Draft of the Federal Ministry of Justice and Consumer Protection

Draft of a law for the further development of the reorganization and insolvency law

(Reorganization Law Development Act - SanInsFoG)

A.Problem and goal

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, debt relief and prohibitions on activitiesand on measures to improve the efficiency of restructuring,insolvency and debt relief proceedings and amending Directive (EU) 2017/1132 (Restructuring and Insolvency Directive) (OJ L 172, 26 June 2019, p. 18) -hereinafterreferred to as "Directive":Directive - and the evaluation of the German Act to Further Facilitate theReorganization of Companies of December 7, 2011 (Bundestag document 18/4880 dated October 11, 2018) provide grounds for the further development and amendment of the Reorganization and Insolvency Law. In addition, the economic consequences of the COVID-19 pandemic demand temporary adjustments of the reorganization and insolvency law to be further developed and supplemented to the special situation characterized by the consequences of the crisis.

Current law lacks the proceduralbasisrequired by the directivefor the implementation and realisation of reorganisations prior to insolvency proceedings.It istrue that reorganizations can oftenbecarried outon thebasis of extrajudicial negotiations within the framework of a well-established and well-functioning practice.However, reorganization projects can fail due to the resistance of individual participantsif they insist on asserting their rights without restriction and without regard to the reorganization solution pursued. If such obstinate behavior removes the basis for the remediation project or leads other parties to withdraw their willingness to support the project, projects that would have been beneficial to all parties involved can also fail. In such cases, it is also possible to implement the project within the framework of a self-administered insolvency procedure. However, this approach is often accompanied by avoidable disadvantages. These include the insolvency proceedings affecting the entire company and the costs of the proceedings. In addition, there are further indirect costs such as the still negatively connotated publicity of insolvency proceedings and the associatedreputational costs. These disadvantages and costs have a disproportionate effect in any case if the core issue is simply topersuadea subset of creditors to make a contribution to restructuring.Therefore, a legal framework is necessary that enables the parties involved in a reorganization project to implement the project against the resistance of individuals. Such a framework should be created in implementation of the requirements of the directive.

The evaluation of the law to further facilitate the restructuring of companies dated December 7, 2011 also gives cause for a further development of the existing restructuring options under insolvency law. Although these haveproven to be successfulin principle, they need to be readjusted in some areas. This applies in particular to access to self-administration proceedings. This is mainly controlled by the absence of disadvantages for the creditor side, which, due to its abstract nature,favors inconsistent handling andburdenspractice with legal uncertainty.A significant proportion of the proceedings initiated under provisional self-administration

proves to be unsuitable for this type of process. Repeated attempts of recourse to self-administration proceedings by badly prepared debtors who are already in a deepened state of insolvency arealso likely to sow mistrust in the institution of self-administration and thusdevalue the self-administration proceedings and with it the options for restructuring the insolvency proceedings. This burdens the realization of well and solidly prepared reorganization projects. Further readjustments arenecessaryin the design of the self-administration procedureand in the insolvency plan law.

The system of reasons for filing for insolvency is to be adapted. One reason for thisisthe extensive overlap between imminent insolvency, which entitles the debtor to file an application to open insolvency proceedings, and over-indebtedness, which obliges the debtor to file such an application. On the other hand, the system of reasons for filing an application has to be harmonized with the framework to be created for insolvency averting reorganizations.

Past measures to promote self-responsible and early management of corporate crises have not been reflected either in a significant increase in the number of well-prepared self-administration proceedings or in higher insolvency rates for unsecured creditors. Managers oflegal entities withlimited liabilitycannot make use of the existing possibility of initiating insolvency proceedings against the will of the shareholders in case of imminent insolvency. In most cases, they are not obliged to protect the interests of the creditor community until the insolvency proceedings have been initiated where these conflict with the interests of the shareholders. This results in obstacles for the timely and consistent preparation and initiation of reorganizationswith the help of the existing procedural instruments. A need for a contouring of the duties of managers also arises in view of the fact that the restructuring framework provides managers with furtheroptions to intervene in the rights of creditors in order to implement reorganizations.A liability-based obligation to protect the interests of creditorsmustcorrespond withthis power to shape thesituation.

As a result of the COVID 19 pandemic, a large number of companies havesufferedsignificant revenue losses.Even though these companies have succeeded in ensuring the continuation of their businesses by drawing on government aid, many of them are suffering from a debt overhang that poses risks for the sustainable continuation ofthe companies. In this respect, it must be ensured that the affected companies and their creditors are given the effective opportunity to use the restructuring options to be developed and created through a temporary adjustment of the conditions for access and over-indebtedness, taking into account the current crisis conditions.

To achieve this, the insolvency proceedings and the new restructuring framework to be created to avoid insolvency also require the use of electronicmeans of communication. In particular, it should be possible to vote on insolvency or residual restructuring plans by using remote means of communication.

Since the Insolvency Compensation Ordinance came into force on January 1, 1999, the compensation rates regulated there have remained essentially unchanged, although the general level of prices and income has risen. It can also be noted that the demands on female insolvency administratorshaveincreased in the meantime.This is to be compensated for.Inaddition, the Insolvency Remuneration Ordinance does not yet contain any regulation on the remuneration of the provisional administratorin the provisional self-administration proceedings. An increase in theremuneration of the members of the provisional creditors' committeeisalso required.

B. Solution

A legal framework to enable insolvency averting reorganizations iscreated, which enables companies to reorganize on the basis of a restructuring plan accepted by a majority of creditors. This legal frameworkcloses the gapleftby the current reorganization law between the area of free reorganization, which is dependent on the consensus of all parties involved, on the one hand, and reorganization in the form of insolvency proceedings, with its costs and disadvantagescompared to free reorganization, on the other.This restructuring framework shouldin principle enablethecompany to conduct the negotiations on the plan itself and to put the plan itself to the vote. The instruments of the framework should beavailableat the stage of imminent and not yet occurred insolvency. Itshould be possible to obtain enforcement and liquidation freezes to safeguard the prospects of success of a restructuring project if the restructuringiswellprepared and if it is ensured that the company can be continued for the duration of the order and remains solvent. If there are already arrears to employees, social security institutions, the tax office or suppliers, or if the company has not fulfilled its accounting obligations in the last three years, such closures should only be achievable if, despite these circumstances, it is to be expected that the debtor is willing and able to carry out the restructuring while safeguarding the interests of the creditors.

The conditions for the use of self-administration should also be more closely linked to the purposes of self-administration and the interests of the creditors. The waiver of the appointment of an insolvency administrator is justified if and as long as it can be expected that the debtor is willing and able to align her management with the interests of the creditors. Theadvance of trustinherent in theorder of self-administration is particularly justifiedifthe debtor prepares the self-administration proceedings in a timely and conscientious manner before shecomesunder thepressure to actresulting from an acute inability to pay.In other cases, self-administration should not be excluded, but should only be considered if the prima faciedisadvantages for the creditors cannotbe excluded. In addition,individual questions on the self-administration procedurewhichhave not been settled so far shallbe regulated, e.g. the authorization of the debtor to establish liabilities in the insolvency estate and the liability of the managers of corporate bodies with limited liability.

Over-indebtedness and the threat of insolvency are more clearlydistinguished from eachother. It is true that imminent insolvency will continue to have to be taken into account in the framework of the continuation forecast to be made for the over-indebtedness audit. However, the competition problem is to be defused by the fact that the over-indebtedness test is to be based on a forecast period of one year, whereas the examination of the imminent insolvency is to be carried out regularly within a two-year forecast period. This ensures that in the second year of the forecast period, competition from imminent insolvency and over-indebtednessis excluded. Inaddition, the maximum period for the obligation to file an application in the event ofover-indebtednessis to beincreased to six weeks in order to give the debtor the opportunity topreparereorganizations in a preventive restructuring framework or on the basis of a self-administration procedurein anorderly and conscientiousmanner.

Managers of limited liability companies should be obliged toprotect the interests of creditors when exercising their entrepreneurial discretion if the company owner is threatened with insolvency. The closer the imminent default of payment approaches, the more the entrepreneurial discretion is to belimitedby the necessity of averting the dangers for the creditors.The culpable violation of these obligations should lead to liability towards

the company owner.If, on theother hand, the debtor makes use of theinstruments of the preventive framework or enters into self-administration proceedings, the liability should be directly towards the creditors.

The improvements in the remediation options will particularly benefit companies that have suffered a drop in salesas aresult of the impact of the measures takento contain the CO-VID 19 pandemic. Undertheconditions of the still unresolved economic crisis, the draft willtemporarily relaxthe stricter access rules to self-managed planning procedures, limited to companies whose financial crisis was caused by the COVID 19 pandemic. In this respect, the forecast period for the going concern assumption in the case of over-indebtedness will be temporarily shortened to take into account the currently increased uncertainty about the further economic development.

To achieve this, the insolvency proceedings and the new restructuring framework to be created to avoid insolvency also require the use of electronicmeans of communication. Inparticular, it should be possibletoconductvoteson insolvency or restructuring plansin creditors' meetingsusing remote communication media.

Finally, to compensate for the rise in the general level of prices and income, the remuneration of female insolvency administrators and custodians isto beadjusted. In addition, the remuneration of the members of the provisional creditors' committee is to be increased appropriately.

C. Alternatives

There is no alternative to implementing the requirements of the directive. The directive grants the implementing legislator a right of choice in many detailed questions.In exercising these options, theimplementation concept developedin the drafthasbeen guidedbytheobjectiveof harmoniously embedding the restructuring framework to be created in the existing German law, which is recognized in its efficiency.

In order to further develop the existing framework for the restructuring of companies, the evaluation study on the Act to Further Facilitate the Restructuring ofEnterpriseshasidentified a number of further development options. The regulatory concept developed in the draft was guided in its choice between these options by the goal of combining insolvency law and the restructuring framework to be created into a coherent legal framework for corporate restructuring.

An increase in the remuneration rates of the insolvency administrators could also be achieved solely by increasing the threshold values for the individual stages or solely by increasing the percentages in the individual stages. By combining the two elements, the two motives for the increase, namely the increase in the generallevel ofprices andincomeon the one handand the increase in the demands on the administrators' offices on the other, are not mixed up. The remuneration of temporary custodians could alsoremainwithoutexpress regulation orbeexpresslyregulatedin accordance with the previous case lawof the Federal Court of Justice, which as a rule denies an independent claim to remuneration for the temporary custodian activity and onlyprovides forasurcharge in the remuneration for the final custodian activity.However,this case lawleads to practical difficulties, e.g. if a provisional cover pool administrator does not act in this capacity throughout the entire opening proceedings.

D. Budgetary expenditure excluding compliance expenditure

Thechanges in the Insolvency Remuneration Ordinance arenot expected to result in any budgetary expenditurefor the Federal Governmentwithout fulfilment expenses. Additional burdens on the state budgets are therefore expected in the amount of approx. 29.8 million euros per year.

E. Fulfilment expenses

E.1 Fulfillment expenses for citizens

None.

E.2 Fulfillment costs for the economy

The regulations on the remuneration of the temporary administrator increase the annualcompliance costs for the economy by around 3,000 euros. This fulfilment expense isrelevant in the sense of the "one in, one out" regulation of the Federal Government. Compensation will be provided by savings in the Act on the Promotion of Electromobility andModernization of the Condominium Act and on the Amendment of Cost and Land RegisterRegulations (Condominium Modernization Act - WEMoG).

[Fulfilment costs for the remaining parts of the design are still to be calculated].

Thereof bureaucratic costs from information duties

[The new information obligations under the Insolvency Statistics Act result in annualbureaucratic costs, which are currently still being calculated].

E.3 Administrative expenses

For the administration, the annual compliance costs will increase by around EUR2,000 due to the new rules governing the remuneration of the provisional administrator. These are attributable to the federal states (including local authorities).

[Fulfilment costs for the remaining parts of the design are still to be calculated].

F. Further costs

The increase in the remuneration of insolvency administrators and trustees burdens the insolvency assets and is therefore economically to be borne by the creditors, unless it finally burdens the state budgets in cases of deferral. However, there are no statistical data that would allow a viable estimate of these additional burdens.

[The further costs for the remaining parts of the design are still to be calculated].

There are no other costs for commercial enterprises. The implementation of thelaw is not expected to have any effects on individual prices or the price level, in particular on the consumer price level.

Draft Speaker of the Federal Ministry of Justice and Consumer Protection

Draft of a law for the further development of the reorganization and insolvency law

(Reorganization Law Development Act - SanInsFoG)[1])

From …

The Bundestag has passed the following law:

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1) This Act serves the further implementation of the Directive (EU) 2019/1023 of the EuropeanParliament and of the Council of 20 June 2019 on preventive restructuring frameworks, debt relief and prohibitions on activities and on measures to improve the efficiency of restructuring, insolvency and debt relief proceedings and amending Directive (EU) 2017/1132 (Restructuring and Insolvency Directive) (OJ L 172, 26.6.2019, p. 18).

Article 1

Law on the Stabilization and Restructuring Framework forEnterprises

(Corporate Stabilization and Restructuring Act - StaRUG)

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Early crisis detection and management

§ 1

Early crisis detection and crisis management for limited liability companies

(1) The members of the body of a legalentityappointed to manage the business(managers) continuously monitor developments thatcould endangerthe continued existence ofthe legal entity. If they recognize such developments,they take appropriate countermeasures andreport immediatelyto thebodies appointedto supervise themanagement (supervisory bodies). If the measures to be taken affect the responsibilities of other bodies, themanagersshallimmediatelyactto ensure that they are taken into account.

(2) If no natural person is liable as a direct or indirect partner for the liabilities of a company without legal personality, paragraph 1 shall applymutatis mutandis to the managing directors of the direct or indirect partners appointed to manage thecompany.

(3) Further obligations arising from other laws remainunaffected.

§2

Obligations in case of imminent insolvency

(1) Ifthe legal entity or the company without legal personality is threatenedly insolvent (§ 18 of the Insolvency Code), the managers protect theinterests of all creditors. The members of the supervisory bodies monitor compliance with these duties. Resolutions and instructions of the supervisory bodies and other bodies shall be irrelevant if theyconflict withtheprotection of creditors' interestsas required under sentences 1 and 2.

(2) Subject to the obligations under paragraph 1, the managers shall also take into account the interests of the shareholders and other parties whoseinterestswould be affectedby insolvency proceedings relating to the assets of the legal person orcompany.

(3) A manager who violates her obligations under paragraph 1 sentence 1 shall be liable to the legal person or company without legal personality for the damage incurred, unless she is not responsible for the violation of obligations. Sentence 1 shall also apply to members of the supervisory bodies who violate their duties under paragraph 1 sentence 2.

(4) A waiver by the legal person or the company without legal personalityof claims for compensation resulting from the breach of obligations under paragraph 1 or a settlement concerning such claims shall be ineffective to the extent that the compensation is necessary to satisfy the creditors. This shall not apply if the person liable to pay compensationcompareshimselfwith his creditorstoavert insolvency proceedings on his assets or if the obligation to pay compensation is regulated in an insolvency plan.

§ 3

Early Warning

Information on the availability ofinstrumentsprovided by public authoritiesfor the early identification of crises (early warning) is providedby theFederal Ministry of Justice and Consumer Protection at its Internet address www.bmjv.bund.de.

Stabilization and restructuring framework

Chapter 1

Restructuring plan

Section 1

Design of legal relationships

§4

Structurable legal relationships

(1) On the basis of a restructuring plan can be designed

1. Receivables due from a person capable of restructuring (debtor) (restructuring receivables), and

2. the rights existing in respect of objects of the debtor's assets which would entitle the debtor to segregation in the event of the opening of insolvency proceedings, unless they are financial collateral within the meaning of Section 1(17) of the German Banking Act or collateralprovidedto the operator of asystem within the meaning of Section 1(16) of the German Banking Act to secure its claims arising from the system or the central bank of a Member State of the European Union or the European Central Bank (segregation entitlements).

(2) Ancillary contractual provisions, to which the restructuring claims or separation rights are subject, can also be formulated. If restructuring claims or rights to separate satisfaction are based on different legal relationshipsand if the holders of the claims or rights to separate satisfaction havereachedagreements among themselves and with the debtor on the enforcement of theclaims or rights to separate satisfactionexistingagainst the debtorand the relative priority of the proceeds resulting from the enforcement, the terms of thisagreement canalso beshaped by the plan.

(3) If the debtor is a legal entity or a company without legal personality, the share or membership rights of thepersons involvedin the debtor may alsobeshaped by the restructuring plan, otherprovisions permissibleunder company lawmay be made and share and membership rights may be transferred.

(4) The restructuring plan may also design the rights of holders of restructuring claims to which theyare entitled under a guarantee issued by a subsidiary within the meaning of Section 290 of the Commercial Code as guarantor, co-debtor or on the basis of a liability otherwise assumed or to items of the assets of thiscompany (intra-group third-party collateral); the intervention shall becompensatedbyappropriate compensation.

(5) The legal relationships at the time of the submission of the plan offer shall be decisive; in the case of a vote in court proceedings (§§ 45, 46) theapplication shall be decisive.If the debtor obtains a stabilization order, the date of the first order shall replace the plan offer or the application.

§ 5

Contingent and undue restructuring receivables; receivables frommutual contracts

(1) Restructuring receivables can also be structured if they are conditional or not yet due.

(2) Restructuring claims from mutual contractscanonlybe structured to theextentthat the service incumbent on the other party has already been rendered.

§6

Excluded legal relationships

A restructuring plan is inaccessible:

1. claims of female employees arising from or in connection with the employment relationship, including rights arising from promises of company pension schemes,

2. claims arising from intentionally committed tortious acts and

3. fines and the claims equivalent thereto under section 39(1)(3) of the Insolvency Statute.

If the debtor is a natural person, this also applies toclaims and separate satisfaction rights that are not connected with the debtor's business activities.

Section 2

Requirements for the restructuring plan

§ 7

Structure of the restructuring plan

The restructuring plan consists of a descriptive and a formative part. It shall contain at least theinformationrequired under the Annex to this Act.It shall be accompanied by the annexes required under Sections 16 and 17.

§8

Presenting part

(1) The descriptive part describes the basics and the effects of the residual invoicing plan. It contains all informationrelevantfor the decision of those affected by the plan to approve the plan and for its judicial confirmation.If restructuring measures are planned that cannotor shouldnotbe implementedvia theformative part of the plan, they must be highlighted separately.

(2) The descriptive part contains, in particular, a comparative calculation showing the effects of the plan on the prospects of satisfying those affected by the plan. If the plan provides for the continuation of the enterprise, it is to be assumed for the determination of the prospects of satisfaction without a plan that the enterprise will continue. This does not apply if there isno prospectof selling the enterprise or otherwise continuing.

(3) If the restructuring plan provides for interventions in the rights of creditors under group-internal third-party collateral (§ 4 (4)), the presentation must also include the circumstancesof the subsidiary providing the collateral and the effects of the plan on this company.

§ 9

Designing part

(1) The formative part of the restructuring plan determines how the legal status of the holders of the restructuring receivables, the separation rights, the rights from group-internal third-party collateral and the share or membership rights (plan participants) is to be changed by the plan.

(2) If restructuring receivables or separation rights are to be structured, it must be determined by which fraction they are to be reduced, for which period they are deferred, how they are to be secured and which other regulations they are to be subject to. Sentence 1 shall apply mutatis mutandis to the structuring of the rights under group-internal third-party collateral(§ 4 paragraph 4).

(3) Insofar as contractual ancillary provisions and agreements are formulated in accordance with § 4 (2), the formative part determines how the ancillary provisions andagreementsareto be amended.

(4) Restructuring claims can also be converted into shares or membership rights in the debtor. In particular, the plan mayprovide fora capital reductionor increase, the making of contributions in kind, the exclusion of subscription rightsor the payment of compensation to departing shareholders. For creditors who object to a conversion into share and membership rights, a cash compensation shall be providedfor.The plan may provide forthe transfer ofshare ormembership rights. In all other respects, any arrangement may be made which is permissible under company law. § Section 225a (4) and (5) of the Insolvency Statute shallapply mutatis mutandis.

§10

Selection of the plan participants

The selection of the persons affected by the plan shall be made according to appropriate criteria, which shall be indicated and explained in the descriptive part of the plan. The selection is appropriateif

1. the receivables not included would probably be fully satisfied even in insolvency proceedings,

2. the differentiation made in the selection according to the type ofeconomic difficultiesto be overcomeand the circumstances appears appropriate,inparticular if only financial liabilities and thecollateralprovided to secure themare structured, or

3. with the exception of the receivables mentioned in § 6, all receivables are included.

§ 11

Classification of those affected by the plan into groups

(1) When determining the rights of the plan participants in the restructuring plan, groups shall be formed if plan participants with different legal status are affected. A distinction shall be made between

1. the holders of segregation entitlements,

2. the holders of claims which would be asserted as non-subordinated insolvency claims in the event of the opening of insolvency proceedings, together with theinterest and default surcharges on suchclaims(simple restructuring creditors),

3. the holders of claims which, in the event of the opening of insolvency proceedings, would have to be filed as subordinate insolvency claims pursuant to section 39 subs. 1 No. 4, No. 5 or subs. 2 of the Insolvency Statute (subordinate restructuring creditors), whereby a group is to be formed for each ranking class and

4. the holders of share or membership rights.

If the formative part of the restructuring planprovides forinterventions in the rights of creditorsunder third party collateral within the group, the creditors affected by such interventions forman independent group.

(2) The groups maybedivided into furthergroups according to economic interests.They must be properly delimited from one another. Thecriteria for the delimitation shall be indicated in the plan. Small creditors shall be grouped together into independent groups within the framework of the groups to be formed in accordance with paragraph 1.

§ 12

Equal treatment of those affected by the plan

(1) Within each group, equal rights shall be offered to all those affected by the plan.

(2) Different treatment of the plan participants in a group is only permissible with the agreement of all plan participants to whose detriment the different treatment is to be applied. In this case, the restructuring plan must be accompanied by a declaration of consent from each of the persons affected by the different treatment.

(3) Any agreement by the debtor or third parties with individual plan participants, which grants them an advantage not provided for in the plan for their conduct in votes or otherwise in connection with the restructuring process, is null and void.

§ 13

Liability of the debtor

Unless otherwise provided in the restructuring plan, the debtor shall bereleasedfrom its remainingliabilities tocreditorsfrom the restructuring requirements and separation rights included in the planwith the satisfaction of the creditors provided for in the constructive part.

§ 14

New financing

The plan mayincludeprovisions for the commitment of loans or other creditsnecessary to finance the restructuring on the basis of the plan (new financing). The prolongation or deferral of receivables and the assumption of sureties, the issue ofguarantees or the assumption of joint liability to secure new financing in accordance with sentence 1is also deemed to be new financing.

§ 15

Change in property law conditions

If rights to objects are to be created, changed, transferred or cancelled, the necessary declarations of intent of the parties involved canbe includedin the formativepart of the restructuring plan. Ifrights to a real property or to registered rights registered inthe land register areaffected, these rights shall be precisely designated in compliance with Section 28 of the Land Register Code. Sentence 2 shall apply mutatis mutandis to rights entered in the register of ships, the register of ships under construction or the register of liens on aircraft.

§ 16

Declaration of viability; balance sheet; profit and finance plan

(1) The plan shall be accompanied by a reasoned explanation of the prospects that the plan will remove the debtor's imminent insolvency and that the debtor's viability will be secured or restored.

(2) The restructuring plan shall be accompanied by a balance sheet setting out the assets and liabilities arising from the restructuring plan when it takes effect.

opposite, are listed with their values.Inaddition,the expenses and income to be expected for the period during which the creditors are to be satisfied and the sequence of income and expenses to ensure the solvency of the company during this period must be listed. In addition to the restructuring claims, theclaims remainingunaffected by the plan aswell as the claims to be established in the future according to the plan must be taken into account.

§ 17

Further plants

(1) Ifthe debtor is a company without legal personalityor a partnership limited by shares, the plan shall beaccompanied bya declaration of thepersons whoare to begeneral partners of theenterpriseaccording to the planthat they are prepared to continue the enterprise on the basis of the plan.

(2) If creditors are to take over share or membership rights or interests in a legal person, an association without legal capacity 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 assumed obligations towards the creditors in the event of confirmation of the plan, the plan shall be accompanied by the declaration of the third party.

(4) If the restructuring plan provides for interference with the rights of creditors under third-party collateral within the group, the plan shall beaccompanied bythe consent of thesubsidiary which provided the collateral.

§ 18

Checklist for restructuring plans

The German Federal Ministry of Justice and Consumer Protection has published a checklist for restructuring plans, which is adapted to the needs of small and medium-sized enterprises. The checklist is publishedon the website www.bmjv.bund.de.

Section 3

Plan reconciliation

Subsection 1

Plan offer and plan acceptance

§ 19

Plan offer

(1) The debtor's offer to accept the restructuring plan (plan offer) addressed to the persons affected by the plan must contain a clear indication that the plan, if accepted by a majority and confirmed by a court, can also become effective against persons affected by the plan who do not accept the offer. The complete restructuring plan including annexes must be attached to the plan offer.

(2) The plan proposal must show with which claims or rights the respective plan participant is included in the plan, which groups the plan participantis assigned to and which voting rights are granted by the claims and rights to which it is entitled.

(3) If the debtor has not given all persons affectedby the plan the opportunity to discuss the plan or the restructuring concept implemented by the plan jointlybefore the plan offer was made, the plan offer shallcontaina reference to the fact thatameeting of the persons affected by the plan will be heldat the request of one or more persons affectedby the planfor the purpose of discussing the plan.

(4) Unless otherwise agreed in relation to individual plan participants, the plan offer is subject to the written form. If the debtor does not specify any other form in the plan offer, the acceptance of the plan is also subject to the written form.

§ 20

Interpretation of the plan offer

In case of doubt, it can be assumed that the plan offer is subject to the condition that all plan participants agree or that the plan is confirmed by a court of law.

§ 21

Acceptance period

The debtor sets a deadline for the acceptance of the plan. The deadline isat least 14 days. This does not apply if the plan is based on a restructuring concept which has been made available in text form to all persons affected by the plan for at least 14 days.

§ 24

Voting within the framework of a meeting of those affected by the plan

(1) The debtor mayputthe planto the votein a meeting of those affected by the plan.The meeting shall be convened in writing. The notice periodis 14 days. If the debtor grants the possibility of electronic participation, the period of notice is seven days. The complete restructuring plan including annexes shall be attached to the notice of meeting.

(2) The plan offer may provide that those affected by the planmayalso participate in the place of assembly without being present andmay exerciseall or some of their rights in whole orin part by means of electronic communication (electronic participation).

(3) The debtor shall chair the meeting. Upon request, it shall provide any person affected by the plan with information on the restructuring plan and thedebtor's circumstances relevantfor a properassessment of the plan. Plan-affected personshave the right to submit proposals for amendments to the plan. The proposals shall besentto the debtor in text form at least one day before the meeting begins.

(4) The meeting may also vote on the plan if it isamendedin individual points based on the discussions in the meeting.

(5) Each group of those affected by the plan votes separately. Otherwise, the debtorshalldetermine the modalities of the voting. If plan participants exercise their voting rightselectronically, they must receive electronic confirmation of receipt of the electronically cast vote. Voting is also possible without participating in the meeting until the end of the voting.

§ 23

Discussion of the plan

(1) If no vote is taken at a meeting of those affected by the plan,a meeting of those affected bythe plan shall beheldat the request of any of themto discuss the planunder the conditions of § 19 (3).

(2) The meeting is convened in writing. The period of notice is at least 14 days. If the debtor grants the possibility of electronic participation, the period of notice is seven days.

(3) § Section 22 (3) shall apply mutatis mutandis.

(4) If the meeting takes place after the expiry of a period set for the adoption of the plan, this period shall be extended until the end of the day of the meeting or until the date determined by the debtor by the end of the meeting. If a person affected by the plan hadalready declaredhimself/herselfto accept the plan, the obligation to make this declaration shall cease to apply if he/she declares his/her acceptance again within the extended period.

§ 24

Documentation of the vote

(1) The debtor shall record the result of the vote immediately after expiry of the Acceptance Period or after the vote has been carried out. If the selection of the plan participants, their division into groups or the allocation of voting rights is disputed, this shall be noted.

(2) The documentation shall be made available to those affected by the plan without delay.

§ 25

Judicial plan approval procedure

The debtor may put the restructuring plan to the vote in a court procedure to be conducted in accordance with sections 45 and 46; sections 19 to 24 shall not apply in this case.

