in the debtor’s financial position.
- (2) The court may deviate from a unanimous recommendation of the preliminary creditors’ committee on the person to be appointed as insolvency administrator only if the proposed person is not suitable for appointment. The court has to base its choice of insolvency administrator on the criteria for the person of the insolvency administrator decided by the preliminary creditors’ committee.
- (3) If, having regard to a prejudicial change in the debtor’s financial position, the court refrains from holding a hearing pursuant to subsection (1), at its first meeting the preliminary creditors’ committee may unanimously choose a different person to the person appointed as insolvency administrator.

Section 57 – Election of a Different Insolvency Administrator

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

Section 58 – Supervision by the Insolvency Court

- (1) The insolvency administrator is subject to the supervision of the insolvency court. The court may request that the insolvency administrator provide specific information or a status and management report at any time.
- (2) If the insolvency administrator does not fulfil his/her duties, following prior warning the court may impose a penalty payment on him/her. An individual penalty payment may not exceed the sum of twenty-five thousand euros. The insolvency administrator has the right of immediate appeal against the decision imposing the penalty.
- (3) Subsection (2) applies with the necessary modifications in relation to the enforcement of the obligation incumbent on a dismissed insolvency administrator to surrender possession of assets.

Section 59 – Dismissal of the Insolvency Administrator

- (1) The insolvency court may remove the insolvency administrator from office for good cause. Such dismissal may occur ex officio or on application by the insolvency administrator, the creditors' committee or the creditors' meeting. The court shall hear the insolvency administrator prior to its decision.
- (2) The insolvency administrator has the right of immediate appeal against his/her dismissal. The insolvency administrator, the creditors' committee or, if the application was lodged by the creditors' meeting, each insolvency creditor, has the right of immediate appeal against the refusal of the application.

Section 60 – Liability of the Insolvency Administrator

- (1) The insolvency administrator shall be liable for damages to all parties to the proceedings if he/she intentionally or negligently breaches the duties incumbent upon him/her under this Code. In carrying out his/her duties he/she shall exercise the due care of a prudent and conscientious insolvency administrator.
- (2) If the insolvency administrator has to utilise employees of the debtor within the scope of their previous activities in order to fulfil the duties incumbent upon him/her and these employees are not clearly unsuitable in this regard, the insolvency administrator shall not be responsible for any fault on the part of such persons pursuant to section 278 of the Civil Code but shall be responsible only for their supervision and for decisions of particular importance.

Section 61 – Failure to Settle Preferential Liabilities

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

Section 62 – Limitation Period

The time-barring of the right to claim damages arising from a breach of duty on the part of the insolvency administrator is governed by the provisions on the standard limitation period under the Civil Code. The claim shall become time-barred at the latest three years from the date of termination of the insolvency proceedings or from the date on which the order discontinuing the proceedings became final. Sentence 2 applies

to breaches of duty committed in relation to subsequent distribution (section 203) or supervision of insolvency plan implementation (section 260) subject to the proviso that implementation of the subsequent distribution or termination of supervision takes the place of termination of the insolvency proceedings.

Section 63 – Remuneration of the Insolvency Administrator

- (1) The insolvency administrator is entitled to remuneration for the execution of his/her office and to reimbursement of reasonable expenses. The standard rate of remuneration is calculated on the basis of the value of the insolvency estate at the date of termination of the insolvency proceedings. Account shall be taken of the scope and complexity of the administrator's execution of office by means of derogations from the standard rate.
- (2) If the costs of the proceedings are deferred in accordance with section 4a, the insolvency administrator has a claim against the public treasury for his/her remuneration and expenses insofar as the insolvency estate is insufficient to cover these.

Section 64 – Insolvency Court's Power to Fix Remuneration

- (1) The insolvency court shall fix the insolvency administrator's remuneration and reimbursement of his/her expenses by order.
- (2) The order must be published and served separately on the insolvency administrator, the debtor and, if a creditors' committee has been appointed, on the members of the committee. The amounts fixed shall not be published; the public announcement shall make reference to the fact that the full order may be inspected at the court registry.
- (3) The insolvency administrator, the debtor and each insolvency creditor has the right of immediate appeal against the order. Section 567 (2) of the Code of Civil Procedure applies with the necessary modifications.

Section 65 – Power to Issue Statutory Orders

The Federal Ministry of Justice is authorised to issue detailed regulations concerning the remuneration and reimbursement of expenses of insolvency administrators by statutory order.

Section 66 – Presentation of Accounts

- (1) Upon termination of his/her office, the insolvency administrator shall present accounts to a creditors' meeting. A different arrangement may be agreed in the insolvency plan.

- (2) The insolvency court shall examine the administrator's final accounts prior to the creditors' meeting. It shall present the final accounts and supporting documents together with a statement concerning its review of the accounts and any comments by the creditors' committee, if one has been appointed, for inspection by the parties; the court may set a time limit for the creditors' committee to make its representations. The period between the presentation of the documents and the date of the creditors' meeting shall amount to at least one week.
- (3) The creditors' meeting may request the administrator to present interim accounts on specified dates during the proceedings. Subsections (1) and (2) shall apply with the necessary modifications.

Section 67 – Establishment of the Creditors' Committee

- (1) Prior to the first creditors' meeting the insolvency court may establish a creditors' committee.
- (2) The creditors entitled to separate satisfaction, the insolvency creditors with the largest claims and the minor creditors shall be represented on the creditors' committee. The committee should include a representative of the employees.
- (3) Persons who are not creditors may also be appointed as members of the creditors' committee.

Section 68 – Election of Different Members

- (1) The creditors' meeting decides whether a creditors' committee should be established. If the insolvency court has already established a creditors' committee, the creditors' meeting decides whether the committee should be retained.
- (2) The creditors' meeting may vote to dismiss the members appointed by the insolvency court and elect other or additional members of the creditors' committee.

Section 69 – Duties of the Creditors' Committee

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

Section 70 – Dismissal

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

the member has the right of immediate appeal against the decision.

Section 71 – Liability of Members of the Creditors' Committee

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

Section 72 – Resolutions of the Creditors' Committee

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

Section 73 – Remuneration of Members of the Creditors' Committee

- (1) The members of the creditors' committee are entitled to remuneration for their services and to reimbursement of reasonable expenses. Account shall be taken of the expenditure of time involved and the scope of activities performed.
- (2) Section 63 (2) and sections 64 and 65 apply with the necessary modifications.

Section 74 – Convening the Creditors' Meeting

- (1) The creditors' meeting is convened by the insolvency court. All creditors entitled to separate satisfaction, all insolvency creditors, the insolvency administrator, the members of the creditors' committee and the debtor are entitled to attend the meeting.
- (2) The time, place and agenda of the creditors' meeting shall be published. Publication is not required if a creditors' meeting adjourns negotiations.

Section 75 – Application to Convene a Creditors' Meeting

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

claims are assessed by the court as reaching two fifths of the total specified in number 3 above.

- (2) The period between receipt of the application and the date of the creditors' meeting should amount to no more than three weeks.
- (3) If the court refuses to convene a creditors' meeting, the applicant has the right of immediate appeal against the refusal.

Section 76 – Resolutions of the Creditors' Meeting

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

Section 77 – Determination of Voting Rights

- (1) Claims which have been filed, and which are not disputed either by the insolvency administrator or by a creditor entitled to vote, confer entitlement to a voting right. Subordinated creditors are not entitled to vote.
- (2) Creditors whose claims are disputed are entitled to vote insofar as this is agreed at the creditors' meeting by the administrator and the creditors entitled to vote who are present at the creditors' meeting. If no agreement is reached, the insolvency court shall decide the matter. The court may vary its decision on application by the administrator or a creditor present at the creditors' meeting.
- (3) Subsection (2) applies with the necessary modifications to
 1. creditors with claims subject to a condition precedent;
 2. creditors entitled to separate satisfaction.

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

- (1) If a resolution of the creditors' meeting is contrary to the common interest of the insolvency creditors, the insolvency court shall cancel the resolution if requested to do so at the creditors' meeting by a creditor entitled to separate satisfaction, a non-subordinated creditor or the insolvency administrator.
- (2) Cancellation of the resolution shall be published. Each creditor entitled to separate satisfaction and each non-subordinated creditor has the right of immediate appeal against the cancellation. The applicant has the right of immediate appeal

against the refusal of an application for cancellation of a resolution.

Section 79 – Provision of Information to the Creditors' Meeting

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

Part Three – Effects of Commencement of Insolvency Proceedings

Chapter One – General Effects

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

- (1) As a result of commencement of insolvency proceedings the right of the debtor to manage and dispose of the assets of the insolvency estate vests in the insolvency administrator.
- (2) An existing prohibition of disposal imposed on the debtor that is only intended to protect particular persons (sections 135 and 136 of the Civil Code) is of no effect in the proceedings. The provisions regulating the effects of an attachment or a seizure by way of compulsory enforcement remain unaffected.

Section 81 – Disposals by the Debtor

- (1) If the debtor has disposed of an asset in the insolvency estate after commencement of the insolvency proceedings, the disposal is ineffective. Sections 892 and 893 of the Civil Code, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction [*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*] and sections 16 and 17 of the Act Governing Rights in Aircraft [*Gesetz über Rechte an Luftfahrzeugen*] remain unaffected. The consideration shall be refunded to the other party out of the insolvency estate to the extent that the insolvency estate is thereby enriched.
- (2) Subsection (1) applies to a disposal of future claims to emoluments due to the debtor under a service contract, or to recurring emoluments replacing them, insofar as the disposal also affects emoluments for the period after termination of the insolvency proceedings. The right of the debtor to assign these emoluments to a trustee for the purpose of the collective satisfaction of the insolvency creditors remains unaffected.

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

Section 82 – Performance in Favour of the Debtor

If the debtor receives performance in settlement of a liability after commencement of insolvency proceedings, although the liability was to be settled to the credit of the insolvency estate, the performing party shall be discharged of liability if it⁴ was unaware of the commencement of proceedings at the time of its performance. If performance was effected prior to publication of the order for commencement of proceedings, it shall be presumed that the said party was unaware of the commencement of proceedings.

Section 83 – Inheritance. Continued Community of Property

- (1) If an inheritance or legacy has accrued to the debtor prior to commencement of insolvency proceedings, or if this occurs during the proceedings, the debtor alone is entitled to accept or renounce such inheritance or legacy. The same applies in relation to the rejection of continued community of property.
- (2) If the debtor is a prior heir, the insolvency administrator may not dispose of the assets of the inheritance if the disposal would be ineffective with respect to the subsequent heir pursuant to section 2115 of the Civil Code in the event of subsequent succession occurring.

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

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

the cancellation of co-ownership in perpetuity or temporarily, or which designates a period of notice, is of no effect in the proceedings. The same shall apply to a clause with this content in a testator's will in respect of the co-ownership of his/her heirs and to a corresponding agreement by the co-heirs.

Section 85 – Resumption of Court Proceedings as Claimant

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

Section 86 – Resumption of Particular Court Proceedings as Defendant

- (1) Court proceedings pending against the debtor at the time of commencement of insolvency proceedings may be resumed both by the insolvency administrator and by the opposing party if they affect:
1. the segregation of an asset from the insolvency estate;
 2. separate satisfaction or
 3. a preferential liability.
- (2) If the insolvency administrator acknowledges the claim immediately, the opposing party may only claim reimbursement of the costs of the court proceedings as an insolvency creditor.

Section 87 – Claims of the Insolvency Creditors

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

Section 88 – Enforcement Prior to Commencement of Insolvency Proceedings

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

⁴) This reference should be construed as referring to male and female natural persons and legal entities.

Section 89 – Prohibition of Enforcement

- (1) During insolvency proceedings compulsory enforcement on behalf of individual insolvency creditors is not permitted against the insolvency estate or the other assets of the debtor.
- (2) During insolvency proceedings compulsory enforcement against future claims to emoluments due to the debtor under a service contract, or to recurring emoluments replacing them, is not permitted, including on behalf of creditors who are not insolvency creditors. This does not apply to compulsory enforcement for a maintenance claim or for a claim based on an intentional tort against the part of the emoluments which is not subject to attachment on behalf of other creditors.
- (3) The insolvency court shall decide on any objections raised against the admissibility of compulsory enforcement on the basis of subsections (1) and (2). The court may issue an interim order prior to its decision; it may, in particular, order the temporary suspension of compulsory enforcement with or without the condition of provision of security or that compulsory enforcement may only be continued subject to the provision of security.

Section 90 – Prohibition of Enforcement in Relation to Preferential Liabilities

- (1) Compulsory enforcement in respect of preferential liabilities not resulting from legal acts by the insolvency administrator is not permitted for a period of six months from the date of commencement of insolvency proceedings.
- (2) The following liabilities are not regarded as such preferential liabilities:
 1. liabilities arising out of a reciprocal contract which the administrator has opted to perform;
 2. liabilities arising out of a contract for continuing obligations for the period after the first date on which the administrator could have terminated the contract;
 3. liabilities arising out of a contract for continuing obligations insofar as the administrator claims counter-performance on behalf of the insolvency estate.

Section 91 – Exclusion of Other Acquisition of Rights

- (1) After commencement of insolvency proceedings, rights in the assets of the insolvency estate cannot be validly acquired even if such acquisition is not based on a disposal by the debtor or compulsory enforcement on behalf of an insolvency creditor.
- (2) Sections 878, 892 and 893 of the Civil Code, section 3 (3) and sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships

under Construction, section 5 (3) and sections 16 and 17 of the Act Governing Rights in Aircraft and section 20 (3) of the Maritime Distribution Regulations [*Schiffahrtsrechtliche Verteilungsordnung*] remain unaffected.

Section 92 – Collective Loss

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

Section 93 – Personal Liability of Partners

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

Section 94 – Maintenance of a Set-off Position

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

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

- (1) If, at the time when insolvency proceedings are commenced, one or more of the claims to be set off are still subject to a condition precedent or are not due, or if the claims are not yet based on performance of an equivalent nature, set-off can only occur once the prerequisites for set-off are met. Sections 41 and 45 shall not apply. Set-off is excluded if the claim against which set-off is to be exercised becomes unconditional and due before set-off can occur.
- (2) Set-off shall not be excluded by reason of the fact that the claims are expressed in different currencies or units of account if these currencies or units of account are freely exchangeable at the place of payment of the claim against which set-off is to be exercised. The conversion shall be made on the basis of the exchange rate effective for this place at the time of receipt of the set-off declaration.

Section 96 – Inadmissibility of Set-off

- (1) Set-off is inadmissible if
 1. an insolvency creditor has become indebted to the insolvency estate only after commencement of insolvency proceedings;
 2. an insolvency creditor has acquired its claim from another creditor only after commencement of insolvency proceedings;
 3. an insolvency creditor has acquired the opportunity to set off a claim through an avoidable legal act;
 4. a creditor whose claim is to be satisfied from the debtor's free assets is indebted to the insolvency estate.
- (2) Subsection (1) and also section 95 (1) sentence 3 shall not prevent the disposal of financial collateral within the meaning of section 1 (17) of the Banking Act or the settlement of claims and performance under payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities brought into systems pursuant to section 1 (16) of the Banking Act which serves to implement such contracts, provided settlement occurs at the latest on the day of commencement of insolvency proceedings; if the other party is a system operator or a participant in the system the day of commencement of insolvency proceedings shall be determined in accordance with the meaning of business day in section 1 (16b) of the Banking Act.

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

- (1) The debtor must disclose information regarding all circumstances relevant to the insolvency proceedings to the insolvency court, the insolvency administrator, the creditors' committee and, if ordered to do so by the court, the creditors' meeting. The debtor shall also disclose any facts which may result in a prosecution for the commission of a criminal offence or an administrative offence. However, any information disclosed by the debtor in accordance with the obligation under subsection (1) shall be used against the debtor or any relative of the debtor specified in section 52 (1) of the Code of Criminal Procedure [*Strafprozeßordnung*] in criminal proceedings or in proceedings under the Act on Breaches of Administrative Regulations [*Gesetz über Ordnungswidrigkeiten*] only with the debtor's consent.
- (2) The debtor must support the administrator in the performance of his/her duties.
- (3) On the order of the court the debtor has to be available at any time to fulfil his/her obligations of disclosure and co-operation. The debtor must refrain from all acts adversely affecting the performance of these obligations.

Section 98 – Enforcement of the Debtor's Obligations

- (1) If considered necessary by the insolvency court for obtaining truthful testimony, the insolvency court shall order the debtor to affirm for the record in an affidavit that to the best of his/her knowledge and belief the information requested of him/her which he/she has provided is accurate and complete. Sections 478 to 480 and 483 of the Code of Civil Procedure apply with the necessary modifications.
- (2) The court may order the debtor's compulsory attendance and order the debtor to be detained after the hearing
 1. if the debtor refuses to disclose information or to provide an affidavit or to co-operate in relation to the performance of the insolvency administrator's duties;
 2. if the debtor attempts to evade the fulfilment of his/her obligations of disclosure and co-operation, in particular by making preparations to abscond; or
 3. if this is necessary to prevent acts by the debtor adversely affecting the performance of his/her obligations of disclosure and co-operation, in particular to secure the insolvency estate.
- (3) Sections 904 to 906, 909, 910 and 913 of the Code of Civil Procedure apply to the detention order with the necessary modifications. The arrest warrant shall be cancelled by the court ex officio as soon as the prerequisites for the detention order are no longer present. There is a right of immediate appeal against the detention order and against the dismissal of an application for cancellation of the arrest warrant on the grounds that the prerequisites for detention have ceased to exist.

Commentary:

In Section 98, paragraph 3 sentence 1 was amended by the Act to Reform the Clarification of Facts in Enforcement (*ZwVollStrÄndG*) of 29 July 2009 (*BGBI.* [Federal Law Gazette] I 2009, 2258). This act concerns amendments to other legal provisions (*BT-Drucks.* [Bundestag Printed Paper] 16/10069). So that practice has time to adjust to this amendment, it will not enter into force until 1 January 2013. The above-cited text is that applicable from 1 July 2007 until 31 December 2012. As of 1 January 2013, in Section 98 (3) sentence 1, "Sections 904 to 906, 909, 910 and 913" will be replaced by "Section 802g (2), Sections 802h and 802j (1)".

Section 99 – Postal Redirection Order

- (1) On application by the insolvency administrator or ex officio, the insolvency court shall order in a substantiated decision that the companies specified in the order redirect all or specific parts of the mail for the debtor to the insolvency administrator if such a measure appears to be necessary in order to investigate or prevent legal acts by the debtor which are prejudicial to the creditors. The order shall be issued after the debtor has been heard, provided this will not jeopardise the objective of the order due to the particular circumstances of the individual case. If the order is issued without the debtor being heard beforehand, this shall be substantiated separately in the decision and the hearing shall take place without delay thereafter.
- (2) The insolvency administrator is entitled to open the mail which is redirected to him/her. Communications which are unrelated to the insolvency estate must be forwarded to the debtor without delay. The remaining mail may be inspected by the debtor.
- (3) The debtor has the right of immediate appeal against the postal redirection order. The court shall revoke the order after hearing the insolvency administrator if the prerequisites for it cease to exist.

Section 100 – Maintenance out of the Insolvency Estate

- (1) The creditors' meeting decides whether and to what extent the debtor and his/her family should be granted maintenance out of the insolvency estate.
- (2) Until the creditors' meeting has reached its decision the insolvency administrator may, with the consent of the creditors' committee if one has been appointed, grant the debtor the necessary maintenance. Maintenance may be granted in the same manner to the debtor's minor unmarried children, spouse, former spouse, civil partner or former civil partner and to the other parent of his/her child in respect of the entitlement under sections 1615l and 1615n of the Civil Code.

Section 101 – Members of the Representative Body. Employees

- (1) If the debtor is not a natural person, sections 97 to 99 apply with the necessary modifications to the members of the debtor's representative or supervisory body and to the debtor's general partners with the power of representation. In addition, section 97 (1) and section 98 apply with the necessary modifications to persons who resigned from a position specified in sentence 1 not more than two years prior to the application for

commencement of insolvency proceedings; if the debtor does not have any representatives, this shall also apply to the parties holding a participating interest in the debtor. Section 100 applies with the necessary modifications to the debtor's general partners with the power of representation.

- (2) Section 97(1) sentence 1 applies with the necessary modifications to employees and former employees of the debtor insofar as they left the debtor's employment not more than two years prior to the application for commencement of insolvency proceedings.
- (3) If the persons specified in subsections (1) and (2) do not comply with their obligations of disclosure and co-operation, they may be ordered to bear the costs of the proceedings if the application for commencement of insolvency proceedings is rejected.

Section 102 – Restriction of a Basic Right

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

Chapter Two – Performance of Transactions. Co-operation of the Works Council**Section 103 – Insolvency Administrator's Right of Choice**

- (1) If a reciprocal contract has not been performed or has not been fully performed by the debtor and the other party at the time when insolvency proceedings are commenced, the insolvency administrator may perform the contract in place of the debtor and demand performance from the other party.
- (2) If the administrator refuses to perform the contract, the other party may assert a claim for non-performance only as an insolvency creditor. If the other party requests that the insolvency administrator exercise his/her right of choice, the administrator must declare without delay whether or not he/she wishes to demand performance of the contract. If he/she fails to do so, he/she cannot insist on performance.

Section 104 – Fixed Term Transactions. Financial Services

- (1) If a precise delivery date or period was agreed for goods with a market or exchange price and the date or expiry of the period occurs only after the commencement of insolvency proceedings, performance of the contract cannot be claimed; only a claim for non-performance can be asserted.

- (2) If a specific date or period was agreed for financial services with a market or exchange price and the date or expiry of the period occurs only after the commencement of insolvency proceedings, performance of the contract cannot be claimed; only a claim for non-performance can be asserted. Financial services include, in particular, the following:

1. the delivery of precious metals;
2. the delivery of securities or similar rights, provided the acquisition of a participating interest in a company is not intended to create a durable link to this company;
3. cash payments to be made in foreign currency or in a unit of account;
4. cash payments, the amount of which is determined directly or indirectly by means of the exchange rate of a foreign currency or unit of account, the interest rate on claims or the price of other goods or services;
5. options and other rights to deliveries or cash payments within the meaning of numbers 1 to 4;
6. financial collateral arrangements within the meaning of section 1 (17) of the Banking Act.

If transactions for financial services are combined in a master agreement in which agreement is reached that, if a ground for insolvency exists, it can only be terminated in its entirety, all these individual transactions shall be regarded as a single reciprocal contract for the purpose of sections 103 and 104.

- (3) The claim for non-performance is based on the difference between the agreed price and the market or exchange price applicable at the place of performance for a contract with the agreed fulfilment date on a date agreed by the parties, but no later than on the fifth business day after commencement of insolvency proceedings. If the parties do not reach agreement, the second business day after commencement of insolvency proceedings shall be applicable. The other party may assert such a claim only as an insolvency creditor.

Section 105 – Divisible Performance

If the performance owed under a contract is divisible and the other party has already partially provided the performance due by it⁵ at the time of commencement of insolvency proceedings, this party is an insolvency creditor for the amount of its claim to counter-performance corresponding to the partial performance, even if the insolvency administrator demands performance in relation to the performance still outstanding. The other party is not entitled to claim the return of any

partial performance that passed into the debtor's assets prior to commencement of proceedings from the insolvency estate on the grounds of non-performance of its claim to counter-performance.

Section 106 – Priority Notice

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

Section 107 – Retention of Title

- (1) If the debtor sold a movable item subject to retention of title and transferred possession to the purchaser prior to commencement of insolvency proceedings, the purchaser may demand performance of the purchase contract. This shall also apply if the debtor assumed additional obligations towards the purchaser and these have not been fulfilled or have not been fulfilled in their entirety.
- (2) If the debtor purchased a movable item subject to retention of title and acquired possession of the item from the seller prior to commencement of insolvency proceedings, the insolvency administrator who has been requested by the seller to exercise his/her right of choice does not have to make his/her declaration pursuant to section 103 (2) sentence 2 until immediately after the report meeting. This shall not apply if a significant reduction in the value of the item can be expected during the period up to the report meeting and if the creditor has informed the insolvency administrator of this circumstance.

Section 108 – Continuation of Particular Contractual Obligations

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

⁵ This reference should be construed as referring to male and female natural persons and legal entities.

party who financed their acquisition or production.

- (2) A loan agreement entered into by the debtor as lender shall continue to exist with effect for the insolvency estate insofar as the object owed has been made available to the borrower.
- (3) Claims for the period prior to commencement of insolvency proceedings may be asserted by the other party only as an insolvency creditor.

Section 109 – Debtor as Tenant or Lessee

- (1) A tenancy or lease entered into by the debtor in relation to immovable property or premises as tenant or lessee may be terminated by the insolvency administrator irrespective of the agreed contractual term or an agreed exclusion of the ordinary right of termination; the notice period shall amount to three months to the end of a month unless a shorter notice period is applicable. If the subject matter of the tenancy is the debtor's dwelling house, termination shall be replaced by the right of the insolvency administrator to declare that claims which become due after the expiry of the period specified in sentence 1 cannot be asserted in the insolvency proceedings. If the administrator effects termination pursuant to sentence 1 or if he/she makes a declaration pursuant to sentence 2, the other party may claim damages as an insolvency creditor in respect of the premature termination of the contractual relationship or in respect of the consequences of the declaration.
- (2) If the debtor had not yet taken possession of the immovable property or premises at the time of commencement of insolvency proceedings, both the insolvency administrator and the other party may withdraw from the contract. If the insolvency administrator withdraws from the contract, the other party may claim damages as an insolvency creditor in respect of the premature termination of the contractual relationship. Each party must notify the other party on request within two weeks as to whether it⁶ wishes to withdraw from the contract; if the party in question fails to do so, such party loses the right to withdraw from the contract.

Section 110 – Debtor as Landlord or Lessor

- (1) If the debtor, as landlord or lessor of immovable property or premises, disposed of future claims for rent prior to commencement of insolvency proceedings, this disposal shall be effective only insofar as it relates to the rent for the calendar month during which insolvency proceedings are

commenced. If insolvency proceedings are commenced after the fifteenth day of a month, the disposal shall be effective also in respect of the following calendar month.

- (2) A disposal within the meaning of subsection (1) includes, in particular, the collection of rent. A disposal effected by means of compulsory enforcement shall be equivalent to an act disposing of a right.
- (3) The tenant or lessee may set off a claim held against the debtor against the claim for rent for the period specified in subsection (1). Sections 95 and 96 Nos 2 to 4 remain unaffected.

Section 111 – Sale of Let or Leased Property

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

Section 112 – Prohibition of Termination

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

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

Section 113 – Termination of a Service Contract

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

Section 114 – Emoluments from a Service Contract

- (1) If the debtor assigned or pledged a claim to future emoluments under a service contract, or to recurring emoluments replacing them, prior to commencement of insolvency proceedings, this disposal is effective only insofar as it relates to the emoluments for the period prior to the expiry

⁶ This reference should be construed as referring to male and female natural persons and legal entities.

of two years from the end of the calendar month during which insolvency proceedings are commenced.

- (2) The party liable for the emoluments may set off a claim to which it⁷ is entitled in relation to the debtor against the claim to the emoluments for the period specified in subsection (1). Sections 95 and 96 Nos 2 to 4 remain unaffected.
- (3) If future emoluments were disposed of by way of compulsory enforcement prior to commencement of the proceedings, this disposal shall be effective only insofar as it relates to the emoluments for the calendar month during which insolvency proceedings are commenced. If insolvency proceedings are commenced after the fifteenth day of a month, the disposal shall be effective also in respect of the following calendar month. Section 88 remains unaffected; section 89 (2) sentence 2 applies with the necessary modifications.