Subsection 2

Voting rights and required majorities

§ 26

Voting rights

(1) The voting right is

1. in the case of interest-bearing restructuring receivables, by the amount,

2. in the case of separation rights and intra-group third-party collateral, according to their value, and

3. in the case of share or membership rights, according to the debtor's share of the subscribed capital or assets. Restrictions on voting rights, special or multiple voting rights are not taken into account.

(2) For the purpose of determining the voting rights granted by restructuring claims, the following are recognized

1. The value of contingent receivables is based on the probability of the occurrence of the conditions;

2. non-interest-bearing receivables with the amount resulting from discounting to the date of submission of the plan in accordance with Section 41 (2) of the German Insolvency Code;

3. Claims directed to monetary amounts of undefined amount or expressed in foreign currency or a unit of account, at the value to be determined in accordance with § 45 of the Insolvency Regulation;

4. claims for recurring services with the value determined in accordance with § 46 of the Insolvency Code.

(3) Receivables secured by segregation rights only confer a voting right in a group of restructuring creditors to the extent that the debtor ispersonally liable for the secured receivables and the holder of the segregation rights waives them orislikely to defaultwith separate satisfaction.As long as the default has not been determined, the claim is to be considered with the presumed default.

(4) If the voting right attributable to a claim or a right is disputed, the debtor may base the vote on the voting right which it has assigned to the plan participants. In the documentation of the vote, the debtor shall note that the voting right is disputed, to what extent and for what reason.

§ 27

Required majorities

(1) In order for the restructuring plan to be adopted, the members of the group approving the plan must hold at least three quarters of the voting rights in each group.

(2) Plan participants who are jointly entitled to a claim or right are treated as one plan participant in the reconciliation. The same applies if a lien or usufruct exists on a right.

§ 28

Majority decision across groups

(1) If the majority required under § 27 is not achieved in a group, the consent of that group shall be deemed to have been granted if

1. the members of this group are not expected to be worse off by the restructuring plan than they would be without a plan,

2. the members of this group participate appropriately in the economic valuethat is to accrue to the plan participants on the basis of the plan (plan value), and

3. the majority of the voting groups has approved the plan with the required majorities; if only two groups have been formed, the approval of the other group is sufficient; the approving groups must not be formed exclusively by shareholders or subordinate restructuring creditors.

(2) A group is deemed to have an appropriate share in the plan value if

1. no other creditor receives economic valuesexceedingthe full amount of its claim,

2. neither a creditor affected by a plan which would be satisfied without a plan with subordination to the creditors of the Group, nor the debtor or a person with an interest in the debtor receives an economic value which is not fully offset by payments into the assets of the debtor, and

3. no creditor affected by a plan which, without a plan, would have to be satisfied on anequal footing with the creditorsof the group is placed in a better position than these creditors.

(3)Notwithstanding subs. 2 No. 2, the appropriate participation of a group of creditorsshall not be precluded if the debtor or a holder ofshare or membership rights retains economic values,

1. insofar as their cooperation is necessary for the continuation of the company in order to realize the added value of the plan and theyhave committedthemselves to the continuation of the companyor

2. the interventions in the rights of creditors are minor, in particular because the rights are not reduced and their due datesarenotpostponedby more than 12 months.

(4) If the majority required under § 27 is not achieved in a group to be formed under the third sentence of § 11(1), subsections (1) and (2) shall apply to that group only if the envisaged compensationadequately compensates the holders of rights under the group-internalthird-party collateral for the loss of rights to be suffered.

(5) For a group of shareholders, an appropriate share of the economic value is deemed to exist if, under the plan

1. no creditor affected by the plan receives economic values thatexceedthe full amount ofher claim, and

2. subject to the second sentence of paragraph 2, no Shareholder who would be treated as a Group Shareholder in the absence of the Plan will receive any economic value.

Chapter 2

Restructuring and stabilization instruments

Section 1

General terms and conditions

Subsection 1

Instruments of the stabilization and restructuring framework; procedures

§ 29

Instruments

(1) The procedural assistance of the stabilization and restructuring framework (instruments) can be used to sustainably manage an imminent illiquidity within the meaning of Section 18 (2) of the German Insolvency Code.

(2) are instruments of the stabilization and restructuring framework:

1. the execution of a judicial plan approval procedure (judicial plan approval),

2. the judicial confirmation of a restructuring plan (plan confirmation),

3. the judicial preliminary examination of issuesrelevantto the confirmation of the restructuring plan(preliminary examination),

4. the judicial termination of mutualcontractsthat have not yet been completely fulfilled by both parties(termination of contract) and

5. the court order of regulations to restrict measures of individual law enforcement (stabilization).

(3) Unless otherwise provided by the provisions of this Act, the debtor may use the instruments of the stabilization and restructuring framework independently of each other.

§ 30

Restructuring ability

(1) Subject toparagraph 2,the instruments of the stabilization and restructuring framework maybe used by any debtor capable of insolvency. For natural persons this applies only to the extent that they are engaged in entrepreneurial activities.

(2) The provisions of this chapter do not apply to companies in the financial sector within the meaning of Section 1 (19) of the German Banking Act.

§31

Display of the restructuring plan

(1) A precondition for the use of the instruments of the stabilization and restructuring framework is the notification of the restructuring plan to thecompetent restructuring court.

(2) The display is to be attached:

1. the draft restructuring plan or, if such a plan could not yet be elaborated and negotiated according to the status of the notified project, a concept for the restructuring, which, based on a description of the nature, extent and causes of the crisis, describes the objective of the restructuring and the measures envisaged to achieve this objective,

2. a description of the status of negotiations with creditors,persons involvedin the debtorand third parties regarding the envisaged measures, and

3. a description of the arrangements the debtor has made toensureitsabilitytofulfil its obligations under this Act.

When givingnotice, the debtor must also indicate whether the rights of female consumersor of medium-sized, small or micro-enterprises are to be affected,inparticular because their claims or expectation of segregationare to beshaped by a restructuring plan or the enforcement of these claimsis to be temporarily blockedby a stabilization order. It must also be stated whether it is to be expected that the concept can only be enforced against the resistance of a group to be formed in accordance with § 11.

(3) With the notification, the restructuring case becomes legally pending.

(4) The display loses its effect,

1. if the debtor takes them back,

2. the decision on the plan confirmation becomes legally binding,

3. the court sets aside the restructuring case under section 33, or

4. six months have passed since the notification or, if the debtor has previously renewed the notification, nine months have passed.

§ 32

Obligations of the debtor

(1) The debtor shall conduct the restructuring case with the diligence of aprudent and conscientious restructuring manager and shall protect the interests of all creditors. In particular, it shall refrain from measures which are notcompatiblewith the objective of the notified restructuring concept (restructuring target)or which jeopardize the prospects of success of the envisaged restructuring. It is usually not compatible with the restructuring goal tosettle or collateralize claims which are to be shaped by the restructuring plan.

(2) The debtor shall notify the court of any material changeaffectingthesubject matter of the notified restructuring plan and the description of thestatus of negotiations. If the debtor has obtained a stabilization order pursuant to section 54, it shall also promptly notify the court of any material changes affecting the restructuring plan. If a restructuring commissioner has been appointed, the obligations under sentences 1 and 2 shall also apply vis-à-vis the restructuring commissioner.

(3) During the lis pendens of the restructuring case the debtor is obliged to notify the restructuring court of the occurrence of an inability to pay within the meaning of § 17 para. 2 of the Insolvency Statute. If the debtor is a legal entity or a company without legal personality for whose obligations no natural person is liable as a direct or indirect partner, over-indebtedness within the meaning of section 19 para. 2 of the Insolvency Statute shall be deemed equivalent to insolvency. If there is sufficient prospect of acceptance andconfirmation of the restructuring plan, claims which are to be shaped by the plan shall be taken as a basis for the determination of insolvency or over-indebtedness in the amount and with the due date which they are to receive under the plan. If the debtor hasnot yet submitted a restructuring plan, sentence 3 shall apply mutatis mutandis if the debtor has submitted a sufficiently concrete restructuring concept whichhassufficientprospects of implementation and whose effects on theclaims to be taken into accountindetermining insolvency or overindebtedness have been determined in a sufficiently concretemanner.

(4) The debtor is obliged to notify the court without delay if the restructuring project has no prospect of implementation, in particular if, as a result of the serious and final rejection of the submitted residual restructuring plan by those affected by the plan, it cannot be assumed that the majorities required for an acceptance of the plan can be achieved.

§ 33

Annulment of the restructuring case

(1) The Restructuring Court shall cancel the restructuring case ex officio if

1. insolvency proceedings have been opened against the debtor's assets,

2. the restructuring court is not competent for the restructuring case and the debtor has not filed a request for referral or withdrawn the notification within a period set by the restructuring court,

3. the debtor fails tosubmit a draft restructuring plan or a mature and coherent restructuring conceptto the court after the expiry of areasonable period of time grantedfor this purpose, or

4. the debtor in a serious manner against

   a) violates the obligations incumbent upon it under § 32, or

   b) violates its obligations to cooperate and provide information to the court or a restructuring officer.

(2) The court shall further set aside the restructuring case if

1. the debtorhasgivennotice ofhis insolvency or over-indebtedness pursuant to section 32 subs. 3or other circumstances are known from which it follows that the debtor is ready for insolvency. If insolvency maturity occurs after the debtorhasalreadymade use ofinstruments of the stabilization and restructuring framework, the court mayrefrain fromsetting aside the restructuring caseif the opening of insolvency proceedings would obviously not be in the interest of all creditors in view of the status achieved in the restructuring case,

2. it emerges from a notification pursuant to Section 32 (4) or from other circumstances that the notified restructuring plan has no prospect of implementation, or

3. in an earlier restructuring case

   a) the debtor has obtained a stabilization order or a plan confirmation, or

   b) a revocation according to paragraph 1 point 3 or point 4 has taken place.

Point 3 is not applicable if the cause of the earlier restructuring case was overcome as a result of a sustainable recovery. In the case of point 3(a), if less than three yearshaveelapsed since the end of the order period or the decision on the application for plan approval in the earlier restructuring case, itshall be presumed, in case of doubt, that a sustainable recovery has not taken place.In this respect,insolvency proceedings administered by the Companyitselfareequivalent torecourse to instruments of the restructuring framework.

(3) The restructuring case shall not be set aside as long as the court has refrained from setting aside a stabilization order under section 63(3).

(4) The debtor shall be entitled to file an immediate appeal against the cancellation of the restructuring case under subs. 1 to 3.

§ 34

Local court as restructuring court

(1) For decisions in restructuring cases, the local court in whose district a higher regional court has its seat is exclusively competent as restructuring court for the district of the higher regional court. If this Local Court does not have jurisdiction for regular insolvency matters, the Local Court which has jurisdiction for regular insolvency matters at the seat of the Higher Regional Court shall have jurisdiction.

(2) The state governments are empowered, for the purpose of expedient promotion or faster settlement of restructuring cases, by statutory order

1. within a district, todeterminethe jurisdiction of anotherlocal courthavingjurisdictionin insolvency matters,or

2. to extend the jurisdiction of a restructuring court within a country additionally to the district of one or more other higher regional courts.

The state governments may transfer the authorization to the state justice administrations by statutory order.

§ 35

Local jurisdiction

The restructuring court in whose district the debtor has its general place of jurisdiction shall have exclusive local jurisdiction. If the center of thedebtor's economic activityis locatedat another place, the Restructuring Court in whose district this place is located shall have exclusivejurisdiction.

§ 36

Uniform responsibility

Thejudge who was responsible for the first decisionis responsible for all decisions and measures in the restructuring case.

§ 37

Group Court of Justice

(1) At the request of a debtor belonging to a group of companies within the meaning of section 3e of the Insolvency Statute (debtor belonging to a group), therestructuring court seised shall declare itselfcompetent for restructuring matters of other debtors belonging to the group (group follow-up proceedings) if the debtorhas filedanadmissible request in the restructuring matter and the debtorisnotobviously of minor importance for the entire group of companies.

(2) § Section 3a subs. 1 sentences 2 to 4, subs. 2, section 3b, section 3c subs. 1, section 3d subs. 1 sentence 1, subs. 2 sentence 1 and section 13a of the Insolvency Statute shall apply mutatis mutandis.

(3) At the debtor's request and subject to the conditions of subs. 1 the court competent for subsequent group proceedings in restructuring matters shall declare itself to be competent as insolvency court also for subsequent group proceedings in insolvency matters under section 3a subs. 1 of the Insolvency Statute.

§ 38

Applicability of the Code of Civil Procedure

Unless otherwise provided for by this Act, the provisions of the Code of Civil Procedure shall apply mutatis mutandis to proceedings in restructuring cases. § Section 128a of the Code of Civil Procedure shallapply with the proviso that, in the case of meetings and appointments, the parties involved must be informed in the summons of the obligation to refrain from making sound and image recordingsand not to allow third parties to perceive the sound and image transmission.

§ 39

Principles of procedure

(1) The Restructuring Court shall determine ex officio all circumstances which are relevant to the proceedings in the restructuring case,unless otherwise provided forin thisAct. For this purpose it may in particular hear witnesses and experts.

(2) The debtor shall provide the restructuring court with the information required to decide on its applications and shall also otherwise support the court in the performance of its duties.

(3) The decisions of the restructuring court canbe madewithout an oralhearing. If an oral hearing takes place, Section 227 (3) sentence 1 of the Code of Civil Procedure shall not apply.

§ 40

Appeals

(1) The decisions of the restructuring court are subject to appeal only in cases where this law provides for immediate appeal. The immediateappeal must be lodged with the restructuring court.

(2) The time limit for appeal begins with the announcement of the decision or, if the decision is not announced, with its notification.

(3) The decision on the appeal will only become effective when it becomes final. However, the court of appeal may order the immediate effectiveness of the decision.

§ 43

Deliveries

(1) Service shall be effected ex officio, without any certification of the document to be served being required. They may be effectedby postingthe documentat the address of the person to be served; section 184(2) first, second and fourth sentences of the Code of Civil Procedure shall apply mutatis mutandis. If service is to be effected within Germany, the document shall be deemed to have been served three days after it has been posted.

(2) No delivery will be made to persons whose whereabouts are unknown. If they have a representative authorized to accept service, the representative will beserved.

(3) The Restructuring Court may instruct the Restructuring Officer to carry outthe notifications under paragraph 1 . To carry out the service and to record it in the files it may makeuse ofthird parties, in particular its own staff.The restructuring commissioner shallimmediately submitthenoticeshe hasmadepursuant to section 184(2) sentence 4 of the Code of Civil Procedureto thecourt files.

(4) If the court instructs the debtor to effect service, service shall be effected in accordance withsections 191 to 194 of the Code of Civil Procedure.

Subsection 2

Restructuring right

§ 42

Indication of insolvency and overindebtedness

(1) During the lis pendens of the restructuring case, the obligation to file an application pursuant to Section 15a (1) to (3) of the Insolvency Code and Section 42 (2) of the CivilCode issuspended . However, the parties obliged to file an application shall be obliged to notify the restructuring court without undue delay of the occurrence of an inability to pay within the meaning of § 17 para. 2 of the Insolvency Statute or over-indebtedness within the meaning of § 19 para. 2 of the Insolvency Statute.

(2) The filing of aninsolvency petition satisfying the requirements of section 15a of the Insolvency Statuteshall be deemed to constitute timely fulfilment of the duty to notify under subs. 1 sentence 2.

(3) Anyone who, contrary to paragraph 1 sentence 2, fails to report the occurrence of insolvency or over-indebtedness or fails to do so in good time shall be punished by imprisonment for up to three years or by a fine. If the offender acts negligently, the penalty is imprisonment for up to one year or a fine. Sentences 1 and 2 are not applicable to associations and foundations to which the obligation under paragraph 1 sentence 1 applies.

(4) If the notification of the restructuring case under Section 31 (4) loses its effect, the obligations to file a petition under Section 15a (1) and (2) of the Insolvency Statute and under Section 42 (2) of the German Civil Code come into force again.

§ 43

Liability of the organs

Claims under § 2 para. 3 resulting from a breach of duty committed during the lis pendens of the restructuring case may also beassertedby the creditors.

§ 44

Prohibition of solution clauses

(1) The lis pendens of the restructuring case or the use of instruments of the stabilization and restructuring framework by the debtor do not automatically constitute grounds for the termination of such contractual relationships in which the debtor is involved, for the due date of payments or for a right of the other party to refuse to perform its obligations or to demand the adjustment or other form of the contract. Nor do they automatically affect the validity of the contract.

(2) Conflicting agreements are invalid.

(3) Subs. 1 and 2 shall not apply to transactions under section 104 subs. 1 of the Insolvency Statute and agreements on liquidation netting under section 104 subs. 3 and 4 of the Insolvency Statute. This applies in particular to transactions whichare subject to the offsetting of claims and benefitswithin the framework of asystem pursuant to section 1 (17) of the German Banking Act.

Section 2

Judicial plan coordination

§ 45

Discussion and voting appointment

(1) At the request of the debtor, the restructuring court will set a date for the discussion of the restructuring plan and the voting rights of those affected by the plan and will then vote on the plan. The summons period is at least 14 days.

(2) The application must be accompanied by the complete restructuring plan and annexes.

(3) The plan participants must be invited to the appointment. The invitation contains a note that the appointment and the coordination can be carried out even if not all those affected by the plan participate. The court mayinstructthe debtor toservethesummons.

(4) Sections 239 to 242 of the Insolvency Statute and sections 26 to 28 shall apply to the proceedings accordingly. If there is a dispute as to which voting rightgrantsthe claim, the expectancy of segregation, the security provided within the group or the share ormembership rightofa plan participant and no agreement can bereached between the parties involved, the court shall determine the voting right.

§ 46

Preliminary examination date

(1) At the debtor's request the court shall fixa separate date for the preliminary examination of the restructuring plan prior to the discussion andvote. The subject of this preliminary examination may be any issue relevant for the confirmation of the restructuring plan, in particular

1. whether the selection of those affected by the plan and the division of those affected by the plan into groupsmeets the requirements of §§ 10 to 11

2. which voting right grants a restructuring claim, a segregation entitlement or a share or membership right, or

3. whether the debtor is threatened with insolvency.

(2) The court shall summarize the result of the preliminary examination in a note.

(3) The court may also set a preliminary examination date ex officio if this is appropriate.

Section 3 Preliminary examination

§ 47

Request

At the debtor's request, the restructuring court will also conduct a preliminary reviewifthe plan is nottobeput to a vote in court. Thesubject of such preliminary review may be any issuerelevantto theconfirmation of the restructuring plan. Inaddition to thematters referred toin § 46 para. 1 second sentence, these may in particular include the requirements to be met by the plan approval procedure under §§ 19 to 24.

§ 48

Procedure

(1) The persons affected by the preliminary examination question shall be heard.

(2) The court summarizes the result of the preliminary examination in a note. The notice should be issued within two weeks of the application being filed or, if a hearing date is scheduled, within two weeks of that date.

Section 4

Termination of contract

§ 49

Termination of contract

(1) At the request of the debtor, the restructuring court will terminate amutual contract which has not been mutually fully performed and in which the debtor is involved, if the other partyis not prepared to make the necessary adjustments or terminate the contract inorder to implement the restructuring projectand the debtor is threatened with insolvency. The application under sentence 1 may only be filed simultaneously with an application for confirmation of a restructuring plan which provides for further restructuring measures.

(2) Subject to theexceptions referred toin subs. 3, termination of a contract under subs. 1 shall bepossible under contracts which may be refused performance under section 103(1) of the Insolvency Statute or terminated under section 109 of the Insolvency Statute.

(3) A termination of the contract according to this provision are inaccessible:

1. Transactions which may be the subject of an agreement on liquidation netting pursuant to section 104 subsections 3 and 4 of the Insolvency Statute or which may be the subject of a settlement of payments and services within a system within the meaning of section 1 subsection 17 of the German Banking Act (Kreditwesengesetz), and

2. if the debtor is a natural person, contracts that are not related to the debtor's business activities.

§ 50

Decision of the court

(1) A decision on the application for termination of the contract and the application for confirmation of the restructuring plan must be taken simultaneously. The decision will be made byway of a resolution.

(2) Listen to the other part.

(3) Any doubts as to whether the conditions for termination of the contract are fulfilled shall be borne by the debtor.

(4) The order shall be served to the debtor and the other party.

§51

Immediate complaint

(1) An immediateappeal shall be lodged against the decision of the Restructuring Court.

(2) At the request of the debtor, the court of appeal shall reject the appeal against the decision without delay if

1. the appeal against the confirmation of the restructuring plan is to be rejected pursuant to § 70(4), and

2. the interests of the other party are sufficiently safeguarded, in particular by a plan provision pursuant to Section 68(3).

§ 52

Legal consequences of the termination of the contract

(1) If the contract has been terminated, no further performance canbedemanded from it. Ifthe contract is a continuing obligation, thedecision has the effect of a termination with a three-month notice period. If a shorter period of notice isapplicable, it replaces the three-month period.

(2) The other part is entitled to a claim for non-performance. The non-performance claimcan be structured in the formative part of the restructuring plan. Claims for non-performance must be grouped together in a separate group.

Section 5Stabilization

§ 53

Principle

(1) To the extent that this is necessary to safeguard the prospects of achieving the restructuring target, the Restructuring Court shall, upon application by the debtor, order that

1. measures of enforcement against the debtorareprohibited or temporarilysuspended (suspension of enforcement) and

2. rights to objects of movable assets whichcould be asserted as a right of separation or segregationin the event of the opening ofinsolvency proceedings may not be enforced by the creditor and that suchobjectsmaybeused for the continuation of the debtor's businessif they are of considerable importance for this purpose (ban on realization).

(2) Claims whichare inaccessible under § 6 of a structuring by a restructuring planshall remain unaffected by an order under subsection 1. The order may otherwise be directed against individual, several or all creditors.

(3) The order may also block the right of female creditors to enforce rights under third-party collateral within the group (Art. 4 para. 4).

§ 54Application

(1) The debtor shall specify the contents, the addressees and the duration of the requested stabilization order.

(2) The debtor attaches a restructuring plan to the application, whichincludes

1. **a draft restructuring plan updated to the day of application or a concept for restructuring according to § 31 par. 2 point 1 updated to that day**

2. **a financial plan covering a period of six months and containing a substantiated description of the sources of financing, which should ensure solvency during this period**

Furthermore, the debtor shall declare

1. **whether, to what extent and to which creditors it isin default with respect to the fulfillment of obligations arising from employment relationships, pension commitments or tax obligations, social security institutions or suppliers,**

2. **whether and in which proceedings in their favour within the last three years prior to the request enforcement or liquidation blocks have been ordered under this Act or under section 21 subs. 2 first sentence no. 3 or 5 of the Insolvency Statute and**

3. **whether it has complied with its obligations under Sections 325 to 328 or Section 339 of the German Commercial Code for the last three completed fiscal years.**

§ 55

Arrangement

(1) The order shall be issued if the restructuring plan submitted by the debtor is complete and conclusive and no circumstances are known from which it can be concluded that

1. **the restructuring plan or the statements on Section 54 (2) sentence 2are basedin materialrespects on incorrect facts,**

2. **the restructuring is futile because there is no prospect that a plan implementing the restructuring concept would be accepted by those affected by the plan or confirmed by the court**

3. **the debtor is not yet threatenedly insolvent or**

4. **the requested order is not necessary toachievethe restructuring objective.**

If the restructuring plan shows remediable deficiencies, the court issues theorder for a maximum period of 20 days and instructs the debtor to remedy the deficiencies within this period.

(2) Are circumstances known from which it follows that

1. there aresubstantial arrears of payment to thecreditorsnamed in § 54 paragraph 2 sentence 2 number 1or

2. the debtorhasbreached the disclosure obligations pursuant to Sections 325 to 328 or Section 339 of the German Commercial Code (HGB) for the last three completed financial years,

the order shall only be issued if, despite these circumstances, it is to be expected that the debtoris willing andable toalignits management with the interests of the creditor community.This shall also apply if in the last three years prior to the filing of the petition the debtorhas been subject to the suspensions ofenforcement orrealisationreferred to in § 53 (1)or provisional security orders pursuant to § 21 (1) sentence 2 number 3 or 5 of the Insolvency Statute, unless the reason for such orders was not overcome by a sustainable restructuring of the debtor.

(3) The order shall be served on all creditors affected by it.

(4) The Restructuring Court shall decide on the application for the issuance of the stabilization orderby way of a resolution. If the court rejects the application and determines that the debtor is insolvent, the debtor is entitled to appeal the order immediately.

§ 56

sequential arrangement, new arrangement

Under the conditions of section 55 subs. 1 and 2, an order may be extended to further creditors, its content may be expanded or its duration extended (subsequent order) or, if the duration of the order has already been exceeded, it may be renewed (new order).

§ 57

Arrangement duration

(1) The stabilization order may be issued for a period of up to three months(maximum order duration).

(2) Subsequent or new orders may only beissued within the maximum order periodpursuant to paragraph 1, unless

1. the debtor has submitted a plan offer to the creditors and

2. no circumstances are known which indicate that a plan is not expected to be accepted within one month.

In this case, the maximum duration of the order is extended by one month and the order is directed exclusively against those affected by the plan.

(3) If the debtor hasapplied for judicial confirmation of therestructuring plan accepted by the persons affected by the plan, follow-up or new orders may be issued until the plan confirmation becomes final and absolute, but not more than eight months after the first order was issued. This does not apply if the restructuring plan is obviously not confirmable.

(4) Paragraph 3 shall not apply if the center of thedebtor's maininterestshas been transferredtoanother Member Statewithin a period of three months prior to the first use ofinstruments of the stabilization and restructuring frameworkand no public announcements are made under sections 88 to 90.

§ 58

Disposal ban

If a ban on utilization has been imposed, the interest owed is to be paid to the creditor and the loss in value resulting from the utilization is to be compensated by ongoing payments to the creditor. This shall not apply if the creditorcannotbe expected to be satisfied from the proceeds of the realisation of the object in view of the amount of the claim and the other encumbrance on the object.

§ 59

Contractual effects

(1) If the debtorowesa creditor something undera contractat the time the orderis issued, the creditor cannotrefuse to make the payments incumbent on him during the period of the order or assert rights to terminate or amend the contractsolely on account of the overduepayment. If follow-up or new orders are issued, the date of the first order shall be decisive.

(2) Par. 1 shall not apply if the debtor is not dependent on the creditor's performance for the continuation of the business.

(3) Paragraph 1 does not affect the right of a creditor who is obliged to make advance payments under Section 321 (2) sentence 1 of the German Civil Code and the right of lenderstoterminatethe loan agreement before the loan is paid out due to adeterioration in the debtor's financial situation or the value of the collateral provided for the loan (Section 490 (1) of the German Civil Code).

§ 60

Financial collateral, payment and settlement systems, liquidation netting

(1) The order shall not affect the validity of disposals of financial collateralunder section 1(17) of the German Banking Act or the validity of the netting of claims and services under payment orders, orders between payment service providers or intermediaries or orders for the transfer of securities placed in systems under section 1(16) of the German Banking Act. This shall also apply if such a transaction of the debtor is executed and set off or financial collateral is provided on the day of the order and the other party proves that it neither knew nor should have known of the order; if the other party is a system operator or participant in the system, the day of the order shall be determined by the business day within the meaning of section 1(16b) of the German Banking Act.

(2) Agreements on liquidation netting pursuant to section 104 subs. 3 and 4 of the Insolvency Statute shall remain unaffected by the order. The claim resulting from the liquidation netting may besubject to an enforcement block and, within the scope of what ispermissible undersubsection 1, also to a liquidation block.

§ 6 1

Liability of the debtor and its organs

(1) If the debtor obtains an order on the basis of intentionally or negligently incorrect information, he is obliged to compensate the creditors affected by it for the damage they suffer as a result of the order.

(2) A manager shall be personally liable to the creditors for the debtor's obligations under subs. 1 unless she is not at fault.

§ 62

Insolvency application

The proceedings on a creditor's request to open insolvency proceedings shall be suspended for the duration of the order.

§ 63

Termination

(1) The restructuring court shall revoke the order if

1. the debtor requests this,

2. the notification pursuant to § 31 para. 4 has lost its effects or if theconditions for cancellation of the matter of restructuring pursuant to § 31 para. 4 no. 3, § 33 are met or

3. circumstances are known from which it follows that

   a) the restructuring plan isbasedin material respects on incorrect facts,

   b) the accounting and bookkeeping are so incomplete or deficient that theydo not permitan assessment of the restructuring plan, in particular thefinance plan, or

   c) if it becomes apparent in any other way that the debtor is not willing and able toalignits management with the interests of the creditor community.

(2) The order shall also be revoked on the grounds referred to in subs. 1(2) and (3) upon application by a creditor affected by the order if the latter provides prima facie evidence of the existence of the ground for termination.

(3) The restructuring court may refrain from setting asidetheorderifthe continuation ofthe order appears necessary toensure an orderly transition to insolvency proceedingsin the interest of all creditors. The court shall set the debtor a deadline of no more than 3 weeks within which she must provide the court with evidence of the request for insolvency proceedings. After expiry of this period, the stabilization order must be revoked.

(4) The order ends if the restructuring plan is confirmed or the plan confirmationis refused.

Section 6

Plan confirmation

Subsection 1

Confirmation procedure

§ 64

Request

At the debtor's request, the court confirms theplan adoptedby the plan participants. The application may also be made during the discussion and voting meeting. If the plan vote has not been taken in the court proceedings (section 45), the debtor shallenclosewith the application for confirmation of the restructuring plan, in addition to theplan and its annexes submittedforvote, the documentation on the result of the voteaswell as all documents and other evidence showing how the vote was carried out and to what result it led.

§ 65

Consultation

The court mayhearthose affected by the plan before deciding on the confirmation.If the plan is not approved in the court proceedings, the court shallhold a hearing of the persons affected by the plan.

§ 66

Conditional plan

If the restructuring plan stipulates that certainservicesareto be rendered or other measures implementedbefore confirmation, the plan is onlyconfirmedifthese conditions are met.

§ 69

Refusal of confirmation

(1) The confirmation shall be refused ex officio if

1. the debtor is not threatened with insolvency;

2. the provisions on the content and procedural treatment of the restructuring planand on the acceptance of the plan by those affected by the plan have not been observed in a material respect and the debtor is unable to remedy the deficiency orfails to remedyit within a reasonableperiod of time setby the restructuring court;or

3. the claimsallocatedto the plan beneficiaries by the formative part of the planand the claims of the othercreditorsnot affected by the planobviously cannot be satisfied.

(2) If the plan provides for new financing, confirmation shall be refused if the restructuring concept on which the plan is based is inconclusive or ifcircumstances are known which show that the concept is not based on actual circumstances or does not offer a reasonable prospect of success.

(3) If the plan has not been approved in court proceedings, any doubts as to whether the plan has been duly accepted by the parties concerned shall be borne by the debtor.If there is a dispute about the voting right to which a plan beneficiary is entitled, thecourtshallbaseits decisiononthevoting right tobedetermined inaccordance with section 46 para. 1 no. 2.

(4) Confirmation shall also be refused if acceptance of the restructuring plan has been unfairly induced, in particular by favouring a party affected by the plan.

§ 68

Protection of minorities

(1) At the request of a party affected by the plan who voted against the restructuring plan, confirmation of the plan must be refused if the applicant is likely to be worse off by the residual restructuring plan than it would be without the plan. In this context, circumstances whichhaveoccurred after the relevant point in time pursuant to § 4 (5) shallnotbe taken into account.

(2) The application is only admissible if the applicanthasalreadyassertedin the voting procedurethat she is likely to be worse off by the plan. If the plan was voted on in a court hearing and voting meeting, the applicant must substantiate at the latest in the voting meeting that it is likely to be worse off by the plan.

(3) The application is to be rejected if the formative part of the restructuring plan provides for funds in the event that a person affected by the plan demonstrates a worse position. Whether the applicant receives compensation from these funds must be clarified outside the restructuring matter.

Notification of the decision

(1) If the decision on the request for plan confirmation is not announced at the hearing or at the discussion and voting meeting, it shall be announced at a special date to be determined as soon as possible.

(2) If the plan is confirmed,a copy of the plan or a summary of its essential contentsshall besentto the persons affected by the plan, with reference totheconfirmation; this does not apply to shareholders or limited shareholders participating in the debtor. Listed companies shall make a summary of the materialcontentofthe plan available on their website.

§ 70

Immediate complaint

(1) Any person affected by the restructuring plan shall have the right to appeal immediately against the decision confirming the restructuring plan. The debtor shall be entitled to an immediateappeal if the confirmation of the restructuring plan has been rejected.

(2) An immediate appeal against the confirmation of the plan shall only be admissible if the appellant

1. has objected to the plan in the voting procedure (§ 68 (2)),

2. voted against the plan and

3. credibly demonstrates that it is significantly worse off as a result of the plan than it would be without the plan, and that this disadvantage cannot be offset by a payment from the funds referred to in Section 68(3).

(3) At the request of the appellant, the court shall order the suspensive effect of the appeal if the execution of the plan entails seriousdisadvantages for the appellant, in particular irreversibledisadvantages whichare disproportionate to the advantages of immediate execution of the plan.

(4) At the request of the debtor, the Complaints Court shall immediately reject the complaint against the confirmation of the residual invoicing plan if the imminent legal force of the plan confirmation appears to have priority because the disadvantages of a delayed execution of the plan outweigh the disadvantages for the complainant; a remedial procedure shall not take place. This does not apply if there is a particularly serious breach of law. If the Appeals Court rejects the appeal pursuant to sentence 1, the debtor isobliged to compensate the complainant forthe damage she hassuffered as aresult of the execution of the plan; the reversal of the effects of the restructuring plan cannot be claimed as damages. The Regional Court whichrejected the complaint shall haveexclusive jurisdiction for actions asserting claims for damages under sentence 3.

Subsection 2

Effects of the confirmed plan; monitoring of plan fulfillment

§ 71

Effects of the plan

(1) With the confirmation of the restructuring plan, the effects specified in the formative part occur. This also applies in relation to plan participants who voted against the plan or who did not take part in the vote, although they were duly involved in the voting procedure.

(2) Ifthe debtor is a company without legal personalityor a partnership limited by shares, an exemption of the debtor from liabilities also works in favour of its general partners.

(3) The rights of the restructuring creditors against co-debtors and guarantors of the debtor as well as the rights of the creditors to objects which are not part of the debtor's assets or from a priority notice relating to such objects shall not be affected by the plan, with the exception of the rights from group-internal third-party collateral created under section 4(4). However, the debtor is released by the plan vis-à-vis the co-debtor, guarantor or other persons entitled to recourse as vis-à-vis the creditor.

(4) If a creditor has been satisfied to a greater extent than she is entitled to under the plan, this shall not give rise to any obligation to return what has been obtained.

(5) If restructuring claims are converted into shares or membership rights in the debtor, the debtor cannotassertany claims against theprevious creditorsafter the court confirmation because of an overvaluation of the claims in the plan.

(6) With the legally binding confirmation of the restructuring plan, deficiencies in the process of plan approval as well as deficiencies in the will of the plan offer and plan acceptance are deemed to be cured.

§ 72

Other effects of the restructuring plan

(1) If rights to objectsare to becreated, changed, transferred orcancelled or shares in a limited liability companyare to beassigned, the declarations of intent of the persons affected by the plan and the debtor included in the restructuring plan are deemed to have been made in the prescribed form.

(2) The resolutions and otherdeclarations of intent of the persons affected by the plan and the debtorincluded in the restructuring planare deemed to have beenmade in the prescribed form. Summonses, announcements and other measures required under company law for the preparation of resolutions of the persons affected by the plan are deemed to have been effected in the prescribed form.

(3) The same shall apply mutatis mutandis to thedeclarations of commitmentincluded in the restructuring planwhich form the basis of a measure under paragraph 1 or paragraph 2.

§ 73

Revival

(1) If included restructuring claims have been deferred or partially waived on the basis of the formative part of the restructuring plan, the deferralor waiver shallbecomenull and void for the creditor against whom the debtor is significantly in arrears with the performance of the plan. Substantial arrears are only to beassumedifthe debtor has not paid a due liability although the creditor has sent a written reminder to the debtor and granted her a grace period of at least two weeks.

(2) If insolvency proceedings are opened on the debtor's assets before the restructuring plan is fully implemented, the deferment or remission is void for all creditors.

(3) The restructuring plan may provide otherwise. However, paragraph 1 may not be derogated from to the detriment of the debtor.

§ 74

Disputed receivables and default claims

(1) Disputed restructuring claims are subject to the plan rules applicable to themto the extent they are subsequently determined, but not beyond the amount on which the plan was based.

(2) If a restructuring claim has been disputed in the voting procedure or if the amount of the default claim of the holder of a right to separate satisfaction is not yet determined, a delay in the fulfilment of the restructuring plan within the meaning of section 73(1) cannot be assumed if the debtor takes the claiminto accountuntilfinal determination in the amount corresponding to the decision on the voting right in the vote on the plan. If no decision of the Restructuring Court on the voting right has been taken, the Restructuring Court shall, at the request of the debtor or the creditor, determine retroactivelyto whatextent the debtor shall provisionally take into account the claim.

(3) If the final determination shows that the debtor has paid too little, he shall pay the missing amount. A substantial delay in the performance of the plan can only be assumed if the debtor fails to pay the missing amount although thecreditor has reminded the debtor in writing and set a grace period of at least two weeks.

(4) If the final determination shows that the debtor has paid too much, it can only reclaim the excess amount to the extent that it also exceeds the part of the claim not due which the creditor is entitled to under the restructuring plan.

§ 75

Enforcement from the plan

(1) From the legally binding confirmed restructuring plan, the restructuring creditors whose claims are not shown as contested in the confirmation resolution may enforce the debt against the debtor as from an enforceable judgment. § Section 202 of the German Insolvency Code applies accordingly.

(2) The same applies to execution against a third party who, by a written declaration submitted to the restructuring court,has assumedobligationsfor the fulfillment of the planalongside the debtor without reservation of the objection of advance action.

(3) If a creditor asserts the rights to which she is entitled in the event of the debtor's substantial arrears in the performance of the plan, she shall, in order to obtain the enforcement clause for these rights and to carry out the enforcement, substantiate the reminder and the expiry of the additional period of time, but notprovideany furtherevidence of the debtor's arrears.

(4) If an enforceabletitlealready existed for the claim subject to a plan regulation, the legally confirmed restructuring plan takes its place;further enforcement from the previous title is inadmissible in this respect.

§ 76

Plan monitoring

(1) In the formative part of the restructuring plan it can be provided that the fulfilment of the claims to which the creditors are entitled according to the formative part is monitored.

(2) The monitoring is to be assigned to a restructuring officer.

(3) If the Restructuring Officer determines that claims whose fulfilmentis monitoredarenot being or cannot be fulfilled, he shallimmediately notify the Restructuring Court and the creditors who are entitled to claims against the debtor under the constructive part of the plan.

(4) The restructuring court decides to lift the monitoring if

1. **the requirements whose fulfilment is monitored are met or if it is guaranteed that they will be met**
2. **three years have elapsed since the restructuring plan took legal effect, or**
3. **insolvency proceedingsareopened against the debtor's assets or theopening is rejected for lack of assets.**

Chapter 3

Restructuring Officer

Section 1

Necessary order

§ 77

Necessary order

(1) The restructuring court shall appoint a restructuring officer if

1. the rights of consumers or medium-sized,small or micro-enterprises are to be affectedby therestructuring, inparticular because theirclaims or separation rights are to be shaped by the restructuring plan or the enforcement of such claims or separation rights is to be blocked by a stabilisation order,

2. the debtor obtains a stabilization order, which isdirectedagainst all or substantially all creditors with the exception of the claims excluded under section 6,

3. a termination of the agreement is applied for or in the course of the restructuring the rights of creditors under group-internal third-party collateral (Art. 4 par. 4) aretobeencroachedupon or

4. the restructuring planprovides formonitoring of the fulfilment of theclaims towhich the creditors areentitled (§ 76).

(2) An appointment shall also be made if it is foreseeable that the restructuring target can only be achieved against the will of holders of restructuring claims or expectancies of absondment, without whose consent to the restructuring plan confirmation of the plan is only possible under the conditions of § 28. This does not apply if only enterprises of the financial sector are involved in the restructuring as parties affected by the plan. The financial sector enterprises are equal to the financial sector enterprises if they are legal successors to theclaims established by financial sector enterprisesor if theyare affectedby claims from money or capital market tradedinstruments. Non-securitized instruments issued on identical terms and conditions are considered equivalent to money and capital market instruments.

(3) If the debtor applies for a stabilization order and hasnot submitted a certificate of a tax advisor, auditor or attorney experienced in restructuring and insolvency matters or of a person with comparable qualification as evidence of the prerequisites for the order, the court may appoint a restructuring commissioner for the purpose of clarifying doubts as to the existence of the prerequisites for the order. The court may also appoint a restructuring commissioner for the purpose of clarifying doubts as to the continued existence of the requirements for the order.

§ 78

Order

(1) Anatural personsuitable for the respective individual case, in particular a person with business knowledge andindependent ofthe creditors and the debtor, who is to be selected from the group of all persons willing to assume the office, is to be appointed asrestructuring officer. The court shall take into account the proposals of the debtor, the creditors and the persons involved in the debtor in its selection.

(2) If the debtor has submittedacertificate issued by a tax advisor, auditor, attorney or a person with comparable qualification experiencedin restructuring and insolvency matters, from which it can be seen that hefulfils therequirementsofsection 55 subs. 1 and subs. 2 and that the envisaged restructuring is not obviously futile, the court maydeviatefrom the debtor's proposalonly if the person proposed is obviously unsuitable; this must be justified. If persons affected by the plan who in each of the groups of holders of restructuring claims and severance payments formed or to be formed under section 11 account for or are expected to account for more than 25 percent of the voting rights submit a joint proposal and ifthe court isnotbound by the first sentence, the court may deviate from the joint proposal of the persons affected by the plan only if the proposed personisobviouslyunsuitable;this must be justified.

(3) If the court follows a proposal of the debtor under subs. 2 first sentence or of the persons affected by the plan under subs. 2 second sentence, it may appoint a further restructuring commissioner andassignto him the tasks under section 80 subs. 2 no. 1 second and third half-sentences,no. 2 and 3, subs. 3 and 5 and the powers under section 80 subs. 6.

§ 79

Legal status

(1) The restructuring officer is under the supervision of the restructuring court. The court may at any timerequestindividual information or a report on the state of affairs.

(2) The Restructuring Court may dismiss the Restructuring Officerfrom officeforgood cause. The dismissal can be made ex officio or upon application of the restructuring commissioner, the debtor or a creditor. At the request of the debtor or a creditor, the dismissal shall only take place if the restructuring commissioneris not independent; this must be substantiated by the applicant. The restructuring commissioner must be heard before the decision is made.

(3) The representative is entitled to an immediate appeal against the dismissal. The applicant is entitled to an immediate appeal against the rejection of the application.

(4) The Restructuring Officer performs her duties with due care and diligence. She performs her duties impartially in the interests of all parties involved and of all creditors. If it culpably violates the duties incumbent on it, it is obliged to pay damages to the affected parties. The statute of limitationsfor the claim for compensation for damages resulting from a breach of duty by the restructuring commissioners shall be governed by the provisions onregular statute oflimitations under the German Civil Code. For those affected by the plan and addressees of a stabilization order, the claim shall become statute-barred at the latest three years from the date on which the notification of the restructuring project loses its effect.

§ 80

Duties and powers

(1) If the Restructuring Officer identifies circumstances which justify the cancellation of the matter under Section 33, he shall inform the Restructuring Judge without delay.

(2) If the appointment is made pursuant to § 77 (1) No. 1 or 2 or (2),

1. the restructuring commissioner shall be entitled to decide how the remaining restructuring plan is to be put to the vote; if the vote is not taken incourt, the commissioner shall chair the meeting of those affected by the plan and document the vote; the commissioner shall examine the claims and expectanciesof those affected by the plan; if the reason or amount of a restructuring claim or expectation of segregation is disputed or doubtful, he shall inform theother parties affected by the plan of this and shall work towards clarifying the voting right by way of a preliminary examination in accordance with sections 47 to 48,

2.the court may delegate the power to the commissioners,

   a) to examine the debtor's economic situation and monitor its management,

   b) to demand from the debtor that incoming fundscanonlybe acceptedby the agent

3. the court may order the debtor to notify the agent of payments and to make payments outside the ordinary course of business only if the agent agrees.

(3) If a stabilization order is issued in favour of the debtor,

1. the Commissioner shall continuously check whether the conditions for the order continue to exist and whether there is a reason for cancellation; for this purpose the Commissioner shall examine thedebtor'scircumstances;

2. the representative shall be entitled to assert the reasons for the cancellation of the order.

(4) If the debtor submits a restructuring plan for confirmation, the agent shall comment on the statement under section 16 subs. 1. If the agents are appointedprior to the plan approval, the statement shall be attached to the plan concerned as a further annex. The report pursuant to sentence 1 shall also represent the dispute or doubts about theexistence or amount of a restructuring claim or a separation expectancy pursuant to subsection (2) no. 2.

(5) If a termination of the contract is applied for or if the plan provides for an intervention in group-internalthird-party collateral, the authorised representative shall examine whether the conditions for such an interventionare fulfilled; the result of such examinations shall be included in the report pursuant to paragraph 3, first sentence.

(6) The agent shall be entitled to enter the debtor's business premises and to make inquiries there. The debtor shall be obliged to provide the agent with the necessary information, to allow her to inspect the books and business papers and to support her in the performance of her duties.

(7) The Restructuring Court may instruct the Restructuring Officer to carry out the service of documents incumbent on the Court.

Section 3

Optional order

§ 81

Request

(1) At the debtor's request, the court appoints a restructuring officer to facilitate negotiations between the parties involved (optional restructuring officer). Creditors are jointly entitled to this right if they hold or are expected to hold more than 25 percent of the voting rights in a group and if theyundertaketo bear the costs of the appointment jointly and severally.

(2) The application may be aimed atassigningthe Commissioner one ormoreadditionaltasks and powers in accordance with § 80; this shall not apply to the power in accordance with § 80 paragraph 6 sentence 1.

§ 82

Order and legal status

(1) Section 78(1) shall apply mutatis mutandis to the appointment of the optional restructuring officers.

(2) If creditors who togetherrepresentallgroupsincluded in the restructuring planmake a proposal regarding the person of the optional restructuring commissioner, the court may only deviate from thisproposalif the person is obviously unsuitable or, if the commissioner is to be appointed solely for the purpose of promoting negotiations between the parties involved, the debtorobjects to the proposal; reasons must be given for any deviation.

(3) Section 79 shall apply mutatis mutandis to the legal status of the optional restructuring officers.

§ 83

Tasks

The optional restructuring officer supports the debtor and thecreditors in the preparation and negotiation of the restructuring concept and the plan based on it.

Section 3

Compensation

§ 84

Entitlement to remuneration

The Restructuring Officer isentitled to remuneration (fees and expenses) inaccordance with the followingprovisions. Agreements on remuneration are only effective if the following provisions on permissible content and procedure are observed.

§ 85

Regular compensation

(1) The Restructuring Officer will receive afee onthebasis of reasonable hourly rates, provided that she acts personally.

(2) Insofar as the support of qualified employees is required, the Restructuring Officer will also receive a fee for their work on thebasis of reasonable hourly rates.

(3) In assessing the hourly rates, the restructuring court takes into account the size of the company, the nature and extent of the debtor's economic difficultiesand the qualifications of the restructuring officers and qualifiedemployees. As arule, the hourly rate for the personal activities of the restructuring officers is up to 350 Euro and for the activities of qualified employeesupto 200 Euro.

(4) When the restructuring officers are appointed, the restructuring court sets the hourly rates. At the same time, it determinesa maximum fee on thebasis of hourly budgetsthat adequately take into account the expected expenditure and the qualifications of the commissioners and qualified employees. For this purpose, the Restructuring Court will hear the person to be appointed and those who owe the expenses according to number 9017 of the List of Costs of the Court Costs Act (debtors of expenses).

(5) The appointment of an optional restructuring officer shall onlybe madeafterpayment of an advance on the expenses according to number 9017 of the cost register of the Court Costs Act.

(6) Ifthe hourly budgets on which the determination of the maximum amount is based are not sufficient for the proper performance of the tasks and powers, therepresentativeshallimmediately present the reason and extent of the need for increase to the restructuring court. In this case, the restructuring court mustdecide immediately on an adjustment of the budgetafter hearing the debtors of the expenses.

(7) In allother respects, theprovisions of § 5 (2) sentence 1 no. 2 as well as §§ 6 and 7 and § 12 (1) sentence 2 no. 4 of the Judicial Remuneration and Compensation Act (Justizvergütungs- und -entschädigungsgesetz) concerningthe Experts shall applyaccordinglyto thereimbursement of expenses.

§ 86

Determination of the remuneration

(1) At the request of the Restructuring Officers, the Restructuring Court shall determine by resolution the remuneration and the expenses to be reimbursed after the termination of the office of the Restructuring Officers.

(2) When determining the remuneration and expenses pursuant to paragraph 1, the Restructuring Court shall also decide who is to bear the expenses pursuant to number 9017 of the List of Costs and to what extent.

(3) The restructuring commissioner and each party liable for expenses shall be entitled to lodge an immediate appealagainst the fixing of the hourly rate pursuant to section 85(4), against thedetermination or adjustment of the maximum amount pursuant to section 85(4) and (6) and against thefixing of the remuneration and the expenses to be reimbursed pursuant to subsection 1.

(4) At the request of the commissioners, an appropriate advance shall be determined if the restructuring commissioner has incurred or islikely to incursubstantial expensesor if the expected remuneration forworkalready performed exceeds EUR1,000.

§ 87

Remuneration in special cases

(1) Hourly rates which exceed the maximum amounts specified in § 85 (3) may be fixed in special cases, in particular if

1. all persons liable to pay expenses agree,

2. otherwise no suitable person declares himself willing to take over the office, or

3. the tasks assigned to the restructuring officer in the special circumstances of the restructuring case are similar to the tasksassignedto a custodianin insolvency proceedings conducted in self-administration, in particular because a general stabilisation order is issued or because all or substantially all creditors and shareholders are included in the restructuring plan with the exception of the creditors to be excluded under section 6.

In the case of sentence 1 number 3, remuneration according to other principles, in particular an assessment based on the value of the claims against the debtor or the company assets included in the restructuring plan, is also possible.

(2) If the Restructuring Officeris appointed upon application and proposal of all parties liable for expensesand the Restructuring Officer and all parties liable for expensessubmit an agreement on remuneration, the court shall base the assessment of the remuneration on this agreement if the agreement does not lead to an unreasonable remuneration.

Public restructuring cases

§ 88

Application and first decision

(1) In proceedings concerning restructuring cases, public announcements areonlymadeif the debtor so requests. The request must be made before the first decision in the restructuring case and can onlybewithdrawn until the first decision is made.Article 102c § 5 of the Introductory Act to the Insolvency Statute shall apply to the request accordingly.

(2) If the debtor has requested that public announcements be made in the proceedings in the restructuring case, the first decision issued in the restructuring case shall state the reasons on which the international jurisdiction of the court is based and whether the jurisdiction is based on Article 3(1) or (2) of Regulation (EU) 2015/848. The information referred to in Article 24(2) of this Regulation shall be made public. Article 102c § 4 of the Introductory Actto the Insolvency Statute shall apply mutatis mutandis.

§ 89

Special provisions

(1) Public announcements shall be made in addition to the information specified in Section 88 (2) sentence 2:

1. Place and time of judicial appointments,

2. the appointment and dismissal of a restructuring officer

3. all court decisions made in the restructuring case.

(2) If public announcements are made, the delivery of summonses ondates to shareholders, limited liability shareholders and holders of bonds isnot required. If the debtor is a listedstock corporation, Section 121 (4a) of the German Stock Corporation Act shallapplyaccordingly.

§ 90

Public announcement

(1) The public announcement is made by means of a central and transnationalpublication on the Internet; this can be done in extracts. The announcementshall be deemed to be effected as soon as two further dayshaveelapsed after the day of publication.

(2) The Federal Ministry of Justice and Consumer Protection is authorized to regulate the details of the central and interstate publication on the Internet by statutory order with the consent of the Bundesrat. In particular

deadlines for deletion and rules to ensure that thepublications are publishedin a timely manner.

1. remain undamaged, complete, factually correct and up-to-date,

2. can be assigned at any time according to their origin.

(3) The public announcement shall suffice as proof of service to allparties involved, even if this Act requires special service in addition to it.

§ 9 1

Restructuring Forum

(1) In the Restructuring Forum of the Federal Gazette, plan participants may request other plan participants toexercise their voting rights in acertain way in a plan vote, to grant a proxy or tosupporta proposal toamend the submitted restructuring plan.

(2) The request shall contain the following information:

1. the name and address of the persons affected by the plan;

2. the debtor;

3. the restructuring court and the file number of the restructuring case;

4. the proposal for the exercise of voting rights, proxy voting or for the amendment of the plan, and

5. the day of the meeting of the persons affected by the plan or the expiry of the deadline for acceptance of the plan offer.

(3) The invitation mayrefer to a statement of reasons on the website of the requesting partyand its electronic address.

(4) In the Restructuring Forum of the Federal Gazette the debtor may refer to a statement on the invitation on its website.

(5) The Federal Ministry of Justice and Consumer Protection shall be authorized to regulate the external design of the Restructuring Forum and further details, in particular with regard to the invitation, the notice, the fees, the periods of cancellation, the claim for cancellation, cases of abuse and inspection, by means of a statutory instrument which does not require the consent of the Bundesrat.

§ 92

Applicability of Article 102c of the Introductory Act to the Insolvency Code

In public restructuring cases Article 102c §§ 1, 2, 3(1) and (3), §§ 6, 15, 25 and 26 of the Introductory Act to the Insolvency Statute shall apply mutatis mutandis.

Chapter 5

Law of rescission and liability

§ 93

Legal acts performed during the lis pendens of the restructuring case

(1) The assumption of an immoral contribution to the delay in filing for insolvency or a legal actthat was undertakenwith the intention of disadvantaging creditorscannot be based on the fact that a party involved in the legal act was aware that the restructuring case was pending or that the debtor used instruments of the stabilization and restructuring framework.

(2) If the court, after having given notice of insolvency or overindebtedness, does not set aside the matter of restructuring under section 33(2)(1), paragraph 1 shall also apply to knowledge of the insolvency or overindebtedness.

(3) If the debtor hasgiven notice ofinsolvency or overindebtedness pursuant to section 32para. 3 first sentence, second sentence, any payment in the ordinary course of business, inparticular paymentsrequiredfor thecontinuation of ordinary business activities and thepreparation and implementation of the notified restructuring project, shall be deemed to be compatible with the due care of a prudent manageruntil the matter of restructuring is resolved in accordance with section 33 para. 2 no. 1.

§ 94

Plan sequences and plan execution

(1) The provisions of a restructuring plan that has been confirmed by a final court decision and legal acts performed in the execution of such a plan can only be contested if the confirmation was based on incorrect or incompleteinformationprovidedby the debtor and the other party was aware of this.

(2) If the formative part of the restructuring planprovides forthe transfer ofall or a substantial part of the debtor's assets, paragraph 1 shall apply only to the extent that it is ensured that the creditors who are not affected by the plan areable to satisfythemselves withpriority over those affected by the plan fromtheconsideration appropriatetothe value of the object of thetransfer.

Renovation moderation

§ 95

Request

(1) At the request of a debtor capable of restructuring, the court shall appoint asuitable natural person as restructuring moderator, in particular a person who is familiar with the business and independent of the creditors and the debtor. This shall not apply if the debtor is obviously insolvent, in particular because hehas suspendedpayments.If the debtor is a legal entity or a person without legal personality for whose obligations no natural personisliableas adirect or indirect partner, sentence 2 shall also apply in the event of obvious over-indebtedness.

(2) The application shall specify

1. the object of the company and

2. the nature of the economic or financial difficulties.

The application shall be accompanied by a list of creditors and a list of assets as well as the debtor's declaration that he is not insolvent.

(3) The application shall be submitted to the court competent for restructuring cases.

§ 96

Order

(1) The order is placed for a period of three months. At the request of the moderator, whichrequiresthe consent of the debtor and thecreditorsinvolved in the negotiations, the appointment period may be extended by up to three additional months. If within this period the confirmation of a reorganization settlementpursuant to § 98isrequested, the appointment shall be extended until the decision on the confirmation of the settlementis made.