Section 115 – Extinguishment of Mandates

- (1) A mandate issued by the debtor relating to the assets of the insolvency estate is extinguished upon commencement of insolvency proceedings.
- (2) If suspension of the mandate represents a risk, the mandated party shall continue to handle the transferred business until the insolvency administrator is able to take care of the business himself/herself. The mandate shall be deemed to continue to this extent. The mandated party is a preferential creditor in respect of the claims to reimbursement arising from this continuation of the mandate.
- (3) If the mandated party is unaware of the commencement of insolvency proceedings through no fault on its⁸ part, the mandate shall be deemed to continue to its benefit. The mandated party is an insolvency creditor in respect of the claims to reimbursement arising from this continuation of the mandate.

Section 116 – Extinguishment of Business

Management Contracts

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

aries or orders for the transfer of securities; these shall continue to apply with effect for the insolvency estate.

Section 117 – Extinguishment of Powers of Attorney

- (1) A power of attorney issued by the debtor relating to the assets of the insolvency estate is extinguished upon commencement of insolvency proceedings.
- (2) If a mandate or a business management contract continues pursuant to section 115 (2), the power of attorney shall also be deemed to continue.
- (3) If the authorised representative is unaware of the commencement of insolvency proceedings through no fault on his/her part, he/she shall not be liable under section 179 of the Civil Code.

Section 118 – Dissolution of Companies

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

Section 119 – Invalidity of Divergent Agreements

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

Section 120 – Termination of Works Agreements

- (1) If provision is made in works agreements for benefits that burden the insolvency estate, the insolvency administrator and the works council shall consult on a mutually agreed reduction in the benefits. Such works agreements may also be terminated subject to three months' notice, even if a longer notice period has been agreed.
- (2) The right to terminate a works agreement for good cause without notice remains unaffected.

Section 121 – Operational Changes and Conciliation Proceedings

In insolvency proceedings relating to the assets of the employer, section 112 (2) sentence 1 of the Works Constitution Act [*Betriebsverfassungsgesetz*] applies subject to the proviso that the proceedings before the conciliation committee shall be preceded by an attempt at mediation only

7) This reference should be construed as referring to male and female natural persons and legal entities.

8) This reference should be construed as referring to male and female natural persons and legal entities.

if the insolvency administrator and the works council jointly seek conciliation.

Section 122 – Judicial Approval for Undertaking an Operational Alteration

- (1) If an operational alteration is planned and no agreement on a reconciliation of interests can be reached between the insolvency administrator and the works council pursuant to section 112 of the Works Constitution Act within three weeks from the date of commencement of negotiations or of a written request to commence negotiations, despite the administrator having provided comprehensive information to the works council in good time, the insolvency administrator may apply for the approval of the Labour Court to the implementation of the operational alteration without this being preceded by proceedings pursuant to section 112 (2) of the Works Constitution Act. To this extent section 113 (3) of the Works Constitution Act shall not be applicable. The right of the insolvency administrator to bring about a reconciliation of interests pursuant to section 125 or to lodge an application for declaratory judgment pursuant to section 126 remains unaffected.
- (2) The court shall grant its approval if the financial position of the enterprise, taking into consideration the social interests of the employees as well, requires the operational alteration to be implemented without prior proceedings pursuant to section 112 (2) of the Works Constitution Act. The provisions of the Labour Court Act [*Arbeitsgerichtsgesetz*] concerning court order proceedings apply with the necessary modifications; the parties to the proceedings are the insolvency administrator and the works council. The application shall be dealt with as a matter of priority in accordance with section 61a (3) to (6) of the Labour Court Act.
- (3) There is no right of appeal against the decision of the court to the Higher Labour Court. An appeal may be brought before the Federal Labour Court if this is allowed in the decision of the Labour Court; section 72 (2) and (3) of the Labour Court Act shall apply with the necessary modifications. The substantiated appeal must be lodged with the Federal Labour Court within one month of service of the Labour Court's full written decision.

Section 123 – Scope of the Social Compensation Plan

- (1) In order to compensate for or mitigate the financial prejudice sustained by employees as a result of the planned operational alteration, a social compensation plan drawn up subsequent to commencement of insolvency proceedings may provide for a total of up to two and a half months'

salary (section 10 (3) of the Protection Against Unfair Dismissal Act [*Kündigungsschutzgesetz*]) for the employees affected by dismissal.

- (2) The liabilities under such a social compensation plan are preferential liabilities. However, if an insolvency plan does not materialise, not more than one third of the insolvency estate which would be available for distribution to the insolvency creditors in the absence of a social compensation plan may be used for the settlement of social compensation plan claims. If the total amount of all social compensation plan claims exceeds this limit, the individual claims shall be reduced proportionately.
- (3) Whenever sufficient liquid funds are available in the insolvency estate, with the approval of the insolvency court the insolvency administrator shall make payments on account towards the social compensation plan claims. Compulsory enforcement against the insolvency estate is not permitted in respect of a social compensation plan claim.

Section 124 – Social Compensation Plan Prior to Commencement of Insolvency Proceedings

- (1) A social compensation plan drawn up prior to the commencement of insolvency proceedings but no earlier than three months prior to the application for commencement of insolvency proceedings may be revoked by the insolvency administrator or by the works council.
- (2) If the social compensation plan is revoked, the employees entitled to claims under the social compensation plan may be taken into account if a social compensation plan is drawn up within the insolvency proceedings.
- (3) Benefits received by employees towards their claims from the revoked social compensation plan prior to commencement of insolvency proceedings cannot be reclaimed on the grounds of the revocation. When a new social compensation plan is drawn up, in calculating the total amount of the social compensation plan claims pursuant to section 123 (1), such benefits to dismissed employees shall be deducted to the extent of up to two and a half months' salary.

Section 125 – Reconciliation of Interests and Protection against Dismissal

- (1) If an operational alteration (section 111 of the Works Constitution Act) is planned and the employees who are to be dismissed are designated by name in a reconciliation of interests between the insolvency administrator and the works council, section 1 of the Protection Against Unfair Dismissal Act shall apply subject to the provisos that:

1. it shall be presumed that termination of the employment contracts of the designated employees is due to compelling operational requirements which preclude the continued employment of the employees in the company or their continued employment on unchanged terms of employment;
 2. selection of employees on the basis of social criteria may be reviewed only with respect to length of service, age and maintenance obligations and in this respect only for gross errors; the maintenance or creation of a balanced personnel structure shall not be regarded as grossly erroneous. Sentence 1 shall not apply if circumstances have significantly changed since the reconciliation of interests was achieved.
- (2) The reconciliation of interests under subsection (1) replaces the work council's right to comment pursuant to section 17 (3) sentence 2 of the Protection Against Unfair Dismissal Act.

Section 126 – Court Order Proceedings Relating to Protection Against Dismissal

- (1) If the company does not have a works council or if no reconciliation of interests in accordance with section 125 (1) is achieved on other grounds within three weeks from the date of commencement of negotiations or of a written request to commence negotiations, despite the administrator having provided comprehensive information to the works council in good time, the insolvency administrator may apply for a declaration by the Labour Court that the termination of the employment of the specific employees designated in the application is due to compelling operational requirements and justified on social grounds. The selection of employees on the basis of social criteria may be reviewed only with respect to length of service, age and maintenance obligations.
- (2) The provisions of the Labour Court Act relating to court order proceedings apply with the necessary modifications; the parties to the proceedings are the insolvency administrator, the works council and the designated employees, insofar as they do not agree to the termination of their employment or to the amended terms of employment. Section 122 (2) sentence 3 and (3) apply with the necessary modifications.
- (3) Section 12a (1) sentences 1 and 2 of the Labour Court Act apply with the necessary modifications to the costs incurred by the parties in the proceedings at first instance. In the proceedings before the Federal Labour Court, the provisions of the Code of Civil Procedure relating to the payment of the costs of the proceedings apply with the necessary modifications.

Section 127 – Legal Action by an Employee

- (1) If the insolvency administrator gives notice to an employee who is designated in the application pursuant to section 126 (1) and the employee brings an action for declaratory judgment that his/her employment is not terminated by the dismissal or that the change to his/her terms of employment is unjustified on social grounds, the final judgment in the proceedings under section 126 shall be binding on both parties. This shall not apply if circumstances have changed significantly since the last hearing.
- (2) If the employee brings an action before the decision in the proceedings under section 126 has become final, on application by the insolvency administrator the hearing of the action shall be suspended until this time.

Section 128 – Sale of Business Operation

- (1) The application of sections 125 to 127 shall not be excluded by reason of the fact that the operational alteration on which the reconciliation of interests or the application for declaratory judgment is based is to be implemented only after the sale of a business operation. The acquirer of the business operation shall be a party to the proceedings under section 126.
- (2) In the case of a transfer of undertakings, the presumption pursuant to section 125 (1) sentence 1 No. 1 or the declaration by the court pursuant to section 126 (1) sentence 1 shall also be to the effect that the employment relationship is not being terminated by reason of the transfer of undertakings.

Chapter Three – Avoidance in Insolvency

Section 129 – Principle

- (1) Legal acts undertaken prior to commencement of insolvency proceedings which are prejudicial to the insolvency creditors may be avoided by the insolvency administrator in accordance with sections 130 to 146.
- (2) An omission is deemed to be equivalent to a legal act.

Section 130 – Congruent Coverage

- (1) A legal act providing security to or enabling the satisfaction of an insolvency creditor may be avoided if it was undertaken
 1. during the three months prior to the application for commencement of insolvency proceedings, if the debtor was illiquid at the time when the act was undertaken and if the creditor was aware at that time of the debtor's illiquidity or
 2. after the application for commencement of insolvency proceedings is filed and if the creditor

was aware of the debtor's illiquidity or of the application for commencement of insolvency proceedings when the act was undertaken.

This shall not apply if the legal act is based on a financial collateral arrangement containing an obligation to provide financial collateral, other financial collateral or additional financial collateral within the scope of section 17 (1) of the Banking Act in order to restore the ratio agreed in the financial collateral arrangement between the value of the secured liabilities and the value of the collateral (margin collateral).

- (2) Awareness of circumstances that necessarily indicate the debtor's illiquidity or the application for the commencement of proceedings is deemed to be equivalent to awareness of the debtor's illiquidity or of the application for commencement of proceedings.
- (3) A person with a close relationship to the debtor at the time when the act was undertaken (section 138) shall be presumed to have been aware of the debtor's illiquidity or of the application for commencement of proceedings.

Section 131 – Incongruent Coverage

- (1) A legal act providing security to or enabling the satisfaction of an insolvency creditor to which the creditor had no right or no right to claim in that manner or at that time may be avoided if it was undertaken
 1. during the month prior to the date of the application for commencement of insolvency proceedings or following such application;
 2. within the second or third month prior to the date on which the application for commencement of insolvency proceedings is filed and the debtor was illiquid when the act took place or
 3. within the second or third month prior to the date on which the application for commencement of insolvency proceedings is filed and the creditor was aware when the act took place that it would prejudice the insolvency creditors.
- (2) For application of subsection (1) No. 3, awareness of circumstances that necessarily indicate prejudice to the insolvency creditors is deemed to be equivalent to awareness of the prejudice to the insolvency creditors. A person with a close relationship to the debtor when the act was undertaken (section 138) shall be presumed to have been aware of the prejudice to the insolvency creditors.

Section 132 – Legal Acts Directly Prejudicial to the Insolvency Creditors

- (1) A transaction by the debtor that is directly prejudicial to the insolvency creditors may be avoided if it is entered into

1. during the three months prior to the date of the application for commencement of insolvency proceedings, if at the time the transaction took place, the debtor was illiquid and the other party to the transaction was aware of the debtor's illiquidity when the transaction took place or
2. after the application for commencement of insolvency proceedings has been filed and if the other party to the transaction was aware of the debtor's illiquidity or of the application for commencement of insolvency proceedings when the transaction took place.

- (2) Any other transaction by the debtor as a result of which the debtor loses a right or is no longer able to assert such right or as a result of which a pecuniary claim against the debtor is maintained or becomes enforceable is deemed to be equivalent to a transaction that is directly prejudicial to the insolvency creditors.
- (3) Section 130 subsections (2) and (3) apply with the necessary modifications.

Section 133 – Intentional Prejudice

- (1) A legal act which was intended to prejudice its creditors undertaken by the debtor during the ten years prior to the date of the application for commencement of insolvency proceedings, or after the date of the application, may be avoided if the other party was aware of the debtor's intention when the legal act was undertaken. Such awareness shall be presumed if the other party was aware of the debtor's imminent illiquidity and that the act would prejudice the creditors.
- (2) A contract for pecuniary interest entered into by the debtor with a closely connected person (section 138) which is directly prejudicial to the insolvency creditors may be avoided. Avoidance is excluded if the contract was entered into more than two years prior to the date of the application for commencement of insolvency proceedings or if at the time the contract was concluded, the other party to the contract was unaware of the debtor's intention to prejudice the creditors.

Section 134 – Gratuitous Performance

- (1) Gratuitous performance by the debtor may be avoided unless it took place more than four years prior to the date of the application for commencement of insolvency proceedings.
- (2) Performance provided in return for a customary occasional gift of small value is not subject to avoidance.

Section 135 – Shareholder Loans

- (1) A legal act which, in respect of the claim of a shareholder to repayment of a loan within the

meaning of section 39 (1) No. 5 or an equivalent claim,

1. provided security, if the act was undertaken during the ten years prior to the application for commencement of insolvency proceedings or after the application has been filed; or
 2. satisfied the claim, if the act was undertaken during the year prior to the application for commencement of insolvency proceedings or after the application has been filed may be avoided.
- (2) A legal act undertaken by a company within the time frames specified in subsection (1) No. 2 in order to satisfy a third party's claim to repayment of a loan may be avoided if a shareholder had provided security or was liable as surety for such claim. This shall also apply with the necessary modifications to payments on claims equivalent in economic terms to a loan.
- (3) If the debtor has been granted an asset for use or exercise by a shareholder, the shareholder's right to segregation cannot be claimed for the duration of the insolvency proceedings, but for a maximum period of one year from the date of commencement of the insolvency proceedings, if the asset is of substantial importance for the continuation of the debtor's business. The shareholder is entitled to compensation for the use or exercise of the asset which shall be calculated on the basis of the average remuneration paid during the year preceding the commencement of insolvency proceedings; if the asset has been provided for use or exercise for a shorter period, the average remuneration during this period is applicable.
- (4) Section 39 subsections (4) and (5) apply with the necessary modifications.

Section 136 – Silent Partnership

- (1) A legal act by means of which a silent partner's capital contribution is wholly or partially repaid or a silent partner's share of accrued losses is wholly or partially waived may be avoided if the underlying agreement was entered into during the year prior to the application for commencement of insolvency proceedings relating to the assets of the owner of the business or after the filing of the application. This shall also apply even if the silent partnership has been dissolved in connection with the agreement.
- (2) Avoidance is excluded if a ground for commencement of insolvency proceedings arose only after the agreement was concluded.

Section 137 – Bill of Exchange and Cheque Payments

- (1) Bill of exchange payments by the debtor cannot be reclaimed from the payee on the basis of section 130 if, in accordance with the law on bills of

exchange, the payee would have lost its⁹ claim under the bill of exchange against other parties liable on the bill upon refusal to accept payment.

- (2) The amount paid on a bill of exchange shall, however, be refunded by the last party liable for recourse or, if the latter endorsed the bill of exchange in favour of a third party, by the third party if the last party liable for recourse or the third party was aware of the debtor's illiquidity or of the application for commencement of insolvency proceedings at the time when it endorsed the bill of exchange or caused it to be endorsed. Section 130 subsections (2) and (3) apply with the necessary modifications.
- (3) Subsections (1) and (2) apply with the necessary modifications to cheque payments by the debtor.

Section 138 – Closely Connected Persons

- (1) If the debtor is a natural person, closely connected persons are:
1. the debtor's spouse, even if the marriage did not take place until after the legal act or was dissolved during the year prior to the legal act;
 - 1a. the debtor's civil partner, even if the civil partnership was entered into only after the legal act or was dissolved during the year prior to the legal act;
 2. the ascendants and descendants of the debtor or of the debtor's spouse as specified in number 1 above or of the debtor's civil partner as specified in number 1a above and also full and half-siblings of the debtor or of the debtor's spouse as specified in number 1 above or of the debtor's civil partner as specified in number 1a above as well as the spouses or civil partners of these persons;
 3. persons living in the household of the debtor or having lived in the household of the debtor during the year prior to the legal act and also persons who have the opportunity to become aware of the debtor's financial circumstances by virtue of a contractual connection to the debtor under a service contract;
 4. a legal entity or a company without legal personality, if the debtor or one of the persons mentioned in numbers 1 to 3 is a member of the representative or supervisory body, a general partner or holds more than one quarter of its capital or has the opportunity by virtue of a comparable connection on the basis of company law or of a service contract to become aware of the debtor's financial circumstances.
- (2) If the debtor is a legal entity or a company without legal personality, closely connected persons are:

⁹ This reference should be construed as referring to male and female natural persons and legal entities.

1. the members of the debtor's representative or supervisory body and general partners of the debtor and also persons who hold more than one quarter of the debtor's capital;
2. a person or company with the opportunity to become aware of the debtor's financial circumstances by virtue of a comparable connection to the debtor on the basis of company law or a service contract;
3. a person with a personal connection as detailed in subsection (1) to one of the persons specified in number 1 or 2; this shall not apply if the persons specified in number 1 or 2 are bound by law to secrecy in relation to the debtor's affairs.

Section 139 – Calculation of Time Periods Prior to the Application for Commencement of Insolvency Proceedings

- (1) The time periods specified in sections 88 and 130 to 136 commence at the start of the day corresponding in number to the day on which the application to commence insolvency proceedings is received by the insolvency court. If a month lacks such a day, the time period commences at the start of the following day.
- (2) If several applications for commencement of insolvency proceedings are filed, the first admissible and well-founded application shall be applicable even if the proceedings are commenced on the basis of a later application. An application rejected with final effect shall be taken into account only if it was rejected due to insufficiency of assets.

Section 140 – Date of Performance of a Legal Act

- (1) A legal act is deemed to be performed on the date on which its legal effects occur.
- (2) If registration in the Land Register, Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft is necessary for a transaction to take effect, the transaction shall be deemed to be performed as soon as the remaining requirements for it to take effect have been met, the debtor's declaration of intent has become binding and the other party has lodged the application for registration of the change of title. If an application for registration of a priority notice to secure the right to the change of title has been lodged, sentence 1 shall apply subject to the proviso that this application takes the place of the application for registration of the change of title.
- (3) In the case of a conditional or fixed term legal act, fulfilment of the condition or occurrence of the expiry date shall not be taken into account.

Section 141 – Enforceable Title

A legal act may be avoided even if an enforceable title was obtained for the legal act or if the act was performed by way of compulsory enforcement.

Section 142 – Cash Transactions

Any performance by the debtor for which counter-performance of the same value is received directly into the debtor's assets may be avoided only if the requirements of section 133 (1) are fulfilled.

Section 143 – Legal Consequences

- (1) Any property of the debtor which is sold, given away or relinquished by means of the avoidable act must be returned to the insolvency estate. The provisions regulating the legal consequences of unjust enrichment where the recipient was aware that there were no legal grounds for the performance apply with the necessary modifications.
- (2) The recipient of gratuitous performance has to make restitution only to the extent that it¹⁰ is thereby enriched. This shall not apply as soon as it knows or must know in the circumstances that the gratuitous performance is prejudicial to the creditors.
- (3) In the case of avoidance under section 135 (2), the shareholder who provided security or was liable as surety must refund the benefit granted to the third party to the insolvency estate. The obligation shall exist only up to the amount for which the shareholder was liable as surety or which corresponds to the value of the security provided by such shareholder at the time of repayment of the loan or of the payment on the equivalent claim. The shareholder shall be released from the obligation if it makes the property which served the creditor as security available to the insolvency estate.

Section 144 – Claims by the Recipient of Avoidable Performance

- (1) If the recipient of avoidable performance returns what it¹¹ has received, its claim revives.
- (2) Any consideration shall be refunded out of the insolvency estate insofar as it is still present in distinct form within the insolvency estate or the insolvency estate is enriched by its value. Over and above this, the recipient of avoidable performance may assert a claim for return of the consideration only as an insolvency creditor.

¹⁰⁾ This reference should be construed as referring to male and female natural persons and legal entities.

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Section 145 – Avoidance against Legal Successors

- (1) Avoidance of a legal act may be asserted against the heirs or other universal successors of the recipient of avoidable performance.
- (2) Avoidance of a legal act may be asserted against any other legal successor:
 1. if the legal successor was aware at the time of his/her acquisition of the circumstances on which the voidability of the acquisition by his/her predecessor is based;
 2. if, at the time of his/her acquisition, the legal successor belonged to the circle of persons closely connected to the debtor (section 138), unless he/she was unaware at this time of the circumstances on which the voidability of the acquisition by his/her predecessor is based;
 3. if the legal successor acquired the property by gratuitous transfer.

Section 146 – Limitation of the Right of Avoidance

- (1) The right of avoidance is subject to the provisions on the standard limitation period under the Civil Code.
- (2) Even if the right of avoidance has become time-barred, the insolvency administrator may refuse to fulfil a duty of performance based on an avoidable act.

Section 147 – Legal Acts after Commencement of Proceedings

A legal act undertaken after the commencement of insolvency proceedings which is valid in accordance with section 81 (3) sentence 2, sections 892 and 893 of the Civil Code, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction and sections 16 and 17 of the Act Governing Rights in Aircraft may be avoided under the provisions applicable to the avoidance of a legal act undertaken prior to the commencement of insolvency proceedings. Sentence 1 applies to legal acts based on the claims and performance specified in section 96 (2) provided that as a result of such avoidance clearing, including settlement of balances, is not reversed and the relevant payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities do not become ineffective.

Part Four – Management and Realisation of the Insolvency Estate**Chapter One – Securing the Insolvency Estate****Section 148 – Taking Charge of the Insolvency Estate**

- (1) After commencement of the insolvency proceedings the insolvency administrator shall immediately assume possession and management of all the assets belonging to the insolvency estate.
- (2) The administrator may enforce the surrender of property in the debtor's custody on the basis of an enforceable execution copy of the order commencing proceedings by way of compulsory enforcement. Section 766 of the Code of Civil Procedure applies subject to the proviso that the insolvency court takes the place of the court of enforcement.

Section 149 – Valuables

- (1) The creditors' committee may determine where and on what conditions funds, securities and objects of value are to be deposited or invested. If a creditors' committee has not been appointed, or if the creditors' committee has not yet passed a relevant resolution, the insolvency court may make a corresponding order.
- (2) The creditors' meeting may decide on differing arrangements.

Section 150 – Sealing

In order to secure the assets of the insolvency estate, the insolvency administrator may have seals affixed by a bailiff or other person authorised by statute. The record documenting the sealing or unsealing of assets must be deposited by the insolvency administrator in the court registry for the parties' inspection.

Section 151 – List of Assets of the Insolvency Estate

- (1) The insolvency administrator shall draw up a list of the individual assets belonging to the insolvency estate. The debtor shall be consulted, if this is possible without prejudicial delay.
- (2) The value of each asset shall be stated. If the value depends on whether the enterprise continues to operate or is closed down, both values shall be stated. Valuations that are particularly difficult to assess may be passed to an expert.
- (3) On application by the administrator the insolvency court may waive the drawing up of the list; the application must state the grounds on which it is based. If a creditors' committee is appointed, the administrator may submit the application only with the consent of the creditors' committee.

Section 152 – List of Creditors

- (1) The insolvency administrator shall draw up a list of all the debtor's creditors ascertained by him/her from the debtor's books and business records, from other information from the debtor, through the filing of their claims or in any other way.
- (2) The list shall record the creditors entitled to separate satisfaction and the individual ranking categories of the subordinated insolvency creditors separately. The creditor's address and the basis and the amount of the creditor's claim shall be stated in each case. In the case of the creditors entitled to separate satisfaction, the asset subject to the right of separate satisfaction and the amount of the probable shortfall shall also be indicated; section 151 (2) sentence 2 applies with the necessary modifications.
- (3) The list shall further indicate the possibilities which exist for set-off. The amount of the preferential liabilities in the event of a prompt realisation of the debtor's assets shall be estimated.

Section 153 – Statement of Assets and Liabilities

- (1) The insolvency administrator shall draw up a structured overview as of the date of commencement of the insolvency proceedings listing and comparing the assets of the insolvency estate and the debtor's liabilities. Section 151 (2) applies with the necessary modifications to the valuation of the assets; section 151 (2) sentence 1 applies with the necessary modifications to the classification of the liabilities.
- (2) After the statement of assets and liabilities has been drawn up, on application by the insolvency administrator or a creditor the insolvency court may order the debtor to affirm the completeness of the statement of assets and liabilities by affidavit. Sections 98 and 101 (1) sentences 1 and 2 apply with the necessary modifications.

Section 154 – Deposit in the Court Registry

The list of assets of the insolvency estate, the list of creditors and the statement of assets and liabilities shall be deposited in the court registry for the parties' inspection no later than one week prior to the report meeting.

Section 155 – Accounting under Commercial and Tax Law

- (1) The debtor's duties under commercial and tax law to keep books and present accounts remain unaffected. The insolvency administrator shall fulfil these duties in relation to the insolvency estate.
- (2) A new financial year begins upon commencement of the insolvency proceedings. However, the period up to the report meeting will not be

taken into account in the statutory periods for drawing up and publishing financial statements.

- (3) Section 318 of the Commercial Code applies to the appointment of the auditor in the insolvency proceedings, provided that the appointment shall be made exclusively by the registration court on application by the insolvency administrator. If an auditor has already been appointed for the financial year prior to commencement of the insolvency proceedings, the validity of the appointment shall not be affected by commencement of the insolvency proceedings.

Chapter Two – Decision on Realisation

Section 156 – Report Meeting

- (1) At the report meeting the insolvency administrator shall report on the debtor's financial position and the causes thereof. The insolvency administrator shall state whether prospects exist for the debtor's business to be maintained in full or in part, what possibilities exist for an insolvency plan and what the implications would be in each case for the satisfaction of the creditors.
- (2) At the report meeting the debtor, the creditors' committee, the works council and the committee representing executive staff shall be given the opportunity to comment on the administrator's report. If the debtor conducts a trade or business, or is a farmer, the competent official professional organisation representing the industry, business, trade or agriculture may also be given the opportunity to make representations at the meeting.

Section 157 – Decision on the Future Course of the Proceedings

The creditors' meeting shall decide at the report meeting whether the debtor's business should be closed down or temporarily continued. It may instruct the insolvency administrator to draw up an insolvency plan and specify the objective of the plan. It may alter its decisions at subsequent meetings.

Section 158 – Measures Prior to the Decision

- (1) If the insolvency administrator wishes to close down or dispose of the debtor's business prior to the report meeting, he/she must obtain the consent of the creditors' committee, if one has been appointed.
- (2) The administrator must notify the debtor prior to the adoption of a resolution by the creditors' committee, if one has been appointed, or, if a creditors' committee has not been appointed, prior to the closure or disposal of the business. On the debtor's application and after hearing the administrator the insolvency court shall prohibit

the closure or disposal of the business if this can be suspended until the report meeting without a significant reduction in the insolvency assets.