(2) The order will not be made public.

§ 97

Renovation moderation

(1) The reorganization moderator mediates between the debtor and itscreditors in finding a solution to overcome the economic or financial difficulties.

(2) The debtor grants the moderator insight into her books and business recordsand provides her with the requested appropriate information.

(3) The reorganization moderator shallreport to the court inwriting on the progress of the reorganization moderation on amonthly basis.The report shall contain at least information on

1. the nature and causes of the economic or financial difficulties

2. the group of creditors and otherpartiesinvolved in the negotiations;

3. the subject of the negotiations and

4. the goal and the expected progress of the negotiations.

(4) The restructuring moderator shall notify the court of the debtor's insolvency. If the debtor is a legal entity or a company without legal personality, in which no generalpartner is a natural person, this shall also apply to the debtor's over-indebtedness.

(5) The restructuring moderator is under the supervision of the restructuring committee. The restructuring court can dismiss the reorganization moderator for important reason from office. Before the decision the Sanierungsmoderatorin is to be heard.

§ 98

Confirmation of a reorganization settlement

(1) A reorganization settlement which the debtor concludes with his creditors and in which third parties may also participate may be confirmed by the court at the debtor's request. Confirmation shall be refused if the restructuring plan on which the settlement is based

1. is not conclusive or does not assume the actual circumstances or

2. has no reasonable prospect of success.

(2) The reorganization moderator comments in writing on the requirements of paragraph 1 sentence 2.

(3) A Settlement confirmed pursuant to subsection 1 may becontested only under theconditions set forth in § 94.

§ 99

Compensation

(1) The reorganization moderator is entitled to an appropriate remuneration. This is calculated according to the time and material expenditure of the tasks associated with the reorganization moderation.

(2) Sections 84 to 87 shall apply accordingly.

§ 100

Dismissal of the reorganization moderator

(1) The reorganization moderator is recalled:

1. at his own request or at the request of the debtor,

2. ex officio, if the court has been notified by the moderator that the debtor is ready for insolvency.

(2) If the moderator is removed under subs. 1(1), the court shall appoint another moderator at the debtor's request.

§ 101

Transition to the stabilization and restructuring framework

(1) If the debtor makes use of instruments of the stabilization and restructuring framework, the restructuring moderator shall remain in office until the appointment period expires, until she is recalled in accordance with section 100 or until a restructuring commissioner is appointed.

(2) The restructuring court may appoint the restructuring moderator as restructuring officer.

Appendix

Necessary information in the restructuring plan

In addition to the information resulting from Sections 7 to 17, the restructuring plan must contain at least the following information:

1. Company name or surname and first names, date of birth, court of registration and registration numberunder which the debtor is entered in the Commercial Register, branch of business or employment, commercial establishment or residence of the debtor;

2. the assets and liabilities of the debtor at the date of submission of the restructuring plan, including an evaluation of the assets, a description of the debtor's economic situation and the position of theemployees, and a description of the causes and extent of the debtor's difficulties

3. the persons affected by the plan, whomusteither be named ordescribedby name with a sufficientlyconcrete description of the claims or rights;

4. the groups into which the plan participants have been divided for the purpose of adopting the restructuring plan and thevoting rightsattributable to their claims and rights

5. the creditors, holders of segregation entitlements and holdersof share or membership rights who were not included in the restructuring plan, together with an explanation of the reasons for their non-inclusion;

6. Name and address of the restructuring officer, if appointed;

7.the effects of the restructuring project on employment relationships as well as dismissals and short-time working arrangements and the modalities of informationand consultation of the employee representation;

B. if the restructuring plan provides for new financing (§ 14), the reasons for the necessity of this financing

Article 2

Amendment of the Judicial System Act

The Court Constitution Act in the version promulgated on 9 May 1975 (BGBl. I p. 1077), last amended by Article 2 of the Act of 10 July 2020 (BGBl. I p. 1648), shall be amended as follows:

1.§ 22 paragraph 6 is worded as follows:

"(6) A probationary judge may not, during the first year following his appointment, carry out business in insolvency and restructuring cases. Judges in insolvency and restructuring cases should have demonstrable knowledge in the fields of insolvency law, restructuring law, commercial and corporate law and basic knowledge of the parts of labour, social and tax law and accounting that are necessary for insolvency and restructuring proceedings. A judge whose knowledge in these areas is not proven may only be assigned the duties of an insolvency or restructuring judge if the acquisition of such knowledge can be expected soon.".

2.71 Paragraph 2 is amended as follows:

a) in number 5 the dot at the end is replaced by a semicolon.

b) The following point 6 is added:

"6. for claims arising from the Corporate Stabilization and Restructuring Act.

3.in Section 72a, paragraph 1, point 7, the word "as well as" shall be replaced by a comma andthe words "as well as disputes andcomplaints arising from the Corporate Stabilization and Restructuring Act"shall beinsertedafter the word "Act on Contestation".

4.in Section 74c (1) sentence 1 number 1, a comma and the words "the Insolvency Act" shall be inserted after the words "the Insolvency Act".

5.in Section 119a, paragraph 1, point 7, the word "as well as" shall be replaced by a comma and the words "as well as disputes arising from the Corporate Stabilization and Restructuring Act" shall be inserted after the word "Act on Contestation".

Article 3

Amendment of the Civil Procedure Code

The Code of Civil Procedure in the version promulgated on 5 December 2005 (BGBl. I p. 3202; 2006 I p. 431; 2007 I p. 1781), last amended by Article 2 of the Act of 12 December 2019 (BGBl. I p. 2633), shall be amended as follows:

1. In the table of contents, the following statement is inserted after the statement on § 19a:

"§19b Exclusive place of jurisdiction for restructuring-related actions".

2. After § 19a the following § 19b is inserted:

"„§ 19b

Exclusive place of jurisdiction for restructuring-related claims

(1) The court in whose district the Restructuring Court responsible for the restructuring case has its seat is exclusively competent for actions relating to restructuring cases under the Corporate Stabilization and Restructuring Act.

(2) The governments of the Länder shall be authorized toassignby statutory order the actions referred to in paragraph 1 to one regional court for the districts of several higher regional courtsif thisis conduciveto the objective promotion or faster settlement ofthe proceedings. The governments of the Länder may transfer this authorization by statutory order to the judicial administrations of the Länder.

Article 4

Amendment of the Act on Forced Auction and Administration

After § 30f of the Act on Foreclosure Auction and Administration in the adjusted version publishedin the Federal Law Gazette Part III, outline number 310-14, which was lastamended by Article 9 of the Act of 24 May 2016 (BGBl. I p. 1217), the following § 30g shall be inserted:

"„§ 30g

Enforcement of the suspension of execution in the case of stabilization measures

(1) If the restructuring court hasordereda stay of execution under section 53(1) sentence 1 number 1 of the Unternehmensstabilisierungs- und -restructurierungsgesetz (Corporate Stabilisation and Restructuring Act), which also covers immovable assets of the debtor, the proceedings shall be suspended upon application by the debtor.

(2) The temporary suspension is to be ordered on the conditionthat the interest owed is to be paidto the debtorcreditor on an ongoing basis and a loss in value resulting from the use is to be compensated by ongoing payments. This

does not applyif the creditor cannot be expected to be satisfied from the proceeds of the auctionaccording to the amount of the claim and the value and otherencumbrance of the property.

(3) The proceedings shall be continued at the request of the creditorif theconditions for temporary suspension have ceased to exist, if the requirements undersubs. 2 are not met or if the debtor consents to continuation. The debtor shall be heard prior to the court's decision".

Article 5

Amendment of the Insolvency Code

The Insolvency Code of 5 October 1994 (BGBl. I p. 2866), last amended byArticle 24 paragraph 3 of the Act of 23 June 2017 (BGBl. I p. 1693), shall be amended as follows:

1.2 Paragraph 2 of § 2 is amended as follows:

a) In the first sentence, the words "or additional" are deleted.

b) The following sentence is inserted after sentence 1:

"For consumer insolvency proceedings, estate insolvency proceedings, insolvency proceedings concerning the joint property of a continued community of property and insolvency proceedings concerning the jointly administered joint property of a community of property,the state governments shall also be authorized todesignateadditional local courtsas insolvency courts.

c) In the new sentence 3, the word "authorization" is replaced by the word "authorizations".

2.§ 3 is amended as follows:

a) The following paragraph 2 is inserted after paragraph 1:

"("2) If the debtor has made use of instruments pursuant to section 30 para. 1 of the Corporate Stabilization and Restructuring Act in the six months preceding the filing of the application, the court which was responsible for the measures as restructuring court shall also have local jurisdiction.

b) The current paragraph 2 becomes paragraph 3.

3) The following paragraph 4 is added to § 3a:

"(4) At the debtor's request and under the conditions ofsubs. 1, the court competent for follow-up group proceedings, if it is competent for decisions in restructuring matters under section 34 of the Corporate Stabilization and Restructuring Act, shalldeclare itselfcompetent as restructuring court also for follow-up group proceedings in insolvency matters under subs. 1.

4) The following sentence is added to § 4:

"Section 128a of the Code of Civil Procedure shall apply with the proviso that at creditors' meetingsas well as other meetings and dates the parties involved in the summons shall be invited to

the obligation to refrain from making sound and image recordings and to ensure that third parties cannot perceive the sound and image transmission".

5) The following paragraph 5 is added to § 5:

"(5) If the debtor has met at least two of the three criteria set forth in section 22a subs. 1 in the preceding financial year, the insolvency administrator shall maintain an electronic creditor information system by means of which heshallmake available to each creditor of the insolvency proceedings who has filed a claim, all decisions of the insolvency court, all reports sent to the insolvency court which do not exclusivelyconcerntheclaimsofother creditors and all documents relating to his own claims in a common file format for immediate electronic retrieval.Theadministratorshallimmediatelymake availableto the persons authorized to inspectthedata requiredforaccess.

6.after § 10 the following § 10a is inserted:

"„§ 10a

preliminary talk

(1) A debtorwho satisfiesat least two of the threeconditionsmentioned in section 22a subs. 1shall be entitled to a preliminary talk at the insolvency court having jurisdiction over him on the matters relevant to the proceedings, in particular the conditions for self-administration, self-administration planning, the composition ofthe temporary creditors' committee, the person of the temporary insolvency administrator or custodian, any further security orders and the authorisationto establish liabilities incumbent onthe assets involved in the insolvency proceedings.

(2) With the debtor's consent the court may hear creditors,in particular todiscusstheir willingness to become members of a temporary creditors' committee.

(3) The judge who conducts the preliminary interview is responsible for the insolvency proceedings concerning the debtor's assets".

7) The following sentence is added to § 14 paragraph 3:

"The debtor shall also bear the costs if the application of a creditoris rejectedon account of a non-public stabilization orderunder the Corporate Stabilization and Restructuring Acteffective at the time of the applicationand the creditor could not have been aware of the stabilization order.

B.§ 15a is amended as follows:a) Paragraph 1 is amended as follows

aa) In the first sentence, after the word "hesitation", the comma and the words "at the latest three weeks after the occurrence of insolvency orover-indebtedness," shall be deleted.

(bb) the following sentence is inserted after the first sentence:

"The application must be submitted at the latest three weeks after the occurrence of insolvency and six weeks after the occurrence of over-indebtedness.

b) In paragraph 2, "sentence 2" is replaced by "sentence 3".

c) In paragraph 4, in the part of the sentence before point 1,"and 2" shall be insertedafter "sentence 1"and "sentence 2" shall be replaced by "sentence 3".

9) After § 15a the following § 15b is added:

"„§ 15b

Payments in case of over-indebtedness

In the event of over-indebtedness, payments whichare madein the ordinarycourse of business, in particular those payments whichserveto maintainbusiness operations, shall be deemed to have been made with the diligence of a prudent and conscientiousmanager within the meaning of § 64 sentence 2 of the Law on Limited Liability Companies, of Section 92 (2) sentence 2 of the German Stock Corporation Act, Section 130a (1) sentence 2, also in conjunction with Section 177a sentence 2 of the German Commercial Code and Section 99 sentence 2 of the German Cooperatives Act, as long as the party required to file an application or measures for the sustainable elimination of over-indebtedness are carried out with the diligence of a prudent and conscientious manager.".

10. The following sentence is added to § 18 (2):

"As a rule, a forecast period of 24 months is to be taken as a basis.

11. In Section 19 (2) sentence 1, the words "in the next twelve months" shall be inserted after the word "company".

12. In Section 21(2), first sentence, point (la), a comma and the indication "3" shall be inserted after "Section 67(2)".

13. § Section 55(4) is worded as follows:

("4. VAT liabilities of the insolvency debtor whichhave been createdby atemporary insolvency administrator or by the debtor with the consent of a temporary insolvency administrator or by the debtor after the appointment of a temporary administrator shall be deemed to be a liability to the assets involved in the insolvency proceedings after the opening of the insolvency proceedings".

14. The following sentence is inserted after § 56 (1) sentence 1:

"Anyone who has acted as restructuring commissioner or restructuring moderator in a debtor's restructuring case can only be appointed as insolvency administrator if the provisional creditors' committee agrees.

15. § Section 56a is amended as follows:

a) In paragraph 1, first sentence, the words "within two working days" shall be inserted after the word "not".

b) Paragraph 3 is worded as follows:

"If the courtrefrains from hearing the debtor in accordance with subs. 1 because ofan adverse change inhis financial situation, it shall give reasons for its decision in writing. The interim creditors' committee may

at its first meeting, unanimously elect a person other than the person appointed as insolvency administrator".

16. section 59 is amended as follows:

a) The second sentence of paragraph 1 is replaced by the following sentences:

"Dismissal may be effected ex officio or at the request of the administrator, the debtor, the creditors' committee, the creditors' assembly or a creditor of the insolvency proceedings. At the request of the debtor or of a creditor of the insolvency proceedings the discharge shall be effected only if the administrator is not independent; this must be substantiated by the applicant.

b) The second sentence of paragraph 2 is replaced by the following sentences:

"The applicant is entitled to an immediateappealagainst the rejection of the application. If the creditors' assembly has filed the petition, each creditor of the insolvency proceedings is also entitled to an immediate appeal.

17) Section 64 is amended as follows:

a) Paragraph 2 is worded as follows:

"(2) The decision shall beserved separately ontheadministrator, the debtor and, if a creditors' committeehas been appointed, on the members of the committee. It shall immediately be made public that the order has been issued and that itmaybe inspected at the business premises andaccessedvia theinsolvency administrator'screditor information systempursuant to section 5 subs. 5 if such a system is available.

b) The following sentence is added to paragraph 3:

"Notwithstanding § 569 paragraph 1 of the Code of Civil Procedure, the period for filing an immediate appeal is four weeks. If the administrator is obliged to maintain a creditor information system pursuant to section 5 subs. 5, theperiod for lodging an appealshallnotcommencebefore the resolution is made available in such system.

18. section 66 is amended as follows:

a) Paragraph 1 sentence 2 is repealed.

b) The following paragraph 4 is added:

"("4) The insolvency plan may provide for a different regulation.

19. in the second sentence of Article 169, a semicolon shall beinsertedbefore the dot at the end and the words "if the order waspreceded bya prohibition of exploitation directed against the creditor pursuant to Article 52(1)(2) of the Unternehmensstabilisierungs- und -restrukturierungsgesetz (Corporate Stabilisation and Restructuring Act), the three-month period shall be reduced by the duration of the prohibition of exploitation":

20) Section 174(4) second sentence shall be replaced by the following sentences:

"In this case, anelectronic invoice within the meaning of § 2 (2) of the E-Invoice Regulationcan also be transmittedas a document within the meaning of paragraph 1 sentence 2. At the request of the insolvency administrator or the insolvency court,printouts, copies or originals of documents shall besubmitted.

21) § 210a number 2 is worded as follows:

"2. the subordinate creditors of the insolvency proceedings shall be replaced by the non-subordinate creditors of the insolvency proceedings.

22) Section 217 is amended as follows:

a) The text becomes paragraph 1

b) The following paragraph 2 is added:

"("2. The insolvency plan may also determine the rights of the holders of insolvency claims to which they areentitledunder a guarantee granted by a subsidiary within the meaning of section 290 of the German Commercial Code (HGB) as guarantor, co-debtor or on the basis of a liability otherwise assumed or to objects of the assets ofthis company (intra-group third-party collateral).

23) Section 220 is amended as follows:

a) Paragraph 2 is amended as follows:

aa) The word "shall" is replaced by the word "must".

(bb) The following sentences are added:

"It contains in particular a comparative calculation showing the effects of the plan on the expected satisfaction of the creditors. If the plan provides for the continuation of the enterprise, the determination of the probablesatisfaction without a plan shall normally be based on the assumption that theenterprise will continue. This does not apply if there is no prospect of selling the business or continuing it in any other way.

b) The following paragraph 3 is added:

("3. If the insolvency plan provides for interventions in the rights of creditors of the insolvency proceedings from third-party collateral within the group (section 217 subs. 2), the presentation shall also include the circumstances of the subsidiary providing the collateral and the effects of the plan on this enterprise".

24. the following sentence shall be added to § 221:

"In addition, the plan may provide that the insolvency administratorshallcontinue totake implementation measures, in particular payments to creditors, even after theproceedingshave beenterminated".

25) Section 222 (1) sentence 2 is amended as follows:

a) In number 4 the dot at the end is replaced by a semicolon.

b) The following point 5 is added:

"5. the holders of rights under third-party collateral within the group."

26) After § 223 the following § 223a is inserted:

"„§ 223a

Group-internal third-party collateral

Unless otherwise provided in the insolvency plan, the right of a creditor of the insolvency proceedings from an intra-group third-party collateral (section 217 subs. 2) shall not be affected by the insolvency plan. If an arrangement is made, the intervention shall be adequately compensated. § Section 223 (1) sentence 2 and (2) shall apply accordingly.

27. in section 230, the following fourth paragraph shall be added after the third paragraph

"Where the insolvency plan provides for interference with the rights of creditors underthird-party collateralwithin the group, the plan shallbeaccompanied bytheconsent of thesubsidiary which provided the collateral.

28. in the second sentence of the first paragraph of Section 231, the words 'submission of the plan' shall be replaced by 'expiry of the period prescribed by the Court of First Instance in accordance with the third paragraph of Section 232

29) Section 232 is amended as follows:

a) In subs. 1 in the part of the sentence preceding No. 1 the words "If the insolvency plan is not rejected, the insolvency court shall forward it for comment" shall be replaced by the words "After submission of the plan the insolvency court shall forward the insolvency plan for comment, in particular for the purpose of settlement calculation".

b) The following sentence is added to paragraph 2:

"If a statement of opinion contains new facts on which the court intends to base a rejection decision, the court shall forward the statement of opinion to the submitter of the plan and to the other persons entitled to submit comments pursuant to para 1 within a period of not more than one week.

30. the following sentence shall be inserted after § 235 (3) sentence 3: "§ 8 (3) shall

apply mutatis mutandis.

31) After § 238a the following § 238b is inserted:

"„§ 238b

Voting rights of the entitled persons from group-internal third-party collateral

If the plan provides for interventions in rights from group-internal third-party collateral, the voting right shall be based on the contribution to satisfaction which can presumably be expected from the assertion of rights from third-party collateral.

32) Section 245 is amended as follows:a) Paragraph 2 is amended as follows

(aa) in point 2, the words "not fully compensatedbypayment into the debtor's assets"shall beinsertedbefore the word "economic".

(bb) The following sentences are added:

"If the debtor is a natural person whose participationinthe continuation of the enterprise is necessarytorealizethe planned surplus valueand if the debtor has committed himself to the continuation of the enterprise, an appropriate participation of the group of creditors mayalso exist if the debtor receives economic values in deviation from sentence 1 number 2. Sentence 2 shall apply mutatis mutandis to holders of share or membership rights participating in the management of the enterprise.

(b)the following paragraph 2a is inserted after paragraph 2

"(2a) If the required majority isnot reachedin thegroup to be formedpursuant to section 222(1) sentence 2number 5, subsections (1) and (2) shall apply to this group only if the compensation provided for the interventionadequately compensatesthe holders of rights under the group-internal third-party collateral for the loss of rights to be suffered.

33. after § 245 the following § 245a is inserted:

"„§ 245a

Worse position for natural persons

If the debtor is a natural person, it shall be assumed in case of doubt for the purpose of examining whether he is likely to be in a worse position under section 245 subs. 1 No. 1 that the debtor's income, assets and family circumstances at the time of voting on the insolvency plan shall remain relevant for the duration of the proceedings and the period during which the creditors of the insolvency proceedings may assert their remaining claims against the debtor without limitation. If the debtor hasfiled an admissible petition for discharge of residual debt, it must also beassumedin case of doubtthatdischarge of residual debt will be granted at the end of the assignment period under section 287 subs. 2.

34. In section 251 subs. 1 No. 2 a semicolon shall be inserted after the words "Plan stünde" and the words "if the debtor is a natural person, section 245a shall apply mutatis mutandis".

35. After § 252 (2) sentence 2, the following sentence is inserted: "§ 8 (3) shall apply

mutatis mutandis.

36. In section 253 subs. 2 No. 3 a semicolon shall be inserted after the words "may become" and the words "if the debtor is a natural person, section 245a shall apply mutatis mutandis.

37. In Section 254 (2) sentence 1 the words "with the exception of rights under group-internal third-party collateral (Section 217(2)) structured in accordance with Section 223a" shall beinsertedafter the word "will".

38. § Section 258 (3) is worded as follows:

"3. The decision shall specify the date of revocation, which shall not be earlier than two days after the decision is taken. The decision and the reason for its revocation shall be made public. The debtor, the insolvency administrator and themembers of the creditors' committee shall be informed in advance of the date of termination. § Section 200 subs. 2 second sentence shall apply mutatis mutandis. If the time of revocation

is not specified, the cancellation shall take effect as soon astwo more days have elapsedafter the date ofpublication.

39. sections 270 to 270c shall be replaced by the following sections 270 to 270f:

"„§ 270

Principle

(1) The debtor shall be entitled to manage and dispose of the insolvent estate under the supervision of a custodian if the insolvency court orders self-management in the order opening the insolvency proceedings. The general provisions shall apply to the proceedings, unless otherwise provided for in this Part.

(2) The provisions of this Part shall not apply to consumer insolvency proceedings under section 304.

§ 270a

Application; self-management planning

(1) The debtor shall enclose with the application for a self-management order an egg management plan which shall include

1. a financial plan covering a period of six months and containing a substantiated presentation of the sources of financing intended to ensure the continuation of normal business operations and to cover the costs of the proceedings during that period

2. a concept for managing insolvency, which, based on adescription of the nature, extent and causes of the crisis, describes the goal of self-management and the measures envisaged to achieve this goal,

3. a presentation of the status of negotiations with creditors, thepersons involvedin the debtorand third parties onthemeasuresenvisaged

4. a description of the arrangements the debtor has made toensurehisability to meet his obligations under insolvency law, and

5. a substantiated description of any additional or reduced costs that are likely to be incurred in the course of self-administration in comparison to a regular procedure and in relation to the insolvency assets.

(2) Furthermore, the debtor shall declare

1.whether, to what extent and to which creditors he isin defaultwithregard tothefulfillment of liabilities arising from employment relationships, pension commitments or tax obligations, to social security institutions or suppliers

2. whether and in which proceedings blocking enforcement or liquidation in its favorhas been orderedunder this Actor under the Corporate Stabilization and Restructuring Actwithin the last three years prior to the application,and

3. whether ithascomplied withits disclosure obligations for the last three fiscal years, in particular under Sections 325 to 328 or 339 of the German Commercial Code.

§270b

Order of provisional self-management

(1) The court shall appoint a temporary custodian to whom sections 274 and 275 shall apply (temporary personal administration) if

1. the debtor's self-management plan is complete and conclusive, and

2. no circumstances are known from which it can be concluded that the self-management planning is based in material respects on incorrect facts.

If the self-administration plan shows remediable deficiencies, the court mayorder provisional self-administration; in this case it shall set the debtor a deadline for remedying the deficiencies, which shall not exceed three weeks.

(2) If the costs of self-management and the continuation of normal business operations arenot covered according to the financial plan submitted pursuant to § 270a para. 1 no. 1,the expected costs of self-management reported pursuant to § 270a para. 1 no. 5 substantially exceed the expectedcosts of the regular procedure or if circumstances are known which indicate that

1. there arepayment arrears to employees or substantial payment arrearsto the other creditors mentioned in Section 270a (2) no. 1,

2. the debtor has been subject to a ban on enforcement or realization under this Act or under the Corporate Stabilization and Restructuring Act within the last three years prior to the filing of the application, or

3. the debtorhas violatedthe disclosure obligations, in particular under Sections 325 to 328 or 339 of the GermanCommercial Code, in the last three years before filing the application,

the appointment of the provisional administrator shall only be made if, despite these circumstances, it is to be expected that the debtor is willing and able to align his management with the interests of the creditors.

(3) A temporary creditors' committee shall be given the opportunity to express its views before the decision under subs. 2 is taken.A decision may be taken without the creditors' committee's statementonly if two working dayshave elapsedsince the request was filedor if adverse changes in thedebtor's financial situation areobviously to be expectedwhich cannot be averted otherwise than by the appointment of a temporary insolvency administrator. To one of the temporary insolvency administrators

The court shall be bound bythe unanimous decision of the temporary committee of creditors supporting the administration of the creditors.If the temporary creditors' committeeunanimouslyvotesagainst the temporary self-administration, the order shall be omitted.

(4) If the court appoints a temporary insolvency administrator, the reasons for this must be explained in writing. § Section 27 subs. 2 No. 4 shall apply accordingly.

§ 270c

Provisional self-management procedure

(1) The court may instruct the temporary custodian to reporton

1. **the self-management plan submitted by the debtor, in particular whether it is based on the recognized and recognizable actual circumstances, is conclusive and appears feasible,**

2. **the completeness and suitability of accounting and bookkeeping as a basis for self-administration planning, especially for financial planning**

3. **the existence of liability claims by the debtor against current or former members of the governing bodies.**

(2) The debtor shall without delay notify the court and the temporary custodian of any material changes affecting the self-administration planning.

(3) The court may order provisional measures under section 21(1) and (2), first sentence, number 1a, 3 to 5. If the court orders provisional self-administration under section 270b subs. 1 second sentence, it may also order that orders of the debtorrequire the consent of the provisional custodian.

(4) At the debtor's request, the court shall order the debtor to establish obligations incumbent on the insolvency estate. If the authorization is to extend to liabilities which are not included in the financial plan, this requires a special justification. § Section 55 subs. 2 shall apply mutatis mutandis.

(5) If the debtor has filed a request for opening of insolvency proceedings in case of imminent insolvency and has applied for self-administration, but the court considers theconditions for self-administration to be not fulfilled, it shallcommunicateits concerns to the debtorand give him the opportunity towithdrawthe request for opening before thedecision on opening is taken.

§ 270d

preparation of a renovation; protective screen

(1) If the debtor hassubmitted with the request a reasoned certificateissued by a tax advisor, auditor or attorney-at-law experienced in insolvency matters or by a person with comparable qualifications stating that thereisimminent illiquidity or overindebtedness but noilliquidity and that the envisaged reorganisationisnot obviously hopeless, the insolvency court shall, at the request of the debtor, determine a period of time for thesubmission of an insolvency plan. This period may not exceed three months.

(2) The issuer of the certificate referred to in paragraph 1 may not be appointed as temporary custodian. The debtor maysubmitto the court proposals concerning theperson of the temporary custodian. The court may deviate from a proposal of the debtor only if the person proposed is obviously not suitable to take over the office; the court shall give reasons for this in writing.

(3) The court shall order measures under section 21 subs. 2 first sentence, number 3, ifthe debtor so requests.

(4) The debtor or the temporary custodian must notify the court of the occurrence of insolvency without delay. After cancellation of the orderor after expiry of the deadline, the court shall decide on the opening of the insolvency proceedings.

§ 270e

Abrogation of provisional self-management

(1) The provisional administration shall be terminated by appointment of a provisional insolvency administrator if

1.the debtor seriously violates obligations under insolvency law or otherwise shows that he is not willing or able to align his management with the interests of the creditors, in particular if it turns out that

a) the debtorhas basedthe self-administration planning in essential points on incorrectfacts orfails to comply withhis obligations under section 270csubs. 2,

b) the accounting and bookkeeping are so incomplete or deficient that they do not allow an assessment of the self-management planning, in particular the finance plan

c) Liability claims of the debtor against acting or formermembers of his organs exist, the enforcement of which could be made more difficult in self-administration,

2.deficiencies of the self-administration planning not within the period of time specified in § 270b paragraph 1 sentence 2 set period of time,

3. the achievement of the self-administration goal, in particular a desiredreorganization provestobe hopeless,

4. the temporary custodian sorequestswith the consent of the temporary creditors' committeeor the temporary creditors' committee so requests,

5.the debtor so requests.

(2) Provisional self-administration shall also be revoked by appointment of a provisional insolvency administrator if a creditor with a right to separatesatisfactionor a creditor of the insolvency proceedings requests such revocation and substantiatesthattherequirements for ordering provisional self-administration are not met and that he is threatened with considerable disadvantages due to self-administration. The debtor must be heard before the decision on the application is made.Boththecreditor and the debtor have the right of immediate appealagainst the decision.

(3) The previous provisional administrator may be appointed as the provisional insolvency administrator.

(4) The interim creditors' committee shall be given an opportunity to express its views before the decision under subs. 1 No. 1 or 3 is taken. § Section 270b subs. 3 second sentence shall apply mutatis mutandis. If the court appoints a temporary insolvency administrator the reasons for this shall be set out in writing. § Section 27 subs. 2 No. 4 shall apply mutatis mutandis.

§ 270f

Arrangement of the self-management

(1) Self-management shall be ordered at the debtor's request unless provisional self-management would not be ordered under section 270b or would be revoked under section 270e.

(2) Instead of an insolvency administrator, a custodian is appointed. Theclaims of the insolvency creditors must be registered with the administrator. Sections 32 and 33 shall not apply.

(3) § Section 270b (1) sentence 2, paragraphs 2 and 3 shall apply mutatis mutandis.

40. The previous § 270d becomes § 270g.

41. § Section 272 is amended as follows:

a) Paragraph 1 is worded as follows:

"(1) The insolvency court shall repeal the order of self-administration if

1. **the debtor seriously violates obligations under insolvency law or otherwise shows that he is not willing or able to align his management with the interests of the creditors; this shall also apply if it turns out that the debtor has based the self-administration planning in essential points on unfounded facts, that the accounting and bookkeepingareso incomplete ordeficient that they do notallowanassessment of the self-administration planning,in particular of the financial plan, or if the debtorhasliability claimsagainst acting or former members of theorganentitled to representation, the enforcement of which could be made more difficult in self-administration,**

2. **the achievement of the self-management goal, in particular a targetedrestructuring provestobe hopeless,**

3. **this isrequestedby the creditors' assembly with themajorityspecified in section 76 subs. 2and the majority of the voting creditors,**

4. **this is applied for by a creditor with a right to separate satisfaction or by a creditor of the insolvent company, the prerequisites for the order of self-managementunder section 270f (1) in conjunction with section 270b (1) first sentence of section 270b (1) have ceased to apply and the applicant is threatened with considerable disadvantages due to the self-management,**

5. **this is requested by the debtor."**

(b)in paragraph 2, first sentence, the indication "number 2" shall be replaced by the indication "number 4
is replaced.

42) The following sentence shall be inserted after § 274 (2) sentence 1:

"The court may order that the custodian may assist the debtor in the context of pre-financing of insolvency money, accounting under insolvency law and negotiations with customers and suppliers".

43. the following § 274a is inserted after § 274:

"„§ 274a

Special administrator

(1) If in appointing the temporary custodian or the custodian the court follows a vote of the temporary creditors' committee under section 56a subs. 2 first sentence or a proposal by the debtor under section 270d subs. 2 second sentence, it may appoint a special custodian who

1. to carry out audits pursuant to § 270c paragraph 1 number 3 and

2. to examine claims under section 280 and to assert them in the proceedings opened.

(2) Section 56 subs. 1 first sentence, second sentence and subs. 2 as well as sections 58 and 59 shall apply to the appointment of the special administrator, to the supervision of the insolvency court and to the liability of the special administrator, subject to the condition that in the event of a request for dismissalby the creditors' committee or creditors' assembly the existence of good cause must be substantiated by the petitioner, and sections 60 and 62 first and second sentences shall apply mutatis mutandis.

(3) Debtors, custodians and temporary custodians shall be obligedto provide thespecial custodian with all informationnecessaryfor the examination and decision on the assertion of liability claims or the contestation of legal acts.§ Section 97 (1) sentences 2 and 3 shall apply mutatis mutandis.

(4) The special administrator shall be entitled to an appropriate remuneration. As basic remuneration the special administrator shall receive a fee basedon reasonable hourly rates. If liability assets are realized through the activities of the Special Consultant, the Special Consultant shall also be entitled to the part of the remuneration of the Special Consultant attributable to this part of the liability assets. The part of the remuneration to which the special administrator is entitled shall be deducted from the remuneration of the administrator. Sections 64 and 65 shall apply accordingly to the remuneration of the special administrator.

44) Section 276a is amended as follows:

a) The text becomes paragraph 1.

b) The following paragraphs 2 and 3 are added

"(2) If the debtor is constituted as a legal entity, themembers of the representative bodyshallalso be liableinaccordance with sections 60 to 62. In the case of acompany without legal personality, this shall apply to the partners

authorised to represent the company. If none of the partners authorized to represent the company is a natural person, this shall apply to the corporate representatives

the shareholders authorized to represent the company. Sentence 3 shall apply mutatis mutandis if the corporate representatives are companies without legal personality, in which no natural personis authorizedtorepresent thecompanyon a corporatebasis, or if the association of companies continues in this way.

(3)Paragraphs 1 and 2 shall apply in the period between the arrangement of the existing

or the ordering of interim measures pursuant to Section 270c (3) and the opening of proceedings.

45) Paragraph 284(1) is amended as follows:

a) The following sentence is inserted after sentence 1:

"The temporary creditors' committee may address a request to the temporary custodian or the debtor to draw up an insolvency plan".

b) In the new sentence 3, the words "the provisional custodian or" are inserted after the words "so works".

46. in the second sentence of Paragraph 292(3), after the word 'dismissal', the words 'including for reasons other than lack of independence' shall be inserted

47. in the second sentence of Section 348(1) and the second sentence of Section 354(3), the words 'Section 3(2)' shall be replaced by 'Section 3(3)

Article 6

Amendment of the Insolvency Remuneration Ordinance

The Insolvency Remuneration Ordinance of 19 August 1998 (BGBl. I p. 2205), which was lastamended by Article 3 of the Act of 13 April 2017 (BGBl. I p. 866), shall be amended as follows

1.§ 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(aa) in point 1, '25 000' is replaced by '35 000

(bb) in point 2, '50 000' is replaced by '70 000' and '25' is replaced by '26

(cc) in point 3, '250 000' is replaced by '350 000' and '7' is replaced by '7,5

(dd) in point 4, '500 000' is replaced by '700 000' and '3' is replaced by '3,3

(ee) in point 5, '25 000 000' is replaced by '35 000 000' and '2' is replaced by '2,2

(ff)in point 6, "50 000 000" is replaced by "70 000 000 and "1" is replaced by the number "1,1".

gg) Point 7 is replaced by the following points 7 to 9:

"7. 0.5 percentof the additional amount up to 350,000,000 Euro,

B. 0.4 percentof the additional amount of up to EUR700,000,000,

9. 0.2 percent of the amount in excess thereof.

(b) paragraph 2 is amended as follows:

(aa) in the first sentence, '1 000' is replaced by '1 400

bb) In sentence 2, "150" is replaced by "210".

(cc) in the third sentence, "100" is replaced by "140

2. The following sentence is added to § 4 (2):

"For the transfer of service within the meaning of § 8 para. 3 of the Insolvency Statute, No. 9002 of the List of Costs of the Court Costs Act shall applyaccordingly.

3. § Article 4 paragraph 3 is worded as follows:

("3") The remuneration shall also coverthe costs of liability insurance with an insured sum of up to EUR2,000,000 per insured event and with anannual maximum paymentof up to EUR4,000,000. If the administrationisassociated with aliability risk exceeding thisamount, the costs of acorrespondingly higher insuranceshall bereimbursed as expenses.".

4. In the first sentence of Section 8(3), "250" shall be replaced by "350".

5. In section 10 a comma and the words "theprovisional administrator" shall be insertedafter the word "custodian".

6. In Section 12(3), "250" is replaced by "350" and "125" is replaced by "175".

7. After § 12 the following §§ 12a and 12b are inserted:

"„§ 12a

Remuneration of the temporary administrator

(1) The activities of the temporary custodian shall be remunerated separately. As a rule he shall receive 25 per cent of the remuneration of the Funding Register administrator in relation to the assets to which his activity extends during the opening proceedings. The relevant date for the valuation shall be the date of termination of the provisional self-administration or the date from which the property is no longer subject to the power of disposal of the debtor engaged in self-administration. Assets to whichrights of separation or segregation exist at the time of the openingof proceedings shallbe added to the assets pursuant to sentence 2 if the temporary custodiandeals with them to aconsiderableextent. They shall not be taken into account if the debtor isonly in possession oftheassets on the basis ofa possession transfer agreement.

(2) If thedetermination of the remuneration is requested before the objects covered by subs. 1 second sentence have been sold, the insolvency court shall benotified,at the latest uponpresentation of the final invoice, of any deviation of the actual value from the value on which the remuneration is based if the difference in value exceeds 20 percent in relation to the total of such objects.

(3) The nature, duration and scope of the temporary administrator's activities shall be taken into account when determining the remuneration.

(4) If the insolvency court has separately commissioned the temporary custodian as an expert to examine whether there is a reason for opening proceedings and what prospects there are for the continuation of the debtor's business, he will receiveseparate remuneration in accordance with the Judicial Remuneration and Compensation Act.

§ 12b

Remuneration of the special administrator

(1) The basic remuneration of the special administrator is regularly between 150 and 350 euros per hour. When determining the hourly rate, the scope of the activity and the professional qualification of the special administrator shall be taken into account in particular.

(2) In addition to the basic remuneration under subs. 1 the special administrator shall receive the share of the administrator's remuneration which corresponds to the share of thepaymentsmade into the insolvency estateon claims asserted by the special administrator within the scope of his competence under section 274 subs. 1 of the Insolvency Statute in relation to the total calculation basis under section 1. The administrator's remuneration shall be reduced by the amount to which the special administrator is entitled under sentence 1.

(3) Expenses shall be listed and documented individually.

(4) Insofar as value added tax is incurred, § 7 shall apply accordingly.

B.In § 13, the figure "800" shall be replaced by "1 120".

9.§ 14 is amended as follows:

a) Paragraph 2 is amended as follows:

(aa) in point 1, '25 000' is replaced by '35 000

(bb) in point 2, '50 000' is replaced by '70 000

b) Paragraph 3 is amended as follows:

(aa) in the first sentence, "100" is replaced by "140

bb) In the second sentence, "50" is replaced by "70".

10. in the first sentence of Section 15(1), "35" shall be replaced by "50

11) § 17 is amended as follows:

(a) paragraph 1 is amended as follows:

(aa) in the first sentence, "35 and 95" is replaced by "50 and 300

bb) In the second sentence, the words "and the professionalqualifications of the committee member" shall be inserted after the word "activity".

(b)in the first sentence of paragraph 2, "Section 270(3)" shall be replaced by "Section 270b(3)" and "300" shall be replaced by "500

12. in § 19, the following paragraph 5 shall be inserted after paragraph 4:

"(5) To insolvency proceedings which began before [insert date]: date of entry into force of the Law on the Further Development of Reorganization and Insolvency Law], the insolvency proceedings applied for up to [insert: date of entry into force of the Law on the Further Development of Reorganization and Insolvency Law] shall be subject to the provisions of the Law on the Further Development of Reorganization and Insolvency Law: date of the day before the date of entry into force of the Law on the Development of Reorganisation and Insolvency Law].

Article 7

Amendment to the Ordinance on Public Announcements in Insolvency Proceedings on the Internet

The Ordinance on Public Announcements in Insolvency Proceedings on the Internet of 12 February 2002 (BGBl. I p. 677), last amended by the Ordinance of 14 October 2019 (BGBl. I p. 1466), shall be amended as follows:

1. The heading is worded as follows:

"Ordinance on public announcements in insolvency proceedingsand restructuring cases on the Internet

(InsBekV)".

2. The following sentence is added to § 1:

"This Regulation shall apply mutatis mutandis to public announcements in restructuring matters on the Internet, unless otherwiseprovidedin the following provisions.

3. The following paragraph 4 is added to § 3:

"(4) The publication of data from a restructuring casein an electronic information and communication system shall bedeleted at the latest six months after the order of the respective stabilization or restructuring instrument, in the case of stabilization orders after the end of their period of effect.

Article 8

Amendment of the Introductory Act to the Insolvency Code

The Introductory Act to the Insolvency Code of 5 October 1994 (BGBl. I p. 2911), last amended by Article 3 of the Act of 5 June 2017 (BGBl. I p. 1476), shall be amended as follows:

1)Article 102c is amended asfollows:a) The second sentence ofparagraph 4 is worded as follows

"Sections 574 to 577 of the German Code of Civil Procedure shall apply mutatis mutandis, whereby thedecision on the appeal pursuant to Section 6 (3) of the German Insolvency Code shall not take effect until it has become final".

b) § Section 9 sentence 2 is worded as follows:

"Sections 574 to 577 of the German Code of Civil Procedure shall apply mutatis mutandis, whereby thedecision on the appeal pursuant to Section 6 (3) of the German Insolvency Code shall not take effect until it has become final".

c) § Section 20 is worded as follows:

aa) Paragraph 1 sentence 2 is worded as follows:

"Sections 574 to 577 of the German Code of Civil Procedure shall apply mutatis mutandis, whereby thedecision on the appeal pursuant to Section 6 (3) of the German Insolvency Code shall not take effect until it has become final".

bb) Paragraph 2 sentence 2 is worded as follows:

"Sections 574 to 577 of the German Code of Civil Procedure shall apply mutatis mutandis, whereby thedecision on the appeal pursuant to Section 6 (3) of the German Insolvency Code shall not take effect until it has become final".

d) § Section 26 sentence 2 is worded as follows:

"Sections 574 to 577 of the German Code of Civil Procedure shall apply mutatis mutandis, whereby thedecision on the appeal pursuant to Section 6 (3) of the German Insolvency Code shall not take effect until it has become final".

2. before Article 104, the following Article 103... [insert: at the promulgation of the next free letter addition] is inserted:

"Article 103... [use: at the announcement of the next free book-addition of bars]

Transition regulation to the law for the development of the reorganization and insolvency law

Insolvency proceedingsrequestedbefore [insert date of entry into force referred to inArticle 27(1)] shallcontinue tobe governed bythe provisions in force until that date.

Article 9

Amendment of the Insolvency Statistics Act

The Insolvency Statistics Act of December 7, 2011 (BGBl. I p. 2582, 2589), which was amended by Article 2 of the Act of November 22, 2019 (BGBl. I p. 1746), is amended as follows:

1) The heading is worded as follows:

"Law on Insolvency and Restructuring Statistics (**Insolvency Statistics Law - InsStatG)".**

2.§ 1 **is amended as follows:**

a) The heading is worded as follows:

"„§ 1

Insolvency and restructuring statistics".

b) After the word "insolvency proceedings" the words "and restructuring matters" are inserted.

3.§ 2 is amended as follows:

a) The words "in insolvency proceedings" are added to the heading.

(b) the number 1 **is preceded bythe following number** 1

"1. upon filing of the petition to open insolvency proceedings

a) Date of application,

b) applicant,

c) debtors who have obtained confirmation of a restructuring plan in a restructuring case within the last three years before the request to open insolvency proceedings".

(c)the existing point 1 **becomes point 2 and is amended as follows:**

(aa) point (b) is deleted.

(bb) point (c) becomes point (b)

(cc) the following point (c) is inserted after the new point (b)

"(c) the date on which the procedure was initiated

c) The previous number 2 becomes number 3.

d) The existing number 3 becomes number 4 and is amended as follows:

(aa) In point (b), the words "and satisfaction rate" are insertedafter the word "amount".

(bb) In point (c), the words "and satisfaction rate" are inserted before "the".

(f)the existing point 4 becomes point 5 and is amended as follows:

(aa) In point (b), the words "and the date of the decision" are inserted after "discharge of residual debt".

(bb) In point (c), the words "the date and" are inserted after the word "discharge of residual debt".

(cc) In point (d), the words "and the date of revocation" are inserted after "discharge of residual debt".

(dd) in point (e), the point at the end shall be replaced by the words "and the date of any other termination.

The following point 6 is added:"6. where costs are fixed:

g)

a) the fixed amount of court costs and the remuneration and expensesof the insolvency administrator, custodian, trustee and members of the creditors' committee;

b) the date of fixing."

4.4The words "in insolvency proceedings" shall be added to the heading of § 3.

5.§ 4 is amended as follows:

a) The words "in insolvency proceedings" are added to the heading.

b) Paragraph 1 sentence 3 is amended as follows:

(aa) in point 1, the words "§ 2, points 1 and 2" shall be replaced by "§ 2, points 1 to 3 and 6

(bb) in point 2, the words "§ 2, points 3 and 4" shall be replaced by "§ 2, points 4 and 5

c) In paragraph 3, points 3 and 4, the words "§ 2, point 4(b) to (e)"shall be replaced by the words "§ 2, point 5(b) to(e)".

6.after § 4 the following §§ 4a to 4c are inserted:

"„§ 4a

Survey characteristics in restructuring cases

The surveys cover the following survey characteristics:

1.when the restructuring plan is announced:

a) Date of display,

b) Type of legal entity or assets (debtor); in addition, legal form, business branch, year of foundation, number of employees and registration in the Commercial, Cooperative, Association or Partnership Register,

) whether the debtor has obtained confirmation of a restructuring plan in a residual restructuring case in the last three years before the notification of the restructuring plan;

2.in case of loss of effect of the notification of the restructuring plan:

a) Confirmation or refusal of the confirmation of the restructuring plan and date of legal force of the confirmation or refusal,

b) Amount and satisfaction rate of the entitlements of the holders of pension rights according to the legally binding restructuring plan,

c) Amount and satisfaction rate of claims of restructuring creditors according to the legally binding restructuring plan,

d) Withdrawal of the display and date of the withdrawal,

e) Cancellation of the restructuring case and date of cancellation,

f) Date when the display has lost its effect due to time lapse.

3. when the costs are fixed:

a) the fixed amount of the legal costs as well as the remuneration and expensesof a restructuring officer and restructuring moderator

b) the date of fixing.

§ 4b

Assistance in restructuring matters

(1) Auxiliary characteristics of the surveys are

1. Date of the procedural acts according to § 4a,

2. Name or business name and address or center of the debtor's independent economic activity,

3. Value added tax number,

4. Name, number and file number of the district court,

5. Name, telephone numbers and e-mail addresses of thepersons available for possible queries,

6. in the case of debtorsenteredin the Commercial, Cooperative, Association or Partnership Register, the type and place of the register and the registration number

(2) Auxiliary features for the completeness check of the information to be transmitted in accordance with § 4c (1) sentence 3 number 2 are

1. Number and name of the district court,

2. Name or company name, address, telephone number and e-mail address of the debtor,

3. Type of declaration to be submitted by the debtor,

4. original file number,

5. Date of notification of the restructuring plan,

6. Procedure identification number,

7. Calendar year for which the report had to be made,

B.Name, address, telephone number and e-mail address of a contact person at the local court.

§ 4c

Duty to provide information and information in restructuring matters

(1) There is an obligation to provide information for the survey. The information on § 4b paragraph 1 number 5 and paragraph 2 number 8 is voluntary. The following are subject to the duty to provide information

1. in respect of the information referred to in §§ 4a and 4b (1) (1), (2), (4) and (6) and (2) (1) to (7): the competent local courts,

2. with regard to the information under section 4a(1) and (2)(b) to (d) and (f) and section 4b(1)(2), (3) and (6): the debtor

(2) The information referred to in paragraph 1 shall betransmitted to the statistical offices by the parties responsible for providing informationfrom the available documents. The information pursuant to subsection (1) sentence 3 number 1 with the exception of the information pursuant to Section 4a number 2 letter f and Section 4b subsection (2) numbers 1 to 7 shall be recorded by the statistical offices on a monthly basis. The information under subsection (1) sentence 3 number 2 and under section 4b subsection (2)numbers 1 to 7 shall be recorded annually.

3. The information shall be submitted within the following deadlines:

1. the information provided by the local courts, with the exception of the information relating to § 4a number 2 letter f and § 4b paragraph 2 numbers 1 to 7: within two weeks of the end of the calendar month in which the respective court decisionwas issued or the respective procedural act was performed,

2. the information provided by the local courts in respect of Section 4a(2)(f) and Section 4b(2)(1) to (7): by 31 March for all restructuring cases for which information had to be reported for the previous calendar year in accordance with (1) sentence 3(2),

3. information on debtors: by 31 March for all restructuring cases for whichinformation had to be reportedfor the previous calendar year in accordance with paragraph 1 sentence 3 number 2

(4) The statistical offices, with the assistance of the competent local courts, shall verify the completeness of the information provided by the debtors.

7) The following paragraphs 3 and 4 are added to § 5:

"(3) The Federal Statistical Office shall transmit to the European Commission each year by 31 December of the calendar year following the year of the survey, using the transmission form pursuant to Article 29(7) Directive (EU) 2019/1023 of theEuropean Parliament and of the Council of 20 December2019/1023/EECon the statistics of the European Communities. June 2019 on preventive restructuring frameworks, on debt relief and on activity prohibitions as well as on measures to improve the efficiency of restructuring, insolvency and debt relief proceedings and amending Directive (EU) 2017/1132 (OJ L 172 of June 26, 2019, p. 18) the following data on insolvency and residual debt discharge proceedings as well as restructuring cases, broken down by type of proceedings:

1. **the number of opened, pending and terminated insolvency and residual debt discharge proceedings**

2. **the average duration of insolvency and residual debt discharge proceedings from the opening of the proceedings to the end of the proceedings**

3. **the average satisfaction rates of the satisfied separation rights and the quota-entitled insolvency creditors in insolvency and residual debt discharge proceedings**

4. **the average costs in insolvency and residual debt discharge proceedings,**

5. **the number of notified and pending restructuring cases and the number of restructuring cases in which the notification has lost its effect,**

6. **the average duration of the restructuring cases from the notification of the restructuring plan until the notification has lost its effect**

7. **the average satisfaction rates of the holders of separation rights and the restructuring creditors in restructuring cases,**

8. **the average costs in restructuring cases,**

9. **the number of restructuring cases in which the notification of the restructuring plan has been withdrawn, the confirmation of the restructuring plan has been legally denied or the restructuring case has been cancelled or the notification of the restructuring planhas lostits effect due to the passage of time,**

10. **the number of debtors who have been the subject of insolvency proceedings or a restructuring case and have obtained confirmation of a restructuring plan in a restructuring case within the last three years before the opening of insolvency proceedings or before notification of the restructuring plan.**

(4) The data to be transmitted in accordance with paragraph 3 points 1 to 8 shall also be broken down:

1. **according to the size of debtors who are not natural persons, according to the number of employees,**

2. **according to whether the debtors in insolvency proceedings or restructuring casesare natural or legal persons,**

3. according to whether the residual debt discharge proceedings concern only entrepreneurs or other natural persons.

The transmission referred to in paragraph 3 shall take place for the first time for the year of the survey following the date of first application of the implementing act referred to in Article 29(7) of Directive (EU) 2019/1023.

B.§ 5a is amended as follows:

a) In the first sentence, the word "may" shall bereplaced by thewords "and the operator of theelectronic information and communication system for public announcementsin restructuring matters on the Internet pursuant to Section 90 (1) of the German Corporate Stabilization and Restructuring Act may".

b) In the third sentence the word "insolvency statistics" is replaced by the words "insolvency and restructuring statistics".

9) The following paragraph 3 is added to § 6:

"(3) The local courts and the debtors shall be obliged to provide information pursuant to Section 4c (1) with regard to information relating to restructuring cases in which a notification of the restructuring project was made after December 31, 2021.

Article 10

Amendment of the COVID-19 Insolvency Suspension Act

The COVID-19 Insolvency Suspension Act of 27 March 2020 (BGBl. I p. 569), which was amended by ... the following paragraphs are added to the COVID-19-Insolvenzaussetzungsgesetz of 27 March 2020 (BGBl. I S 569):

"„§ 4

Forecast period for the over-indebtedness audit

Notwithstanding section 19 subs. 2 first sentence of the Insolvency Statute,a period of four monthsbetween [insert: date of entry into force under Article 27 subs. 1] and 31 December 2021shall be taken as thebasis instead of the period of twelve months if

1. the debtor was not insolvent as of 31 December 2019,

2. the debtor has generated a positive result from ordinary activities in the last financial year completed before January 1, 2020, and

3. sales from ordinary activities in calendar year 2020fell by more than 40 percent year-on-year.

§5

Easier access to the stabilization and restructuring framework and to the equity capital administration

(1) The insolvency of a debtor shall notprevent the application of section 270d of the Insolvency Statute in the case of an insolvency petition filed between [insert date of entry into force under Article 27 subs. 1] and 31 December 2021if the certificate under section 270d subs. 1 first sentence confirms that

1. **the debtor was not insolvent as of 31 December 2019,**

2. **the debtor has generated a positive result from ordinary activities in the last financial year completed before January 1, 2020, and**

3. **sales from ordinary activities in calendar year 2020fell by more than 40 percent comparedtotheprevious year.**

Under the conditions set out in the first sentence, arrears of payment to the creditors referred to in section 270a sentence 2 number 1 of the Insolvency Statute shall also not prevent the order of provisional own administration.

(2) Under the conditions of subs. 1, the debtor's maturity for insolvency shall notprevent the use of instruments of the stabilization and restructuring framework under the German Corporate Stabilization and Restructuring Act ifthe maturity for insolvency is notified to the restructuring court under section 42 subs. 1 of the German Corporate Stabilization and Restructuring Act.

Article 11

Amendment of the Court Costs Act

The Court Costs Act in the version of the announcement of 27 February 2014 (BGBl. I p. 154), which was last amended by Article 2 Paragraph 4 of the Act of 25 June 2020 (BGBl. I p. 1474), is amended as follows:

1) The table of contents is amended as follows:

a) After the information on § 13, the following information is inserted: "Section 13a Procedure under the Corporate Stabilization and Restructuring Act".

b) After the information on § 25, the following information is inserted:

"Section 25a Procedure under the Corporate Stabilization and Restructuring Act".

c) After the information on Section 58, the following information is inserted:

"Section 58a Procedure under the Corporate Stabilization and Restructuring Act".

2) In § 1 paragraph 1 sentence 1, the following point 3a is inserted after point 3:

"3a. under the Corporate Stabilization and Restructuring Act.

3) In § 6 paragraph 1 the following point 3a is inserted after point 3

"„3a. In proceedings under the Corporate Stabilization and Restructuring Act".

4.after § 13 the following § 13a is inserted:

"„§ 13a

Proceedings according to the Corporate Stabilization and Restructuring Act

(1) A decision on the application for the use of procedural assistance under the Corporate Stabilization and Restructuring Act shall only be made after payment of the fee provided for this purpose and an appropriate advance on the expenses for public announcement, if such an announcement is to be made.

(2) Ifthe debtor is also the debtor of the expenses under No. 9017 of the Schedule of Expenses, the Restructuring Court shall alsodecideon any further application by the debtor only after the payment of an advance on the expenses underNo. 9017 of the Schedule ofExpenses.

5.after § 25 the following § 25a is inserted:

"„§ 25a

Proceedings according to the Corporate Stabilization and Restructuring Act

(1) The costs of the proceedings concerning the application for an instrument of the Stabilization and Restructuring Framework or for the appointment of arestructuringmoderatoror restructuring officer under the Corporate Stabilization and Restructuring Act shall be owed only by the debtor, unless otherwise provided.

(2) If a Restructuring Officer is appointed at the request of a creditor, onlythe applicantshallbeliable for expenses pursuant to No. 9017 of the Schedule of Expenses. This shall not apply if the expenses are incurred for activities which the Restructuring Court has assigned to the Restructuring Officer ex officio or at the debtor's request.

6.After § 59 the following § 59a is inserted:

"„§ 58a

Proceedings according to the Corporate Stabilization and Restructuring Act

(1) The fees are charged according to the value of the claims and rights created by the restructuring plan.