Section 159 – Realisation of the Insolvency Estate

Following the report meeting, the insolvency administrator shall realise the assets forming the insolvency estate without delay unless the resolutions of the creditors' meeting preclude this.

Section 160 – Legal Acts of Particular Importance

- (1) The insolvency administrator must obtain the consent of the creditors' committee if he/she wishes to undertake legal acts that are of particular importance for the insolvency proceedings. If a creditors' committee has not been appointed, the consent of the creditors' meeting must be obtained. If the convened creditors' meeting does not have a quorum, consent shall be deemed to have been granted; the creditors shall be informed of this consequence in the notice calling the creditors' meeting.
- (2) Consent in accordance with subsection (1) is required in particular
 1. in the case of a planned disposal of the enterprise or a business operation, the entire stock, an immovable asset by private sale, the debtor's interest in another company which is intended to create a durable link to this company or the right to receive income of a recurring nature;
 2. if a loan is to be taken out that would significantly burden the insolvency estate;
 3. if legal action involving a significant amount in dispute is to be brought or initiated, or if the initiation of such legal action is rejected or if a scheme of composition or an arbitration agreement is entered into for the purpose of settling or averting such legal action.

Section 161 – Temporary Prohibition of the Legal Act

In the cases specified in section 160 the insolvency administrator shall notify the debtor prior to the adoption of a resolution by the creditors' committee or the creditors' meeting, if this is possible without prejudicial delay. If the creditors' meeting has not granted its consent, on application by the debtor or a majority of creditors as specified in section 75 (1) No. 3 and after hearing the administrator, the insolvency court may temporarily prohibit performance of the legal act and convene a creditors' meeting to decide on performance of the legal act.

Section 162 – Disposal of Business Operations to Parties with a Special Interest

- (1) The disposal of the enterprise or of a business operation requires the consent of the creditors'

meeting if the acquirer or a person who holds at least one fifth of the acquirer's capital

1. belongs to the group of persons with a close relationship to the debtor (section 138);
 2. is a creditor with a right to separate satisfaction or a non-subordinated insolvency creditor whose rights to separate satisfaction and claims are assessed by the insolvency court as together reaching one fifth of the total resulting from the value of all rights to separate satisfaction and the amounts of the claims of all non-subordinated insolvency creditors.
- (2) A person shall also be deemed to hold a participating interest in the acquirer within the meaning of subsection (1) insofar as a company controlled by the person or a third party holds a participating interest in the acquirer for the account of the person or of the controlled company.

Section 163 – Disposal of Business Operations Below Value

- (1) On application by the debtor or a majority of creditors as specified in section 75 (1) No. 3 and after hearing the administrator, the insolvency court may order that the planned disposal of the enterprise or of a business operation requires the consent of the creditors' meeting if the applicant demonstrates to the satisfaction of the court that a disposal to another acquirer would be more favourable for the insolvency estate.
- (2) If costs are incurred by the applicant as a result of the application, the applicant is entitled to reimbursement of these costs from the insolvency estate as soon as the court order is issued.

Section 164 – Validity of the Acts of the Insolvency Administrator

The validity of the acts of the insolvency administrator shall not be affected by any contravention of sections 160 to 163.

Chapter Three – Assets Subject to Rights to Separate Satisfaction

Section 165 – Realisation of Immovable Assets

The insolvency administrator may apply to the competent court to conduct the forced sale or sequestration of an immovable asset of the insolvency estate even if the asset is subject to a right to separate satisfaction.

Section 166 – Realisation of Movable Assets

- (1) The insolvency administrator may realise a movable asset that is subject to a right to separate satisfaction by private sale if he/she has the item in his/her possession.

- (2) The insolvency administrator may collect or otherwise realise an account receivable which the debtor has assigned in order to secure a claim.
- (3) Subsections (1) and (2) do not apply
 - 1. to assets subject to a security interest in favour of the operator of or a participant in a system pursuant to section 1 (16) of the Banking Act in order to secure its claims under the system;
 - 2. to assets subject to a security interest in favour of the central bank of a Member State of the European Union or a contracting state of the Agreement on the European Economic Area or in favour of the European Central Bank or
 - 3. to a financial collateral arrangement within the meaning of section 1 (17) of the Banking Act.

Section 167 – Provision of Information to the Creditor

- (1) If the insolvency administrator is entitled to realise a movable asset pursuant to section 166 (1), he/she must provide information on the condition of the asset to the creditor entitled to separate satisfaction on the latter's request. In place of providing information, he/she may permit the creditor to inspect the asset.
- (2) If the insolvency administrator is entitled to collect an account receivable pursuant to section 166 (2), he/she must provide information about it to the creditor entitled to separate satisfaction on the latter's request. In place of providing information, he/she may permit the creditor to inspect the debtor's books and business records.

Section 168 – Notification of Intention to Sell

- (1) Before the insolvency administrator sells an asset to a third party which he/she is entitled to realise pursuant to section 166, he/she must notify the creditor entitled to separate satisfaction of the means by which the asset is to be sold. He/she must give the creditor the opportunity to indicate, within one week, another option for realising the asset which would be more beneficial for the creditor.
- (2) If the creditor's proposal is made within the one week period or in good time prior to the sale, the insolvency administrator must take advantage of the realisation option put forward by the creditor or put the creditor in the position it would have been in if the insolvency administrator had taken advantage of the proposed option.
- (3) The other realisation option may also consist in the creditor taking over the asset itself. A realisation option is also more favourable if it results in cost savings.

Section 169 – Protection of the Creditor against a Delay in Realisation

As long as an asset which the insolvency administrator is entitled to realise pursuant to section 166 is not realised, the interest due is payable to the creditor out of the insolvency estate on a regular basis from the date of the report meeting onwards. If the creditor has already been prevented prior to commencement of the insolvency proceedings from realising the asset on the basis of an order under section 21, the interest due is payable at the latest with effect from the date which falls three months after this order. Sentences 1 and 2 shall not apply insofar as the creditor is unlikely to obtain satisfaction from the proceeds of realisation, taking into account the amount of the claim and also the value of and other encumbrances on the asset.

Section 170 – Distribution of Proceeds

- (1) After a movable asset or a claim has been realised by the insolvency administrator, the costs incurred in assessing and realising the object shall first be taken from the realisation proceeds for the benefit of the insolvency estate. The remaining amount shall be applied without undue delay to satisfy the creditors entitled to separate satisfaction.
- (2) If the insolvency administrator hands over an asset which he/she is entitled to realise pursuant to section 166 to the creditor for realisation, out of the realisation proceeds achieved by the creditor the latter must first pay an amount covering the costs of assessing the asset and also the amount of the value added tax (section 171 (2) sentence 3) to the insolvency estate.

Section 171 – Calculation of the Contribution to Costs

- (1) The costs of assessment include the costs of the actual assessment of the asset and of determining the rights in the asset. They shall be charged at a flat rate of four per cent of the realisation proceeds.
- (2) The costs of realisation shall be charged at a flat rate of five per cent of the realisation proceeds. If the costs actually and necessarily incurred for realisation of the asset are considerably lower or higher than this, these costs shall be charged. If realisation of the asset results in a charge to the insolvency estate of value added tax, the amount of the value added tax shall be charged in addition to the flat rate pursuant to sentence 1 or the actual costs incurred pursuant to sentence 2.

Section 172 – Other Use of Movable Assets

- (1) The insolvency administrator may use a movable asset for the insolvency estate which he/she

is entitled to realise, provided the loss in value thereby resulting is compensated for by regular payments to the creditor from the date of commencement of the insolvency proceedings. The obligation to make compensatory payments exists only insofar as the loss in value resulting from the use adversely affects the security of the creditor entitled to separate satisfaction.

- (2) The insolvency administrator may combine, intermix and process such an asset insofar as this does not adversely affect the security of the creditor entitled to separate satisfaction. If the creditor's right continues in another asset, the creditor must release the new security to the extent that it exceeds the value of the previous security.

Section 173 – Realisation by the Creditor

- (1) If the insolvency administrator is not entitled to realise a movable asset or a claim subject to a right of separate satisfaction, the creditor's right of realisation remains unaffected.
- (2) On application by the insolvency administrator and after hearing the creditor, the insolvency court may set a period of time within which the creditor has to realise the asset or claim. After the expiry of the period of time the insolvency administrator is entitled to realise the asset or claim.

Part Five – Satisfaction of the Insolvency Creditors. Discontinuation of Proceedings

Chapter One – Acceptance of Claims

Section 174 – Filing of Claims

- (1) The insolvency creditors must file their claims in writing with the insolvency administrator. The claim submission shall include copies of the documentation evidencing the claim. Persons providing collection services (registered persons pursuant to section 10 (1) sentence 1 No. 1 of the Legal Services Act [*Rechtsdienstleistungsgesetz*]) are also authorised to represent the creditor in the proceedings pursuant to this section.
- (2) When the claim is filed the basis and the amount of the claim must be stated, together with the facts which, in the view of the creditor, indicate that the claim is based on the commission of an intentional tort by the debtor.
- (3) The claims of subordinated creditors have to be filed only if the insolvency court specifically requires the filing of these claims. When such claims are filed, reference must be made to their subordination and the ranking to which the creditor is entitled.

- (4) Claims may be submitted by the transmission of an electronic document if the insolvency administrator has expressly agreed to the transmission of electronic documents. In this case the documentation evidencing the claim shall subsequently be sent in without delay.

Section 175 – Schedule

- (1) The insolvency administrator shall register each filed claim in a schedule together with the information specified in section 174 subsections (2) and (3). The schedule containing the filed claims together with the documentation attached shall be deposited in the court registry of the insolvency court for the parties' inspection within the first third of the period of time between the expiry of the time limit for filing claims and the verification meeting.
- (2) If a creditor has filed a claim on the basis of an intentional tort, the insolvency court shall advise the debtor of the legal consequences of section 302 and the possibility of objection.

Section 176 – Format of the Verification Meeting

The amount and ranking of the filed claims shall be verified at the verification meeting. Claims disputed by the insolvency administrator, the debtor or an insolvency creditor shall be discussed individually.

Section 177 – Late Claim Submission

- (1) Claims filed after the expiry of the period allowed for filing shall also be verified at the verification meeting. However, if the insolvency administrator or an insolvency creditor objects to this verification or if a claim is only filed after the verification meeting, at the defaulting party's expense the insolvency court shall either fix a special verification meeting or order the verification process to be undertaken in writing. Sentences 1 and 2 apply with the necessary modifications to subsequent amendments to filed claims.
- (2) If the court has requested subordinated creditors to file their claims pursuant to section 174 (3) and if the period allowed for filing expires less than one week prior to the verification meeting, at the expense of the insolvency estate the court shall either fix a special verification meeting or order the verification process to be undertaken in writing.
- (3) Notice of the special verification meeting shall be published. The insolvency creditors who have filed claims, the insolvency administrator and the debtor shall be specifically invited to the meeting. Section 74 (2) sentence 2 applies with the necessary modifications.

Section 178 – Requirements for and Effects of Acceptance of Claims

- (1) A claim is deemed to be accepted insofar as no objection is raised against it at the verification meeting or during the written verification process (section 177) either by the insolvency administrator or by one of the insolvency creditors, or any objection raised is overcome. An objection by the debtor shall not preclude acceptance of the claim.
- (2) For each filed claim the insolvency court shall register in the schedule the extent to which the claim has been accepted in terms of amount and ranking or who objected to acceptance of the claim. An objection by the debtor shall also be registered. The clerk of the court registry shall note the acceptance of the claim on bills of exchange and other debt instruments.
- (3) In terms of the amount and the ranking of accepted claims, the entry in the schedule has the effect of a final judgment against the insolvency administrator and all insolvency creditors.

Section 179 – Disputed Claims

- (1) If a claim is disputed by the insolvency administrator or one of the insolvency creditors, it is left to the creditor to pursue acceptance of the claim against the party disputing the claim.
- (2) If an enforceable debt instrument or a final judgment exists for such a claim, it is the responsibility of the party disputing the claim to pursue the objection.
- (3) The insolvency court shall issue the creditor whose claim has been disputed with a certified extract from the schedule. In the case specified in subsection (2), the party disputing the claim shall also receive a certified extract. The creditors whose claims have been accepted will not be notified; this shall be indicated to the creditors prior to the verification meeting.

Section 180 – Competence for Acceptance of Claims

- (1) An action for acceptance of a claim must be brought in ordinary proceedings. The local court at which the insolvency proceedings are or were pending has exclusive jurisdiction for the action. If the matter in dispute is not within the competence of local courts, the regional court within whose district the insolvency court is located shall have exclusive jurisdiction.
- (2) If an action concerning the claim was pending at the time of commencement of insolvency proceedings, acceptance of the claim shall be pursued by resumption of the action.

Section 181 – Scope of the Acceptance

Acceptance of a claim in terms of the basis, amount and ranking of the claim may only be requested in accordance with the description of the claim stated upon its filing or at the verification meeting.

Section 182 – Amount in Dispute

The value of the matter in dispute in an action for acceptance of a claim, the legal validity of which was disputed by the insolvency administrator or by an insolvency creditor, shall be determined on the basis of the amount to be expected for the claim upon distribution of the insolvency estate.

Section 183 – Effects of the Decision

- (1) A final decision in terms of which a claim is accepted or an objection is held to be well-founded is effective with respect to the insolvency administrator and all insolvency creditors.
- (2) It is the responsibility of the successful party to apply to the insolvency court for amendment of the schedule.
- (3) If only individual creditors conducted the action and not the insolvency administrator, these creditors may claim reimbursement of their costs out of the insolvency estate insofar as a benefit has accrued to the estate as a result of the decision.

Section 184 – Action against an Objection by the Debtor

- (1) If the debtor has disputed a claim at the verification meeting or during the written verification process (section 177), the creditor may bring an action against the debtor for acceptance of the claim. If an action concerning the claim was pending at the time of commencement of the insolvency proceedings, the creditor may resume this action against the debtor.
- (2) If an enforceable debt instrument or a final judgment exists for such a claim, it is the responsibility of the debtor to pursue the objection within a time limit of one month commencing on the date of the verification meeting or, during the written verification process, when the claim is disputed. After the expiry of this time limit, if the objection is not pursued, an objection shall be deemed not to have been raised. The insolvency court shall issue the debtor and the creditor whose claim was disputed with a certified extract from the schedule and draw the debtor's attention to the consequences of a failure to observe the time limit. The debtor must prove to the court that it has pursued the claim.

Section 185 – Special Jurisdiction

If an action for acceptance of a claim cannot be brought by recourse to the ordinary courts, acceptance of the claim shall be pursued at the other court with jurisdiction or by the competent administrative authority. Section 180 (2) and sections 181, 183 and 184 apply with the necessary modifications. If acceptance of the claim is to be pursued at another court, section 182 also applies with the necessary modifications.

Section 186 – Restoration of the Status Quo Ante

- (1) If the debtor failed to attend the verification meeting, on application the insolvency court shall grant the debtor restoration of the status quo ante. Section 51 (2), section 85 (2) and sections 233 to 236 of the Code of Civil Procedure apply with the necessary modifications.
- (2) The pleadings relating to the application for restoration of the status quo ante shall be served on the creditor whose claim is to be retroactively disputed. If restoration of the status quo ante is granted, the challenge raised in these pleadings is equivalent to a challenge raised at the verification meeting.

Chapter Two – Distribution**Section 187 – Satisfaction of the Insolvency Creditors**

- (1) Satisfaction of the insolvency creditors may commence only after the general verification meeting.
- (2) Distributions may be made to the insolvency creditors whenever sufficient cash funds are available in the insolvency estate. Subordinated insolvency creditors shall not be included in interim distributions.
- (3) Distributions are made by the insolvency administrator. If a creditors' committee has been appointed, its consent must be obtained by the insolvency administrator prior to each distribution.

Section 188 – Distribution Schedule

Prior to each distribution the insolvency administrator shall draw up a schedule of the claims to be included in the distribution. The schedule shall be deposited in the court registry for the parties' inspection. The insolvency administrator shall notify the court of the total amount of the claims and the amount available for distribution from the insolvency estate; the court shall publish the notified total amount of the claims and the amount available for distribution.

Section 189 – Consideration of Disputed Claims

- (1) An insolvency creditor whose claim has not been accepted and in respect of whose claim no enforceable title or final judgment exists must prove to the insolvency administrator, at the latest within a time limit of two weeks from the date of the publication by the court, that an action for declaratory judgment has been raised together with the amount of such claim, or that proceedings in an earlier pending case have been resumed.
- (2) If the appropriate proof is provided within the specified time, the share apportioned to the claim shall be withheld from distribution while the action is pending.
- (3) If the appropriate proof is not provided within the specified time, the claim shall not be taken into consideration when the distribution is made.

Section 190 – Consideration of Creditors Entitled to Separate Satisfaction

- (1) A creditor who is entitled to separate satisfaction must prove to the insolvency administrator, at the latest within the time limit specified in section 189 (1), that it has waived its right to separate satisfaction or suffered a shortfall in relation thereto, together with the amount of such waiver or shortfall. If proof is not provided within the time limit, the claim shall not be taken into consideration when the distribution is made.
- (2) It is sufficient in order for claims to be taken into consideration in relation to an interim distribution if the creditor proves to the administrator, at the latest within the time limit, that realisation of the asset which is subject to the right of separate satisfaction is being pursued and credibly establishes the amount of the probable shortfall. In this event, the share apportioned to the claim shall be withheld from distribution. If the requirements of subsection (1) are not met by the time of the final distribution, the retained share shall become freely available for the final distribution.
- (3) If only the insolvency administrator is entitled to realise the asset which is subject to the right of separate satisfaction, subsections (1) and (2) are not applicable. In the case of an interim distribution, if the insolvency administrator has not yet realised an asset he/she shall estimate the amount of the creditor's shortfall and retain the share apportioned to the claim.

Section 191 – Consideration of Claims Subject to a Condition Precedent

- (1) The full amount of a claim subject to a condition precedent shall be taken into consideration in relation to an interim distribution. The share

apportioned to the claim shall be withheld from distribution.

- (2) A claim subject to a condition precedent shall not be taken into consideration in relation to the final distribution if the possibility of the condition occurring is so remote that the claim has no asset value at the time of the distribution. In this event a share retained pursuant to subsection (1) sentence 2 shall become freely available for the final distribution.

Section 192 – Subsequent Consideration

Creditors not taken into consideration in an interim distribution who subsequently meet the requirements of sections 189 and 190 shall, on the next distribution, first receive an amount from the remaining insolvency estate which puts them in the same position as the other creditors.

Section 193 – Amendment of the Distribution Schedule

The insolvency administrator shall undertake the amendments to the schedule required on the basis of sections 189 to 192 within three days of the expiry of the time limit specified in section 189 (1).

Section 194 – Objections to the Distribution Schedule

- (1) In the case of an interim distribution, an objection to the schedule by a creditor must be notified to the insolvency court within one week of the expiry of the time limit specified in section 189 (1).
- (2) A decision by the court rejecting the objection shall be served on the creditor and the insolvency administrator. The creditor has the right of immediate appeal against the order.
- (3) A decision by the court ordering the amendment of the schedule shall be served on the creditor and the insolvency administrator and deposited in the court registry for the parties' inspection. The administrator and the insolvency creditors have the right of immediate appeal against the order. The period for lodging an appeal begins on the day on which the decision was deposited in the court registry.

Section 195 – Determination of the Fraction

- (1) The creditors' committee shall determine the fraction to be paid by way of an interim distribution on the recommendation of the insolvency administrator. If no creditors' committee has been appointed, the insolvency administrator shall determine the fraction.
- (2) The insolvency administrator shall notify the creditors taken into consideration in the interim distribution of the fraction.

Section 196 – Final Distribution

- (1) The final distribution shall take place as soon as realisation of the insolvency estate has been completed, with the exception of ongoing income.
- (2) The final distribution may only be made with the approval of the insolvency court.

Section 197 – Final Meeting

- (1) On approving the final distribution, the insolvency court shall fix the date for a final creditors' meeting. The purpose of this meeting is:
 1. to discuss the insolvency administrator's final accounts;
 2. to raise objections to the final schedule and
 3. for the creditors to make a decision in relation to assets of the insolvency estate which cannot be realised.
- (2) There must be a period of not less than one month and not more than two months between publication of notice of the meeting and the date of the meeting.
- (3) Section 194 (2) and (3) apply with the necessary modifications to the decision of the court on a creditor's objections.

Section 198 – Deposit of Retained Amounts

The insolvency administrator shall deposit any amounts retained when the final distribution is made with an appropriate institution for the account of the parties concerned.

Section 199 – Surplus on Final Distribution

If the claims of all the insolvency creditors can be settled in full by the final distribution, the insolvency administrator shall hand over any surplus remaining to the debtor. If the debtor is not a natural person, the administrator shall hand over to each party holding a participating interest in the debtor the share of the surplus to which such party would be entitled under liquidation outside insolvency proceedings.

Section 200 – Termination of the Insolvency Proceedings

- (1) As soon as the final distribution has been carried out, the insolvency court shall order the termination of the insolvency proceedings.
- (2) The order and the grounds for termination of the proceedings shall be published. Sections 31 to 33 apply with the necessary modifications.

Section 201 – Rights of the Insolvency Creditors after Termination of the Proceedings

- (1) After termination of the insolvency proceedings the insolvency creditors may assert their remaining claims against the debtor without restriction.

- (2) Insolvency creditors whose claims were accepted and not disputed by the debtor at the verification meeting may pursue compulsory enforcement against the debtor on the basis of their entry in the schedule as under an enforceable judgment. A claim in relation to which an objection raised has been overcome is equivalent to an undisputed claim. An application for the issue of an execution copy of the schedule may be submitted only after termination of the insolvency proceedings.
- (3) The provisions regulating the discharge of residual debt remain unaffected.

Section 202 – Jurisdiction in Relation to Enforcement

- (1) In the circumstances specified in section 201, the local court where the insolvency proceedings are or were pending has exclusive jurisdiction
 - 1. for an action for the issue of the court certificate of enforceability;
 - 2. for an action following the issue of the court certificate of enforceability disputing that the requirements for its issue had arisen;
 - 3. for an action asserting objections affecting the claim itself.
- (2) If the matter in dispute is not within the competence of local courts, the regional court within whose district the insolvency court is located shall have exclusive jurisdiction.

Section 203 – Order for a Subsequent Distribution

- (1) On application by the insolvency administrator or an insolvency creditor or ex officio, the insolvency court shall order a subsequent distribution if, subsequent to the final meeting,
 - 1. retained amounts become available for distribution;
 - 2. amounts paid out of the insolvency estate are returned to it or
 - 3. assets of the insolvency estate are identified.
- (2) Termination of the insolvency proceedings does not preclude the ordering of a subsequent distribution.
- (3) The court may refrain from making such an order and transfer the available amount or the identified asset to the debtor if this appears appropriate having regard to the insignificance of the amount or the low value of the asset and the costs of a subsequent distribution. The court may make the ordering of a subsequent distribution subject to advance payment of a sum of money covering the costs of the subsequent distribution.

Section 204 – Appeal

- (1) The order refusing the application for subsequent distribution shall be served on the appli-

cant. The applicant has the right of immediate appeal against the order.

- (2) The decision ordering a subsequent distribution shall be served on the insolvency administrator, the debtor and, if a creditor applied for the distribution, this creditor. The debtor has the right of immediate appeal against the decision.

Section 205 – Implementation of the Subsequent Distribution

After a subsequent distribution has been ordered, the insolvency administrator shall distribute the available amount or the proceeds from the realisation of the identified asset on the basis of the final schedule. He/she shall present accounts to the insolvency court in relation to the distribution.

Section 206 – Exclusion of Preferential Creditors

Preferential creditors whose claims became known to the insolvency administrator

- 1. in relation to an interim distribution, only after determination of the fraction;
- 2. in relation to the final distribution, only after the conclusion of the final meeting or
- 3. in relation to a subsequent distribution, only after its public announcement may demand satisfaction only out of the funds remaining in the insolvency estate after the distribution.

Chapter Three – Discontinuation of Proceedings

Section 207 – Discontinuation due to Insufficient Assets

- (1) If it transpires after commencement of insolvency proceedings that the insolvency estate is insufficient to cover the costs of the proceedings, the insolvency court shall discontinue the proceedings. The proceedings shall not be discontinued if a sufficient sum of money is advanced or if the costs are deferred pursuant to section 4a; section 26 (3) applies with the necessary modifications.
- (2) The creditors' meeting, the insolvency administrator and the preferential creditors shall be heard prior to discontinuation.
- (3) Any cash funds available in the insolvency estate shall be used by the administrator prior to discontinuation to settle the costs of the proceedings and of these, in the first place, the expenses in proportion to their amounts. The administrator is no longer obliged to realise the assets of the insolvency estate.

Section 208 – Notification of Deficiency of Assets

- (1) If the costs of the insolvency proceedings are covered but the insolvency estate is insufficient to

meet the other preferential liabilities which are due, the insolvency administrator shall notify the insolvency court that there is a deficiency of assets. The same shall apply if it is likely that the estate will be insufficient to meet the other existing preferential liabilities when they become due.

- (2) The court shall publish the notification of deficiency of assets. It shall be served separately on the preferential creditors.
- (3) The duty incumbent on the insolvency administrator to manage and realise the insolvency estate shall continue even after the notification of deficiency of assets.

Section 209 – Satisfaction of the Preferential Creditors

- (1) The insolvency administrator shall settle the preferential liabilities in the following order; liabilities with the same ranking shall be settled in proportion to their amounts:
 1. the costs of the insolvency proceedings;
 2. preferential liabilities that were created after the notification of deficiency of assets without forming part of the costs of the insolvency proceedings;
 3. the remaining preferential liabilities, including lastly the maintenance permitted pursuant to sections 100 and 101 (1) sentence 3.
- (2) The following shall also be deemed to be preferential liabilities within the meaning of subsection (1) No. 2:
 1. liabilities arising out of a reciprocal contract which the insolvency administrator has chosen to perform subsequent to the notification of deficiency of assets;
 2. liabilities arising out of a contract for continuing obligations for the period after the first date on which the insolvency administrator could have given notice of termination subsequent to the notification of deficiency of assets;
 3. liabilities arising out of a contract for continuing obligations insofar as the insolvency administrator has claimed counter-performance on behalf of the insolvency estate subsequent to the notification of deficiency of assets.

Section 210 – Prohibition of Enforcement

As soon as the insolvency administrator has given notification of deficiency of assets, enforcement in respect of a preferential liability within the meaning of section 209 (1) No. 3 is not permitted.

Section 210a – Insolvency Plan on Deficiency of Assets

Where notification of deficiency of assets is given, the provisions regulating insolvency plans are applicable subject to the provisos that

1. the preferential creditors with the ranking of section 209 (1) number 3 take the place of the non-subordinated insolvency creditors and
2. section 246 number 2 applies with the necessary modifications to the non-subordinated insolvency creditors.

Section 211 – Discontinuation after Notification of Deficiency of Assets

- (1) As soon as the insolvency administrator has distributed the insolvency estate in accordance with section 209, the insolvency court shall discontinue the insolvency proceedings.
- (2) The insolvency administrator shall render a separate account of his/her activities subsequent to the notification of deficiency of assets.
- (3) If assets of the insolvency estate are identified after the discontinuation of the proceedings, on application by the administrator or a preferential creditor or ex officio, the court shall order a subsequent distribution. Section 203 (3) and sections 204 and 205 apply with the necessary modifications.