(2) In the absence of a restructuring plan, the amount of the receivables and rights that areto beshaped by the restructuring plan according to the debtor's restructuring plan or included in the restructuring settlement is decisive.This also applies to an application for the appointment of a restructuring moderator.

(3) Where necessary, the values shall be estimated.".

7) Appendix 1 (Schedule of costs) is amended as follows:

a) In the outline, the information in Part 2 is amended as follows:

(aa) the followingentriesareinsertedafter the entry relating to Part 2, Section 4, Subsection 4

"Main Section 5Proceedingsunder the Corporate Stabilization and Restructuring ActSection1 Proceedings before the Restructuring CourtSection1 Notification of the Restructuring ProjectSection 2Instruments of the Stabilization and Restructuring FrameworkSection 3 Restructuring ModerationSection2 ComplaintsSections1 ImmediateComplaintsSection 2 Legal Complaints".

(bb) The specification for Part 2, Section 5 is worded as follows:

"Section 6, Notice of infringement of the right to be heard.

b) Part 2, Section 5 is worded as follows:

No.	Fee facts	Fee or rate offee according to § 34 GKG
	Main section 5 Procedure according to the Company Stabilization and Restructuring Act	
	Section 1 Proceedings before the restructuring court	
	Subsection 1 Display of the restructuring plan	
2510	Receipt of the notification of the restructuring plan	150,00 €
	Subsection 2 Instruments of the stabilization and restructuring framework	
2511	Use of instruments of the stabilization and restructuring frame (1) If several instruments of the Stabilization and Restructuring Framework are used in the same restructuring case, the fee only arises once. (2) If fees pursuant to Subsection 1 have been incurred in the same restructuring matter, they shall be set off against the fee.	2,0
2512	Termination of the restructuring matter before 1. Execution of the judicial discussion and vote or 2. judicial plan confirmation The fee 2511 is reduced to	1,0
	Subsection 3Refurbishment Moderation	
2513	Execution of the reorganization moderation ... If the procedure is transferred to a stabilization and restructuring framework, the fee will be credited against the 2511 fee.	0,5

2514	Termination of the entire procedure before appointment of the restructuring moderator	0,25
	Section 3Complaints	
	Subsection 1Immediateappeal	
2520	Procedure for immediate appeal	1,0
2521	Termination of the entire procedure by withdrawal of the appeal The fee is reduced to	0,5
	Subsection 2Appeal	
2522	Procedure for appeal on points of law	2,0
2523	Termination of the entire procedure by withdrawal of the appeal The fee 2522 is reduced to	1,0

c) The former Part 2 Main Section 5 becomes Part 2 Main Section 6 and is amended as follows:

(aa) in the heading, "Section 5" is replaced by "Section 6

bb) Number 2500 shall become number 2600 and in the fee facts a comma and the indication "§ 38 StaRUG" shall be inserted after the indication "SVertO".

d) In No. 9017, the words "as well as those addressed to the restructuring officer and the restructuring moderator inaccordance with the StaRUG"areinsertedin the fee statement after the statement "§ 4a InsO".

Article 12

Amendment of the Attorney Remuneration Act

The Lawyers' Fees Act of 5 May 2004 (BGBl. I p. 718, 788), whichwas last amendedby Article 2 paragraph 5 of the Act of 25 June 2020 (BGBl. I p. 1474), is amended as follows

1. In the table of contents, the following statement is inserted after the statement on § 29:

"Section 29a Object Value in the Stabilization and Restructuring Framework under the German Corporate Stabilization and Restructuring Act".

2. In § 1 para. 2 sentence 2, the words "restructuring moderator, restructuring agent" shall be inserted after the words "member of the creditors' committee,".

3. After § 29 the following § 29a is inserted:

"„§ 29a

Asset value in restructuring cases according to the Corporate Stabilizationand Restructuring Act

If the order is placed by the debtor, the value of the object is determined by the value of the claims and rights created by the restructuring plan. If the order is given by a creditor or a person involved in the debtor, the value of the object is determined by the sum of the nominal values of his or her claims, the values of his or her security interests and the values of his or herparticipations which are or are to be affected by an instrument of the stabilization and restructuring framework requested by the debtor".

4.Appendix 1 (List of Remuneration) is amended as follows:

a) In the outline, in the information on Part 3, Section 3, Subsection 5, a comma and the words "Restructuring Cases under the Stabilization and Restructuring Framework" are inserted after the word "Distribution Order".

b) In the heading to Part 3 Section 3 Subsection 5, a comma and the words "Restructuring Cases under the Stabilization and Restructuring Framework" shall be inserted after the word "Distribution Order".

c) Preliminary note 3.3.5 is amended as follows:

aa) In paragraph 1, the words "restructuring matters under the StaRUG" are inserted after the word "SVertO".

(bb) in paragraph 2, the words "creditors having different claims" arereplaced by "creditors or persons having an interest in the debtor havingdifferent claims or rights

d) In the note to point 3317, a comma and the words 'in a restructuring case under the StaRUG, in' are inserted after the word 'SVertO'.

e) In point 3318, after the word 'insolvency plan', the words 'or residual restructuring plan' are inserted.

Article 13

Amendment of the Civil Code

In § 925 paragraph 1 of the German Civil Code (Bürgerliches Gesetzbuch) in the version of the announcement of 2 January 2002 (BGBl. I p. 42, ber. S. 2909 und 2003 I p. 738), which was last amended by Article 1 of the Act on the Distribution of Broker's Costs in the Mediation of Purchase Agreements for Apartments and Single Family Houses of 12.6.2020 (BGBl. I p. 1245), the words "or restructuring plan" shall beinserted after the word "insolvency plan".

Article 14

Amendment of the German Commercial Code

The German Commercial Code in the amended version publishedin the Federal Law Gazette Part lll, Section No. 4100-1, which was last amended by Article 1 of the Act of August 12, 2020 (BGBl. I p. 1874), is amended as follows:

1. **In Section 130a(1), in the second sentence, the word "from" shall be replaced by the word "for" and the following sentence shall be inserted after the second sentence**

   "After this point in time, payments for the fulfilment of claims arising from the tax debt relationship arenotcompatiblewiththediligence of a prudent manager".

2. **In Section 177a, first sentence, the words "sentence 4" shall be replaced by "sentence 5".**

Article 15

Amendment of the German Stock Corporation Act

The Stock Corporation Act of September 6, 1965 (BGBl. I p. 1089), which was last amended by Article 1 of the Act of December 12, 2019 (BGBl. I p. 2637), is amended as follows:

1. **In the second sentence of paragraph 92(2), the word "from" shall be replaced by the word "for" and the following sentence shall be inserted after the second sentence**

"After this point in time, payments for the fulfilment of claims arising from the tax debt relationship are not compatible with the diligence of a prudent manager".

2. **In section 302 subs. 3 second sentence the words "or residual invoicing plan" shall be inserted after the word "insolvency plan".**

Article 16

Amendment to the law on limitedliabilitycompanies

In Section 64 of the Law on Limited Liability Companies inthe amendedversion publishedin the Federal Law Gazette Part lll, outline number 4123-1,lastamendedby Article 10 of the Law of 17 July 2017 (BGBl. I p. 2446), the word "from" shall be replaced by the word "for" and the following sentence shall be inserted after sentence 2

"After this point in time, payments for the fulfilment of claims arising from the tax debt relationship are not compatible with the diligence of a prudent businessman".

Article 17

Amendment of the Cooperatives Act

The following sentence shall be addedto § 99 of the Cooperatives Act in the version of the announcement of 16 October 2006 (BGBl. I p. 2230), which was last amended by Article 3 of the Act of 12August 2020 (BGBl. I p. 1874)

"After this date, payments for the fulfilment of claims arising from the tax liability arenotcompatible with thediligence of an ordinary manager of acooperative.

Article 18

Amendment of the German Bond Act

§Section 19 of the German Bond Act of July 31, 2009 (BGBl. I p. 2512), whichwas lastamendedby Article 24 paragraph 21 of the Act of June 23, 2017 (BGBl. I p. 1693), is amended as follows:

1. **The words "and restructuring matters" are added to the heading.**

2. **The following paragraph 6 is added:**

   ("6. If a debtorincludesclaims under bonds in aninstrument of the stabilization and restructuring framework under the German Corporate Stabilization and Restructuring Act, the preceding paragraphs shall applymutatis mutandis.

Article 19

Change of the tax consulting law

The following paragraph 5 is addedto § 57 of the Tax Consultancy Act in the version of the announcement of 4 November 1975 (BGBl. I p. 2735), which was last amended by Article 3 of the Act of 19 June 2020 (BGBl. I p. 1403):

"(5) When preparing theannual financial statements for a client,tax advisors and tax representatives are obliged toexamine whether, on the basis of thedocumentsavailable tothemand the circumstances otherwise known to them, there are factual or legal circumstances whichcould stand in the way of thecontinuation of the business activity. They mustinformthe client of the possible existence of a reason for insolvency in accordance with §§ 17 to 19 of the Insolvency Code and the associatedobligations of the managers and members of the supervisory bodies if corresponding indications are obvious and the tax consultant or tax agentmust assume that the client is not aware of the possible insolvency maturity.

Article 20

Amendment to the Act on Provisional Regulation of the Law of Chambers of Commerce and Industry

The following sentence shall be addedto § 1 paragraph 2 of the Law on Provisional Regulation of the Law of the Chambers of Industry and Commerce in theadjusted version publishedin the Federal Law Gazette Part Ill, Section No. 701-1,which was last amendedby Article 2 of the Law of 25 May 2020 (Federal Law Gazette I p. 1067):

"They mustadvisethe tradespeople in their district who belong to them on questions of early recognition ofcorporate crises and how to deal with them.

Article 21

Amendment of the Auditing Regulations

The following paragraph 7 shall be addedto § 43 of the Wirtschaftsprüferordnung (Auditing Regulations) in the version of the announcement of 5 November 1975 (BGBI. I p. 2803), which was last amended by Article 4 of the Act of 19 June 2020 (BGBI. I p. 1403):

"(7) When preparing or auditing the annual accounts for a client,professionals shall verify whether, on the basis of the documents available to them and of the circumstances otherwise known to them,there areanyfactual or legalcircumstances whichmayprevent the firm from continuing its activities.They mustinformthe client of the existence of a possible reason for insolvency in accordance with §§ 17 to 19 of the Insolvency Code and the associated obligations of themanagers and members of the supervisory bodies if corresponding indications are obvious and the professional must assume that the client is not aware of the possible insolvency maturity. Sentences 1 and 2 shall also apply if the mandate is given to an auditing company for which the professionalis working".

Article 22

Change of the trade regulations

The Industrial Code in the version of the announcement of 22 February 1999 (BGBI. I p. 202), which was last amended by Article 5 of the Act of 19 June 2020 (BGBI. I p. 1403), is amended as follows

1. **In the table of contents, the words "and restructuring matters" shall be added to the information on Section 12.**

2. **§ Section 12 is amended as follows:**

   a) **The words "and restructuring matters" are added to the heading.**

   b) **The first sentence is worded as follows:**

" Provisions allowing the prohibition of a trade or the withdrawal or revocation of an authorisation on the grounds of unreliability of the trader due to disorderly financial circumstancesshall be adopted during the period

1. of insolvency proceedings,

2. in which security measures are ordered in accordance with § 21 of the German Insolvency Code,

3. monitoring the fulfilment of an insolvency plan (§ 260 of the Insolvency Statute) or

4. in which a restructuring commissioner has been appointed in a stabilization and restructuring framework, a stabilization order is effective or a restructuring plan has been submitted to the restructuring court for preliminary review, for the purpose of a court hearing and vote or for confirmation,

does not apply in respect of the trade whichwas being carried on atthe time of the application forthe opening of insolvency proceedings or the application for the order of the restructuring or stabilization instrument.

Article 23

Change of the handicraft order

§ Section 91 (1) of the Crafts Code in the version of the announcement of September 24, 1998 (BGBl. I p. 3074; 2006 I p. 2095), which was last amended by Article 6 of the Act of June 19, 2020 (BGBl. I p. 1403), is amended as follows:

1. **In number 13, the dot at the end is replaced by a comma.**

2. **The following point 14 is added:**

"14.to adviseowners of a craft enterprise and a craft-like trade of the Chamber of Crafts District on questions of early recognition of business crises andtheir management".

Article 24

Amendment of the Pfandbrief Act

§ 30 par. 6a of the Pfandbrief Act of May 22, 2005 (BGBl. I p. 1373), whichwaslast amendedby Article 97 of the Act of November 20, 2019 (BGBl. I p. 1626), is amended as follows:

1. **In the fifth sentence, "Section 270c" shall be replaced by "Section 270f(2)" and the words "Section 270a(1), second sentence" shall be replaced by "Section 270b(1), first sentence".**

2. **In the sixth sentence, the words "Section 272(1)" shall bereplacedby "Section 272(1),points 3 to 5".**

3.in sentence 7 the words "§ 270 paragraph 2, § 270a paragraph 2 and §§ 270b" are replaced by

the words "Section 270f(1), Section 270c(5) and Section 270d" shall be replaced by "Section 270f(1), Section 270c(5) and Section 270d".

Article 25

Amendment of the Company Pensions Act

§ Section 9 (4) sentence 1 of the Company Pensions Act of 19 December 1974 (BGBI. I p. 3610), which was last amended by Article 8a of the Act of 12 June 2020 (BGBI. I p. 1248), is worded as follows:

"In an insolvency plan whichprovides forthe continuation of the enterprise or a business, a special group must be formed for the holder of insolvency protection, unless he waives this right".

Article 26

Amendment of the Third Book of the Social Code

The following sentence shall be addedto § 314 (2) of the Third Book of the Social Code - Employment Promotion - (Article 1 of the Act of 24 March 1997, Federal Law Gazette I p. 594, 595), as last amended by Article 6 of the Act of 14 July 2020 (Federal Law Gazette I p. 1683):

"Sentence 1 shall apply mutatis mutandis in those cases in which self-administration has been ordered under section 270 subs. 1 first sentence of the Insolvency Statute.

Article 27 Entry into force

(1) Subject to paragraphs 2 and 3, this Act shall enter into force on 1 January 2021.

(2) Article 9 shall enter into force on 1 January 2022.

(3) Article 7 and Sections 88 to 92 of the German Corporate Stabilization and Restructuring Act (Unternehmensstabilisierungs- und -restrukturie-rungsgesetz) will come into force on July 17, 2022.

Justification

A. General part

I.Objective and necessity of the regulations

The Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, debt relief and prohibitions on activitiesand on measures to improve the efficiency of restructuring,insolvency and debt relief proceedings and amending Directive (EU) 2017/1132 (Restructuring and Insolvency Directive) (OJ L 172, p. 18) - hereinafterreferred to as the "Directive": Directive - and the evaluation of the German Act to Further Facilitate the ReorganizationofCompanies of December 7, 2011 (Bundestag document 18/4880 dated October 11, 2018) provide an opportunity to further develop and supplement the Reorganization and Insolvency Law.In addition, the economic consequences of the COVID 19 pandemic require temporaryadjustments of the reorganization and insolvency law to be further developed and supplemented to the special situation characterized by the consequences of the crisis.

Current law lacks the proceduralbasisrequired by the directivefor the implementation and realisation of reorganisations prior to insolvency proceedings.It istrue that reorganizations can oftenbecarried outon thebasis of extrajudicial negotiations within the framework of a well-established and well-functioning practice.However, reorganization projects can fail due to the resistance of individual participantsif they insist on asserting their rights without restriction and without regard to the reorganization solution pursued. If such obstinate behavior removes the basis for the remediation project or leads other parties to withdraw their willingness to support the project, projects that would have been beneficial to all parties involved can also fail. In such cases, it is also possible to implement the project within the framework of a self-administered insolvency procedure. However, this approach is often accompanied by avoidable disadvantages. These include the insolvency proceedings affecting the entire company and the costs of the proceedings. In addition, there are further indirect disadvantages such as the still negatively connotated publicity of insolvency proceedings and the associatedreputational costs. These disadvantages and costs have a disproportionate effect in any case if the core issue is simply topersuadea subset of creditors to make a contribution to restructuring.Therefore, a legal framework is necessary that enables the parties involved in a reorganization project to implement the project against the resistance of individuals. Such a framework is to be created in implementation of the requirements of Directive (EU) 2019/1023.

The ESUG evaluation also provides an opportunity to further develop the existing options for reorganisation under insolvency law. Although these have proven themselves in principle, they require readjustment in some areas. This applies in particular toaccess to the self-administration procedure. This is mainly controlled by the absence of disadvantages for the creditor side, which, due to its abstract nature,favors inconsistent handling andburdensthe practice with legal uncertainty. A significant proportion of the proceedings initiated under provisional self-administration prove to be unsuitable for this type of procedure. Repeated attempts by poorly prepared debtors who are already in a deepened state of insolvency to take advantage of self-administration proceedings arealso likely to sow mistrust in the institution of self-administration and thusdevalue the self-administration proceedings and with it the options for restructuring the insolvency proceedings. This burdens the realization of well and solidly prepared

Redevelopment projects. Further readjustments arenecessaryin the design of the self-administration procedureand in the insolvency plan law.

The system of reasons for filing for insolvency is to be adapted. One reason for thisisthe extensive overlap between the imminent inability to pay, which entitles the debtor to file an application to open insolvency proceedings, and overindebtedness, which obliges the debtor to file such an application. On the other hand, the system of reasons for filing an application has to be harmonized with the framework to be created for insolvency averting reorganizations.

Past measures to promote self-responsible and early management of corporate crises have not been reflected either in a significant increase in the number of well-prepared self-administration proceedings or in higher insolvency rates for unsecured creditors. Managers oflegal entities withlimited liabilitycannot make use of the existing possibility of initiating insolvency proceedings against the will of the shareholders in case of imminent insolvency. In the majority of cases, they are not obliged to protect the interests of creditors until the insolvency proceedings have been initiated where these interests are in competition or conflict with those of the shareholders. Thisresults in obstacles for the timely and consistent preparation and initiation ofreorganizations with the help of the procedural instruments available for this purpose.A need for a contouring of the duties of managers also arises in view of the fact that the restructuring framework provides managers with further options tointervene in the rights of creditorsinorder to implement reorganizations.As acorrective measure, this creative power mustbecounterbalancedbyan obligation of the female managers toprotect the interests of creditors who are endangered in the stage of imminent insolvency.

As a result of the COVID 19 pandemic, a large number of companies havesufferedsignificant revenue losses.Even though these companies have succeeded in ensuring the continuation of their businesses by drawing on government aid, many of them are suffering from a debt overhang that poses risks for the sustainable continuation ofthe companies. In this respect, it must be ensured that the affected companies and their creditors are given the effective opportunity to use the restructuring options to be developed and created through a temporary adjustment of the conditions for access and over-indebtedness, taking into account the current crisis conditions.

To achieve this, the insolvency proceedings and the new preventiverestructuring frameworkto be createdalsorequirethe use of electronic means of communication. In particular, it should be possible to vote on insolvency or restructuring plans using remote communication media.

Since the Insolvency Compensation Ordinance came into force on January 1, 1999, the compensation rates regulated there have remained essentially unchanged, although the general level of prices and income has risen. It can also be noted that the demands on female insolvency administratorshaveincreased in the meantime.This is to be compensated for.On theother hand,remuneration istobe limited in cases with extremely high insolvency assets. In addition, the Insolvency Remuneration Ordinance does not yet contain any regulation on the remuneration of the provisional administrator in provisional self-administration proceedings. It is also necessary to increase the remuneration of the members of the provisional creditors' committee.

II. Essential content of the draft1General and overview

A major goal of the design is to improve the framework conditions for the implementation of early and well prepared remediation measures. The draft sees itself as a further development of the current law, whichispartlypromptedby European lawrequirements from the Restructuring and Insolvency Directive, and partly bypractical experience with the reorganization and insolvency law that was last reformed in 2011. However, in view of the current crisis phenomena in the wake of the COVID 19 pandemic, there is also cause for temporary adjustments.

The planned improvements and additions are intended to further develop and supplement the existing legal framework, but not to reorient it. In particular, the amendments are not intended to reflect a shift towards a primary orpriority orientation of insolvency law towards the preservation of businesses. Nor should it be the task of insolvency law to enforce the interests of the debtor or its shareholders in the continuation or reorganization of the business against the interests of the creditors (BT-Drucksache 12/2443, p. 77). Restructuring remains an instrument for achieving the objectives of insolvency law, which are aimed at satisfying creditors. Whether or not the reorganization path is to be taken should continue to be decided primarily by those who co-finance the reorganization through their contributions, namely the creditors and other parties involved (BT-Drucksache 12/2443, p. 77 et seq.; 17/5712, p. 25). The autonomy of the participants and the market conformity of the results of the proceedings, which is secured by them, thus remain the pillars on which the restructuring options under insolvency law are based. This should alsoapply to thereorganization optionsto be createdin implementation of the directive's requirements for a preventiverestructuring framework. Like the insolvency proceedings, the pre-insolvency and non-insolvency restructuring assistance to be created in the preventive restructuring framework is concerned with reacting to any threat to the complete satisfaction of creditors and thereby safeguarding the interests of creditors. This is based on the idea that an effective alignment of the proceduralrestructuring options with the interests of creditorsensures that lending and other capital transfers are spared from the uncertainties that inevitably follow from an insolvency management regime that is removed from the effects of market laws (on these, most recently Heese, Die Funktion des Insol-venzrechts im Wettbewerb der Rechtsordnungen (2018), p. 42 ff. m.w.N.). It thus not only prevents credit rationing and ensures an efficient allocation of credit and capital, but also ensures that theresources pooled in the companyfind their way to their most productive use in the economic system (BT-Drucksache 12/2443, p. 77). At the same time, the market-compliant orientation ofinsolvency and reorganization law avoidsdistortions in competition, which thecontinued existence of companies must haveif they are to be able to surviveagainst the laws ofthe market (BT-Drucksache 12/2443, p. 78).Conversely, the withdrawal of non-competitivecompanies from the business enterprise is a basic prerequisite not only for the success of competitive companies, but also for entrepreneurial innovation, for the successful management of any structural changes and for the sustainabilityofthe entire economy.

The market conformity of insolvency law will be further secured in those areaswherecreditor autonomy, as a fundamental control principle,reachesits performance limits. This applies to the early phase of insolvency proceedings, in which decisions have to be made under uncertainty and the creditors are not yet fully capable of acting. The concerns expressed in the evaluation of the ESUG regarding theindependence of (provisional) custodians proposed by the debtor on the basis of a unanimous vote of the provisional creditors' committee or in the context of the protective umbrella procedure are to bemetby the possibility of appointing

be met by a special administrator. In addition, the conditions for access to self-administration procedures are specified in order to better align the procedure with the interests of creditors.In future,a debtorseekingself-administrationwill be required to submit a self-administration plan to the application for self-administration. This plan must show, among other things, that and how the continuation of the business can be financed for the first six months after the application and which measures are envisaged on the basis of which cause analysis. With the planning to be carried out, the debtor willhave to provethe seriousness and soundness of her reorganisation project in the future.Unscheduled, spontaneous or even self-administration following the delay in filing for insolvency are to be prevented from the outset. Although self-administration should also be considered in the future in exceptional cases if the debtor does not meet all requirements to which a legally secure access to self-administration should be linked, this should depend on the court's conviction that despite the absence of the requirementsitcan be assumed that the debtor is willing and able to align the management of the company with the interests of its creditors. In the preventive framework to be created,comparable requirements will be set for the obtainability of a stay of execution under Art. 6 and 7 of the Directive, under whose protection the debtor can conduct negotiations with her creditors. This is intended to ensure that the procedural aids of the preventive frameworkareusedsolely for the pursuit of serious and justified reorganisation intentions.They should not be misused topersuade creditorstomake promises that are not appropriate. Inaddition, it should be avoided that the suspension of enforcementis usedto delay creditors who are willing to enforce their claims or even todelaythenecessary crisis or insolvency management.

In the implementation of the guidelines for the creation of a preventive restructuring framework, the draft is guided by the objective of closing the gap left by current law between free and consensual restructuring on the one hand and the strictly procedural and therefore drastic restructuring options in insolvency proceedings on the other, and toopen upnew avenues wherethose involved in a renovation projectcan make use ofthe cost and efficiency advantagesof private autonomous initiative, design and organization and also have the opportunity to implement renovation solutions against the will of opposing minorities. The basic values to be taken from the self-administration-based insolvency plan procedures aretransferredto the preventiveframeworkin the starting pointand thus also shape the concrete design of theinstrumentsofthe preventive framework. This is based on the consideration that the framework to be created is largely functionally consistent with the restructuring options under insolvency law. Here and there, it is a matter of the collective management of economic imbalances thatendangerthe complete satisfaction of all creditors. Inboth cases, the financial imbalance shouldbemanagedon thebasis of aplan to be decided by a majority of creditors and then confirmed by the court. Inboth cases, the debtor canclaima stay of execution until the planhas beenapproved andconfirmed. Against this background, the draft is orientedin essential points to the existing and further developedregulations on the restructuring options under insolvency lawin thedesign of the preventiveframeworkto be created. Inparticular, the regulations on the division of creditor and shareholder groups, the right of opposing creditors to object that they are worse off by the plan than without it, and the conditions for the cross-groupcoordination of participantsareadopted.The preventive framework should differ from the model under insolvency law in those points whichensurethatit has its ownscope of application: In the preventive framework the debtor is entitled to a selection test in the question from which creditors she demands reorganization contributions and which creditors she includes in the procedure for this purpose.

Against this background, there is no need for a publicity-effective request for the creditor tofile a claim, nor is there any need to file a claim at all. The inclusion of certain claims is excluded from the outset. This appliesin particular to the claims of female employees. Therefore, the provision of (prefinanceable) insolvency money is also dispensable. The reorganization assistance can be claimed in non-publicproceedings, so that the operative businesscanideallybe continuedunaffected by the financial difficulties and the proceduralmeasures to overcome them.Inaddition, the process of plan preparation and plan coordination should be largely left to the private self-organization of the parties involved, whoshould be able to make use ofthe opportunities opened up by this on their own responsibility. The automatic appointment mechanism anchored in the self-administration procedure, according to which a trustee is always to be appointed regardless of the case, will be dispensed with. It is true that the draft also provides for the possibility of appointing a restructuring officer. However, the commissioner's primary task is to check the existence and continued existence of the access requirements and to assess the restructuring plan. An all-encompassing supervision of the management and the exercise of the debtor's power of disposal is not usually provided for. This task profile is also reflected in the regulations on the remuneration of the agents. In principle, this is not - as in the case of the remuneration of the cover pool administrator - calculated as a fraction of the value of the debtor's assets, but on the basis of hourly rates to be determined. However, in order to take account of the fact that, if all or essentially allcreditorsare includedin the restructuring framework, the latter will approach in essence that of a creditor in self-administration proceedings, it should be possible for the court to grant the agent more extensive powers and toapproximateher legal position to that of a custodianin insolvency proceedings. As a result, the substance of the project should always determine the procedural framework and the density of the control to which the debtor must submit if she pursues her restructuring project. The more creditor groups it involves and the more vulnerable the creditor groups that are involved, the more it must be possible for the court to assign more extensive powers to the mandated party in individual cases. This can then also be reflected at the level of remuneration in a remuneration structure similar to that of a trustee.