Section 212 – Discontinuation Where the Grounds for Commencement of Proceedings Cease to Exist

The insolvency proceedings shall be discontinued on application by the debtor if it is warranted that, after the proceedings are discontinued, the debtor will neither be in a position of illiquidity nor imminent illiquidity, nor of overindebtedness, if overindebtedness was the ground for commencement of insolvency proceedings. The application shall be admissible only if the debtor demonstrates to the satisfaction of the court that no ground for commencement of proceedings exists.

Section 213 – Discontinuation with the Consent of the Creditors

- (1) The insolvency proceedings shall be discontinued on application by the debtor if, after the expiry of the time limit for filing claims, the debtor procures the consent of all the insolvency creditors who have filed claims. In the case of creditors whose claims are disputed by the debtor or the insolvency administrator and in the case of creditors entitled to separate satisfaction, the insolvency court shall decide at its own discretion to what extent it requires the consent of these creditors or the provision of security in relation to them.

- (2) The proceedings may be discontinued on application by the debtor prior to the expiry of the time limit for filing claims if no other creditors are known beyond the creditors whose consent the debtor has procured.

Section 214 – Proceedings Concerning Discontinuation

- (1) An application for discontinuation of insolvency proceedings pursuant to section 212 or section 213 shall be published. It shall be deposited in the court registry for the parties' inspection; in the case specified in section 213 it must be accompanied by the creditors' declarations of consent. The insolvency creditors may object in writing to the application within one week of its publication.
- (2) The insolvency court shall make its decision on discontinuation after hearing the applicant, the insolvency administrator and the creditors' committee, if one has been appointed. In the case of an objection, the objecting creditor shall also be heard.
- (3) The insolvency administrator shall settle the undisputed preferential claims and provide security for the disputed preferential claims prior to discontinuation of the proceedings.

Section 215 – Publication and Effects of Discontinuation

- (1) The order discontinuing insolvency proceedings pursuant to section 207, 211, 212 or 213 and the reason for discontinuation shall be published. The debtor, the insolvency administrator and the members of the creditors' committee shall be informed in advance when the discontinuation will become effective (section 9 (1) sentence 3). Section 200 (2) sentence 2 applies with the necessary modifications.
- (2) Upon discontinuation of the insolvency proceedings, the right to freely dispose of the insolvency estate reverts to the debtor. Sections 201 and 202 apply with the necessary modifications.

Section 216 – Appeal

- (1) If insolvency proceedings are discontinued pursuant to section 207, 212 or 213, each insolvency creditor and, if discontinuation occurs pursuant to section 207, the debtor has the right of immediate appeal.
- (2) If an application pursuant to section 212 or section 213 is refused, the debtor has the right of immediate appeal.

Part Six – Insolvency Plan

Chapter One – Preparation of the Plan

Section 217 – Principle

The satisfaction of the creditors entitled to separate satisfaction and of the insolvency creditors, the realisation of the insolvency estate and its distribution to the parties concerned as well as the handling of the proceedings and the liability of the debtor subsequent to termination of the insolvency proceedings may be regulated in an insolvency plan derogating from the provisions of this Code. If the debtor is not a natural person, the share and membership rights of the parties holding a participating interest in the debtor may also be included in the plan.

Section 218 – Submission of the Insolvency Plan

- (1) The insolvency administrator and the debtor are entitled to submit an insolvency plan to the insolvency court. Submission by the debtor may be combined with the application for commencement of insolvency proceedings. A plan that is only received by the court after the final meeting will not be considered.
- (2) If the creditors' meeting has instructed the insolvency administrator to draw up an insolvency plan, the administrator must submit the plan to the court within a reasonable period of time.
- (3) Where the plan is drawn up by the insolvency administrator, the creditors' committee, if one has been appointed, the works council, the committee representing executive staff and the debtor shall assist in an advisory capacity.

Section 219 – Structure of the Plan

The insolvency plan consists of the declaratory part and the constructive part. It shall be accompanied by the attachments specified in sections 229 and 230.

Section 220 – Declaratory Part

- (1) The declaratory part of the insolvency plan describes the measures taken or yet to be taken following the commencement of insolvency proceedings in order to establish the basis for the planned structuring of the rights of the parties concerned.
- (2) The declaratory part shall contain all other information concerning the basis and effects of the plan which is relevant for the decision of the parties concerned on approval of the plan and for its confirmation by the court.

Section 221 – Constructive Part

The constructive part of the insolvency plan sets out how the legal status of the parties concerned is to be changed as a result of the plan. The insolvency administrator may be authorised by the plan to take the necessary measures for implementation of the plan and to correct any manifest errors in the plan.

Section 222 – Formation of Groups

- (1) In determining the rights of the parties involved in the insolvency plan, insofar as parties with differing legal status are affected, groups shall be formed. A distinction shall be made between
 1. creditors entitled to separate satisfaction, if their rights are impaired by the plan;
 2. non-subordinated insolvency creditors;
 3. the individual ranking categories of the subordinated insolvency creditors, unless their claims are deemed to be waived pursuant to section 225;
 4. parties holding a participating interest in the debtor, if their share or membership rights are included in the plan.
- (2) Groups of parties with the same legal status may be formed, grouping together parties with equivalent economic interests. The groups must be appropriately distinguished from one another. The demarcation criteria shall be specified in the plan.
- (3) The employees shall form a separate group if they hold significant claims as insolvency creditors. Separate groups may be formed for minor creditors and for small shareholders holding an interest in the liable equity capital of less than one per cent or less than 1,000 euros.

Section 223 – Rights of Parties Entitled to Separate Satisfaction

- (1) Unless otherwise specified in the insolvency plan, the plan shall not affect the right of the creditors entitled to separate satisfaction to obtain satisfaction from the assets that are subject to rights to separate satisfaction. A derogating provision is excluded in relation to financial collateral arrangements within the meaning of section 1 (17) of the Banking Act as well as to securities provided
 1. to the operator of or participant in a system pursuant to section 1 (16) of the Banking Act in order to secure its claims under the system or
 2. to the central bank of a Member State of the European Union or the European Central Bank.
- (2) If the plan contains a derogating provision, the constructive part shall indicate in respect of the creditors entitled to separate satisfaction the fraction by which their rights are to be reduced, the period of time for which their rights are to be

deferred and any other provisions to which they are to be subject.

Section 224 – Rights of Insolvency Creditors

The constructive part of the insolvency plan shall indicate in respect of the non-subordinated creditors the fraction by which their claims are to be reduced, the period of time for which their claims are to be deferred, how their claims are to be secured and any other provisions to which they are to be subject.

Section 225 – Rights of Subordinated Insolvency Creditors

- (1) Unless otherwise specified in the insolvency plan, the claims of subordinated insolvency creditors shall be deemed to be waived.
- (2) If the plan contains a derogating provision, the constructive part shall contain the information specified in section 224 in respect of each group of subordinated creditors.
- (3) The liability of the debtor for fines and the comparable liabilities pursuant to section 39 (1) No. 3 subsequent to termination of the insolvency proceedings can neither be excluded nor restricted by a plan.

Section 225a – Rights of Shareholders

- (1) The share or membership rights of the parties holding a participating interest in the debtor remain unaffected by the insolvency plan unless the plan provides otherwise.
- (2) Provision may be made in the constructive part of the plan for creditors' claims to be converted into share or membership rights in the debtor. A conversion against the wishes of the creditors concerned is excluded. The plan may, in particular, provide for a reduction or an increase in the registered capital, the provision of in-kind contributions, the exclusion of subscription rights or the payment of financial settlements to departing shareholders.
- (3) Any provision that is admissible under company law may be made in the plan, in particular the continuation of a liquidated company or the transfer of share or membership rights.
- (4) Measures pursuant to subsections (2) or (3) shall not confer entitlement to rescind or terminate contracts involving the debtor. They shall further not result in any other cessation of contracts. Contractual agreements to the contrary are invalid. Agreements linked to a breach of duty by the debtor remain unaffected by sentences 1 and 2 insofar as this is not confined to a measure pursuant to subsections (2) or (3) being envisaged or implemented.⁽⁵⁾ If a measure pursuant to subsection (2) or (3) constitutes good cause

for a party holding a participating interest in the debtor to withdraw from the legal entity or company without legal personality and if this right of withdrawal is exercised, the financial position which would have arisen on liquidation of the debtor shall be applicable in determining the amount of any settlement claim. Payment of the settlement claim may be deferred over a period of up to three years in order to avoid an unreasonable burden on the debtor's financial position. Interest is payable on unpaid settlement balances.

Section 226 – Equal Treatment of the Parties Concerned

- (1) Within each group equal rights shall be extended to all parties concerned.
- (2) Any differing treatment of the parties in a group is only permitted with the consent of all parties concerned. In this case the insolvency plan shall be accompanied by the declaration of consent of each party concerned.
- (3) Any agreement concluded between the insolvency administrator, the debtor or other parties and individual parties conferring on the latter an advantage not provided for in the plan in exchange for their conduct during voting or otherwise in connection with the insolvency proceedings is void.

Section 227 – Liability of the Debtor

- (1) If nothing to the contrary is specified in the insolvency plan, the debtor shall be discharged from his/her residual obligations towards the insolvency creditors by way of the satisfaction of these creditors provided for in the constructive part of the plan.
- (2) If the debtor is a company without legal personality or a partnership limited by shares, subsection (1) shall apply with the necessary modifications to the personal liability of the partners.

Section 228 – Modification of Relationships under Property Law

If rights in objects are to be created, modified, transferred or cancelled, the necessary declarations of intent by the parties concerned may be incorporated into the constructive part of the insolvency plan. If rights in a plot of land or in registered rights which are registered in the Land Register are involved, these rights shall be specified in compliance with section 28 of the Land Register Code [*Grundbuchordnung*]. Sentence 2 applies with the necessary modifications to rights registered in the Register of Ships, Register of Ships under Construction and Register of Liens on Aircraft.

Section 229 – Statement of Assets and Liabilities.

Earnings and Financial Plan

If the creditors are to be satisfied from the earnings resulting from the continuation of the enterprise by the debtor or a third party, the insolvency plan shall be accompanied by a statement of assets and liabilities listing the values of the assets and liabilities which would be set against each other if the plan were to become effective. In addition, the plan shall indicate the outgoings and earnings to be expected for the period during which the creditors are to be satisfied and the sequence of income and expenditure which is intended to ensure the liquidity of the enterprise during this period. The creditors who have not filed their claims but who are known about when the plan is drawn up must also be taken into consideration in this regard.

Section 230 – Additional Attachments

- (1) If the insolvency plan provides for the continued operation of the debtor's enterprise by the debtor and the debtor is a natural person, the plan shall also be accompanied by the debtor's declaration of his/her willingness to continue to operate the enterprise on the basis of the plan. If the debtor is a company without legal personality or a partnership limited by shares, the plan shall be accompanied by a corresponding declaration by the persons who are to be general partners of the enterprise in terms of the plan. The debtor's declaration pursuant to sentence 1 is not required if the debtor submits the plan himself/herself.
- (2) If creditors are to take over share or membership rights or participating interests in a legal entity, an unincorporated association or a company without legal personality, the plan shall be accompanied by the declaration of consent of each of these creditors.
- (3) If a third party has agreed to assume obligations towards the creditors in the event that the plan is confirmed, the plan shall be accompanied by the declaration of the third party.

Section 231 – Rejection of the Plan

- (1) The insolvency court shall reject the plan *ex officio*
 1. if the provisions concerning the right to submit a plan and the contents of the plan, in particular the formation of groups, are not complied with and the submitting party cannot or does not remedy the defect within a reasonable period of time set by the court;
 2. if a plan submitted by the debtor clearly has no prospect of being accepted by the parties concerned or of being confirmed by the court or

3. if the claims to which the parties concerned are entitled according to the constructive part of a plan submitted by the debtor clearly cannot be satisfied.

The decision of the court shall be made within two weeks of submission of the plan.

- (2) If the debtor had already submitted a plan during the insolvency proceedings which was refused by the parties concerned, not confirmed by the court or withdrawn by the debtor after publication of the date of the discussion meeting, the court shall reject a new plan submitted by the debtor if the insolvency administrator, with the consent of the creditors' committee if one has been appointed, requests its rejection.
- (3) The submitting party has the right of immediate appeal against the order rejecting the plan.

Section 232 – Comments on the Plan

- (1) If the insolvency plan is not rejected, the insolvency court shall forward the plan for comment to:
 1. the creditors' committee, if one has been appointed, the works council and the committee representing executive staff;
 2. the debtor, if the insolvency administrator submitted the plan;
 3. the insolvency administrator, if the debtor submitted the plan.
- (2) The court may also give the debtor's competent official professional organisation representing industry, business, trade or agriculture, or other expert bodies, the opportunity to make representations.
- (3) The court shall fix a period for submission of representations. The submission period shall not exceed two weeks.

Section 233 – Stay of Realisation and Distribution

On application by the debtor or the insolvency administrator, the insolvency court shall order the stay of the process of realisation and distribution insofar as the continued realisation and distribution of the insolvency estate would jeopardise the implementation of a submitted insolvency plan. The court shall not order a stay or shall revoke the stay order if it entails the risk of significant detriment to the insolvency estate or if the insolvency administrator, with the consent of the creditors' committee or creditors' meeting, requests the continuation of realisation and distribution.

Section 234 – Deposit of the Plan

The insolvency plan, together with its attachments and any representations received, shall be

deposited in the court registry for the parties' inspection.

Chapter Two – Acceptance and Confirmation of the Plan

Section 235 – Discussion and Voting Meeting

- (1) The insolvency court shall schedule a meeting at which the insolvency plan and the voting rights of the parties concerned can be discussed and for subsequent voting on the plan (discussion and voting meeting). The meeting shall be scheduled for no later than one month in advance. It may be called at the same time as the representations pursuant to section 232 are being obtained.
- (2) The date of the discussion and voting meeting shall be published. The public announcement of the meeting must indicate that the plan and the representations received may be inspected at the court registry. Section 74 (2) sentence 2 applies with the necessary modifications.
- (3) The insolvency creditors who have filed claims, the creditors entitled to separate satisfaction, the insolvency administrator, the debtor, the works council and the committee representing executive staff shall be specifically invited. A copy of the plan or a summary of the main content, which the submitting party must provide on request, shall be sent with the invitation. If the share or membership rights of the parties holding a participating interest in the debtor are included in the plan, these parties shall also be invited in accordance with sentences 1 and 2; this shall not apply to shareholders or to shareholders in a partnership limited by shares. Section 121 (4a) of the Stock Corporation Act [*Aktiengesetz*] applies with the necessary modifications to quoted companies; they shall make a summary of the main content of the plan available on their website.

Section 236 – Combination with the Verification Meeting

The discussion and voting meeting must not take place prior to the verification meeting. Both meetings may, however, be combined.

Section 237 – Voting Rights of the Insolvency Creditors

- (1) Section 77 (1) sentence 1, section 77 (2) and section 77 (3) No. 1 apply with the necessary modifications to the voting rights of the insolvency creditors in relation to the vote on the insolvency plan. Creditors entitled to separate satisfaction are only entitled to vote as insolvency creditors to the extent that the debtor is also personally liable towards them and they waive their right

to separate satisfaction or separate satisfaction fails; so long as the amount of the shortfall has not been determined, their claims shall be taken into consideration at the level of the probable shortfall.

- (2) Creditors whose claims are not impaired by the plan do not have a voting right.

Section 238 – Voting Rights of the Creditors Entitled to Separate Satisfaction

- (1) Insofar as the legal position of creditors entitled to separate satisfaction is also regulated in the insolvency plan, the rights of these creditors shall be discussed individually at the meeting. Rights to separate satisfaction which are not disputed by the insolvency administrator, by a creditor entitled to separate satisfaction or by an insolvency creditor give entitlement to a voting right. Section 41, section 77 (2) and section 77 (3) No. 1 apply with the necessary modifications to voting rights in the case of disputed rights, rights subject to a condition precedent or rights that have not yet matured.
- (2) Section 237 (2) applies with the necessary modifications.

Section 238a – Voting Rights of Shareholders

- (1) The voting rights of the debtor's shareholders are determined solely in accordance with their participating interest in the subscribed capital or the debtor's assets. Restrictions on voting rights, special voting rights and multiple voting rights shall be disregarded.
- (2) Section 237 (2) applies with the necessary modifications.

Section 239 – Voting List

The registrar of the court registry shall draw up a list recording the voting rights of the parties concerned resulting from the discussions at the meeting.

Section 240 – Amendment of the Plan

The party who submits the plan is entitled to amend the content of individual provisions of the insolvency plan on the basis of the discussions at the meeting. The amended plan may be voted on at the same meeting.

Section 241 – Separate Voting Meeting

- (1) The insolvency court may schedule a separate meeting for the vote on the insolvency plan. In this event the period of time between the discussion meeting and the voting meeting shall amount to not more than one month.
- (2) The parties entitled to vote and the debtor shall be invited to the voting meeting. This shall not

apply to shareholders or to shareholders in a partnership limited by shares. It is sufficient in respect of these parties to publish the date of the meeting. Section 121 (4a) of the Stock Corporation Act applies with the necessary modifications to quoted companies. In the event of an amendment to the plan, specific reference shall be made to the amendment.

Section 242 – Written Vote

- (1) If a separate voting meeting is scheduled, voting rights may be exercised in writing.
- (2) The insolvency court shall send out voting papers to the parties entitled to vote advising them of their voting right after the discussion meeting. Votes in writing shall only be taken into account if they are received by the court by no later than the day before the voting meeting; reference shall be made to this when the voting papers are sent out.

Section 243 – Voting in Groups

Each group of parties entitled to vote shall vote separately on the insolvency plan.

Section 244 – Required Majorities

- (1) Acceptance of the insolvency plan by the creditors requires that, in each group,
 1. the majority of the voting creditors approve the plan and
 2. the total of the claims of the assenting creditors amounts to more than half of the total of the claims of the voting creditors.
- (2) Creditors who are entitled to a right jointly or whose rights constituted a single right until the occurrence of the ground for commencement of insolvency proceedings shall be counted as one creditor in the vote. The same applies where a right is encumbered with a lien or a usufruct.
- (3) Subsection (1) number 2 applies with the necessary modifications to the parties holding a participating interest in the debtor subject to the proviso that the total of the participating interests takes the place of the total of the claims.

Section 245 – Prohibition of Obstruction

- (1) Even if the required majorities have not been achieved, the approval of a voting group shall be deemed to have been granted if
 1. the members of this group are likely to be in no worse a position as a result of the insolvency plan than they would be in without a plan;
 2. the members of this group participate to a reasonable extent in the economic value accruing to the parties concerned on the basis of the plan; and

3. the majority of the voting groups approved the plan with the required majorities.
- (2) For a group of creditors reasonable participation within the meaning of subsection (1) number 2 exists if, pursuant to the plan,
 1. no other creditor receives economic value exceeding the full amount of its claim;
 2. neither a creditor whose claim for satisfaction would rank behind the claims of the creditors in the group without a plan, nor the debtor, nor any party holding a participating interest in the debtor receives economic value and
 3. no creditor whose claim for satisfaction would rank equally with the claims of the creditors in the group without a plan is placed in a better position than these creditors.
- (3) For a group of shareholders, reasonable participation within the meaning of subsection (1) number 2 exists if, pursuant to the plan,
 1. no creditor receives economic value exceeding the full amount of its claim and
 2. no shareholder who would be on an equal footing with the shareholders in the group without a plan is placed in a better position than these shareholders.

Section 246 – Approval of Subordinated Insolvency Creditors

The following additional conditions apply to the acceptance of the insolvency plan by the subordinated insolvency creditors:

1. The approval of the groups with claims ranking behind those specified in section 39 (1) No. 3 is deemed to be granted if no insolvency creditor is placed in a better position as a result of the plan than the creditors in these groups.
2. If none of the creditors in a group participates in the vote, the approval of the group is deemed to have been granted.

Section 246a – Approval of the Shareholders

If none of the members of a group of shareholders participates in the vote, the approval of the group is deemed to have been granted.

Section 247 – Approval of the Debtor

- (1) The approval of the debtor to the plan is deemed to have been granted if the debtor does not object to the plan in writing, at the latest at the voting meeting.
- (2) An objection under subsection (1) shall be disregarded if
 1. the debtor is likely to be in no worse a position as a result of the plan than it would be in without a plan and

2. no creditor receives economic value exceeding the full amount of its claim.

Section 248 – Court Confirmation

- (1) Following acceptance of the insolvency plan by the parties concerned (sections 244 to 246a) and approval of the plan by the debtor, the plan must be confirmed by the insolvency court.
- (2) Prior to its decision confirming the plan, the court shall hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor.

Section 248a – Court Confirmation of Plan Correction

- (1) Correction of the insolvency plan by the insolvency administrator pursuant to section 221 sentence 2 requires the confirmation of the insolvency court.
- (2) Prior to its decision confirming the plan, the court shall hear the insolvency administrator, the creditors' committee, if one has been appointed, the creditors and shareholders, insofar as their rights are affected, and also the debtor.
- (3) On application, confirmation shall be refused if a party is likely to be placed in a worse position by the plan amendment resulting from the correction than it¹² would be in under the effects envisaged by the plan.
- (4) The creditors and shareholders specified in subsection (2) and the insolvency administrator have the right of immediate appeal against the order confirming or rejecting the correction. Section 253 (4) applies with the necessary modifications.

Section 249 – Conditional Plan

If the insolvency plan provides that prior to confirmation particular contributions are to be provided or other measures are to be put into effect, the plan may be confirmed only if these requirements are met. Confirmation shall be refused ex officio if the requirements are not met even after the expiry of a reasonable period of time set by the insolvency court.

Section 250 – Breach of Procedural Provisions

Confirmation shall be refused ex officio if

1. the provisions concerning the content and procedural handling of the insolvency plan, acceptance of the plan by the parties concerned and approval of the plan by the debtor have not been observed in a material respect and the defect cannot be remedied or

¹²⁾ This reference should be construed as referring to male and female natural persons and legal entities.

2. acceptance of the plan was improperly obtained, in particular by the preferential treatment of a party.

Section 251 – Protection of Minorities

- (1) On application by a creditor or, if the debtor is not a natural person, a party holding a participating interest in the debtor, confirmation of the insolvency plan shall be refused if
 1. the applicant objected to the plan in writing or had its objection minuted, at the latest at the voting meeting and
 2. the applicant is likely to be placed in a worse position as a result of the plan than it would be in without a plan.
- (2) The application is admissible only if the applicant demonstrates to the satisfaction of the court, at the latest at the voting meeting, that it is likely to be placed in a worse position as a result of the plan.
- (3) The application shall be rejected if funds are made available in the constructive part of the plan in case a party proves less favourable treatment. Whether the party concerned receives a settlement out of these funds shall be resolved outside the insolvency proceedings.

Section 252 – Publication of the Decision

- (1) The order confirming or refusing confirmation of the insolvency plan shall be pronounced at the voting meeting or at a special meeting to be scheduled as soon as possible. Section 74 (2) sentence 2 applies with the necessary modifications.
- (2) If the plan is confirmed, a copy of the plan or a summary of the main content shall be sent to the insolvency creditors who filed claims and the creditors entitled to separate satisfaction referring to its confirmation. If the share or membership rights of the parties holding a participating interest in the debtor are included in the plan, the documents shall also be sent to them; this shall not apply to shareholders or shareholders in a partnership limited by shares. Quoted companies shall make a summary of the main content of the plan available on their website.

Section 253 – Appeal

- (1) The creditors, the debtor and, if the debtor is not a natural person, the parties holding a participating interest in the debtor have the right of immediate appeal against the order confirming or refusing confirmation of the insolvency plan.
- (2) The right of immediate appeal against the confirmation order is admissible only if the appellant
 1. objected to the plan in writing or had its objection minuted, at the latest at the voting meeting;
 2. voted against the plan and

3. demonstrates to the satisfaction of the court that it will be placed in a substantially worse position as a result of the plan than it would be in without a plan and that this disadvantage cannot be compensated for by a payment out of the funds specified in section 251 (3).

- (3) Subsection (2) numbers 1 and 2 shall apply only if specific reference was made in the public announcement of the meeting (section 235 (2)) and in the notices of invitation to the meeting (section 235 (3)) to the necessity of an objection to and rejection of the plan.
- (4) On application by the insolvency administrator, the regional court shall refuse the appeal without delay if it appears that the entry into effect of the insolvency plan as soon as possible deserves priority because, in the view of the court, exercising its independent discretion, the disadvantages of a delay in implementing the plan outweigh the disadvantages for the appellant; a redress procedure pursuant to section 572 (1) sentence 1 of the Code of Civil Procedure shall not take place. This shall not apply in the event of a particularly serious infringement of the law. If the court refuses the appeal pursuant to sentence 1, the appellant shall be compensated out of the insolvency estate for the loss it incurs as a result of the implementation of the plan; cancellation of the effects of the insolvency plan cannot be requested as compensation. The regional court which refused the immediate appeal has exclusive jurisdiction for actions claiming compensation pursuant to sentence 3.

Chapter Three – Effects of the Confirmed Plan. Monitoring Implementation of the Plan

Section 254 – General Effects of the Plan

- (1) When the order confirming the insolvency plan becomes final, the effects set out in the constructive part become binding for and against all parties concerned.
- (2) The plan shall not affect the rights of the insolvency creditors against co-debtors and sureties of the debtor, the rights of these creditors in objects which do not form part of the insolvency estate or rights under a priority notice relating to such objects. Under the plan the debtor is, however, discharged vis-à-vis its co-debtors, sureties or any other party holding a right of recourse in the same way as it is discharged vis-à-vis its creditors.
- (3) If a creditor receives satisfaction exceeding the amount it could claim under the plan, this shall not give rise to a duty on the part of the recipient to make restitution.

- (4) If creditors' claims are converted into share or membership rights in the debtor, following court confirmation of the plan the debtor cannot assert any claims against the former creditors on account of an overvaluation of the claims in the plan.

Section 254a – Rights in Objects. Other Effects of the Plan

- (1) If rights in objects are to be created, amended, transferred or cancelled or if shareholdings in a company with limited liability are to be transferred, the declarations of intent by the parties concerned that are recorded in the insolvency plan shall be deemed to have been made in the prescribed form.
- (2) If the share or membership rights of the parties holding a participating interest in the debtor are included in the plan (section 255a), the resolutions of the shareholders or other declarations of intent by the parties concerned that are recorded in the plan shall be deemed to have been made in the prescribed form. Notices of meetings, announcements and other measures required under company law in preparation for resolutions of the shareholders shall be deemed to have been effected in the prescribed form. The insolvency administrator is entitled to undertake the necessary registrations with the relevant registration court.
- (3) The same shall apply with the necessary modifications to the undertakings recorded in the plan on which a measure pursuant to subsection (1) or (2) is based.

Section 254b – Effect for all Parties Concerned

Sections 254 and 254a apply also to insolvency creditors who have not filed their claims and to parties who have objected to the insolvency plan.

Section 255 – Revival Clause

- (1) If the claims of insolvency creditors are deferred or partially waived on the basis of the constructive part of the insolvency plan, the deferment or waiver will cease to be binding on a creditor against whom the debtor significantly defaults in implementing the plan. Significant default shall only be considered to have occurred when the debtor has not paid a liability that is due despite having received a written reminder from the creditor granting a period of grace of at least two weeks.
- (2) If new insolvency proceedings are commenced in respect of the debtor's assets before the plan has been implemented in full, the deferment or waiver of claims shall cease to be binding on all the insolvency creditors.

- (3) The plan may provide otherwise. However, subsection (1) cannot be departed from to the detriment of the debtor.