The draft takes the particularly pronounced scope for the private autonomous design and organization of the crisis management process in the preventive framework as anopportunity tosupplementthe reorganization law with regulations on the obligations of the debtor and theliability of its managers. It subjects the managing directors oflegal entitieswithlimited liabilitytoa duty to protect the interests of creditors which commences with the occurrence of the imminent insolvency of the company. This duty follows from the threat to the interests of creditors, which already arises in the state of imminent insolvency and thus does not only begin with the occurrence of insolvencyor overindebtedness, for which the applicable law in the form of the insolvency application obligations of § 15a Insolvency Code (InsO) and § 42 Para. 2Civil Code (BGB) as well as with the liability-based payment prohibitions of §§ 64 Sentence 1 Act on Limited Liability Companies (GmbHG), § 92 Para. 2 Sentence 1 Stock Corporation Act (AktG), § 130a Para. 1 Sentence 1, also in conjunction with § 177a Sentence 1 Commercial Code (HGB) and § 99 Sentence 1 Cooperative Society Act (GenG) provides for liability-based precautions. The threat to creditors' interests inherent in the imminent insolvency may be obscured in the applicable law by the fact thatthe imminent insolvency largelyoverlapswith the over-indebtednessand is thus overshadowed by it. Conversely, however, this overlap confirms that the imminent insolvency also represents a concrete threattocreditors' interests if the scope of application of over-indebtedness is restricted in the future by a limitation of the relevant forecast period compared to the imminent insolvency. The obligation to protect the interests of creditorsthen acts as a necessary corrective for the possibilities of influence of the

debtor to the creditors' prospects of satisfaction and to theeconomic finding that, in view of the already existing threat to creditors' interests, it isvery likely that creditors will have to bear future losses. The necessity of a liability corrective becomes particularly obviousif the debtor, referring to her imminent insolvency, makes use of the procedural aids of the preventive framework or the insolvency proceedings in order to be able to intervene in the rights of the creditors. However, the duty to safeguard the interests of creditors should be incumbent on managers regardless of whether the debtor makes use of such procedural aids. It may well be the case here, particularly in view of the two-year forecast period on which thedetermination of imminent insolvency according to the draft is to be based, that the measures to be considered for coping with the imminentinsolvency also include a large number of measures, theimplementation ofwhichdoes not lead to any adverse effects on the creditor side. From this alone it follows, however, that the duty to protect creditors' interests is irrelevant for the decision between such alternatives which do not affect creditors' interests. However, it remains relevant for all decisions thatmaylead to adeterioration of the situation of creditors.In an out-of-court context, the liability of managers linked to impending insolvency is conceived as internal liability, subject to special regulations specific to the legal form. In the case of lis pendens of proceedings of the preventive framework it condenses to external liability. And with the entry into the provisional self-administration procedure,the obligation goes into theliability law framework of §§ 60 et seq. of the German Civil Code (BGB) to be createdin generalization of the ruling of the Federal Court of Justiceof April 26, 2018 (IX ZR 238/17). InsO and also displaces the liability for breach ofpayment prohibitions.

The improvements in the remediation options will particularly benefit companies that have suffered revenue shortfallsas aresult of the impact of measures takento contain the CO-VID 19 pandemic. Under the conditions of the still unresolved economic crisis, thedraft willtemporarily relax the stricter access rules to self-managed planning procedures, limited to companies whose financial crisis was caused by the COVID 19 pandemic. In this respect, the forecast period for the going concern assumption in the case of over-indebtedness will be temporarily shortened to take intoaccountthe currently increased uncertainty about the further economic development.

To achieve this, the insolvency proceedings and the new restructuring framework to be created to avoid insolvency also require the use of electronicmeans of communication. In particular, it should be possibletoconductcreditors' meetings and voteson insolvency or restructuring plans using remote communication media.

Since the Insolvency Remuneration Ordinance came into force on January 1, 1999, the remuneration rates for female insolvency administrators and administrators regulated therein have remained essentially unchanged, although the general level of prices and incomehas increased. To compensate for the increase in thegeneral level of prices and income, thedraft therefore providesfor an increase of around 40% in each of the step limits in § 2 (1) and § 14 (2) of the Insolvency Remuneration Regulation and in all the minimum and fixed amounts regulated in the Insolvency Remuneration Regulation. In return, the compensation will be limited in cases of extremely high insolvent assets. In order to compensate for the increased demands on insolvency administrators, it is proposed that the percentages in the middle levels also be moderately increased.Inaddition, it is proposed that a new Section 12ashouldprovide foran independentclaim to remuneration for provisional female trustees.

2. introduction of the law on the stabilization and restructuring framework for companies (StaRUG)

The Act on the Stabilization and Restructuring Framework for Enterprises (StaRUG) implements the provisions of the Directive on the Preventive Restructuring Framework (Art. 4 to 19 of the Directive). The directive requires the introduction of proceduralassistance offers for corporate entities willing to restructure, which want to implement and enforce a restructuring concept supported by the majority of creditors against the resistance of opposing creditors: A restructuring plan accepted by a majority of creditors must becapable of beingconfirmed by a court of lawand, with its judicial confirmation, must also have effects vis-à-vis creditorswho have not approved the plan (Article 8 et seq. of the Directive). In addition, the debtor mustbeable to obtaincourt orders to stop enforcement measuresthat could jeopardize the negotiations on the plan (Article 6 et seq. of the Directive). In certain cases, the court must appoint a restructuring officer to assist the parties in negotiating the plan (Article 5(3) of the Directive). The national transposition legislator may provide that a representative may alsobe appointedto supervise the debtor's management or even totakepartialcontrol;however,an unconditional, automaticappointment may not be provided for (Article 5(1) of the Directive). Finally, it must be ensured that the execution of confirmed restructuring plans and the financing provided for in such plansare shieldedfrom liability and avoidance risks(Articles 17(1) and (3), 18(2) of the Directive). Interim financingand transactions necessary for the negotiation of the plan mustalsobeshielded from such risks (Articles 17(2), 18(1) of the Directive).

The instruments to be introduced with the preventive restructuring frameworkopen up opportunities for a company willing to restructure that are partly similar to those of a self-managed insolvency plan procedure. However, they must bemadeavailable outside the insolvency proceedings and thus before the initiation of suchproceedings. In any case, the orders to block individual enforcement measures that can be implemented within the preventive framework of Article 6 et seq. of the Directive must result in a block on insolvency proceedings that could lead to the liquidation of the indebted company (Article 7 (1) and (2) of the Directive). Since liquidation is not excluded as a procedural objective in any variant of the applicable insolvency law, the framework of insolvency proceedings could only be considered if the existing insolvency proceedings were supplemented by a variant of proceedings aimed exclusively at reorganisation. Such a supplement would, however, rule out the possibility that the insolvency proceedingscouldcontinue toserveas a discovery procedurefor identifying the best exploitation alternative and thus provide a guarantee for results in line with market conditions (see BT printed paper 12/2443, p. 79, 82 f., 92).Anotherargument against implementing the preventive framework in insolvency proceedings lawis thatthe preventive framework - unlike insolvency proceedings - is not an overall procedure in which all creditors must be involved. Claims from pension commitments must always beshieldedfrom the consequences of the preventive framework(Article 1(6)). At thechoice of the national transposing legislator,other types of claims may be excluded (Article 1(5) of the Directive). The recommended pre-insolvency location of the framework to be createdcorresponds totherequired pre-insolvency link to a merely probableinsolvency, which the national transposing legislatormustdistinguish from the insolvency that has occurred(Article 2(2) of the Directive).

The draft takes from the directive the task of closing the gap left by the existing law between the area of free reorganisation based on the consensus of all parties involved on the one hand and strictly procedural reorganisation in insolvency proceedings on the other. To close this gap, the draft is based on the one hand on

Valuations which can be taken from the current or further developed insolvency law. This applies in particular to the material requirements whichmustbe fulfilledfor procedural aidssuch as, in particular, the confirmation of the plan and the blockage of execution.On the other hand, in comparison to the insolvency proceedings, the draft gives the parties involved further scope for the privately autonomous organization of the process of drawing up, negotiating and coordinating plans. Therefore, the draft does not conceive the preventive framework as an integrated procedure, but as a modular procedural framework, the elements of which a debtor willing to reorganize should be able to claim individually, provided that such a claim is considered expedient by the debtor and the creditors supporting her project. A formal opening procedure, in the context of which opening requirements would have to be examined, is not provided for. Instead of such an application for opening proceedings, anotification of the need for restructuring should be submitted to the competent court, which should enable the court to take note of the restructuring project and tobe preparedfor any applications to use the individual instruments of theframework. Indetail, the draft law on the Stabilization and Restructuring Framework follows the following key points:

a) Based on the insolvency law

In order to do justice to the functional similarities that the preventiveframeworktobe createdhas with the self-administration-based insolvency plan procedure,the instruments of the preventive framework are also based on insolvency law. This applies on the one hand to the connection to the imminent insolvency in the sense of § 18 InsO, on the other hand, however, also to the design of the individual stabilization and restructuring instruments, namely the requirements for the restructuring plan, the classification of the groups to be made in this context, theprerequisites fortheconfirmation of the plan and the contouring of the enforcement and liquidation blocks.

For access to the instruments of the preventive framework, the draft essentially ties in with the threat of insolvency within the meaning of section 18 InsO. Companies that are already insolvent or over-indebted aredeniedaccess to theinstrumentsofthe stabilization and restructuring framework. Thisis because in the event of insolvency maturity, the interests of all creditors are affected andoverall proceedingsarerequiredto deal with the insolvency that has occurred. Proceedings which - like theprocedural aids of the stabilization and restructuring framework -involveonly a subset ofthe creditors are not suitable for this task.

By linking the imminent insolvency, which according to section 18 InsO is also a reason for the opening of insolvency proceedings, the draft does not fail to recognize that it is desirable to make theprocedural aids of the stabilization and restructuring framework available as early as possible in order to create the prerequisites for countermeasures to be taken at an early stage of the crisis, when as a rulethere arebetter prospectsofsuccessful crisis management. However, theinterventions in the rights of creditors that can be achievedwithin the preventiveframeworkrequireobjective justification. From the point of view of the Directive, this is also a threat to the full satisfaction of creditors' claims. Interventions in the rights of dissentingcreditors are subject to the condition that the restructuring plan does not put creditors in a worse position than they would be without a plan (Articles 10(2)(d) and 11(1)(a)in conjunction with Article 2(1)(6) of the Directive). In the case of a plan which provides for interventions in the rights of creditors, the latter is only possible if the fullsatisfaction of creditors would be jeopardized even without a plan. The threat of insolvency, which also points the way to the insolvency proceedings (section 18 (1) InsO) if the debtor files a separate application, is conceptually a statein whichthefull satisfaction of creditors is at risk. Whether other facts are constructively

The draft does not allowfor the creation of new companies that also fulfill this requirement andarethusupstream ofthe impendinginsolvency. The facts, which are suggested for an earlier procedure connection, do notshowanyadvantagesin relation to the threatening insolvency. Insome cases, it is already doubtful whether they aresuitableas a basis for legitimizing interventions in creditors' rights.In particular, it is doubtful that common business paraphrases of early stages of a crisis, such as a stakeholder or strategy crisis,are accompanied by sufficientlyconcrete dangers for creditors' interests, which justify the interventions in creditors' rights that can be achieved in a preventive framework. Such early stages of a crisis are characterized by the fact that theycantypically becounteredwith purelyeconomic measures, in which the existing legal relationships and their fulfillment are not in question. In contrast to this, the term "crisis" in the sense of the former § 32a para. 1 GmbHG, taken from the replaced equity substitution law, describes advanced stages of a crisis, but it has also remained so vague and contourless in the interpretation of a long-standing highest court jurisdiction that it is not suitable for a procedural connection. Against this background, the draft leaves it at a connection to the imminentinsolvency. This is awell-established fact which was introduced precisely for the purpose of giving the debtor the opportunity and incentive to make early use of procedural aids for crisis management (BT-Drucksache 12/2443, p. 84). It is precisely this function that the Directive assigns to the concept of probable insolvency. The draft is alsoguided bythe ideathatthe scope for implementing early reorganization in existing insolvency practice is far from being exhausted, so that a real need for an earlier connection cannot be discerned.

The link to impending insolvency is compatible with the provisions of the Directive. Article 2(2) leaves it to the national transposing legislators to define the concept of impending insolvency, which is relevant for the preventive framework, and to define the concept of insolvency (Article 2(2) of the Directive). The fact that imminent insolvency can also lead to insolvency proceedings if the debtor so requests is not detrimental. This is because the Directive does not deny the national insolvency legislators the possibility ofopening up further possibilities for crisis managementin addition to the preventive framework(Article 4(5) of the Directive).As long as the debtor remains free to choose between the instruments offered to her by the legal system and, in particular,can choosethe path to the preventive framework, it is irrelevant from the point of view of the Directive whether the same facts also enable the debtor tooptfor restructuring in the form of insolvency proceedings. Theonly problem would be the connection to a set of facts thatobligesthe debtorto file an application or entitles the creditor to do so. In this context it has been argued that linking the imminent insolvency as a result of its extensive overlap withover-indebtedness (§ 19 InsO), which createsanobligation to file an application and conveys a creditor's right to file an application, would be contrary to the Directive because itwouldleavethe preventive framework de facto with no meaningfulscope of application. However, since the core of over-indebtedness is based on a test of the ability to continue as a going concern (section 19 (2) sentence 1 InsO), which can be constructed as a viability test permitted by the directive under Article 4 (3), it is already doubtful that the overlap with over-indebtedness aloneis problematicfrom thepoint of view of the directive. Moreover, over-indebtedness is ruled out if the chances of success of a planned reorganization are predominantly probable. This does not apply to imminent insolvency. For it would be absurd if the facts of the case, in the very situation in which it is to be applied (BT-Drucksache 12/2443, p. 84), were to deny the debtor wishing to reorganize access to the insolvency proceedings because the reorganization that she iscontemplating has achanceofsuccess (see Brinkmann, NZI 2019, 921, 923). Finally, elsewhere the draft delimits the scope of application of the two grounds for opening insolvency proceedings by

he limits the forecast period on which the determination of over-indebtedness is to be based to twelve months (section 19 (2) InsO-E), whereas the examination of the impendinginsolvency will in future be based on a period of 24 months (section 18 (2) InsO-E). However, this means that the two facts can be sufficiently distinguished from each other.

The design of the preventive framework is also based on the existing instruments of insolvency law. In particular, theregulations on the content of the restructuring plan, the classification of groups and therequirements for the confirmation of the plan are based on the models of insolvency plan law.Supplements and deviations are only necessary where the special features of the preventiveframework have to betaken into account.For example, the restriction of the circle ofcreditorsto be included in the proceedings, which is to be made possible under the debtor's guideline, requiresa regulation to limit the scope of the selection. The provisions for obtaining enforcement and liquidation blocks are based on thecorresponding blocks in the insolvency opening proceedings. This applies not only to the legal consequences that can be achieved, whichare identicalwith the legal consequences of blocks under section 21 (2) sentence 1numbers 3 and 5 InsO, but also to the prerequisites. In this respect, the draft assumes the comparability of the insolvency opening proceedings with the situation in which a company makes useofan enforcement or liquidation block as a preventive measure.

b)Private self-organization and personal responsibility

In order to supplement the existing law in a meaningful way and in particulartoeffectively closethe gap between the strictly procedural restructuring options under insolvency law and freerestructuring, the stabilization and restructuring framework to be created will not be designed as an integrated procedure and in particular will notbeintegrated into the Insolvency Codeas afurther variant of the self-administration procedure. From the point of view of the Directive, it would be permissible toconceivethe framework as a uniformprocedure, which - for example, following the model of the former Settlement Rules - would be managed by a court-appointed restructuring commissioner according to a procedurally prescribed scheme from the application to the opening to the dissolution before the judicial forum.However,the formalism associated with such a conceptwould from the outset deprive the stabilization and restructuring framework of the flexibility it needsto beable to provide practical benefitsinaddition to the already existing reorganization optionsunder insolvency law on the one hand and the practice of free and consensus-basedreorganizationontheother. The diversity of the reality of reorganizationcorresponds to the different needs for proceduralsupport of the reorganization process. For example, in some cases the question of a suspension of enforcement measures may not arise because the parties involved are solely arguing about the content of the restructuring plan. And where a suspension ofenforcement measures hasinitiallybeen claimed, theneed for a later confirmation of the restructuring planmay beeliminated if theparties involved agree in the meantime on a plan solution. These differentneeds are best met if the instruments of the frameworkare giventotheparties involved as options from which they can make use in the course of a preferably unbounded reign over the restructuring process. Although this would also be conceivable under the regime of a uniform procedure, the construction ofan integrating procedural legal relationshipislargely dispensable if the participants are to be able to decide whether and which modules of the overall framework they wish to make use of and which modules they mayneedat what point in time.Insofar as a procedural interlocking of the individual modules is expedient, for example with a view to ensuring a uniform jurisdictional regime, it can be easily ensured by appropriate jurisdictional regulations.

Compared to the role models of insolvency procedure law, the autonomy of theparties involvedisthus further strengthened. The participants should not only, as in the insolvency plan procedure,

The debtor may not only decide on the content of the plan, but also have the possibility to vote on the plan out of court according to the modalities determined by the debtor.Theonly thing to be ensured is that all parties involved are aware of the contents of the plan andcan makean informed decision on whether to approve orreject the plan.However,thedetermination of the modalities of the coordination processand, above all, its implementation can in principlebe leftto the debtor, who must make use of these possibilities on his own responsibility. Errors and shortcomings in the process of plan approval cannot be excluded, but if they do occur, they will be borne by the debtor andthose who support the restructuring project. This mayseemuneconomical in individual cases, but it is the consequence of the freedom granted to those involved at this stage to organize and carry out the process on their own responsibility. The fact that this largely dispenses with procedural formalisms takes into account the desideratum that, ideally, restructuring should be carried out early, quietly and quickly (K. Schmidt, Verhandlungen des 54. Deutschen Juristentages, Volume I (1982), p. D 97 ff.)In this way, the creativity, flexibility and efficiency of private autonomous action can be made fruitful, which is characteristic for the practice of free redevelopment and to whichthe preventive framework to be created builds a bridge. Theflexibilitythusmadepossible requires restrictions under three aspects alone.

Firstly, minimum requirements must be laid down, compliance with which should ensure that all creditors from whom restructuring contributions are to be obtainedare appropriately involved in the plan coordination process. In particular, they must be provided in good time with the information necessary for assessing the plan project and must begivenan opportunity to participate in the discussion andvote on the plan. These minimum requirements also form the interface to the judicial plan confirmation procedure, in the course of which the court must examine whether the minimum requirements of the procedurehave been complied with.

Secondly, small or micro-enterprises in particular, as debtors, maybeoverburdenedwith the process of organizing such a sometimes complexprocesson theirown responsibility.It must therefore be possible for such enterprises tovotefor theimplementation of a judicial voting procedure based on therules for plan voting in the insolvency plan procedure. Furthermore, it should be possible to place the plan coordination in the hands of a court-appointed restructuring officer who has the necessary qualifications and experience tocarry out such coordination.

Thirdly, it cannot always be assumed that all parties involved in a remediation projectare able to fully assert their interests. In this case, the question of the modalities of the coordination process cannot be left to the negotiations of the parties involved. If small or micro-entrepreneurs or evenconsumersareinvolved in the proceedings as creditors, they maybe overwhelmedby thedemands placed on them by the subject matter of the negotiations and the proceedings. In addition, in this case the value of theclaimsto which the parties are entitled willbe disproportionate to the cost of active participation in the process and, in particular, the use of female consultants. Since the directive does not allow such cases to be kept out of the scope of the preventive framework, a corrective approach is needed. The draft stipulates that in this case a restructuring officer must be appointed to ensure the integrity and transparency of the process in the interest of the parties in need of protection. The commissioner is responsible in particular for deciding on the modalities of the voting process.

c)The framework and the instruments it contains

The stabilization and restructuring framework isdesignedas a modular framework ofprocedural aids, which the debtor can also make use of individually

shall.It istherefore not necessary to formallyopen the proceedingsfor theuse of the individual procedural aidsas in the case of insolvency proceedings or the previous composition proceedings. The only requirement for recourse to procedural assistance is that the debtor notifies the competent restructuring court of the need for restructuring. With this notification, the debtor must present the facts and the main objectives of the envisaged restructuring. This will enable the court to prepare for any subsequent applications for the use of procedural assistanceand to classify such an application if it is too quickly modest - as in the case of an application for a stabilization order.

The concept of a modular framework is based on the basic idea that the stabilization and restructuring framework provides procedural assistance to which debtorsand their supporting creditors can resort in order tocarry out and implementa restructuring project.In the starting point, these procedural aids tie in with the private autonomous negotiations between the parties involved and provide mechanisms for coping with the collective problems of action thatcan burdenthesenegotiations or even causethemto fail. It should be possible to make use of these procedural aids. However, it is not always necessary to make use of them. Whether and which assistance is used depends on the concrete situation and on the debtor's own assessment and decision.

The procedural aids provided include

- the confirmation of a restructuring plan accepted by the plan participants with the required majorities, with the consequence that the effects of the planare also effective for and against the plan participants who did notapprovethe plan(§§ 64 ff. StaRUG);

- the preliminary examination of the restructuring plan and the envisaged coordination process with theaim of obtaining judicial advice on issuesrelevantto alater confirmation of the plan (§§ 47 f. StaRUG);

- the termination of mutual contracts which have not yet been completely fulfilled (§§ 49 ff. StaRUG);

- the ordering of enforcement and liquidation blocks for the purpose ofaverting measures of individual legal enforcement whichare likely to impede or thwartthe envisagedrestructuring solution (stabilization orders pursuant to Sections 53 et seq. StaRUG).

In addition, the debtor or an appointed restructuring officer to whom the task of carrying out the coordination is assigned may have the coordination of the restructuring plan carried out in court proceedings (sections 45 et seq. StaRUG).

d)Principle of self-administration and restructuring officers

As in the self-management procedure, the debtor remains authorized to dispose of and manage its assets within the stabilization and restructuring framework. In contrast to the self-administration procedure, this already follows from the fact that there is no reason for restrictions of the power of management and disposal. The instruments of the stabilization and restructuring framework are to be understood as procedural aids for an essentially out-of-court reorganization process. For this reason, the draft does not provide the debtor with a court-appointed restructuring agent in any case. It thus complies with the requirements of the Directive, which in Art. 5 (2) and (3) only allows for appointments to be made on a case-by-case basis and in specific groups of cases that can also be determined by the Member States. The draft provides for two ar-

of the order. Necessary orders are placed in the interest of participantswhose possibilities for effective protection of their interests are limited. Optionalappointments are made at the request of the participants and with the aim ofsimplifyingnegotiationsbetween them through the moderation services of the representatives.

e) The restructuring moderation

The stabilization and restructuring framework is rounded off by the possibility for debtors to be supported in confidential proceedings by a court-appointed restructuring moderator, whowill sound outany restructuring prospectsand moderate the negotiations between the debtor and her creditors. This is a voluntary procedure for the debtor in which - unlike in the stabilization and restructuring framework - coercive effects against the creditors involved cannot be achieved. However, the confirmation of a consensual settlement can be obtained and in this way the settlement can be shielded against later risks under insolvency avoidance law. Ifa moderation process shows that the project can only be implemented against the resistance of individual creditors, the debtor can switch to the stabilization and restructuring framework and use the instruments available there.

2. amendment of the Insolvency Code

Over-indebtedness and the threat of insolvency are betterdistinguished fromeach other. It is true that imminent insolvency will continue to have to be taken into account in the continuation forecast to be made for the over-indebtedness audit. However, the competition problem is to be mitigated by the fact that the over-indebtedness test is to be based on a forecast period of one year, whereas the examination of the imminent insolvency is to be carried out within the framework of a two-year forecast period. This ensures that in the second year of the forecast period, competition from imminent insolvency and overindebtednessis excluded. Inaddition, the application period in case of over-indebtedness is to be increased to six weeksinorder to give the debtor the opportunity to prepare reorganizations in a preventive restructuring framework or on the basis of a self-administration procedure in an orderly and conscientiousmanner.

The conditions for the use of self-administration should be more closely linked to the purposes of self-administration and the interests of the creditors.The waiver of the appointment of an insolvency administrator is justified if and as long as it can be expected that the debtor is willing andable toalignhermanagement with the interests of the creditors. The advance of trust inherent in the order of self-administration is particularly justified if the debtorpreparesthe self-administration proceedings in a timely and conscientious mannerbefore shecomesunder pressure to act due to acute insolvency. Infuture, the debtor should thereforesubmit a self-management planwith the application for a self-management order, which contains, among other things, a rough concept for the management of the crisis triggering the insolvency and a financial plan, which shows that and how the going concern of the company is ensured for a period of at least six months. The plan must alsocontaina substantiated presentation of the cost advantages and disadvantages of self-administration compared to the standard procedure.If the self-administration planning is complete and conclusive, provisional self-administration maynot be ordered only if circumstances are known from which it can be concluded that it is based on incorrect facts in essential points. Theorder of provisional self-administration can also be refused if the debtorhasconsiderable arrears of payment to employees, social security institutions, tax creditors or suppliers or if she has not fulfilled her invoicing obligations. In these cases, and ifthedebtor is in a state of crisis, the financing of the company's continued existenceis not possible.

management is no longer secured for a period of six months, self-management shouldnot be categorically excluded. However, it should then require the court to come to the conclusion that the debtoris willing and able to align the management with the interests of the creditors, despite the existence of the circumstances that speak against the order.

The concerns expressed in the ESUG evaluation regarding the independence of female trustees proposed by the debtor on the basis of a unanimous vote of the provisional creditors' committee or within the scope of the protective shield procedure are to be taken into account by the court being able to appoint a special trustee whose task it is to enforce rescission and liability claims.

Inaddition, individual questions on the self-administration procedure which have not been regulated so far are to beregulated, such as the authorisation of the debtor to establish liabilities in the assets involved in the insolvency proceedings and the liability of the managers ofcompanies withlimited liability.

III. Alternatives

There is no alternative to implementing the requirements of the restructuring and insolvency directive. The Directive grants the implementing legislator a right of choice in many detailed questions. In exercising these options, the implementation concept developed in the draft has been guided by the goal of harmoniously embedding the restructuring framework to be created in the existing German law, which is recognized in its efficiency.

In order to further develop the existing framework for the restructuring of companies, the evaluation study on the Act to Further Facilitate the Restructuring ofEnterpriseshasidentified a number of further development options. The regulatory concept developed in the draft was guided in its choice between these options by the goal ofcombininginsolvency law and the restructuring framework to be created into a coherentand practicable legal framework for corporate restructuring.

An increase in theremuneration ratesregulated in the Insolvency Remuneration Ordinancecould also be achieved solely by increasing the threshold values for the individual stages or solely by increasing the percentages in the individual stages. Bycombining both elements, the two motives for increase, namely theincrease of the general price and income levelon theone handand the increase of the requirements for the administrator's offices on the other hand, are not mixed up.

The remuneration of the temporary custodian could alsoremainwithout express regulationor could be reduced in accordance with the existing case law of the Federal Court of Justice (decision of 22 June 2017 - IX ZB 91/15, ZInsO 2017, 1813, marginals 10, 11 m. w. N.) as a mere surcharge on the remuneration of the cover pool administrator in the proceedings opened. However, this case law leads to practical difficulties, e.g. if the temporary cover pool administratordoes not act as such throughout the opening proceedings.

IV.legislative competence

For Articles 1 to 13, the legislative competence of the Federal Government is derived from Article 74, paragraph 1, point 1 of the Basic Law ("judicial procedure", "legal profession" and "civil law"). For Articles 14 to 24, the legislative power is derived from the legislative com-

The protection of the legal or economic unity of theFederation is based on Article 74 (1) No. 11 of the Basic Law ("law of theeconomy"); the preservation of the legal or economic unityrequires a federal legal regulationin theinterest ofthe whole country(Article 72 (2) of the Basic Law).Articles 25 and 26 are based on Article 74, paragraph 1, number 12 of the Basic Law.

V. Compatibility with European Union law and international treaties

The draft law iscompatiblewith the law of the European Union and internationaltreaties concluded by the Federal Republic of Germany. It servesinparticular to implement the second title of the Directive.

VI. Legal consequences

The remuneration and expenses of the insolvency administrator, the temporary insolvency administrator, the administrator, the trustee and the members of the creditors' committee and the temporary creditors' committee are part of the costs of the insolvency proceedings pursuant to sections 54 no. 2, 270a (1) sentence 2, 274 (1) InsO and must be corrected in advance as liabilities from the assets involved in the insolvency proceedings pursuant to section 53 InsO. Thus, anincrease in the remunerationburdensthe insolvency creditors, to whom only the insolvency assets reduced by the liabilities from the assets involved in the insolvency proceedings can be distributed. Insofar as liabilities from the assets involved in the insolvency proceedings are not corrected from the assets involved in the insolvency proceedings, they will continue to burden the debtor even after discharge of residual debt has been granted, because such discharge does not include liabilities from the assets involved in the insolvency proceedings pursuant to section 301 (1) sentence 1 InsO. The procedural costs may also be charged to the state budgets ifthe costs are deferred in accordance with section 4a InsO, the assets are not sufficient to cover them, the insolvency administratorcan asserta claim against the state treasury in accordance with section 63 (2) InsOand the debtor cannot correct the procedural costs until the expiry of a possibly extended deferment period in accordance with section 4b InsO. Increases in remuneration may also increase the number of cases in which a request to open insolvency proceedings is rejected in accordance with section 26 (1) InsO, whichcould impairthe orderly functionof the insolvency proceedings.