Section 256 – Disputed Claims. Shortfall Claims

- (1) If a claim was disputed at the verification meeting or if the amount of the shortfall claim of a creditor entitled to separate satisfaction has not yet been determined, default in the implementation of the insolvency plan within the meaning of section 255 (1) shall not be considered to have occurred if, until final determination of the amount of the claim, the debtor takes account of the claim to the extent corresponding to the decision of the insolvency court on the voting right of the creditor at the vote on the plan. If the insolvency court has not yet decided on the creditor's voting right, on application by the debtor or the creditor the court shall make a subsequent determination of the extent to which the debtor must take account of the claim on a provisional basis.
- (2) If the final determination results in the debtor having paid an insufficient amount, it shall make retrospective payment of the amount outstanding. Significant default in the implementation of the plan shall only be considered to have occurred when the debtor does not make retrospective payment of the amount outstanding despite having received a written reminder from the creditor granting a period of grace of at least two weeks.
- (3) If the final determination results in the debtor having paid an excessive amount, it may claim repayment of the excess only insofar as the excess also exceeds the unmatured part of the claim to which the creditor is entitled under the insolvency plan.

Section 257 – Enforcement based on the Plan

- (1) Insolvency creditors whose claims were accepted and not disputed by the debtor at the verification meeting may pursue compulsory enforcement against the debtor based on the confirmed, final and binding insolvency plan in conjunction with their entry in the schedule as under an enforceable judgment. A claim in relation to which an objection which was raised has been overcome is equivalent to an undisputed claim. Section 202 applies with the necessary modifications.
- (2) The same shall apply to compulsory enforcement against a third party who assumed obligations for the implementation of the plan alongside the debtor by means of a written declaration submitted to the insolvency court without reserving the defence of failure to pursue remedies.
- (3) If a creditor asserts the rights to which it is entitled in the event of significant default by the

debtor in the implementation of the plan, the creditor has to satisfy the court in relation to the reminder and the expiry of the period of grace in order to obtain the issue of the court certificate of enforceability in respect of these rights and for the purpose of carrying out compulsory enforcement but is not required to produce any further evidence in respect of the debtor's default.

Section 258 – Termination of the Insolvency Proceedings

- (1) As soon as the order confirming the insolvency plan has become final and binding, the insolvency court shall order the termination of the insolvency proceedings unless the insolvency plan provides otherwise.
- (2) The insolvency administrator shall settle the undisputed, mature preferential claims and provide security for disputed or unmatured preferential claims prior to termination of the proceedings. A financial plan may also be submitted showing that satisfaction of the unmatured preferential claims is ensured.
- (3) The order and grounds for termination of the proceedings shall be published. The debtor, the insolvency administrator and the members of the creditors' committee shall be informed in advance when the termination will become effective (section 9 (1) sentence 3). Section 200 (2) sentence 2 applies with the necessary modifications.

Section 259 – Effects of Termination

- (1) The offices of the insolvency administrator and members of the creditors' committee expire upon termination of the insolvency proceedings. The right to freely dispose of the insolvency estate reverts to the debtor.
- (2) The provisions concerning monitoring of implementation of the plan remain unaffected.
- (3) The insolvency administrator may continue a pending action concerning avoidance in insolvency even after termination of the proceedings if provision is made for this in the constructive part of the insolvency plan. In this case the action will be undertaken for account of the debtor unless the plan provides otherwise.

Section 259a – Protection from Enforcement

- (1) If, after termination of the proceedings, compulsory enforcement by individual insolvency creditors who did not file their claims by the date of the voting meeting threatens the implementation of the insolvency plan, on application by the debtor the insolvency court may order the full or partial lifting of a measure of compulsory enforcement or prohibit it for a maximum of three

years. The application is admissible only if the debtor credibly establishes the factual allegations substantiating the threat.

- (2) If the threat is credibly established, the court may also temporarily suspend compulsory enforcement.
- (3) The court shall set aside or vary its order on application if this is necessary taking account of a change in circumstances.

Section 259b – Special Limitation Period

- (1) The claim of an insolvency creditor who did not file its claim by the date of the voting meeting becomes time-barred within one year.
- (2) The limitation period begins when the claim is due and payable and the order confirming the insolvency plan has become final and binding.
- (3) Subsections (1) and (2) are applicable only if this results in a claim becoming time-barred earlier than by application of the limitation provisions which would otherwise be applicable.
- (4) The limitation period for the claim of an insolvency creditor is suspended while enforcement is not permitted by reason of protection from enforcement pursuant to section 259a. The suspension ends three months after termination of protection from enforcement.

Section 260 – Monitoring of Plan Implementation

- (1) Provision may be made in the constructive part of the insolvency plan for monitoring the implementation of the plan.
- (2) In the case provided for in subsection (1), after termination of the insolvency proceedings monitoring will be undertaken in relation to fulfilment of the claims to which the creditors are entitled against the debtor pursuant to the constructive part of the plan.
- (3) If so provided in the constructive part of the plan, the monitoring shall extend to fulfilment of the claims to which the creditors are entitled pursuant to the constructive part of the plan against a legal entity or company without legal personality set up after the commencement of insolvency proceedings in order to take over and continue the debtor's enterprise or a business operation of the debtor (takeover company).

Section 261 – Duties and Powers of the Insolvency Administrator

- (1) The monitoring of implementation of the plan is the duty of the insolvency administrator. The offices of the insolvency administrator and members of the creditors' committee and also the supervision of the insolvency court will continue for this purpose. Section 22 (3) applies with the necessary modifications.

- (2) During the monitoring period the insolvency administrator must report annually to the creditors' committee, if one has been appointed, and to the court on the current status of and future prospects for implementation of the insolvency plan. The right of the creditors' committee and of the court to request specific information or an interim report at any time remains unaffected.

Section 262 – Insolvency Administrator's Duty of Notification

If the insolvency administrator ascertains that claims which are being monitored for fulfilment are not or cannot be met, he/she must notify the creditors' committee and the insolvency court accordingly without delay. If a creditors' committee has not been appointed, the administrator shall instead notify all creditors with claims against the debtor or the takeover company pursuant to the constructive part of the insolvency plan.

Section 263 – Transactions Requiring Approval

Provision may be made in the constructive part of the insolvency plan for particular transactions undertaken by the debtor or the takeover company during the monitoring period to require the approval of the insolvency administrator to be effective. Section 81 (1) and section 82 apply with the necessary modifications.

Section 264 – Credit Limit

- (1) Provision may be made in the constructive part of the insolvency plan for the insolvency creditors to be subordinated to creditors with claims arising under loans and other lending taken out by the debtor or the takeover company during the monitoring period or left in place by a preferential creditor into the monitoring period. In this event a total amount for such lending shall also be fixed (credit limit). This may not exceed the value of the assets listed in the statement of assets and liabilities annexed to the plan (section 229 sentence 1).
- (2) The insolvency creditors shall be subordinated under subsection (1) only to creditors with whom it is agreed that the lending granted by them is within the credit limit in terms of principal claim, interest and costs, the amounts of which shall be specified, and in relation to whom the insolvency administrator has confirmed this agreement in writing.
- (3) Section 39 (1) No. 5 remains unaffected.

Section 265 – Subordination of New Creditors

Creditors with other contractual entitlements which arise during the monitoring period are also subordinated to creditors with claims arising

under loans taken out or left in place in accordance with section 264. Entitlements arising under a contract for continuing obligations entered into prior to the monitoring period shall also be regarded as such entitlements for the period after the first date on which the creditor could have terminated the contract after the commencement of monitoring.

Section 266 – Consideration of Subordinated Ranking

- (1) The subordinated ranking of the insolvency creditors and the creditors specified in section 265 shall be taken into account only in insolvency proceedings commenced prior to the termination of monitoring.
- (2) In these new insolvency proceedings these creditors shall rank senior to the other subordinated creditors.

Section 267 – Notification of Monitoring

- (1) If implementation of the insolvency plan is being monitored, an announcement to this effect shall be published along with the order terminating the insolvency proceedings.
- (2) Publication is also required of the following:
 1. in the case of section 260 (3), the extension of monitoring to the takeover company;
 2. in the case of section 263, the transactions requiring the approval of the insolvency administrator;
 3. in the case of section 264, the amount of the credit limit.
- (3) Section 31 applies with the necessary modifications. In the case of section 263, insofar as the right to dispose of a plot of land, a registered ship, ship under construction or aircraft, a right in such an object or a right in such a right is restricted, sections 32 and 33 shall apply with the necessary modifications.

Section 268 – Termination of Monitoring

- (1) The insolvency court shall order termination of monitoring
 1. if the claims whose fulfilment is subject to monitoring are fulfilled or if the fulfilment of these claims is guaranteed, or
 2. if three years have elapsed since termination of the insolvency proceedings and no application for commencement of new insolvency proceedings has been submitted.
- (2) The order shall be published. Section 267 (3) applies with the necessary modifications.

Section 269 – Costs of Monitoring

The monitoring costs shall be borne by the debtor. In the case of section 260 (3), the takeover

company shall bear the costs incurred for its monitoring.

Part Seven – Self-administration

Section 270 – Requirements

- (1) The debtor is entitled to manage and dispose of the insolvency estate under the oversight of a supervisor if the court orders self-administration in its order for commencement of insolvency proceedings. The proceedings shall be governed by the general provisions unless provision to the contrary is made in this Part.
- (2) An order for self-administration requires that
 1. it is applied for by the debtor and
 2. no circumstances are known which suggest that the order will result in prejudice to the creditors.
- (3) Prior to the decision on the application, the preliminary creditors' committee shall be given the opportunity to make representations if this will not clearly lead to a prejudicial change in the debtor's financial position. If the application is supported by a unanimous resolution of the preliminary creditors' committee, the order shall be deemed not to be prejudicial to the creditors.
- (4) If the application is refused, written reasons for the refusal shall be given; section 27 (2) number 5 applies with the necessary modifications.

Section 270a – Preliminary Insolvency Proceedings

- (1) If the debtor's application for self-administration does not clearly lack any prospect of success, during the preliminary insolvency proceedings the court shall refrain from
 1. imposing a general prohibition of disposal on the debtor or
 2. ordering that all disposals by the debtor shall be effective only with the approval of a preliminary insolvency administrator.
 In this case, instead of the preliminary insolvency administrator a preliminary supervisor shall be appointed to whom sections 274 and 275 are applicable with the necessary modifications.
- (2) If the debtor has submitted the application for commencement of insolvency proceedings in the case of imminent illiquidity and applied for self-administration, but the court regards the requirements for self-administration as not being fulfilled, the court shall advise the debtor of its concerns and give the debtor the opportunity to withdraw the application for commencement of insolvency proceedings prior to the decision on commencement.

Section 270b – Preparation for Restructuring

- (1) If the debtor has submitted the application for commencement of insolvency proceedings in the case of imminent illiquidity or overindebtedness and applied for self-administration, and if the planned restructuring does not clearly lack any prospect of success, on application by the debtor the insolvency court shall fix a period of time for submission of an insolvency plan. The time allowed shall amount to no more than three months. Along with the application the debtor must submit a substantiated statement from a tax consultant, auditor, lawyer or other comparably qualified person experienced in insolvency matters attesting that the debtor faces imminent illiquidity or overindebtedness but is not illiquid and that the planned restructuring does not clearly lack any prospect of success.
- (2) In the order pursuant to subsection (1) the court shall appoint a preliminary supervisor pursuant to section 270a (1) who cannot be the same person as the person who issues the statement pursuant to subsection (1). The court may deviate from the debtor's proposal only if the proposed person is clearly unsuitable for the role; the court shall give reasons for its decision. The court may order interim measures pursuant to section 21 (1) and (2) number 1a and (3) to (5); the court must order measures pursuant to section 21 (2) number 3 if the debtor applies for this.
- (3) On application by the debtor the court must decree that the debtor is creating preferential liabilities. Section 55 (2) applies with the necessary modifications.
- (4) The court shall revoke the order made pursuant to subsection (1) prior to expiry of the time allowed if
 1. the planned restructuring no longer has any prospect of success;
 2. the preliminary creditors' committee applies for revocation of the order or
 3. a creditor entitled to separate satisfaction or an insolvency creditor applies for revocation of the order and circumstances become known which suggest that the order will result in prejudice to the creditors; the application is admissible only if no preliminary creditors' committee has been appointed and the applicant proves the circumstances to the satisfaction of the court.
 The debtor or the preliminary supervisor must notify the court without delay in the event of illiquidity occurring. After the order has been revoked or after expiry of the time allowed for submission of an insolvency plan, the court shall decide on commencement of insolvency proceedings.

Section 270c – Appointment of the Supervisor

When self-administration is ordered, a supervisor shall be appointed in place of the insolvency administrator. The claims of the insolvency creditors shall be submitted to the supervisor. Sections 32 and 33 are not applicable.

Section 271 – Subsequent Order

If the creditors' meeting applies for self-administration with the majority specified in section 76 (2) and the majority of the creditors voting, the court shall make a corresponding order, provided the debtor consents. The former insolvency administrator may be appointed as supervisor.

Section 272 – Revocation of the Order

- (1) The insolvency court shall revoke the order for self-administration if this is requested by
 1. the creditors' meeting with the majority specified in section 76 (2) and the majority of the creditors voting;
 2. a creditor entitled to separate satisfaction or an insolvency creditor and if the requirement contained in section 270 (2) number 2 ceases to apply and the applicant is threatened with significant detriment as a result of self-administration;
 3. the debtor.
- (2) An application by a creditor shall be admissible only if the requirements specified in subsection (1) number 2 are proved to the satisfaction of the court. The debtor shall be heard prior to a decision on the application. The creditor and the debtor have the right of immediate appeal against the decision.
- (3) The former supervisor may be appointed as insolvency administrator.

Section 273 – Publication

The decision of the insolvency court ordering self-administration or ordering revocation of the order for self-administration after commencement of insolvency proceedings shall be published.

Section 274 – Legal Status of the Supervisor

- (1) Section 27 (2) number 5, section 54 number 2 and also sections 56 to 60 and 62 to 65 apply with the necessary modifications to the appointment of the supervisor, his/her supervision by the insolvency court, his/her liability and his/her remuneration.
- (2) The supervisor shall investigate the financial position of the debtor and monitor the debtor's management of the business and living expenses. Section 22 (3) applies with the necessary modifications.

- (3) If the supervisor identifies circumstances suggesting prejudice to the creditors if self-administration continues, he/she shall notify the creditors' committee and the insolvency court without delay. If a creditors' committee has not been appointed, the supervisor shall instead notify the insolvency creditors who have submitted claims and the creditors entitled to separate satisfaction.

Section 275 – Involvement of the Supervisor

- (1) The debtor shall incur liabilities which fall outside the ordinary course of business only with the approval of the supervisor. Even liabilities which fall within the ordinary course of business may not be incurred by the debtor if the supervisor objects.
- (2) The supervisor may require the debtor to permit all incoming funds to be received and all payments to be made by the supervisor alone.

Section 276 – Involvement of the Creditors' Committee

The debtor must obtain the approval of the creditors' committee if it wishes to undertake legal acts that are of particular importance for the insolvency proceedings. Section 160 (1) sentence 2, section 160 (2), section 161 sentence 2 and section 164 apply with the necessary modifications.

Section 276a – Involvement of Supervisory Bodies

If the debtor is a legal entity or a company without legal personality, the supervisory board, shareholders' meeting or corresponding bodies shall have no influence over the debtor's management. The dismissal and new appointment of members of the management board shall be effective only with the supervisor's approval. Approval shall be granted if the measure does not result in prejudice to the creditors.

Section 277 – Ordering the Requirement of Approval

- (1) On application by the creditors' meeting the insolvency court shall order that particular transactions by the debtor require the approval of the supervisor to be effective. Section 81 (1) sentences 2 and 3 and section 82 apply with the necessary modifications. If the supervisor approves the creation of a preferential liability, section 61 shall apply with the necessary modifications.
- (2) The order may also be issued on application by a creditor entitled to separate satisfaction or an insolvency creditor if it is required without delay in order to avoid prejudice to the creditors. The application shall be admissible only if this requirement is proved to the satisfaction of the court.

- (3) The order shall be published. Section 31 applies with the necessary modifications. Insofar as the right to dispose of a plot of land, a registered ship, ship under construction or aircraft or a right in such an object, or a right in such a right is restricted, sections 32 and 33 shall apply with the necessary modifications.

Section 278 – Funds for the Debtor's Living Expenses

- (1) The debtor is entitled to withdraw funds for himself/herself and the family members specified in section 100 (2) sentence 2 from the insolvency estate that permit a modest standard of living, taking into account the debtor's previous lifestyle.
- (2) If the debtor is not a natural person, subsection (1) shall apply with the necessary modifications to the debtor's general partners with authority to represent the debtor.

Section 279 – Reciprocal Contracts

The provisions on the performance of transactions and the co-operation of the works council (sections 103 to 128) shall apply subject to the proviso that the debtor takes the place of the insolvency administrator. The debtor shall exercise its rights under these provisions in agreement with the supervisor. The debtor can validly exercise the rights pursuant to sections 120, 122 and 126 only with the supervisor's approval.

Section 280 – Liability. Avoidance in Insolvency

Only the supervisor may assert a claim of liability on behalf of the insolvency estate pursuant to sections 92 and 93 and avoid legal acts pursuant to sections 129 to 147.

Section 281 – Provision of Information to the Creditors

- (1) The debtor shall draw up the list of assets of the insolvency estate, the list of creditors and the statement of assets and liabilities (sections 151 to 153). The supervisor shall review the lists and the statement of assets and liabilities and in each case state in writing whether the result of his/her review gives rise to any objections.
- (2) The debtor shall present the report at the report meeting. The supervisor shall comment on the report.
- (3) The debtor is obliged to present accounts (sections 66 and 155). Subsection (1) sentence 2 applies with the necessary modifications to the final presentation of accounts by the debtor.

Section 282 – Realisation of Collateral

- (1) The right of the insolvency administrator to realise assets subject to rights to separate satisfac-

tion is vested in the debtor. The costs of assessment of the assets and of determining the rights in these assets shall, however, not be charged. Only the costs actually and necessarily incurred for realisation of the assets and the amount of the value added tax shall be recognised as realisation costs.

- (2) The debtor shall exercise its realisation right in agreement with the supervisor.

Section 283 – Satisfaction of Insolvency Creditors

- (1) During the verification of claims, claims filed may be disputed by the debtor and the supervisor as well as by the insolvency creditors. A claim disputed by an insolvency creditor, the debtor or the supervisor is not considered as accepted.
- (2) Distributions shall be carried out by the debtor. The supervisor shall review the distribution schedules and in each case state in writing whether the result of his/her review gives rise to any objections.

Section 284 – Insolvency Plan

- (1) An instruction from the creditors' meeting to prepare an insolvency plan shall be addressed either to the supervisor or to the debtor. If the instruction is addressed to the debtor, the supervisor shall assist in an advisory capacity.
- (2) It is the duty of the supervisor to monitor implementation of the plan.

Section 285 – Deficiency of Assets

The supervisor shall notify the insolvency court of a deficiency of assets.

Part Eight – Discharge of Residual Debt

Section 286 – Principle

If the debtor is a natural person, he/she shall be discharged from the liabilities towards the insolvency creditors not fulfilled during the insolvency proceedings pursuant to sections 287 to 303.

Section 287 – Debtor's Application

- (1) Discharge of residual debt requires an application by the debtor which should be combined with his/her application for commencement of insolvency proceedings. If the application is not so combined, it shall be lodged within two weeks of notification pursuant to section 20 (2).
- (2) The application shall be accompanied by a declaration by the debtor assigning his/her attachable claims to emoluments due under a service contract, or to recurring emoluments replacing them, to a trustee to be designated by the insolvency court for a period of six years follow-

ing commencement of insolvency proceedings. If the debtor had already previously assigned or pledged these claims to a third party, reference shall be made to this in the declaration.

- (3) Agreements which exclude the assignment of the debtor's claims to emoluments due under a service contract, or to recurring emoluments replacing them, or which make such assignment subject to a condition or which otherwise restrict such assignment, are invalid insofar as they would frustrate or impair the assignment declaration pursuant to subsection (2) sentence 1.

Section 288 – Right of Recommendation

The debtor and the creditors may recommend a natural person who is suitable in respect of the individual case to the insolvency court as trustee.

Section 289 – Decision of the Insolvency Court

- (1) The insolvency creditors and the insolvency administrator shall be heard in relation to the debtor's application at the final meeting. The insolvency court decides on the debtor's application by way of a court order.
- (2) The debtor and each insolvency creditor who applied at the final meeting for the refusal of discharge of residual debt has the right of immediate appeal against the order. The insolvency proceedings are terminated only when the order becomes final. The final order shall be published along with the order for termination of the insolvency proceedings.
- (3) If the insolvency proceedings are discontinued, discharge of residual debt may be granted only if, after notification of deficiency of assets, the insolvency estate has been distributed pursuant to section 209 and the insolvency proceedings are discontinued pursuant to section 211. Subsection (2) applies subject to the proviso that discontinuation of the proceedings takes the place of termination of the proceedings.

Section 290 – Refusal of Discharge of Residual Debt

- (1) Discharge of residual debt shall be refused in the order if refusal has been requested by an insolvency creditor at the final meeting and if
 1. the debtor has received a final conviction for a criminal offence under sections 283 to 283c of the Criminal Code [*Strafgesetzbuch*];
 2. during the three years prior to the application for commencement of insolvency proceedings or subsequent to the application the debtor has intentionally or through gross negligence provided incorrect or incomplete written information about his/her financial circumstances in order to obtain a loan, to receive payments from public resources or to avoid payments to public funds;

3. during the ten years prior to the application for commencement of insolvency proceedings or subsequent to the application the debtor has been granted discharge of residual debt or such discharge has been refused pursuant to section 296 or section 297;

4. during the year prior to the application for commencement of insolvency proceedings or subsequent to the application the debtor has intentionally or through gross negligence prejudiced the satisfaction of the insolvency creditors by creating inappropriate liabilities, dissipating assets or delaying the commencement of insolvency proceedings without any prospect of an improvement in his/her financial position;

5. during the insolvency proceedings the debtor has intentionally or through gross negligence breached obligations of disclosure and co-operation under this Code or

6. in the lists of his/her assets and income, creditors and the claims against him/her to be submitted pursuant to section 305 (1) No. 3, the debtor has intentionally or through gross negligence provided incorrect or incomplete information.

- (2) The creditor's application is admissible only if the creditor proves to the satisfaction of the court that a ground for refusal exists.

Section 291 – Announcement of Discharge of Residual Debt

- (1) If the prerequisites of section 290 are not met, the court shall state in its order that the debtor will be granted discharge of residual debt if he/she complies with the obligations under section 295 and if the prerequisites for refusal pursuant to section 297 or section 298 are not present.
- (2) In the same order the court shall appoint the trustee upon whom the debtor's attachable emoluments devolve in accordance with the assignment declaration (section 287 (2)).

Section 292 – Legal Status of the Trustee

- (1) The trustee must notify the parties obliged to pay the emoluments of the assignment. He/she must keep the amounts he/she receives through the assignment and other payments from the debtor or third parties separate from his/her assets and distribute them once a year to the insolvency creditors on the basis of the final schedule, provided the costs of the proceedings deferred pursuant to section 4a less the costs of appointment of counsel have been discharged. Section 36 (1) sentence 2 and subsection (4) apply with the necessary modifications. At the end of four years from the date of termination of the insolvency proceedings the trustee shall pay over to the debtor ten per cent, and at the end of five

years from the date of termination fifteen per cent, of the amounts he/she receives through the assignment and other payments. If the costs of the proceedings deferred pursuant to section 4a have not yet been discharged, payments shall only be made to the debtor if his/her income does not exceed the amount calculated in accordance with section 115 (1) of the Code of Civil Procedure.

- (2) The creditors' meeting may also assign to the trustee the task of monitoring fulfilment of the debtor's obligations. In this case the trustee must inform the creditors without delay if he/she ascertains that the debtor has breached any of these obligations. The trustee is obliged to monitor the debtor's compliance only if the additional remuneration to which he/she is entitled for this is covered or paid in advance.
- (3) Upon termination of his/her office the trustee shall present accounts to the insolvency court. Sections 58 and 59 apply with the necessary modifications, section 59 with the proviso, however, that each insolvency creditor may apply for the dismissal of the trustee and each insolvency creditor has the right of immediate appeal.

Section 293 – Remuneration of the Trustee

- (1) The trustee is entitled to remuneration for his/her activities and to reimbursement of reasonable expenses.
Account shall be taken of the expenditure of time involved and the scope of activities performed by the trustee.
- (2) Section 63 (2) and sections 64 and 65 apply with the necessary modifications.

Section 294 – Equal Treatment of Creditors

- (1) Compulsory enforcement against the debtor's assets on behalf of individual insolvency creditors is not permitted during the term of the assignment declaration.
- (2) Any agreement by the debtor or other persons with individual insolvency creditors creating a preference in favour of such creditors is void.
- (3) The party liable for the emoluments covered by the assignment declaration may only set off a claim in relation to the debtor against the claim to the emoluments if such party would have had the right of set-off under section 114 (2) if the insolvency proceedings had continued.

Section 295 – Debtor's Obligations

- (1) During the term of the assignment declaration the debtor is obliged
 1. to be in reasonable gainful employment and if unemployed to try to find such employment and not to refuse any suitable activity;

2. to surrender to the trustee one half of the value of property he/she acquires by testamentary disposition or in consideration of a future right of succession;

3. to notify the insolvency court and the trustee without delay of any change of residence or place of employment, not to conceal any emoluments covered by the assignment declaration or assets covered by number 2, and to provide the insolvency court and the trustee on request with information about his/her employment or his/her efforts to find employment and about his/her emoluments and assets;

4. to make payments in satisfaction of the insolvency creditors only to the trustee and not to create a preference for any insolvency creditor.

- (2) Insofar as the debtor is self-employed, he/she is obliged, by means of payments to the trustee, to put the insolvency creditors in the position they would be in if he/she had entered into a reasonable service contract.

Section 296 – Breach of Obligations

- (1) The insolvency court shall refuse the discharge of residual debt on application by an insolvency creditor if the debtor breaches one of his/her obligations during the term of the assignment declaration and thereby impairs the satisfaction of the insolvency creditors; this shall not apply if the debtor is not at fault. The application may be lodged only within one year of the date on which the creditor became aware of the breach of an obligation. The application is admissible only if the prerequisites specified in sentences 1 and 2 are proved to the satisfaction of the court.
- (2) Prior to its decision on the application, the court shall hear the trustee, the debtor and the insolvency creditors. The debtor must provide information on the fulfilment of his/her obligations and, if the creditor so requests, affirm the accuracy of the information in an affidavit. If the debtor fails without reasonable excuse to provide the information or the affidavit within the time limit set by the court or if he/she fails without reasonable excuse to attend a hearing scheduled by the court for provision of the information or the affidavit despite having been duly summoned, the court shall refuse the discharge of residual debt.
- (3) The applicant and the debtor have the right of immediate appeal against the decision. The refusal of the discharge of residual debt shall be published.

Section 297 – Insolvency Offences

- (1) On application by an insolvency creditor the insolvency court shall refuse the discharge of residual debt if the debtor receives a final conviction

for a criminal offence under sections 283 to 283c of the Criminal Code in the period between the final meeting and termination of the insolvency proceedings or during the term of the assignment declaration.

- (2) Section 296 (1) sentences 2 and 3 and subsection (3) apply with the necessary modifications.

Section 298 – Cover for the Trustee's Minimum Remuneration

- (1) On application by the trustee the insolvency court shall refuse the discharge of residual debt if the amounts paid to the trustee for his/her previous year of office do not cover the minimum remuneration and the debtor fails to pay in the outstanding amount despite being requested to do so by the trustee in writing within a time limit of at least two weeks and being informed of the possibility that the discharge of residual debt could be refused. This shall not apply if the costs of the insolvency proceedings have been deferred pursuant to section 4a.
- (2) The debtor shall be heard prior to the decision. Discharge shall not be refused if the debtor pays in the outstanding amount within two weeks of being requested to do so by the court or if the debtor is permitted to defer the amount in accordance with section 4a.
- (3) Section 296 (3) applies with the necessary modifications.

Section 299 – Premature Termination

If the discharge of residual debt is refused pursuant to section 296, 297 or 298, the term of the assignment declaration, the office of the trustee and the restriction on the creditors' rights shall expire when the decision becomes final.

Section 300 – Decision on Discharge of Residual Debt

- (1) If the term of the assignment declaration has elapsed without premature termination, after hearing the insolvency creditors, the trustee and the debtor the insolvency court shall decide on the grant of discharge of residual debt by means of a court order.
- (2) The insolvency court shall refuse the discharge of residual debt on application by an insolvency creditor if the prerequisites specified in section 296 (1) or (2) sentence 3 or section 297 are present, or on application by the trustee if the prerequisites specified in section 298 are present.
- (3) The order shall be published. The debtor and each insolvency creditor who requested the refusal of discharge of residual debt at the hearing pursuant to subsection (1) has the right of immediate appeal.

Section 301 – Effect of Discharge of Residual Debt

- (1) If discharge of residual debt is granted, it takes effect against all insolvency creditors. This also applies in respect of creditors who have not filed their claims.
- (2) The rights of the insolvency creditors against co-debtors and sureties of the debtor and the rights of these creditors under a priority notice registered to secure a claim or under a right giving entitlement to separate satisfaction in insolvency proceedings are not affected by the discharge of residual debt. The debtor is, however, discharged vis-à-vis his/her co-debtors, sureties or any other party holding a right of recourse in the same way as he/she is discharged vis-à-vis the insolvency creditors.
- (3) If a creditor without entitlement to satisfaction by virtue of the discharge of residual debt is satisfied, this shall not give rise to a duty on the part of the recipient to make restitution.

Section 302 – Excluded Claims

The following claims are not affected by the grant of discharge of residual debt:

1. liabilities of the debtor based on the commission of an intentional tort, provided the creditor had registered the corresponding claim stating this as the legal ground pursuant to section 174 (2);
2. fines and the comparable liabilities of the debtor pursuant to section 39 (1) No. 3;
3. liabilities arising out of interest-free loans granted to the debtor for settlement of the costs of the insolvency proceedings.

Section 303 – Revocation of Discharge of Residual Debt

- (1) On application by an insolvency creditor the insolvency court shall revoke the grant of discharge of residual debt if it subsequently transpires that the debtor intentionally breached one of his/her obligations and satisfaction of the insolvency creditors was significantly impaired as a result.
- (2) The creditor's application is admissible only if it is submitted within one year of the date on which the decision on the discharge of residual debt became final and if the creditor proves to the satisfaction of the court that the prerequisites specified in subsection (1) are present and that the creditor had no knowledge of them before the decision became final.
- (3) The debtor and the trustee shall be heard prior to the decision. The applicant and the debtor have the right of immediate appeal against the decision. The decision revoking the discharge of residual debt shall be published.

Part Nine – Consumer Insolvency Proceedings and other Minor Proceedings

Chapter One – Scope of Application

Section 304 – Principle

- (1) If the debtor is a natural person who does or did not pursue a self-employed economic activity, the proceedings are governed by the general provisions unless provision to the contrary is made in this Part. If the debtor did pursue a self-employed economic activity, sentence 1 shall apply if his/her financial circumstances are straightforward and there are no claims against him/her under employment contracts.
- (2) Financial circumstances are straightforward within the meaning of subsection (1) sentence 2 only if, at the time when the application for commencement of insolvency proceedings is submitted, the debtor has fewer than 20 creditors.

Chapter Two – Debt Settlement Plan

Section 305 – Debtor's Application for Commencement of Insolvency Proceedings

- (1) Along with the written application for commencement of insolvency proceedings (section 311) or without delay following the application, the debtor must submit:
 1. a certificate issued by an appropriate person or body stating that within the last six months prior to the application for commencement of insolvency proceedings an unsuccessful attempt was made to reach an out-of-court debt settlement agreement with the creditors on the basis of a plan; the plan shall be attached and the principal reasons for its failure shall be explained; the Federal States may determine which persons or bodies are to be regarded as appropriate;
 2. the application for discharge of residual debt (section 287) or a declaration that an application for discharge of residual debt is not to be made;
 3. a list of available assets and income (list of assets), a summary of the main content of this list (statement of assets and liabilities), a list of creditors and a list of the claims against the debtor; a declaration must be attached to the lists and to the statement of assets and liabilities stating that the information they contain is accurate and complete;
 4. a debt settlement plan; this may include all arrangements which, taking account of the creditors' interests and the debtor's assets, income and family circumstances, are likely to lead to a reasonable debt settlement; the plan shall also state whether and to what extent guarantees,

liens and other creditors' securities are to be affected by the plan.

- (2) In the list of claims pursuant to subsection (1) No. 3 reference may also be made to enclosed itemisations of claims by the creditors. At the debtor's request the creditors are obliged to provide the debtor with a written itemisation of their claims against him/her at their expense to enable him/her to prepare the list of claims; they must, in particular, state the amount of their claims broken down into principal claim, interest and costs. The debtor's request must contain a reference to an application for commencement of insolvency proceedings that has already been submitted to the court or to an application planned for the near future.
- (3) If the debtor has not submitted all the statements and documents specified in subsection (1), the insolvency court shall request him/her to produce any missing items without delay. If the debtor does not comply with this request within one month, his/her application for commencement of insolvency proceedings shall be deemed to have been withdrawn. In cases coming under section 306 (3) sentence 3, the period shall be three months.
- (4) In proceedings pursuant to this section, the debtor may be represented before the insolvency court by an appropriate person or member of a body recognised as appropriate within the meaning of subsection (1) No. 1. Section 174 (1) sentence 3 applies with the necessary modifications to representation of the creditor.
- (5) In order to simplify consumer insolvency proceedings, the Federal Ministry of Justice is authorised to introduce forms for the parties concerned for the certificates, applications, lists and plans to be submitted in accordance with subsection (1) Nos 1 to 4 by means of statutory order issued with the approval of the Bundesrat. Insofar as forms are introduced pursuant to sentence 1, the debtor must use these forms. Different forms may be introduced for proceedings in courts where the proceedings are processed electronically and for proceedings in courts where the proceedings are not processed electronically.

Section 305a – Failure of Out-of-Court Debt Settlement

An attempt to reach an out-of-court debt settlement agreement with the creditors shall be deemed to have failed if a creditor pursues compulsory enforcement after the negotiations on out-of-court debt settlement have been initiated.

Section 306 – Suspension of Proceedings

- (1) The proceedings relating to the application for commencement of insolvency proceedings shall be suspended until the decision on the debt settlement plan. This period shall not exceed three months. After hearing the debtor the court shall order the proceedings relating to the application for commencement of insolvency proceedings to be continued if the court, exercising its independent discretion, determines that the debt settlement plan is not likely to be accepted.
- (2) Subsection (1) does not preclude the ordering of protective measures. If the proceedings are suspended, the debtor shall submit the number of copies of the debt settlement plan and statement of assets and liabilities required for service within two weeks of being requested to do so by the court. Section 305 (3) sentence 2 applies with the necessary modifications.
- (3) If a creditor applies for commencement of proceedings, prior to its decision on the application the insolvency court shall give the debtor the opportunity to lodge an application as well. If the debtor lodges an application, subsection (1) shall also apply to the creditor's application. In this case the debtor shall, in the first place, attempt to reach an out-of-court agreement pursuant to section 305 (1) No. 1.

Section 307 – Service on the Creditors

- (1) The insolvency court shall serve the debt settlement plan and statement of assets and liabilities on the creditors named by the debtor and at the same time request that the creditors comment on the lists specified in section 305 (1) No. 3 and the debt settlement plan within a strict time limit of one month; the creditors shall be informed that the lists have been deposited with the insolvency court for inspection. At the same time each creditor shall be given the opportunity within the time limit pursuant to sentence 1, with an express reference to the legal consequences of section 308 (3) sentence 2, to verify the details of its claim in the list of claims deposited for inspection with the insolvency court and if necessary to supplement the details. Section 8 (1) sentences 2 and 3 and subsections (2) and (3) do not apply to service pursuant to sentence 1.
- (2) If a creditor's comments are not received by the court with the time limit stated in subsection (1) sentence 1, this creditor shall be deemed to have approved the debt settlement plan. This must be pointed out in the request for comments.
- (3) After expiry of the time limit pursuant to subsection (1) sentence 1 the debtor shall be given the opportunity to amend or supplement the debt settlement plan within a time limit to be de-

termined by the court, if this appears necessary based on the comments submitted by a creditor or expedient for facilitating a mutually agreed debt settlement. Where necessary, the amendments or additions shall be served on the creditors. Subsection (1) sentences 1 and 3 and subsection (2) apply with the necessary modifications.

Section 308 – Acceptance of the Debt Settlement Plan

- (1) If no creditor has raised objections to the debt settlement plan or if approval is substituted pursuant to section 309, the debt settlement plan is deemed to have been accepted; the insolvency court shall issue an order to this effect. The debt settlement plan has the effect of a settlement within the meaning of section 794 (1) No. 1 of the Code of Civil Procedure. An official copy of the debt settlement plan and the order pursuant to sentence 1 shall be served on the creditors and the debtor.
- (2) The applications for commencement of insolvency proceedings and for the grant of discharge of residual debt are deemed to have been withdrawn.
- (3) If claims are not included in the debtor's list and have also not been taken into consideration subsequently on realisation of the debt settlement plan, the creditors may demand fulfilment from the debtor. This shall not apply insofar as a creditor failed to add the details of its claims to the list of claims deposited for inspection with the insolvency court within the time limit set by the court, although the debt settlement plan was sent to this creditor and the claim arose prior to the expiry of the time limit; the claim is extinguished to this extent.

Section 309 – Substitution of Approval

- (1) If the debt settlement plan has been approved by more than half of the named creditors and if the total of the claims of the assenting creditors amounts to more than half of the total of the claims of the named creditors, on application by a creditor or the debtor the insolvency court shall substitute the objections of a creditor to the debt settlement plan with approval. This shall not apply if
 1. the creditor who raised objections does not receive a fair share in relation to the other creditors or
 2. this creditor is likely to be placed in a worse economic position as a result of the debt settlement plan than would be the case if the proceedings relating to the applications for commencement of insolvency proceedings and for the grant of discharge of residual debt had been conducted; in case of doubt the income, assets and family circumstances of the debtor applicable at the time of the application pursuant to sentence 1 shall be

taken as a basis throughout the duration of the proceedings.

- (2) The creditor shall be heard prior to the decision. The reasons pursuant to subsection (1) sentence 2 opposing the substitution of the creditor's objections with approval must be demonstrated to the satisfaction of the court. The applicant and the creditor whose objections have been substituted with approval have the right of immediate appeal against the order. Section 4a (2) applies with the necessary modifications.
- (3) If a creditor credibly establishes facts which give rise to serious doubts as to whether a claim stated by the debtor exists or is for a higher or a lower amount than stated and if the outcome of the dispute is decisive with regard to whether the creditor receives a fair share in relation to the other creditors (subsection (1) sentence 2 No. 1), the objections of this creditor cannot be substituted with approval.

Section 310 – Costs

The creditors do not have a claim against the debtor for reimbursement of the costs incurred by them in connection with the debt settlement plan.

Chapter Three – Simplified Insolvency Proceedings

Section 311 – Resumption of Proceedings Relating to the Application for Commencement of Insolvency Proceedings

If objections to the debt settlement plan are raised that are not substituted with court approval pursuant to section 309, the proceedings relating to the application for commencement of insolvency proceedings are resumed ex officio.

Section 312 – General Procedural Simplifications

- (1) Public announcements shall be made in extract form; section 9 (2) is not applicable. In derogation from section 29, when the insolvency proceedings are commenced only the verification meeting shall be scheduled. If the proceedings are commenced on application by the debtor, the period specified in section 88 shall be three months.
- (2) The provisions relating to the insolvency plan (sections 217 to 269) and self-administration (sections 270 to 285) are not applicable.

Section 313 – Trustee

- (1) The tasks of the insolvency administrator shall be carried out by the trustee (section 292). In derogation from section 291 (2), the trustee shall be appointed when the insolvency proceedings are commenced. Sections 56 to 66 apply with the necessary modifications.

- (2) Legal acts pursuant to sections 129 to 147 may be avoided not by the trustee but instead by each insolvency creditor. The costs incurred by the creditor shall be reimbursed first from the funds received. The creditors' meeting may instruct the trustee or a creditor to seek avoidance. If the creditors' meeting has instructed a creditor to seek avoidance, the costs incurred by this creditor shall be reimbursed out of the insolvency estate insofar as they cannot be covered by the funds received.
- (3) The trustee is not entitled to realise assets which are subject to liens or other rights to separate satisfaction. The creditor has the right of realisation. Section 173 (2) applies with the necessary modifications.

Section 314 – Simplified Distribution

- (1) On application by the trustee the insolvency court shall order that realisation of the insolvency estate is wholly or partially waived. In this case the court shall, in addition, request the debtor to pay to the trustee within a period of time set by the court an amount corresponding to the value of the insolvency estate which would have been distributed to the insolvency creditors. Such an order shall not be made if realisation of the insolvency estate appears to be necessary, particularly in the interests of the creditors.
- (2) The insolvency creditors shall be heard prior to the decision.
- (3) The decision on an application by the debtor for the grant of discharge of residual debt (sections 289 to 291) shall be made only after expiry of the period of time set pursuant to subsection (1) sentence 2. On application by an insolvency creditor the court shall refuse the discharge of residual debt if the amount to be paid pursuant to subsection (1) sentence 2 is not paid following the expiry of a further period of two weeks set by the court making reference to the possibility that the discharge of residual debt could be refused. The debtor shall be heard prior to the decision.

Part Ten – Special Types of Insolvency Proceedings

Chapter One – Insolvency Proceedings Relating to a Deceased's Estate

Section 315 – Local Jurisdiction

The insolvency court within whose district the deceased had his/her place of general jurisdiction at the time of his/her death has exclusive local jurisdiction in respect of insolvency proceedings relating to a deceased's estate. If the centre

of a self-employed economic activity carried on by the deceased was located in a different place, the insolvency court within whose district this place is located has exclusive jurisdiction.

Section 316 – Admissibility of Commencement

- (1) Commencement of insolvency proceedings is not excluded by reason of the fact that the heir has not yet accepted the inheritance or that he/she has unlimited liability for the liabilities of the estate.
- (2) If there are several heirs, proceedings may also be commenced subsequent to division of the estate.
- (3) Insolvency proceedings shall not take place in respect of a share in an inheritance.

Section 317 – Parties Entitled to Apply for Commencement

- (1) Commencement of insolvency proceedings relating to a deceased's estate may be applied for by any heir, the administrator of the estate or any other curator of the estate, an executor entitled to manage the estate and any creditor of the estate.
- (2) If the application is not submitted by all the heirs, it shall be admissible if the ground for commencement is demonstrated to the satisfaction of the court. The insolvency court shall hear the other heirs.
- (3) Where an executor is entitled to manage the estate, if the heir applies for commencement of proceedings the executor shall be heard; if the executor applies for commencement of proceedings, the heir shall be heard.

Section 318 – Right of Application in case of Joint Marital Property

- (1) If the deceased's estate forms part of the joint marital property of a community of property, both the spouse who is the heir and the spouse who is not the heir but who manages the joint marital property alone or jointly with the other spouse may apply for commencement of insolvency proceedings relating to the deceased's estate. The consent of the other spouse is not required. The spouses retain the right of application if the community of property ends.
- (2) If the application is not submitted by both spouses, it shall be admissible if the ground for commencement is demonstrated to the satisfaction of the court. The insolvency court shall hear the other spouse.
- (3) Subsections (1) and (2) apply with the necessary modifications to civil partners.

Section 319 – Time Limit for Application

An application by a creditor of the estate for commencement of insolvency proceedings is inad-

missible if two years have elapsed since acceptance of the inheritance.

Section 320 – Grounds for Commencement

The grounds for commencement of insolvency proceedings relating to a deceased's estate are illiquidity and overindebtedness. If the heir, the administrator of the estate or any other curator of the estate or an executor applies for commencement of proceedings, imminent illiquidity is also a ground for commencement.

Section 321 – Compulsory Enforcement after Death of Deceased

Compulsory enforcement measures against the estate undertaken after the death of the deceased do not confer any right to separate satisfaction.

Section 322 – Avoidable Legal Acts by the Heir

If the heir has satisfied claims to a compulsory portion, legacies or testamentary burdens prior to commencement of insolvency proceedings, this legal act may be avoided in the same way as gratuitous performance by the heir.

Section 323 – Heir's Expenses

The heir has no right of retention on account of the expenses which are reimbursable to him/her out of the estate under sections 1978 and 1979 of the Civil Code.

Section 324 – Preferential Liabilities

- (1) In addition to the liabilities specified in sections 54 and 55, preferential liabilities are:
 1. the expenses reimbursable to the heir out of the estate under sections 1978 and 1979 of the Civil Code;
 2. the deceased's funeral costs;
 3. the costs to the estate of proceedings for an official declaration of death in respect of the deceased;
 4. the costs of opening a testamentary disposition by the deceased and the court costs of securing the estate, curatorship, public notice to the creditors of the estate and filing an inventory;
 5. liabilities arising out of transactions undertaken by a curator or an executor;
 6. liabilities which have arisen for the heir towards a curator, an executor or an heir who has disclaimed his/her inheritance from the management of the estate by such persons insofar as the creditors of the estate would be liable if the designated persons had had to undertake the transactions for them.
- (2) In the event of a deficiency of assets, the liabilities specified in subsection (1) shall have the ranking of liabilities under section 209 (1) No. 3.

Section 325 – Liabilities of the Estate

In insolvency proceedings relating to a deceased's estate, only the liabilities of the estate may be claimed.

Section 326 – Claims of the Heirs

- (1) The heir may assert the claims to which he/she is entitled against the deceased.
- (2) If the heir has settled a liability of the estate, insofar as such settlement is not deemed to have been made for the account of the deceased's estate pursuant to section 1979 of the Civil Code, he/she shall take the place of the creditor unless he/she has unlimited liability for the liabilities of the estate.
- (3) If the heir has unlimited liability towards an individual creditor he/she may assert the creditor's claim in the event that the creditor does not assert the claim.

Section 327 – Subordinated Liabilities

- (1) The following liabilities are subordinated to the liabilities specified in section 39 and shall be satisfied in the following order and in proportion to their respective amounts if they have equal ranking:
 1. liabilities towards persons entitled to a compulsory portion;
 2. liabilities arising out of legacies and testamentary burdens arranged by the deceased;
 3. (repealed)
- (2) A legacy through which the right of the beneficiary to the compulsory portion is excluded pursuant to section 2307 of the Civil Code has the same ranking as the right to a compulsory portion insofar as it does not exceed the compulsory portion. If the deceased instructed by testamentary disposition that a legacy or testamentary burden should be satisfied before another legacy or testamentary burden, such legacy or testamentary burden shall have prior ranking.
- (3) A liability due to a creditor excluded by means of the public notice procedure or having the same status as an excluded creditor pursuant to section 1974 of the Civil Code shall be satisfied only after the liabilities specified in section 39 and, if this liability is included in the liabilities specified in subsection (1), only after the liabilities with which it would have equal ranking without the restriction. The restrictions shall not affect the order of ranking in other respects.

Section 328 – Returned Assets

- (1) Assets returned to the insolvency estate as a consequence of the avoidance of a legal act undertaken by or in relation to the deceased may not be used for settlement of the liabilities specified in section 327 (1).

- (2) Assets which have to be returned to the insolvency estate by the heir on the basis of sections 1978 to 1980 of the Civil Code may be claimed by the creditors excluded by means of the public notice procedure or having the same status as an excluded creditor pursuant to section 1974 of the Civil Code only insofar as the heir would also be liable to make restitution pursuant to the provisions on the restitution of unjust enrichment.

Section 329 – Subsequent Succession

Sections 323, 324 (1) No. 1 and section 326 (2) and (3) apply to the prior heirs even after the occurrence of subsequent succession.

Section 330 – Purchase of an Inheritance

- (1) If the heir has sold the inheritance the purchaser shall take his/her place in the insolvency proceedings.
- (2) The heir is entitled to apply for commencement of insolvency proceedings like a creditor of the deceased's estate with respect to a liability of the estate to be settled by the purchaser on the basis of the relationship between the heir and the purchaser. He/she shall also have the same right in respect of any other liability of the estate unless he/she has unlimited liability or an order subjecting the estate to administration is issued. Sections 323, 324 (1) No. 1 and section 326 shall apply to the heirs even after the sale of the inheritance.
- (3) Subsections (1) and (2) shall apply with the necessary modifications in the event that a party sells an inheritance acquired by contract or has placed himself/herself under an obligation in another way to sell an inheritance which has devolved on him/her or which he/she has otherwise acquired.

Section 331 – Simultaneous Insolvency of the Heir

- (1) In insolvency proceedings relating to the assets of the heir, sections 52, 190, 192, 198 and 237 (1) sentence 2 apply with the necessary modifications to creditors of the estate to whom the heir has unlimited liability if insolvency proceedings are also commenced in respect of the deceased's estate or if an order subjecting the estate to administration is issued.
- (2) The same shall apply if one spouse is the heir and the deceased's estate forms part of the joint marital property which is managed by the other spouse alone, including in insolvency proceedings relating to the assets of the other spouse and, if the joint marital property is jointly managed by the spouses, including in insolvency proceedings relating to the joint marital property and in insolvency proceedings relating to the other assets of the spouse who is not the heir.

Chapter Two – Insolvency Proceedings Relating to the Joint Marital Property of a Continued Community of Property

Section 332 – Reference to Insolvency Proceedings Relating to a Deceased's Estate

- (1) In the case of continued community of property, sections 315 to 331 apply with the necessary modifications to insolvency proceedings relating to the joint marital property.
- (2) Only those creditors whose claims already existed as obligations on the joint marital property when the continuation of community of property occurred are insolvency creditors.
- (3) The descendants entitled to a share are not entitled to apply for commencement of proceedings. They shall, however, be heard by the insolvency court in relation to an application for commencement of insolvency proceedings.

Chapter Three – Insolvency Proceedings Relating to the Jointly Managed Joint Marital Property of a Community of Property

Section 333 – Right of Application. Grounds for Commencement

- (1) Any creditor who can demand fulfilment of an obligation from the joint marital property is entitled to apply for commencement of insolvency proceedings relating to the joint marital property of a community of property that is jointly managed by the spouses.
- (2) Each spouse is also entitled to submit an application. If the application is not submitted by both spouses it shall be admissible if the illiquidity of the joint marital property is demonstrated to the satisfaction of the court; the insolvency court shall hear the other spouse. If the application is submitted by both spouses, imminent illiquidity shall also constitute a ground for commencement of proceedings.

Section 334 – Personal Liability of the Spouses

- (1) Where the fulfilment of obligations may be demanded from the joint marital property, the personal liability of the spouses for such obligations may be claimed only by the insolvency administrator or supervisor for the duration of the insolvency proceedings.
- (2) In the case of an insolvency plan, section 227 (1) applies with the necessary modifications to the personal liability of the spouses.

Part Eleven – International Insolvency Law

Chapter One – General Provisions

Section 335 – Principle

Unless otherwise provided, the law applicable to insolvency proceedings and their effects shall be that of the state within the territory of which the proceedings have been commenced.

Section 336 – Contracts Relating to Immovable Property

The effects of insolvency proceedings on a contract relating to a right in rem in immovable property or a right to make use of immovable property shall be governed by the law of the state in which the immovable property is situated. In the case of an asset registered in the Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft, the applicable law shall be that of the state under the supervision of which the register is kept.

Section 337 – Employment Relationships

The effects of insolvency proceedings on an employment relationship shall be governed by the law applicable to the employment relationship under Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (Official Journal L 177 of 4.7.2008, p. 6).

Section 338 – Set-off

Commencement of insolvency proceedings shall not affect the right of set-off of an insolvency creditor if such set-off is permitted under the law applicable to the debtor's claim at the time of commencement of insolvency proceedings.

Section 339 – Avoidance in Insolvency

A legal act may be avoided if the requirements for the avoidance of legal acts in insolvency under the law of the state where the proceedings were commenced are met, unless the opposing party proves that the law of another state is applicable to the legal act and the legal act is not open to challenge in any way under this law.

Section 340 – Organised Markets. Repurchase Agreements

- (1) The effects of the insolvency proceedings on the rights and obligations of a participant in an organised market pursuant to section 2 (5) of the Securities Trading Act [*Wertpapierhandelsgesetz*] are governed by the law of the state which applies to this market.
- (2) The effects of the insolvency proceedings on repurchase agreements within the meaning of

section 340b of the Commercial Code, and on contracts for novation and netting agreements, are governed by the law of the state which is applicable to these contracts.

- (3) Subsection (1) applies with the necessary modifications to the participants in a system within the meaning of section 1 (16) of the Banking Act.

Section 341 – Exercise of Creditors' Rights

- (1) Each creditor may file its claims in the main insolvency proceedings and in any secondary insolvency proceedings.
- (2) The insolvency administrator is entitled to file a claim which has been filed in the proceedings for which he/she has been appointed in other insolvency proceedings relating to the debtor's assets. The creditor's right to decline or withdraw the filing of a claim is unaffected.
- (3) The administrator is deemed to be authorised to exercise the voting right arising from a claim filed in the proceedings for which he/she has been appointed in other insolvency proceedings relating to the debtor's assets unless the creditor determines otherwise.

Section 342 – Return. Imputation

- (1) If an insolvency creditor receives something through compulsory enforcement, through a payment by the debtor or in another way at the expense of the insolvency estate out of the assets that are not situated in the state where the insolvency proceedings were commenced, it shall return what it has obtained to the insolvency administrator. The provisions on the legal consequences of unjust enrichment apply with the necessary modifications.
- (2) The insolvency creditor may retain what it has obtained in insolvency proceedings commenced in another state. However, it will be included in distributions only if the other creditors are put on an equal footing.
- (3) On the request of the insolvency administrator the insolvency creditor shall provide information about what it has obtained.

Chapter Two – Foreign Insolvency Proceedings

Section 343 – Recognition

- (1) The commencement of foreign insolvency proceedings shall be recognised. This shall not apply
 1. if the courts of the state where the proceedings are commenced do not have jurisdiction under German law;
 2. insofar as the effects of recognition would be manifestly incompatible with material principles of German law and, in particular, incompatible with basic rights.

- (2) Subsection (1) applies with the necessary modifications to protective measures which are taken subsequent to the application for commencement of insolvency proceedings and to decisions issued in relation to the implementation or termination of recognised insolvency proceedings.

Section 344 – Protective Measures

- (1) If a preliminary administrator has been appointed abroad prior to commencement of the main insolvency proceedings, on his/her application the competent insolvency court may order the measures pursuant to section 21 that appear necessary to secure the assets covered by domestic secondary insolvency proceedings.
- (2) The preliminary administrator also has the right of immediate appeal against the order.

Section 345 – Publication

- (1) If the requirements for recognition of the commencement of proceedings are fulfilled, on application by the foreign insolvency administrator the insolvency court shall publish the main content of the decision commencing insolvency proceedings and of the decision appointing the insolvency administrator domestically. Section 9 (1) and (2) and section 30 (1) sentence 1 apply with the necessary modifications. If the commencement of insolvency proceedings has been published, the termination of proceedings shall be published in the same manner.
- (2) If the debtor has an establishment on domestic territory, publication takes place ex officio. The insolvency administrator or a permanent representative pursuant to section 13e (2) sentence 5 No. 3 of the Commercial Code shall notify the insolvency court having jurisdiction in accordance with section 348 (1).
- (3) The application is admissible only if it is credibly established that the factual requirements for recognition of the commencement of proceedings are present. An official copy of the order instructing publication shall be issued to the administrator. The foreign administrator has the right of immediate appeal against the decision of the insolvency court refusing publication.

Section 346 – Land Register

- (1) If the debtor's power of disposal is restricted as a result of the commencement of proceedings or the ordering of protective measures under section 343 (2) or section 344 (1), on application by the foreign insolvency administrator the insolvency court shall request the Land Registry to register the commencement of insolvency proceedings and the nature of the restriction of the debtor's power of disposal in the Land Register:

1. in respect of plots of land for which the debtor is registered as owner;
 2. in respect of the debtor's registered rights in plots of land and in registered rights if there are concerns, based on the type of rights and in the circumstances, that the insolvency creditors would be disadvantaged in the absence of registration.
- (2) An application under subsection (1) is admissible only if it is demonstrated to the satisfaction of the court that the factual requirements for recognition of the commencement of proceedings are present. The foreign administrator has the right of immediate appeal against the decision of the insolvency court. Section 32 (3) sentence 1 applies with the necessary modifications to the deletion of the entry.
- (3) Subsections (1) and (2) apply with the necessary modifications to the registration of commencement of insolvency proceedings in the Register of Ships, Register of Ships under Construction and Register of Liens on Aircraft.

Section 347 – Proof of Appointment of Administrator. Notification of the Court

- (1) The foreign insolvency administrator shall prove his/her appointment by means of a certified copy of the decision appointing him/her or by means of other certification issued by the competent agency. The insolvency court may require a translation which must be certified by a person authorised to do so in the state in which proceedings are commenced.
- (2) The foreign insolvency administrator who has lodged an application pursuant to sections 344 to 346 shall inform the insolvency court about all significant changes to the foreign proceedings and about all other foreign insolvency proceedings known to him/her relating to the debtor's assets.

Section 348 – Competent Insolvency Court. Co-operation between Insolvency Courts

- (1) The insolvency court within whose district the establishment is situated or, in the absence of an establishment, assets of the debtor are situated has exclusive jurisdiction for the decisions pursuant to sections 344 to 346. Section 3 (2) applies with the necessary modifications.
- (2) If the requirements for recognition of foreign insolvency proceedings are fulfilled or if clarification is required as to whether the requirements are met, the insolvency court may co-operate with the foreign insolvency court and in particular pass on information of relevance to the foreign proceedings.
- (3) In order for the proceedings to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to allocate the decisions pursuant to sections 344 to 346 for the districts of several insolvency courts

to one of these by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

- (4) The Federal States may agree that the decisions pursuant to sections 344 to 346 for several Federal States are allocated to the courts of one Federal State. If an application pursuant to sections 344 to 346 is received by a court without jurisdiction it shall forward the application without delay to the court with jurisdiction and inform the applicant accordingly.

Section 349 – Disposals of Immovable Assets

- (1) If the debtor disposes of an asset in the insolvency estate that is registered domestically in the Land Register, Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft, or if the debtor disposes of a right in such an asset, sections 878, 892 and 893 of the Civil Code, section 3 (3) and also sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction and section 5 (3) and also sections 16 and 17 of the Act Governing Rights in Aircraft shall apply.
- (2) If a priority notice is registered domestically in the Land Register, Register of Ships, Register of Ships under Construction or Register of Liens on Aircraft in order to secure a claim, section 106 remains unaffected.

Section 350 – Performance to the Debtor

Where performance is rendered to the debtor domestically in fulfilment of an obligation although the obligation had to be fulfilled for the benefit of the insolvency estate of the foreign insolvency proceedings, the party rendering performance shall be deemed to have discharged the obligation if it¹³ was unaware at the time of performance of the commencement of proceedings. If it rendered performance prior to the publication provided for in section 345, it shall be presumed to have been unaware of the commencement of proceedings.

Section 351 – Rights in Rem

- (1) Commencement of the foreign insolvency proceedings shall not affect the right of a third party in an asset of the insolvency estate that was situated on domestic territory at the time of commencement of the foreign insolvency proceedings which grants entitlement to segregation or to separate satisfaction under domestic law.
- (2) Notwithstanding section 336 sentence 2, the effects of foreign insolvency proceedings on the

¹³ This reference should be construed as referring to male and female natural persons and legal entities.

debtor's rights in immovable assets that are situated on domestic territory shall be determined in accordance with German law.

Section 352 – Interruption and Resumption of Court Proceedings

- (1) Court proceedings pending at the time of commencement of foreign insolvency proceedings relating to the insolvency estate are interrupted by commencement of the foreign insolvency proceedings. The interruption shall continue until the court proceedings are taken up by a person who is authorised in accordance with the law of the state where the insolvency proceedings have been commenced to resume the court proceedings or until the insolvency proceedings are terminated.
- (2) Subsection (1) applies with the necessary modifications where the power to manage and dispose of the debtor's assets has passed to a preliminary insolvency administrator through the ordering of protective measures pursuant to section 343 (2).

Section 353 – Enforceability of Foreign Decisions

- (1) Compulsory enforcement based on a decision handed down in foreign insolvency proceedings may be pursued only if such compulsory enforcement is ruled admissible by a judgment for enforcement. Section 722 (2) and section 723 (1) of the Code of Civil Procedure apply with the necessary modifications.
- (2) Subsection (1) applies with the necessary modifications to the protective measures specified in section 343 (2).

Chapter Three – Territorial Insolvency Proceedings Relating to Domestic Assets

Section 354 – Requirements for Territorial Insolvency Proceedings

- (1) If a German court does not have jurisdiction to commence insolvency proceedings in respect of all the debtor's assets but the debtor has an establishment or other assets on domestic territory, on application by a creditor separate insolvency proceedings may be brought in respect of the debtor's domestic assets (territorial insolvency proceedings).
- (2) If the debtor does not have an establishment on domestic territory, the application of a creditor for commencement of territorial insolvency proceedings is admissible only if this creditor has a particular interest in the commencement of proceedings, in particular if it is likely to be placed in a substantially worse position in foreign proceedings than in domestic proceedings. The particular interest must be demonstrated by the applicant to the satisfaction of the court.

- (3) The insolvency court within whose district the establishment is situated or, in the absence of an establishment, assets of the debtor are situated has exclusive jurisdiction for the proceedings. Section 3 (2) applies with the necessary modifications.

Section 355 – Discharge of Residual Debt. Insolvency Plan

- (1) The provisions on discharge of residual debt are not applicable in territorial insolvency proceedings.
- (2) An insolvency plan providing for deferment, waiver or other restrictions on the creditors' rights may be confirmed in these proceedings only if all creditors affected have approved the plan.

Section 356 – Secondary Insolvency Proceedings

- (1) Recognition of foreign main insolvency proceedings does not exclude secondary insolvency proceedings in respect of the domestic assets. Sections 357 and 358 are applicable in addition in respect of secondary insolvency proceedings.
- (2) The foreign insolvency administrator is also entitled to apply for commencement of secondary insolvency proceedings.
- (3) The proceedings shall be commenced without a ground for commencement having to be established.

Section 357 – Co-operation between Insolvency Administrators

- (1) The insolvency administrator shall notify the foreign administrator without delay of all circumstances which may be of relevance for implementation of the foreign proceedings. He/she shall give the foreign administrator the opportunity to submit proposals for the realisation or other use of the domestic assets.
- (2) The foreign administrator is entitled to attend the creditors' meetings.
- (3) An insolvency plan must be forwarded to the foreign administrator for comment. The foreign administrator is entitled to submit his/her own plan. Section 218 (1) sentences 2 and 3 apply with the necessary modifications.

Section 358 – Surplus on Final Distribution

If all claims can be satisfied in full by the final distribution in the secondary insolvency proceedings, the insolvency administrator shall hand over any surplus remaining to the foreign administrator of the main insolvency proceedings.

Part Twelve – Entry into Force

Section 359 – Reference to the Introductory Act

This Act comes into force on the day appointed by the Introductory Act to the Insolvency Code.

Extract of the Introductory Act to the Insolvency Code

Introductory Act to the Insolvency Code of 5 October 1994 (*BGBI.* [Federal Law Gazette] I 1994, page 2911), as last amended by Article 42 of the Act of 22 December 2011 (*BGBI.* [Federal Law Gazette] I 2011, page 3040).

Article 102 Implementation of Council Regulation (EC) No 1346/2000 on insolvency proceedings

Section 1 – Local Jurisdiction

- (1) If, in insolvency proceedings, the German courts are assigned international jurisdiction pursuant to Article 3 (1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ EC L 160 page 1) where no domestic jurisdiction would be established under section 3 of the Insolvency Code, the insolvency court within whose district the centre of a debtor's main interests is situated shall have exclusive jurisdiction.
- (2) If the German courts have jurisdiction pursuant to Article 3 (2) of Council Regulation (EC) No 1346/2000, the insolvency court within whose district the establishment belonging to the debtor is situated shall have exclusive jurisdiction. Section 3 (2) of the Insolvency Code applies with the necessary modifications.
- (3) Without prejudice to the jurisdiction under subsections (1) and (2), each domestic insolvency court within whose district assets of the debtor are situated shall have jurisdiction for decisions or other measures under Council Regulation (EC) No 1346/2000. In order for the proceedings to be appropriately facilitated or processed more rapidly, the governments of the Federal States are authorised to allocate the decisions and measures pursuant to Council Regulation (EC) No 1346/2000 for the districts of several insolvency courts to one court by statutory order. The governments of the Federal States may delegate this power to the administration of justice departments of the Federal States.

Section 2 – Reasons for the Order Commencing Proceedings

If there is reason to believe that assets of the debtor are situated in another Member State of the European Union, the order of the court commencing proceedings shall describe in brief the factual findings and legal considerations substantiating the jurisdiction of the German courts pursuant to Article 3 of Council Regulation (EC) No 1346/2000.

Section 3 – Avoiding Conflicts of Jurisdiction

- (1) Where the court of another Member State of the European Union has commenced main insolvency proceedings, as long as these insolvency proceedings are pending an application lodged with a domestic insolvency court for commencement of such proceedings in respect of the assets belonging to the insolvency estate is inadmissible. Any proceedings commenced in contravention of sentence 1 may not be continued. The administrator of the foreign main insolvency proceedings is also authorised to appeal against the commencement of the national proceedings.
- (2) Where the court of another Member State of the European Union has refused to commence insolvency proceedings on the basis that the German courts have jurisdiction pursuant to Article 3 (1) of Council Regulation (EC) No 1346/2000, a German insolvency court may not refuse to commence insolvency proceedings on the basis that the courts of the other Member State have jurisdiction.

Section 4 – Discontinuation of Insolvency Proceedings in Favour of the Courts of another Member State

- (1) If the insolvency court is not permitted pursuant to section 3 (1) to continue insolvency proceedings already commenced, it shall discontinue the proceedings ex officio in favour of the courts of the other Member State of the European Union. The insolvency court shall hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor prior to discontinuing the proceedings. If the insolvency proceedings are discontinued, each insolvency creditor has the right of appeal.
- (2) Effects of the insolvency proceedings which had already occurred prior to their discontinuation and which are not limited to the duration of these proceedings shall persist even if they conflict with effects of insolvency proceedings commenced in another Member State of the European Union that extend to domestic territory under Council Regulation (EC) No 1346/2000. This also applies to any legal acts carried out during the discontinued proceedings by or with the insolvency administrator in the exercise of his/her office.
- (3) Prior to discontinuing the proceedings pursuant to subsection (1) the insolvency court shall notify the court of the other Member State of the Euro-

pean Union where the proceedings are pending of the imminent discontinuation of the proceedings, specifying how commencement of the discontinued proceedings was announced, in which public records and registers the commencement of the proceedings was registered and who the insolvency administrator is. The discontinuation order shall name the court of the other Member State in favour of which the proceedings are being discontinued. An official copy of the discontinuation order shall be sent to this court. Section 215 (2) of the Insolvency Code is not applicable.

Section 5 – Publication

- (1) The application for publication of the main content of the decisions pursuant to Article 21 (1) of Council Regulation (EC) No 1346/2000 shall be addressed to the court having jurisdiction in accordance with section 1. The court may require a translation which must be certified by a person authorised to do so in one of the Member States of the European Union. Section 9 (1) and (2) and section 30 (1) sentence 1 of the Insolvency Code apply with the necessary modifications.
- (2) If the debtor possesses an establishment on domestic territory, publication pursuant to subsection (1) takes place ex officio. If the commencement of insolvency proceedings has been published, the termination of proceedings shall be published in the same manner.

Section 6 – Registration in Public Records and Registers

- (1) The application for registration pursuant to Article 22 of Council Regulation (EC) No 1346/2000 shall be addressed to the court having jurisdiction in accordance with section 1. The court shall request the agency responsible for maintaining the register to make the entry if, under the law of the state in which the main insolvency proceedings were commenced, the commencement of proceedings is likewise registered. Section 32 (2) sentence 2 of the Insolvency Code shall not apply.
- (2) The form and content of the entry shall be in conformity with German law. If the law of the state in which the proceedings are commenced provides for entries unknown to German law, the insolvency court shall select an entry that comes closest to the entry of the state in which proceedings are commenced.
- (3) If the application under subsection (1) or under section 5 (1) is received by a court that does not have jurisdiction, it shall forward the application without delay to the court with jurisdiction and advise the applicant accordingly.

Section 7 – Appeal

An immediate appeal may be brought against the decision of the insolvency court pursuant to section 5 or section 6. Sections 574 to 577 of the Code of Civil Procedure [*Zivilprozessordnung*] apply with the necessary modifications.

Section 8 – Enforcement on the basis of the Decision on Commencement of Proceedings

- (1) If, under the law of the state in which insolvency proceedings are commenced, the administrator in the main insolvency proceedings is authorised on the basis of the decision on commencement of proceedings to enforce the surrender of items which are in the custody of the debtor by way of compulsory enforcement, Article 25 (1) subparagraph 1 of Council Regulation (EC) No 1346/2000 shall apply to the declaration of enforceability on domestic territory. Sentence 1 shall apply with the necessary modifications to the realisation of assets of the insolvency estate by way of compulsory enforcement.
- (2) Section 6 (3) applies with the necessary modifications.

Section 9 – Insolvency Plan

If an insolvency plan provides for deferral, waiver or other restrictions on the creditors' rights, it may be confirmed by the insolvency court only if all creditors affected have approved the plan.

Section 10 – Stay of Liquidation

If, at the request of the administrator in the main insolvency proceedings, the liquidation of an asset in which a right to separate satisfaction exists is stayed in domestic secondary insolvency proceedings pursuant to Article 33 of Council Regulation (EC) No 1346/2000, the creditor shall continue to be paid the interest due out of the insolvency estate.

Section 11 – Provision of Information for Creditors

Along with the order commencing proceedings, notice must be served on creditors who have their habitual residence, domicile or registered office in another Member State of the European Union informing them of the consequences of late submission of claims pursuant to section 177 of the Insolvency Code. Section 8 of the Insolvency Code applies with the necessary modifications.

Article 102a – Insolvency Administrators from Other Member States of the European Union

Nationals of another Member State of the European Union or of a state which is a contracting party to the Agreement on the European Economic Area and persons who have a professional

establishment in one of these states may undergo the procedure for inclusion on a preselection list of insolvency administrators maintained by the insolvency court through a single agency in accordance with the provisions of the Administrative Procedure Act [*Verwaltungsverfahrensgesetz*]. Applications for inclusion on a preselection list must be decided within a time limit of three months in such cases. Section 42a (2) sentences 2 to 4 of the Administrative Procedure Act apply with the necessary modifications.

Article 103 – Application of Previous Law

The previously applicable statutory provisions shall continue to apply to bankruptcy, composition and collective execution proceedings applied for prior to 1 January 1999 and to their effects. The same applies to follow-up bankruptcy proceedings in which the preceding application for composition proceedings was filed prior to 1 January 1999.

Commentary:

In Article 103, the third sentence was revoked with effect as of 1 April 2012 by the Act to Amend Provisions relating to Publications and Announcements and by the Code of Civil Procedure and the Introductory Acts to the Code of Civil Procedure and to the Tax Code (*BAnzDiG*) of 22 December 2011 (*BGBl.* [Federal Law Gazette] I 2011, 3044).

Article 103a – Transitional Provision

The statutory provisions which applied up to 1 December 2001 shall continue to apply to insolvency proceedings commenced prior to that date.

Art. 103b – Transitional Provision relating to the Act to Implement Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements and to amend the Mortgage Bank Act [*Hypothekendarlehenbankgesetz*] and Other Acts

The statutory provisions which applied up to 9 April 2004 shall continue to apply to insolvency proceedings commenced prior to that date.

Article 103c – Transitional Provision Relating to the Act to Simplify Insolvency Proceedings [*Gesetz zur Vereinfachung des Insolvenzverfahrens*]

- (1) With the exception of sections 8 and 9 of the Insolvency Code and the Regulation on Publication on the Internet in Insolvency Proceedings [*Verordnung zu öffentlichen Bekanntmachungen im Insolvenzverfahren im Internet*], the previously applicable statutory provisions shall continue to apply to insolvency proceedings commenced

before the entry into force on 1 July 2007 of the Act to Simplify Insolvency Proceedings of 13 April 2007 (Federal Law Gazette I, page 509). Without prejudice to subsection (2), all publications to be undertaken by the court in such insolvency proceedings shall be made only in accordance with section 9 of the Insolvency Code. Section 188 sentence 3 of the Insolvency Code shall also apply to insolvency proceedings commenced prior to the entry into force on 18 December 2007 of the Act Revising the Law on Legal Advice [*Gesetz zur Neuordnung des Rechtsberatungsrechts*] of 12 December 2007 (Federal Law Gazette I, page 2840).

- (2) Up to 31 December 2008, in addition to electronic publication in accordance with section 9 (1) sentence 1 of the Insolvency Code, publication may also be made in a periodical published in the locality where the debtor resides or where the registered office of the debtor's business is located; publication may be made in extract form. Only publication on the internet in accordance with section 9 (1) sentence 1 of the Insolvency Code shall produce the legal effects of publication.

Article 103d – Transitional Provision Relating to the Act to Modernise the Law Governing Private Limited Companies and to Combat Abuses [*Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen*]

The previously applicable statutory provisions shall continue to apply to insolvency proceedings commenced before the entry into force on 1 November 2008 of the Act of 23 October 2008 (Federal Law Gazette I, page 2026). In relation to insolvency proceedings commenced after 1 November 2008, the provisions of the Insolvency Code applicable up to 1 November 2008 on the avoidance of legal acts shall apply to legal acts undertaken prior to that date insofar as they escaped avoidance or were subject to avoidance to a lesser extent under the previous law.

Article 103e – Transitional Provision Relating to the Budget Supplement Act [*Haushaltsbegleitgesetz*] 2011

The statutory provisions which applied up to 1 January 2011 shall continue to apply to insolvency proceedings in respect of which an application for commencement of proceedings was lodged prior to that date.

Article 103f – Transitional Provision Relating to the Act Amending Section 522 of the Code of Civil Procedure

The version of the Insolvency Code applicable up to 27 October 2011 shall continue to apply to de-

cisions regarding the right of immediate appeal pursuant to section 6 of the Insolvency Code in relation to which the time limit specified in section 575 of the Code of Civil Procedure has not yet expired on 27 October 2011. Sentence 1 applies with the necessary modifications to decisions regarding the right of immediate appeal pursuant to Article 102 section 7 sentence 1 of the Introductory Act to the Insolvency Code.

Article 103g – Transitional Provision relating to the Act for Further Facilitation of the Restructuring of Companies [*Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen*]

The statutory provisions which applied up to 1 March 2012 shall continue to apply to insolvency proceedings in respect of which an application for commencement of proceedings was lodged prior to that date.

Note:

The following second sentence has been added to Article 103g by the Act on the Introduction of Instructions on the Right of Appeal in Civil Procedure (*Gesetz zur Einführung einer Rechtsbehelfsbelehrung im Zivilprozess*), promulgated by the *Bundestag* on 8 November 2012: section 18 (1) Number 2 of the Registrars' Act (*RPfLG*) in the version applicable with effect from 1 January 2013 is only applicable to insolvency proceedings in respect of which an application for commencement of proceedings is lodged on or after 1 January 2013 (*BT-Drucks.* [Bundestag Printed Paper] 17/11385).

Article 104 – Application of the New Law

In insolvency proceedings applied for after 31 December 1998, the Insolvency Code and this Act shall also apply in respect of legal relationships and rights created prior to 1 January 1999.

Article 105 – Financial Futures Transactions

- (1) If a specific date or a specific period of time was agreed for financial services with a market or exchange price and the date or expiry of the period occurs only after the commencement of bankruptcy proceedings, performance of the contract cannot be claimed; only a claim for non-performance can be asserted. Financial services include, in particular, the following:
 1. the delivery of precious metals;
 2. the delivery of securities or similar rights, provided the acquisition of a participating interest in a company is not intended to bring about a durable link to this company;

3. cash payments to be made in foreign currency or in a unit of account;
4. cash payments, the amount of which is determined directly or indirectly by means of the exchange rate of a foreign currency or unit of account, the interest rate on claims or the price of other goods or services;
5. options and other rights to deliveries or cash payments within the meaning of numbers 1 to 4. If transactions for financial services are combined in a master agreement in which agreement is reached that it can only be terminated in its entirety in the event of breaches of contract, all these individual transactions shall be regarded as a single reciprocal contract.

- (2) The claim for non-performance is based on the difference between the agreed price and the market or exchange price applicable at the place of performance for a contract with the agreed fulfilment date on the second business day after commencement of bankruptcy proceedings. The other party may assert such a claim only as a creditor in bankruptcy.
- (3) The provisions stipulated in subsections (1) and (2) in the event of the commencement of bankruptcy proceedings apply with the necessary modifications in the event of the commencement of composition or collective enforcement proceedings.

Article 106 – Avoidance in Insolvency

The provisions of the Insolvency Code on the avoidance of legal acts are applicable to legal acts undertaken prior to 1 January 1999 only insofar as they were not excluded from avoidance or subject to avoidance to a lesser extent under the previous law.

Article 107 (repealed)

Article 108 – Continuation of the Restriction on Enforcement

- (1) In relation to compulsory enforcement against a debtor in respect of whose assets collective enforcement proceedings have been implemented, the restriction on enforcement contained in section 18 (2) sentence 3 of the Collective Enforcement Act must be observed also after 31 December 1998.
- (2) If insolvency proceedings are commenced in accordance with the provisions of the Insolvency Code in respect of the assets of such a debtor, the claims which are subject to the restriction on enforcement shall be settled in subordination to the claims specified in section 39 (1) of the Insolvency Code.

Article 109 – Bonds

Insofar as holders of bonds issued prior to 1 January 1963 by credit institutions other than mortgage banks have a preferential right to satisfaction from the credit institution's mortgages, charges on land or loans in accordance with the provisions of Federal State Law in conjunction with section 17 (1) of the Introductory Act to the Bankruptcy Code [*Einführungsgesetz zur Konkursordnung*], this preferential right shall also be taken into consideration in future insolvency proceedings.

Article 110 – Entry into Force

- (1) Unless otherwise provided, the Insolvency Code and this Act shall enter into force on 1 January 1999.
- (2) Section 2 (2) and section 7 (3) of the Insolvency Code and also the power of the Federal States specified in section 305 (1) No. 1 of the Insolvency Code shall come into force on the day after promulgation. The same shall apply in respect of section 65 of the Insolvency Code and in respect of section 21 (2) No. 1, section 73 (2), section 274 (1), section 293 (2) and section 313 of the Insolvency Code, insofar as they declare section 65 of the Insolvency Code to be accordingly applicable.
- (3) Insofar as Article 2 No. 9 of this Act orders the repeal of section 2 (1) sentence 2 of the Act on the Dissolution and Deregistration of Companies and Cooperative Societies [*Gesetz über die Auflösung und Löschung von Gesellschaften und Genossenschaften*], Article 22, Article 24 No. 2, Article 32 No. 3, Article 48 No. 4, Article 54 No. 4 and Article 85 Nos 1 and 2e, Article 87 No. 8d and Article 105 of this Act shall enter into force on the day after promulgation.

COUNCIL REGULATION (EC) No. 1346/2000

of 29 May 2000 on Insolvency Proceedings
(as of 8 July 2011)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67(1) thereof,

Having regard to the initiative of the Federal Republic of Germany and the Republic of Finland,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the Economic and Social Committee²,

Whereas:

- (1) The European Union has set out the aim of establishing an area of freedom, security and justice.
- (2) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (3) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.
- (4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).
- (5) These objectives cannot be achieved to a sufficient degree at national level and action at Community level is therefore justified.
- (6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such

proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.

- (7) Insolvency proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters³, as amended by the Conventions on Accession to this Convention⁴.
- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States.
- (9) This Regulation should apply to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. The insolvency proceedings to which this Regulation applies are listed in the Annexes. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are subject to special rules and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention.
- (10) Insolvency proceedings do not necessarily involve the intervention of a judicial authority; the expression 'court' in this Regulation should be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened and should be collective insolvency proceedings which entail

¹) Opinion delivered on 2 March 2000 (not yet published in the Official Journal).

²) Opinion delivered on 26 January 2000 (not yet published in the Official Journal).

³) OJ L 299, 31.12.1972, p. 32.

⁴) OJ L 204, 2.8.1975, p. 28; OJ L 304, 30.10.1978, p. 1; OJ L 388, 31.12.1982, p. 1; OJ L 285, 3.10.1989, p. 1; OJ C 15, 15.1.1997, p. 1.

the partial or total divestment of the debtor and the appointment of a liquidator.

- (11) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening should also be allowed alongside main insolvency proceedings with universal scope.
- (12) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main proceedings satisfy the need for unity in the Community.
- (13) The centre of main interests' should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.
- (14) This Regulation applies only to proceedings where the centre of the debtor's main interests is located in the Community.
- (15) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.
- (16) The court having jurisdiction to open the main insolvency proceedings should be enabled to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. In that connection this Regulation should afford different possibilities. On the one hand, the court competent for the main insolvency proceedings should be able also to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, a liquidator temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those States.
- (17) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and creditors of the local establishment or to cases where main proceedings cannot be opened under the law of the Member State where the debtor has the centre of his main interest. The reason for this restriction is that cases where territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary. If the main insolvency proceedings are opened, the territorial proceedings become secondary.
- (18) Following the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment is not restricted by this Regulation. The liquidator in the main proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.
- (19) Secondary insolvency proceedings may serve different purposes, besides the protection of local interests. Cases may arise where the estate of the debtor is too complex to administer as a unit or where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening to the other States where the assets are located. For this reason the liquidator in the main proceedings may request the opening of secondary proceedings when the efficient administration of the estate so requires.
- (20) Main insolvency proceedings and secondary proceedings can, however, contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators must cooperate closely, in particular by

exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the liquidator in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. For example, he should be able to propose a restructuring plan or composition or apply for realisation of the assets in the secondary insolvency proceedings to be suspended.

- (21) Every creditor, who has his habitual residence, domicile or registered office in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. Every creditor should be able to keep what he has received in the course of insolvency proceedings but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.
- (22) This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision.
- (23) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the *lex concursus* determines all the effects of the insolvency

proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

- (24) Automatic recognition of insolvency proceedings to which the law of the opening State normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provisions should be made for a number of exceptions to the general rule.
- (25) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since these are of considerable importance for the granting of credit. The basis, validity and extent of such a right in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of the right in rem should therefore be able to continue to assert his right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the *lex situs* in one Member State but the main proceedings are being carried out in another Member State, the liquidator in the main proceedings should be able to request the opening of secondary proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If a secondary proceeding is not opened, the surplus on sale of the asset covered by rights in rem must be paid to the liquidator in the main proceedings.
- (26) If a set-off is not permitted under the law of the opening State, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off will acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (27) There is also a need for special protection in the case of payment systems and financial markets. This applies for example to the position-closing agreements and netting agreements to be found in such systems as well as to the sale of securities and to the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems⁵. For such transactions, the only law which is material should thus be that applicable to the system or

⁵) OJ L 166, 11.6.1998, p. 45.

market concerned. This provision is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on the regulated financial markets of the Member States being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules in this Regulation.

- (28) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment must be determined by the law applicable to the agreement in accordance with the general rules on conflict of law. Any other insolvency law questions, such as whether the employees' claims are protected by preferential rights and what status such preferential rights may have, should be determined by the law of the opening State.
- (29) For business considerations, the main content of the decision opening the proceedings should be published in the other Member States at the request of the liquidator. If there is an establishment in the Member State concerned, there may be a requirement that publication is compulsory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.
- (30) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened and act in good faith in a way that conflicts with the new situation. In order to protect such persons who make a payment to the debtor because they are unaware that foreign proceedings have been opened when they should in fact have made the payment to the foreign liquidator, it should be provided that such a payment is to have a debt-discharging effect.
- (31) This Regulation should include Annexes relating to the organisation of insolvency proceedings. As these Annexes relate exclusively to the legislation of Member States, there are specific and substantiated reasons for the Council to reserve the right to amend these Annexes in order to take account of any amendments to the domestic law of the Member States.
- (32) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (33) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed

to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

Chapter I – General Provisions

Article 1. Scope

- 1. This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.
- 2. This Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

Article 2. Definitions

For the purposes of this Regulation:

- (a) 'insolvency proceedings' shall mean the collective proceedings referred to in Article 1 (1). These proceedings are listed in Annex A;
- (b) 'liquidator' shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;
- (c) 'winding-up proceedings' shall mean insolvency proceedings within the meaning of point (a) involving realising the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by reason of the insufficiency of the assets. Those proceedings are listed in Annex B;
- (d) 'court' shall mean the judicial body or any other competent body of a Member State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;
- (e) 'judgment' in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;
- (f) 'the time of the opening of proceedings' shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;
- (g) 'the Member State in which assets are situated' shall mean, in the case of:

- tangible property, the Member State within the territory of which the property is situated,
 - property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,
 - claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (h) 'establishment' shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

Article 3. International Jurisdiction

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.
2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.
3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.
4. Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:
 - (a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or
 - (b) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

Article 4. Law Applicable

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State

within the territory of which such proceedings are opened, hereafter referred to as the 'State of the opening of proceedings'.

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:

- (a) against which debtors insolvency proceedings may be brought on account of their capacity;
- (b) the 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 proceedings;
- (c) the respective powers of the debtor and the liquidator;
- (d) the conditions under which set-offs may be invoked;
- (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
- (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
- (g) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;
- (h) the rules governing the lodging, verification and admission of claims;
- (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 5. Third Parties' Rights in Rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.
2. The rights referred to in paragraph 1 shall in particular mean:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
 - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
 - (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
 - (d) a right in rem to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.
4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 6. Set-off

- 1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.
- 2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 7. Reservation of Title

- 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.
- 3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 8. Contracts Relating to Immoveable Property

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

Article 9. Payment Systems and Financial Markets

- 1. Without prejudice to Article 5, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.
- 2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

Article 10. Contracts of Employment

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

Article 11. Effects on Rights Subject to Registration

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.

Article 12. Community Patents and Trade Marks

For the purposes of this Regulation, a Community patent, a Community trade mark or any other similar right established by Community law may be included only in the proceedings referred to in Article 3(1).

Article 13. Detrimental Acts

- Article 4(2)(m) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:
- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and
 - that law does not allow any means of challenging that act in the relevant case.

Article 14. Protection of Third-party Purchasers

- Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:
- an immovable asset, or
 - a ship or an aircraft subject to registration in a public register, or
 - securities whose existence presupposes registration in a register laid down by law,
- the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

Article 15. Effects of Insolvency Proceedings on Lawsuits Pending

The effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending.

Chapter II – Recognition of Insolvency Proceedings

Article 16. Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

Article 17. Effects of Recognition

1. The judgment opening the proceedings referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

Article 18. Powers of the Liquidator

1. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there nor any preservation measure to the contrary has been taken there further to a request for the opening

of insolvency proceedings in that State. He may in particular remove the debtor's assets from the territory of the Member State in which they are situated, subject to Articles 5 and 7.

2. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. He may also bring any action to set aside which is in the interests of the creditors.

3. In exercising his powers, the liquidator shall comply with the law of the Member State within the territory of which he intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures or the right to rule on legal proceedings or disputes.

Article 19. Proof of the Liquidator's Appointment

The liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which he intends to act may be required. No legalisation or other similar formality shall be required.

Article 20. Return and Imputation

1. A creditor who, after the opening of the proceedings referred to in Article 3(1) obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the liquidator, subject to Articles 5 and 7.

2. In order to ensure equal treatment of creditors a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

Article 21. Publication

1. The liquidator may request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State in accordance with the publication procedures provided for in that State. Such publication shall also

specify the liquidator appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or Article 3(2).

2. However, any Member State within the territory of which the debtor has an establishment may require mandatory publication. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) are opened shall take all necessary measures to ensure such publication.

Article 22. Registration in a Public Register

1. The liquidator may request that the judgment opening the proceedings referred to in Article 3(1) be registered in the land register, the trade register and any other public register kept in the other Member States.

2. However, any Member State may require mandatory registration. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) have been opened shall take all necessary measures to ensure such registration.

Article 23. Costs

The costs of the publication and registration provided for in Articles 21 and 22 shall be regarded as costs and expenses incurred in the proceedings.

Article 24. Honouring of an Obligation to a Debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 21 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 25. Recognition and Enforceability of other Judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51, with the exception of Article 34(2), of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Conventions of Accession to this Convention.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court. The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Convention referred to in paragraph 1, provided that that Convention is applicable.

3. The Member States shall not be obliged to recognise or enforce a judgment referred to in paragraph 1 which might result in a limitation of personal freedom or postal secrecy.

Article 26⁶. Public Policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

Chapter III – Secondary Insolvency Proceedings

Article 27. Opening of Proceedings

The opening of the proceedings referred to in Article 3(1) by a court of a Member State and which is recognised in another Member State (main proceedings) shall permit the opening in that other Member State, a court of which has jurisdiction pursuant to Article 3(2), of second-

⁶) Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

any insolvency proceedings without the debtor's insolvency being examined in that other State. These latter proceedings must be among the proceedings listed in Annex B. Their effects shall be restricted to the assets of the debtor situated within the territory of that other Member State.

Article 28. Applicable Law

Save as otherwise provided in this Regulation, the law applicable to secondary proceedings shall be that of the Member State within the territory of which the secondary proceedings are opened.

Article 29. Right to Request the Opening of Proceedings

The opening of secondary proceedings may be requested by:

- (a) the liquidator in the main proceedings;
- (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.

Article 30. Advance Payment of Costs and Expenses

Where the law of the Member State in which the opening of secondary proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

Article 31. Duty to Cooperate and Communicate Information

1. Subject to the rules restricting the communication of information, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to communicate information to each other. They shall immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.
2. Subject to the rules applicable to each of the proceedings, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to cooperate with each other.
3. The liquidator in the secondary proceedings shall give the liquidator in the main proceedings an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings.

Article 32. Exercise of Creditors' Rights

1. Any creditor may lodge his claim in the main proceedings and in any secondary proceedings.
2. The liquidators in the main and any secondary proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides.
3. The liquidator in the main or secondary proceedings shall be empowered to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

Article 33. Stay of Liquidation

1. The court, which opened the secondary proceedings, shall stay the process of liquidation in whole or in part on receipt of a request from the liquidator in the main proceedings, provided that in that event it may require the liquidator in the main proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors. Such a request from the liquidator may be rejected only if it is manifestly of no interest to the creditors in the main proceedings. Such a stay of the process of liquidation may be ordered for up to three months. It may be continued or renewed for similar periods.
2. The court referred to in paragraph 1 shall terminate the stay of the process of liquidation:
 - at the request of the liquidator in the main proceedings,
 - of its own motion, at the request of a creditor or at the request of the liquidator in the secondary proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main proceedings or in the secondary proceedings.

Article 34. Measures Ending Secondary Insolvency Proceedings

1. Where the law applicable to secondary proceedings allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the liquidator in the main proceedings shall be empowered to propose such a measure himself. Closure of the secondary proceedings by a measure referred to in the first subparagraph shall not become final without the consent of the liquidator in the main proceedings; failing his agreement, however, it may become final if the financial interests of the

creditors in the main proceedings are not affected by the measure proposed.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest.

3. During a stay of the process of liquidation ordered pursuant to Article 33, only the liquidator in the main proceedings or the debtor, with the former's consent, may propose measures laid down in paragraph 1 of this Article in the secondary proceedings; no other proposal for such a measure shall be put to the vote or approved.

Article 35. Assets Remaining in the Secondary Proceedings

If by the liquidation of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the liquidator appointed in those proceedings shall immediately transfer any assets remaining to the liquidator in the main proceedings.

Article 36. Subsequent Opening of the Main Proceedings

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 31 to 35 shall apply to those opened first, in so far as the progress of those proceedings so permits.

Article 37(?). Conversion of Earlier Proceedings

The liquidator in the main proceedings may request that proceedings listed in Annex A previously opened in another Member State be converted into winding-up proceedings if this proves to be in the interests of the creditors in the main proceedings.

The court with jurisdiction under Article 3(2) shall order conversion into one of the proceedings listed in Annex B.

Article 38. Preservation Measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another

Member State, provided for under the law of that State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

Chapter IV – Provision of Information for Creditors and Lodgement of their Claims

Article 39. Right to Lodge Claims

Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States, shall have the right to lodge claims in the insolvency proceedings in writing.

Article 40. Duty to Inform Creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.

2. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need lodge their claims.

Article 41. Content of the Lodgement of a Claim

A creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it and its amount, as well as whether he alleges preference, security in rem or a reservation of title in respect of the claim and what assets are covered by the guarantee he is invoking.

Article 42. Languages

1. The information provided for in Article 40 shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading 'Invitation to lodge a claim. Time limits to be observed' in all the official languages of the institutions of the European Union.

2. Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that

7) Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

other State. In that event, however, the lodgement of his claim shall bear the heading 'Lodgement of claim' in the official language or one of the official languages of the State of the opening of proceedings. In addition, he may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings.

Chapter V – Transitional and Final Provisions

Article 43. Applicability in Time

The provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into force. Acts done by a debtor before the entry into force of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done.

Article 44. Relationship to Conventions

1. After its entry into force, this Regulation replaces, in respect of the matters referred to therein, in the relations between Member States, the Conventions concluded between two or more Member States, in particular:

(a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;

(b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;

(c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;

(d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;

(e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;

(f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;

(g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;

(h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments

in Civil and Commercial Matters, signed at The Hague on 30 August 1962;

(i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;

(j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1993;

(k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of this Regulation.

3. This Regulation shall not apply:

(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that State with one or more third countries before the entry into force of this Regulation;

(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time this Regulation enters into force.

Article 45. Amendment of the Annexes

The Council, acting by qualified majority on the initiative of one of its members or on a proposal from the Commission, may amend the Annexes.

Article 46. Reports

No later than 1 June 2012, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied if need be by a proposal for adaptation of this Regulation.

Article 47. Entry into Force

This Regulation shall enter into force on 31 May 2002. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 29 May 2000.

For the Council

The President

A. COSTA

ANNEX A

Insolvency Proceedings Referred to in Article 2(a)

BELGIË/BELGIQUE

- Het faillissement/La faillite
- De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif
- De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice
- De collectieve schuldenregeling/Le règlement collectif de dettes
- De vrijwillige vereffening/La liquidation volontaire
- De gerechtelijke vereffening/La liquidation judiciaire
- De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites

БЪЛГАРИЯ

- Производство по несъстоятелност

ČESKÁ REPUBLIKA

- Konkurs
- Reorganizace
- Oddlužení

DEUTSCHLAND

- Das Konkursverfahren
- Das gerichtliche Vergleichsverfahren
- Das Gesamtvollstreckungsverfahren
- Das Insolvenzverfahren

EESTI

- Pankrotimenetlus

ΕΛΛΑΔΑ

- Η πτώχευση
- Η ειδική εκκαθάριση
- Η προσωρινή διαχείριση εταιρείας. Η διοίκηση και διαχείριση των πιστωτών
- Η υπαγωγή επιχείρησης υπό επίτροπο με σκοπό τη σύναψη συμβιβασμού με τους πιστωτές

ESPAÑA

- Concurso

FRANCE

- Sauvegarde
- Redressement judiciaire
- Liquidation judiciaire

IRELAND

- Compulsory winding-up by the court
- Bankruptcy
- The administration in bankruptcy of the estate of persons dying insolvent
- Winding-up in bankruptcy of partnerships
- Creditors' voluntary winding-up (with confirmation of a court)
- Arrangements under the control of the Court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution
- Company examinership

ITALIA

- Fallimento
- Concordato preventivo
- Liquidazione coatta amministrativa
- Amministrazione straordinaria

ΚΥΠΡΟΣ

- Υποχρεωτική εκκαθάριση από το Δικαστήριο
- Εκούσια εκκαθάριση από πιστωτές κατόπιν Δικαστικού Διατάγματος
- Εκούσια εκκαθάριση από μέλη
- Εκκαθάριση με την εποπτεία του Δικαστηρίου
- Πτώχευση κατόπιν Δικαστικού Διατάγματος
- Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα

LATVIJA

- Tiesiskās aizsardzības process
- Juridiskās personas maksātnespējas process
- Fiziskās personas maksātnespējas process

LIETUVA

- įmone's restruktūrizavimo byla
- įmone's bankroto byla
- įmone's bankroto procesas ne teismo tvarka

LUXEMBOURG

- Faillite
- Gestion contrôlée
- Concordat préventif de faillite (par abandon d'actif)
- Régime spécial de liquidation du notariat

MAGYARORSZÁG

- Csődeljárás
- Felszámolási eljárás

MALTA

- Xoljiment
- Amministrazzjoni
- Stralc' volontarju mill-membri jew mill-kredituri
- Stralc' mill-Qorti
- Falliment f'każ ta' negozjant

NEDERLAND

- Het faillissement
- De surséance van betaling
- De schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

- Das Konkursverfahren (Insolvenzverfahren)
- Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren)
- Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren)
- Das Schuldenregulierungsverfahren
- Das Abschöpfungsverfahren
- Das Ausgleichsverfahren

POLSKA

- Postępowanie upadłościowe
- Postępowanie układowe
- Upadłość obejmująca likwidację
- Upadłość z możliwością zawarcia układu

PORTUGAL

- Processo de insolvência
- Processo de falência
- Processos especiais de recuperação de empresa, ou seja:
- Concordata
- Reconstituição empresarial
- Reestruturação financeira
- Gestão controlada

ROMÂNIA

- Procedura insolvenței
- Reorganizarea judiciară
- Procedura falimentului

SLOVENIJA

- Stečajni postopek
- Skrajšani stečajni postopek
- Postopek prisilne poravnave
- Prisilna poravnava v stečaju

SLOVENSKO

- Konkurzné konanie
- Reštrukturalizačné konanie

SUOMI/FINLAND

- Konkurssi/konkurs
- Yrityssaneeraus/företagssanering

SVERIGE

- Konkurs
- Företagsrekonstruktion

UNITED KINGDOM

- Winding-up by or subject to the supervision of the court
- Creditors' voluntary winding-up (with confirmation by the court)
- Administration, including appointments made by filing prescribed documents with the court
- Voluntary arrangements under insolvency legislation
- Bankruptcy or sequestration

ANNEX B

Winding-up Proceedings Referred to in Article 2(c)

BELGIË/BELGIQUE

- Het faillissement/La faillite
- De vrijwillige vereffening/La liquidation volontaire
- De gerechtelijke vereffening/La liquidation judiciaire
- De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice

БЪЛГАРИЯ

- Производство по несъстоятелност

ČESKÁ REPUBLIKA

- Konkurs

DEUTSCHLAND

- Das Konkursverfahren
- Das Gesamtvollstreckungsverfahren
- Das Insolvenzverfahren

EESTI

- Pankrotimenetlus

ΕΛΛΑΔΑ

- Η πτώχευση
- Η ειδική εκκαθάριση

ESPAÑA

- Concurso

FRANCE

- Liquidation judiciaire

IRELAND

- Compulsory winding-up
- Bankruptcy
- The administration in bankruptcy of the estate of persons dying insolvent
- Winding-up in bankruptcy of partnerships
- Creditors' voluntary winding-up (with confirmation of a court)
- Arrangements under the control of the Court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution

ITALIA

- Fallimento
- Concordato preventivo con cessione dei beni
- Liquidazione coatta amministrativa
- Amministrazione straordinaria con programma di cessione dei complessi aziendali
- Amministrazione straordinaria con programma di ristrutturazione di cui sia parte integrante un concordato con cessione dei beni

ΚΥΠΡΟΣ

- Υποχρεωτική εκκαθάριση από το Δικαστήριο
- Εκκαθάριση με την εποπτεία του Δικαστηρίου
- Εκούσια εκκαθάριση από πιστωτές (με την επικύρωση του Δικαστηρίου)
- Πτώχευση
- Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα

LATVIJA

- Juridiskās personas maksātnespējas process
- Fiziskās personas maksātnespējas process

LIETUVA

- įmonės bankroto byla
- įmonės bankroto procesas ne teismo tvarka

LUXEMBOURG

- Faillite
- Régime spécial de liquidation du notariat

MAGYARORSZÁG

- Felszámolási eljárás

MALTA

- Stralc' volontarju
- Stralc' mill-Qorti
- Falliment inkluż il-h- rug ta' mandat ta' qbid mill-Kuratur f'każ ta' negozjant fallut

NEDERLAND

- Het faillissement
- De schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

- Das Konkursverfahren (Insolvenzverfahren)

POLSKA

- Postępowanie upadłościowe
- Upadłość obejmująca likwidację

PORTUGAL

- Processo de insolvência
- Processo de falência

ROMÂNIA

- procedura falimentului

SLOVENIJA

- Stečajni postopek
- Skrajšani stečajni postopek

SLOVENSKO

- Konkurzné konanie

SUOMI/FINLAND

- Konkurssi/konkurs

SVERIGE

- Konkurs

UNITED KINGDOM

- Winding-up by or subject to the supervision of the court
- Winding-up through administration, including appointments made by filing prescribed documents with the court
- Creditors' voluntary winding-up (with confirmation by the court)
- Bankruptcy or sequestration

ANNEX C

Liquidators Referred to in Article 2(b)

BELGIË/BELGIQUE

- De curator/Le curateur
- De gedelegeerd rechter/Le juge-délégué
- De gerechtsmandataris/Le mandataire de justice
- De schuldbemiddelaar/Le médiateur de dettes
- De vereffenaar/Le liquidateur
- De voorlopige bewindvoerder/L'administrateur provisoire

БЪЛГАРИЯ

- Назначен предварително временен синдик
- Временен синдик
- (Постоянен) синдик
- Служебен синдик

ČESKÁ REPUBLIKA

- Insolvenční správce
- Předběžný insolvenční správce
- Oddělený insolvenční správce
- Zvláštní insolvenční správce
- Zástupce insolvenčního správce

DEUTSCHLAND

- Konkursverwalter
- Vergleichsverwalter
- Sachwalter (nach der Vergleichsordnung)
- Verwalter
- Insolvenzverwalter
- Sachwalter (nach der Insolvenzordnung)
- Treuhänder
- Vorläufiger Insolvenzverwalter

EESTI

- Pankrotihaldur
- Ajutine pankrotihaldur
- Usaldusisik

ΕΛΛΑΔΑ

- Ο σύνδικος
- Ο προσωρινός διαχειριστής. Η διοικούσα επιτροπή των πιστωτών
- Ο ειδικός εκκαθαριστής
- Ο επίτροπος

ESPAÑA

- Administradores concursales

FRANCE

- Mandataire judiciaire
- Liquidateur
- Administrateur judiciaire
- Commissaire à l'exécution du plan

IRELAND

- Liquidator
- Official Assignee
- Trustee in bankruptcy
- Provisional Liquidator
- Examiner

ITALIA

- Curatore
- Commissario giudiziale
- Commissario straordinario
- Commissario liquidatore
- Liquidatore giudiziale

ΚΥΠΡΟΣ

- Εκκαθαριστής και προσωρινός εκκαθαριστής
- Επίσημος παραλήπτης
- Διαχειριστής της πτώχευσης
- Εξεταστής

LATVIJA

- Maksātnespējas procesa administrators

LIETUVA

- Bankrutuojančių įmonių administratorius
- Restruktūrizuojamų įmonių administratorius

LUXEMBOURG

- Le curateur
- Le commissaire
- Le liquidateur
- Le conseil de gérance de la section d'assainissement du notariat

MAGYARORSZÁG

- Vagyonfelügyelő
- Felszámoló

MALTA

- Amministratur Proviz'orju
- Riċevitur Uffiċjali
- Stralċjarju
- Manager Speċjali
- Kuraturi f'kaz ta' proceduri ta' falliment

NEDERLAND

- De curator in het faillissement
- De bewindvoerder in de surséance van betaling
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

- Masseverwalter
- Sanierungsverwalter
- Ausgleichsverwalter
- Besonderer Verwalter
- Einstweiliger Verwalter
- Sachwalter
- Treuhänder
- Insolvenzgericht
- Konkursgericht

POLSKA

- Syndyk
- Nadzorca sądowy
- Zarządca

PORTUGAL

- Administrador da insolvência
- Gestor judicial
- Liquidatário judicial
- Comissão de credores

ROMÂNIA

- Pratician în insolvență
- Administrator judiciar
- Lichidator

SLOVENIJA

- Upravitelj prisilne poravnave
- Stečajni upravitelj
- Sodišče, pristojno za postopek prisilne poravnave
- Sodišče, pristojno za stečajni postopek

SLOVENSKO

- Predbežny správca
- Správca

SUOMI/FINLAND

- Pesähoitaja/boförvaltare
- Selvittäjä/utredare

SVERIGE

- Förvaltare
- Rekonstruktör

UNITED KINGDOM

- Liquidator
- Supervisor of a voluntary arrangement
- Administrator
- Official receiver
- Trustee

List of Abbreviations

ABA	American Bar Association
ABI	American Bankruptcy Institute
AIFM	Alternative Investment Fund Manager
AIRA	Association of Insolvency & Restructuring Advisors
ALI	American Law Institute
BAnzDiG.	Act to Amend Provisions relating to Publications and Announcements and by the Code of Civil Procedure and the Introductory Acts to the Code of Civil Procedure and to the Tax Code (= <i>Gesetz zur Änderung von Vorschriften über Verkündung und Bekanntmachungen sowie der Zivilprozessordnung, des Gesetzes betr. die Einführung der Zivilprozessordnung und der Abgabenordnung</i>)
BGBI.	Federal Law Gazette (= <i>Bundesgesetzblatt</i>)
BGH	Federal German Court of Justice (= <i>Bundesgerichtshof</i>)
BMJ	Federal Ministry of Justice (= <i>Bundesministerium der Justiz</i>)
cf.	compare
COMI	Centre of Main Interests
DAV	German Lawyers' Association (= <i>Deutscher Anwaltverein</i>)
e.g.	exempli gratia (= for example)
ECJ	European Court of Justice
EEG	Renewable Energy Act (= <i>Erneuerbare-Energien-Gesetz</i>)
EGInsO	Introductory Act to the Insolvency Code (= <i>Einführungsgesetz zur Insolvenzordnung</i>)
EIR	European Insolvency Regulation
ESUG	Act for the Further Facilitation of the Restructuring of Companies (= <i>Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen</i>)
et al.	et alii (= and others)
et seq.	et sequentes (= and the following)
etc.	et cetera (= and so on)
EU	European Union
EUR	Euro
FMStGÄndG	Act to Facilitate the Restructuring of Companies (= <i>Gesetz zur Erleichterung der Sanierung von Unternehmen</i>)
GmbH	Limited Liability Company (= <i>Gesellschaft mit beschränkter Haftung</i>)
HBeglG	Act Accompanying the Budget (= <i>Haushaltsbegleitgesetz</i>)
i.e.	id est (= that is)
IBA	International Bar Association

InsO	Insolvency Code (= <i>Insolvenzordnung</i>)
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
InsVV	Insolvency Administrator Compensation Ordinance (= <i>Insolvenzrechtliche Vergütungsordnung</i>)
IPRspr.	German case law in the field of private international law (= <i>Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts [Zeitschrift]</i>)
IWIRC	International Women's Insolvency & Restructuring Confederation
LL.M.	Master of Laws
LLP	Limited Liability Partnership
NABT	National Association of Bankruptcy Trustees
NBC	National Bankruptcy Conference
NCBJ	National Conference of Bankruptcy Judges
KO	Bankruptcy Code (= <i>Konkursordnung</i>)
NIPR	Private International Law of the Netherlands (= <i>Nederlands Internationaal Privaatrecht</i>)
NJ	Jurisdiction of the Netherlands (= <i>Nederlandse Jurisprudentie</i>)
NZI	New Journal for Insolvency and Restructuring Law (= <i>Neue Zeitschrift für das Recht der Insolvenz und Sanierung</i>)
OJ	Official Journal
p.	page
p.a.	per anno (= per year)
para.	paragraph
pp.	pages
SchVG	German Act on Notes (= <i>Schuldverschreibungsgesetz</i>)
SE	European Company (= <i>Société européenne</i>)
Sp z o.o.	Unlimited (= <i>Spółka z ograniczoną odpowiedzialnością</i>)
TMA	Turnaround Management Association
UNCITRAL	United Nations Commission on International Trade Law
VID	German Association of Insolvency Practitioners (= <i>Verband Insolvenzverwalter Deutschlands e. V.</i>)
ZInsO	Insolvency Law Journal (= <i>Zeitschrift für das gesamte Insolvenzrecht</i>)
ZVI	Journal for Consumer and Personal Insolvency Law (= <i>Zeitschrift für Verbraucher- und Privat-Insolvenzrecht</i>)
ZwVollStrÄndG	Act to Reform the Clarification of Facts in Enforcement (= <i>Gesetz zur Reform der Sachaufklärung in der Zwangsvollstreckung</i>)