1. Legal and administrative simplificationNo.

2. Sustainability Aspects

The draft is in line with the Federal Government's guiding principles on sustainable development as defined in the German Sustainability Strategy, which serves to implement the UN Agenda 2030 for sustainable development. The draft aims to improve the possibilities for the rehabilitation of existing companies. This helps to promote sustainable economic growth in the sense of the sustainability goal 8. Furthermore, this is in line with the 4th principle of the German Sustainability Strategy, according to which sustainableeconomic activityisto be strengthened.

3. Household expenditure excluding compliance expenditure

The changes to the Insolvency Remuneration Ordinance are not expected to result in any budgetary expenditure for the Federal Government without fulfilment expenses.

For the budgets of the federal states, budget expenditure arises insofar as the costs are deferred in accordance with section 4a InsO, the assets are insufficient to cover them, the insolvency administrator can assert a claim against the state treasury in accordance with section 63 (2) InsO and the debtor has to pay the procedural costs until the expiry of a possibly extended

deferment period pursuant to § 4b InsO. In this context, theclaims against the state treasuryare limitedto the amount of the minimum remuneration, if the assets are insufficient for this purpose (Federal Supreme Court, decision of 7 February 2013 - IX ZB 245/11, NZI 2013, 351, marginal no. 13). The same applies to the remuneration of the trustee in the simplifiedprocedurein theevent of deferment of procedural costs.

Data on budgetary expenditure resulting from payments by the state treasury to insolvent administrators and trustees and the reimbursements that can be collected from the debtor in this respect are not collected nationwide.As demand from the state justice administrationshas shown, corresponding surveysdo not exist in all federal states either. Moreover, the data from the individual federal states, insofar as they collect corresponding data at all, are notcollectedaccording touniform principles. For example, the annualexpenses for insolvency administrator and trustee remuneration are availablefor Baden-Württemberg.On the revenue side, however, only theexpensesclaimed from the debtor can bequantified, but not theexpenses actually received; furthermore, the figures collected do not show to what extent the claimed expensesincludenot only those for insolvency administrator and trustee remuneration but also those for experts and interpreters.North Rhine-Westphalia also knows the amount of the annualexpenses for insolvency administrator and trustee remunerations, but can - to a greater extentthan Baden-Württemberg - quantify the actual recoveries from procedural cost deferment (in insolvency and residual debt discharge proceedings); the latter, however, in turn contain all recoveries including those for experts and interpreters.Mecklenburg-Western Pomerania collects the total expenditurein insolvency caseswithout internal differentiation, without being able to provide information on the revenue side. No state in Germany has data on both expenditure and income, which shows the part of the total expenditure attributable to the remuneration of insolvency administrators and trustees.

Therefore, only an estimate with considerable uncertainties can be made on the basis of the available data. Budgetary figures on actual payment flows according to essentially similarly delimited values were reported by the states of North Rhine-Westphalia and Thuringia. From these states, the revenues for 2019 (only insolvency administrator and fiduciary fees) and the returns from deferments of procedural costs (all items) are available.

In 2019, these two countries together had combined revenues of EUR28.4 million and expenditures of about EUR 16.8 million. Based on an estimate that the share of insolvency administrator and fiduciary fees in total income amounts to approx. 80% (whichcorresponds to the rounded share of insolvency administrator and fiduciary fees in total expenses including expert expenses according to the data provided by Schleswig-Holstein), it can be assumed thatincome in this respect amounts to approx. 13.4 million Euro, so that net expenses amount to approx. 15 million Euro. If this is extrapolated on the basis of the most recent population figures of North Rhine-Westphalia (17.93 million), Thuringia (2.13 million) and the entire Federal Republic of Germany (83.02 million) provided by Eurostat, the net expenditure for all states together will amount to approximately EUR 62.1 million in 2019. The increase in the minimum remuneration, which amounts to 40% for both the insolvency administrators (Section 2 (2) InsVV) and the trustees (Section 14 (3) InsVV), is decisive for the expected additional burdens,so that with annual additional burdensfor the state budgets of around 24.8 million if the number of proceedings in which the assets involved arenot sufficient to cover the remuneration of the insolvency administrator and trusteeand in which the state budgets have to make advance payments due to a deferral of the costs of proceedings remains unchanged. However, assuming that the increase in the minimum remuneration increases this figure by 20% ceteris paribus, the additional burden on the state budgets is estimated to be around EUR 29.8 million.This figure does not take into accountcyclical factors, in particular the effects of

COVID-19 pandemic, future changes in the number of low-mass insolvency proceedings, because these can at bestbe estimatedwith such a high degree of uncertaintythat they cannot be a basis for a sustainable estimate of the effect of an increase in the remuneration of insolvency administrators and trustees on the state budgets.

[Any budgetary expenditure for the remaining parts of the draft is still being calculated].

4. Fulfilment expenses

The new regulations in the Insolvency Compensation Ordinance do not lead toany change in the fulfillment costs for citizens. For the economy, the annual compliance costs will increase by around 3,000 euros. For the administration, the annual compliance costs increaseby around Euro2 thousand. These are attributable to the federal states (including local authorities).

The additional fulfilment expense for the economy and for the administration is based on the introduction of an independent remuneration claim of the temporary administrator (new § 12a of the Insolvency Remuneration Regulation). Until now there was no explicitregulation for this. The remuneration was previously treated as a surcharge on the final administrator's work.In thefuture, the temporary custodians will have toaccount fortheir workseparately. The time required to prepare the invoice is estimated at 20 minutes. In addition, the invoice recipients must process andpaythe invoice.The time required for this is estimated at 10 minutes.

Provisional trustees are involved in provisional self-administration proceedings. On a long-term average, about 260 insolvency proceedingswere openedannually under self-administration.

It is to be assumed that the invoicing of the trusteesis theresponsibility offemale employees with an intermediate level of qualification and the invoicing of the courts is theresponsibility offemale employees with an average wage rate within the uppercivil service. For this reason, a wage rate of 35.40 euros per hour and a wage rate of 40.80 euros per hour at the courtsis setforinvoicing.

There are no material costs.

If one assumes 260 transactions, in which the administrator's offices incur personnel costs of11.80 Euroeach (=35.40 Euro/hour * 20/60 hours) and the courts incur personnel costs of 7.07 Euro each (=40.80 Euro/hour * 10/60 hours), then the annualcompliance costs for the economy amount to approx. 3,000 Euro and for the administration (at the state level) to approx. 2,000 Euro.

[Fulfilment costs for the remaining parts of the design are still to be calculated].

5. Further costs

The remuneration of insolvency administrators and trustees is a burden on the insolvency debtors and creditors of the insolvency proceedings, unless it is finally charged to the state budgets in cases of deferment of procedural costs.

However, neither at the federal level nor at the level of individual states is the total annual volume of all insolvency administrator and fiduciary fees in all insolvency proceedings collected. Data on the average amount of insolvency assets is also available

not before. There is also a lack of other data whichwouldallowan indirect conclusion to be drawn on theannual sales volume of all insolvency administrators and trustees.

The most recent statistical data published by the Federal Statistical Office ontheeconomic key figures of the insolvency proceedings relate to the insolvency proceedings opened in 2011 and concluded by 31.12.2018 (Fachserie 2 Reihe 4.1.1, published on 31.03.2020). Thenumber of these proceedings subsequently totaled 138,747 and the sum of the amounts available for distribution in these proceedings amounted to 547,017,000 euros, so that arithmetically, an average of 3,943 euroswas available for distribution per proceeding. However, since the amount available for distribution has alreadybeen reduced by all liabilities to the estateand no statistical data are available on the amount of the liabilities to the estate, it is not possible to extrapolate the amount available for distribution to the respective assets involved in the insolvency proceedings, which according to § 1 InsW is the basis for calculating the remuneration of the insolvency administrator. In addition, the amount available for distribution is also reduced by the amounts distributed to secured creditors on the basis of rights of segregation; there is no statistical data on this either.

There are also no statistical data on the payments received by trustees, which according to § 14 InsVV form the basis of his remuneration.

6. further legal consequences

The provisions of the draft law are gender-neutral in content and affect women and men equally. Demographic effects are notexpected.

VII. Time limit; evaluation

Only the regulations for the adaptation of the further developed and supplemented legal framework to the temporary special situation, which were set up due to the COVID 19 pandemic and its economic effects, are limited in time.

There is no provision for a time limit on the provisions of the restructuring framework, as the draft serves to implement the guidelines, the provisions of which themselves are not limited in time.

The other regulations will not be limited in time either, because they are basedon the evaluation of theGerman Act on the Further Facilitation of Corporate Restructuring (ESUG) of 7 December 2011 (Federal Law Gazette I p. 2582).

An evaluation should not prejudge the evaluation to be submitted by the European Commission by 17 July 2026 in accordance with Article 33, insofar as the draft serves the implementation of the Directive. The aim of this evaluation is todeterminethe effects of the Directive, including the application of the class formation and voting rules with regard to vulnerablecreditors, and, if necessary, to initiate a proposal by the Commission for adjustments to the Directive. Furthermore, an evaluation is recommended at the earliest after the submission of the evaluation to be submitted at European level. An evaluation should therefore cover at least the period up to 17 July 2027.

A time limit is alsoout of the question withregard to the regulations in the InsolvencyRemuneration Ordinance. The remuneration regulations are designed as permanent provisions that must apply until the legislatordeemsa change to benecessary.

B. Specific part

Re Article 1 (Law on the Stabilization and Restructuring Framework for Enterprises)

Part 1 (Early crisis detection and management)

Article 19 of the Directive contains a mandate to the Member States toensurethatthe managers of companieslikely tobecomeinsolventconsider,taking into account the interests of stakeholders, measures to prevent insolvency so as not to further jeopardise the viability of the company.The aim isto encourage women managers to take economicallyjustifiable decisions on restructuring (recital 70 of the Directive) andto protect those involved in the company from the consequences of management decisions which delay the resolution of the crisis or aggravate it (recital 71 of the Directive). The Directive does not specify how theinterestsofthe parties involved in the company are to be weighted, in particular whether and in what way the interests of creditors or other stakeholdersareto be given priority over theinterestsofshareholders. This decision is left to the nationalinsolvency and company law systems. In addition, Article 3 of the Directive requires Member States to ensure access to early warning systems that support debtors in the early detection of crises.

Part **1** serves to implement these requirements. Sections **1** and 2 create regulations that transcend legal forms regarding the duties of managers and members of thesupervisory bodies of legal entities with limited liability in connection with crisis deveIopments.In view of the distinction between legal entities with limited liability and those without limited liability, which is based on the steering and incentive effect of personal liability , thecorresponding requirements for the management of companies of legal entities with nolimited liabilityare waived. This is compatible with the requirements of the Directive, not least because the second subparagraph ofArticle **1** (4) of the Directive opens up the possibility of restricting the Directive's requirements on preventive restructuring frameworks to legal entities andArticle 19 is systematically located in Part II on preventive restructuring frameworks . § Article **1** sets outminimum requirements for monitoring and dealing with risks that could jeopardize the continued existence of corporate entities with limited liability. §Section 2specifies the duties of the managers of legal entities with limited liability in a crisis and stipulates that these duties are aimed at safeguarding the interests of the creditors from the time of the occurrence of imminent insolvency within the meaning of section 18 (2) InsO. § Section 3 provides for the publication of information on the availability of publicly offered early warning systems on the homepage of the Federal Ministry of Justice and Consumer Protection for the purpose of providing support in early crisis detection.

Re § 1 (early detection of crises and crisis management for limited liability companies)

Section **1** createsa general and cross-legal-form regulation on the obligations of the managers of legal entities with limited liability to react and to anticipate crises at an earlystage. These duties can already be taken from the applicable law, but they are only regulated in the law in certain areas. An obligation to monitor risk is standardized for the executive board of a stock corporation in Section 91 (2) of the German Stock Corporation Act (AktG). As a result of the "radiating effect" of this provision, however, it must also beassumedfor the management bodiesof corporate bodies of other legal forms (cf. theexplanatory memorandumtothe government draft of a law on control and transparency in thecorporate sector, BT-Drucksache 13/9712, p. 15). In this respect, theprovisionis limitedtoproviding a positive regulation ofthe applicable law in the interest of legal clarity for those applying the law.The regulation also fits into the

This is theframework established by the special legal provisions governing the duties of themanagement bodies and is thus a form of these duties. For this reason,thespecific regulations and principles of the legal formremain in place with regard to individual questions, particularly with regard to the consequences of breaches of duty.Moreover,theprovision only specifies minimum requirements. Insofar as special statutoryregulations, such as those in Section 91 (2) of the German Stock Corporation Act (AktG) or Section 25a (1) sentence 3 of the German Banking Act (KWG), contain more extensive requirements, these shall remain unaffected (paragraph 3). In addition to the obligation to monitor risks, the regulation also contains provisions for dealing with identified risks. It is clarified that the managing directors must take appropriate countermeasures and, in accordance with the respective organizational constitution of the company owner,mustalsoinvolvethe supervisory and monitoring bodies and the shareholders in crisis management.

Regarding paragraph 1

Paragraph 1 lays down obligations of the members of the organ ofa legal personappointed to manage the business. Where, as in the case of a limited liability company, in addition to the organ entitled to represent the company, other organsarealsoappointedto make management decisions(partners' meeting), paragraph 1, first sentence, refers to the members of the organ entitled to represent the company alone by the term "managing directors".

Paragraph 1 sentence 1 obliges the managing directors to monitor developments that could endanger the existence of the company. The concrete form and scope of this duty depends on the size, sector, structure and also the legal form of the respective company (see BT printed paper 13/9712, p. 15). In any case, however, the managing directors are required to constantly review the circumstances of the enterprise and the developments relevant to the activities of the enterprise to determine whether they have the potential tojeopardize the continued existence ofthe enterprise if they continue unhindered.

Paragraph 1 sentence 2 also imposes on the managers the duty to take appropriate countermeasures. With regard to the selection of the countermeasures to be takenand their implementation, the managers shall have the scope of assessmentto whichthey are entitled in accordance with the special statutory provisions for management measures. Thebodiesappointed to supervise the management(supervisory bodies) shall be informed immediately. Ifthe measures to be taken affect the responsibilities of other bodies, such as theshareholders' meeting, the managers shall act without delay to ensure that they are taken into account.

Regarding paragraph 2

Paragraph 2 extends the provision tailored to the managers of legal persons to the managers of legal persons who, by virtue of theirdirect or indirect partnership status, manage the business of a company without legal personality, provided that nonatural person is personally liable as a direct or indirect partnerfor the obligations of this company.In accordance with section 15a (1) sentence 2 and (2) InsO, this ensures that theprovisions of (1) also apply to companies without legal personalityfor whose liabilities no natural person is personally liable as a direct or indirect partner. The linguistic differences between paragraph 2 and the models in section 15a (1) sentence 2 and (2) InsO serve solely tostreamline thewording.They are not associated with any change in substance.

Regarding paragraph 3

Paragraph 3 makes it clear that the duties of care and responsibilitiesof managers undercompany lawremain unaffected by other provisions. This applies - in addition to the already mentioned § 91 (2) AktG and § 25a (1) sentence 3 KWG - for example, to the obligation to convene a meeting of shareholders in the event of loss of half of the subscribed capital (§ 49 (3) GmbHG, § 92 (1) AktG), but also to the obligations at the stage of insolvency maturity (§§ 15a InsO, 64 sentence 1 GmbHG, 92 (2) sentence 1 AktG).

Re § 2 (Obligations in case of imminent insolvency)

The provision follows on from § 1 and specifies the obligations of the managers oflimited liability company owners in the stage of imminent insolvency within the meaning of § 18 (2) InsO. The managers areobliged tosafeguard theinterestsofthe creditors. In the stage of imminent insolvency the fulfilment of all obligations of the debtor is endangered. Therefore the imminentilliquidityjustifiestheopening of insolvency proceedings (section 18 (1) InsO) and the use of the instruments of the stabilization and restructuring framework (section 29 (1)). Consequently, the debtor can obtain measures which interfere with the rights of creditors. The obligation to safeguard the interests of creditors established by the provision thus serves as a corrective to thepower which the managers havein the state of imminent insolvencyto take decisions whichaffectthe creditors as residual beneficiaries of the company assets.Since this power exists regardless of whether the reorganisation is pursued within the framework of insolvency proceedings, by making use of the instruments of the stabilisation and restructuring framework or outside of a judicial forum, a general regulation is required which isbasedsolely on the state of threatened insolvency.This regulation is necessary not least because without it gaps in protection and liability could arise. For according to Article 5, point 11 of thisdraft, the forecast period relevant for the examination of over-indebtedness is to be shortened from currently 24 months to twelve months. This also shortens the scope of application of the liability linked to over-indebtedness due to delay in filing for insolvency (§ 15a InsO) and due to violation of the payment prohibitions of § 64 sentence 1 GmbHG, § 92 (2) sentence 1 AktG, § 130a (1) sentence 1, also in conjunction with § 177a sentence 1 HGB, and § 99 sentence 1 GenG, which are generally regarded as an expression of the general obligation of managers towards creditors. Consequently, the obligation to protect creditors threatened tolapse without substitutionin theperiodno longercoveredby over-indebtedness in the future,unless the provision makes it clear that there is an obligation to protect the interests of creditors. This is because under current law there is disagreement on the question of whether the threat of insolvency already triggers an obligatory commitment in favor of the creditors. Theduty to safeguard the interests of creditorsimposed by the provisionisneither a strict obligation to file for insolvency nor a strict ban on payment. It characterizes the state of impending insolvency bycoveringdifferent stages of the crisis.The spectrum ranges from a default in payment not expected for two years to an imminent insolvency. In order to cope with such different situations, different countermeasures for coping with the crisis manifesting itself in the imminent insolvency are naturally considered. While in the first case it may be sufficient to protect the interests of creditors by discontinuing loss-making business activities orsellingloss-generatingparts of the company, in the second case strict measures of mass protection may become necessary. As the crisis deepens in the stage of imminentinsolvency, the duties of the managing directors will therefore also become more stringent.While at the beginning of the 24-month forecast period to which the impending insolvency relates,there will generally be such a broad discretioninaccordance with the large number ofalternativesavailable thattherisk of insolvency will be reduced to a minimum.

hardly ever condensed into concrete obligations to act or to cease and desist in accordance with existing obligations to protect creditors' interests, the discretion will benarrowedin thetransition to insolvency. Inparticular, the uncertainties existing at the beginning of the forecast period about the concrete form of afinancing that will becomenecessary willnot trigger any special obligations as longasthere isno reasonto doubt the debtor's ability to refinance. Theprovision therefore replaces the binary distinction between a non-insolvencyarea, in which managers are not obliged to safeguard the interests of creditors, and the area of material insolvency, in which the protection of creditors' interests is paramount, with a continuous transition based on a regime of obligations and liability that adapts to the degree of crisis. The finding that theaverage insolvency ratesin the single-digitpercentage range indicatethatthe widespread assumption that the claims of creditors are fully adequate until the material insolvency maturity is reached does not apply. Itis also necessary to link the interests of creditors to those of debtors because the legislator's previous expectationthatenabling legally secure access to self-administration proceedings would help debtors to seek early entry into insolvency proceedings has not been fulfilled. A major reason for this can alsobe soughtin the lack of an effective compulsory commitment of themanagementto theinterests of the creditors.

Regarding paragraph 1

Thefirst sentence of paragraph 1 specifies - in transposition of Article 19(a) of the Directive - the obligations of female managers to be derived from the special legal provisions. As from the occurrence of imminent insolvency, the interests of the creditor community must be safeguarded in the performance of management duties (first sentence of paragraph 1). This obligation applies to the members of the body of the legal entity appointed to manage the business. In cases in which, as in the limitedliabilitycompany, to whose management the shareholders are also appointed (§ 45 Paragraph 1 GmbHG), further organs are equipped with management powers, the concept of the managing director is limited to the members of the organs entitled to represent the company. However, the necessary protection of the creditors' interests also affects the other organs in accordance with the provisions of sentences 2 and 3.

The duty is aimed at protecting the interests of the creditors. The managersare therefore obliged to take the interests of the creditors into account when making management decisions and to refrain from taking any measures that are likely tofurther endanger thecreditors' interestsin the state of imminent insolvency. In accordance with the special legal regulations concerning their scope of duties, the managers must be granted a scope of assessment and discretion at the outset. Also the question of whether and how to deal with an imminent insolvency and the underlying causes is essentially a business decision. This is also emphasized by the Directive in Recital70, although the protective purpose of protecting creditors' interests means that risks may no longer be taken to the same extent as they were before the imminent insolvency occurred. In case of doubt, the creditors' legitimate expectations of liability must be given priority.

The organs entrusted with the supervision of the management shall be obliged by subs. 1 sentence 2 to ensure that the managers safeguard the interests of the creditors. Thus the scope of duties of the supervisory bodies is alsogearedtosafeguarding the interests of creditors.

Insofar as the measures necessary to safeguard the interests of the creditors fall within the competence of other organs, resolutions and otheracts of these organsshallremainirrelevant insofar as theypreventthe implementation of the necessarymeasure (subs. 1 third sentence). If corresponding resolutions, such as instructions under § 37.1 GmbHG, remained binding, they would rule out a breach of duty by the managers. Since, however, the organs of the company owner should not be able to dispose of duties which serve to protect the creditors, the observance of corresponding resolutions or instructions must be excluded.Otherwise, the creditor-protecting obligation and the subsequent liability norm wouldrun dry,especially in the cases of the one-person GmbH, which are important for insolvency practice.The irrelevance of corresponding instructions corresponds in all other respects to the applicable GmbH law, whichexcludesliability for breach of creditor-protectingobligations from the possibility of exculpation on the basis of aninstruction (§ 43, Subsection 3, Sentence 3, GmbHG).

Regarding paragraph 2

Paragraph 2 implements Article 19(a) of the Directive, which requires managers to take into account the interests of other parties involved in the business. However, the consideration required under paragraph 2 is subject to the protection of the interests of the creditors as required under paragraph 1. In case of conflict, the interests of the creditors shall be given priority. According to thesixth sentence ofrecital71, this iscompatible with the Directive.

Regarding paragraph 3

Violations of the obligation according to paragraph 1 will result in an obligation to pay damages to the company owner in case of fault according to paragraph 3. The concept of liability as internal liability ensures that the liability model fits into the framework of the special legal liability regulations (for example § 43 paragraph 2 GmbHG). It also takes account of the fact that the transition from the generalregimeofobligations and liability that exists before the onset of imminent insolvency to the liability regime in the state of imminent insolvency is a fluidone.Several parties liable for damages are jointly and severally liable (§ 421 of theGerman CivilCode (BGB)).

Regarding paragraph 4

Although it is an internal liability, it sanctions the violation of obligations owed to creditors. It is therefore necessary, following the example of § 43 (3) in conjunction with § 9b (1) GmbHG (cf. § 93 (5) sentence 3 AktG), to exclude the possibility that the company waives the claim for compensation without the cooperation of the addressees of the liability.

Re § 3 (early warning)

Article 3(1) and (2) of the Directive requires Member States to ensure that companies have access to clear and transparent early warning systems. An early warning systemmust identify circumstances that may lead to probable insolvency and signal to the company the need for immediate action. The concept of "probable insolvency" is the same as that used in Article 1(1)(a) and Article 4 of the Directive, so the early warning systems must be aimed at the preliminary phase of the restructuring period and must enable measures to remedy financial difficulties to be taken as soon as possible.

The Directive does not contain any concrete specifications on the design and mode of operation of the early warning systems mentioned. Theexamples givenin Article 3(2) of the Directive refer to awide range of different subjects. Besides

Mechanisms for notifying the debtor include privately and publiclyoffered advisory services as well as legal incentives for third parties who, such as tax advisors, auditors or social security institutions, have information about the debtor to draw the debtor's attention to negative developments. The number of early warning systems outlined in this way ranges from concrete IT tools for early detectionaccessible by the debtorto abstractlegal incentives and instruments that give third parties reason to draw the debtor'sattentionto negative developments.

Article 3(3) and (4) of the Directive requires Member States to ensure that information is available online through existing early warning systems and is up-to-date, user-friendly and easily accessible to everyone. Recital 22, sentence 5 of the Directive mentions a specially created website or webpage of the Member State as a standard example.

Article 3(5) of the Directive also includes the option of providing special assistance to employee representatives to help them assess the economic situation of the company.

In the Federal Republic of Germany, there are already various advisory services,information duties and state support programs that meet the requirements of the directive on early warning systems.

First and foremost are the duties of the auditors to provide information within the scope of the audit of medium-sized and large companies in accordance with § 267 HGB. According to § 321 (1) sentences 2 and 3 HGB, the auditors must comment on the assessment of the company's situation by the legal representatives and report on facts thatcouldendanger the existence of the audited companyor influence the development of the company. Pursuant to Section 322 (2) Sentence 3 HGB, the auditor's report must separately address risks that could jeopardize the continued existence of the company; pursuant to Section 322 (6) Sentence 2 HGB, it must be stated whether the opportunities and risks of future development have been accurately presented. All of these are early warning mechanisms within the meaning of Article 3 (2) (c) of the Directive, the "incentive" being to comply with the statutory requirements for the audit of financial statements and thus to comply with the professional obligations of the German Auditors' Code. The draft will also clarify these obligations from a professional point of view and at the same timeextendthem to consulting servicesbefore or outside the statutory audit (see Article 20 of thedraft). The counterpart for the profession of tax consultants is the duty to indicate a possible reason for insolvency when preparing annual financial statements for theclient, which results from the contractual obligation to perform work with the nature of an agency contract (see BGH, ruling of 26 January 2017, IX ZR 285/14, marginals 14, 38, 44 et seq.) The "incentive" within the meaning of Article 3(2)(c) of the Directive consists here in duly fulfilling the professional obligations arising from the Tax Consultancy Act (§ 57(1) StBerG). This obligation will also be clarified from a professional point of view in future (see Article 18 of the draft).

Theconsultancy services referred to in Article 3(2)(b) of the Directive arein particular the public consultancy services provided by the chambers of commerce and industry and the chambers of skilled crafts. The former are based on the Law on Provisional Regulation of the Law of the Chambers of Industry and Commerce in theadjusted version publishedin the Federal Law Gazette Part III, Section No.701-1, whereby the counselling services are not expressly named there. A legal clarification in § 1 paragraph 1 of the Chamber of Industry and Commerce Act should therefore be made with this Act (see Article 19 of the draft). TheChambers of Skilled Crafts are based on §§ 90, 91 of the Crafts Code in the versionpublishedon September 24, 1998 (BGBl. I p. 3074; 2006 I p. 2095), whereby here too the advisory services are not explicitly named andare supplemented in the course of this law for clarification(see Article 22 of the draft).

A national on-line consulting offer is availablewith the business startup portal of theFederal Ministry for economics and energy (www.existenzgruender.de). Under the heading "Leading Companies", the portal contains two checklists for detectingsigns of crisis, the "Early Detection Stairway" and a "Crash Test for Early Detection of Weak Points". In addition, it contains various leaflets and brochures on the correct behavior when there are signs of a corporate crisis. The portal will be adapted in parallel with the legislative process.

However, advisory services within the meaning of Article 3(2)(b) of the Directive are also services provided by private bodies. The German government supports access to such advisory services through the Federal Ministry of Economics and Energy's "Promotion of entrepreneurial know-how" program. The program is based on the Framework Directive for the Promotion of Entrepreneurial Know-how in the currentlyvalid version of December 28, 2015 (BAnz AT 31 31.12.2015 B4), whereby the continuation of the program for the follow-up period 2021 to 2025 has already been decided. The program proportionally promotes the use of consulting services on all economic, financial, personnel and organizational issues of companies with up to 249 employees (SMEs as defined by European Union law). The support program is thus a state instrument to ensure access to an early warning system within the meaning of Article 3 of the Directive. It is anchored in national law by the Framework Directive and thus meets the requirements for implementation.

§ 3 serves to ensure the permanent provision of the online information platform required by Article 3 (3) and (4) of the Directive with bundled information on the available early warning systems. This platform is to beestablishedwithin the sphere of influence of the Federal Ministry ofJustice and Consumer Protection and integrated into the website of the Federal Ministry of Justice and Consumer Protection. In order to avoid duplication, the platform will then be able to refer to the business start-up portal of the Federal Ministry of Economics and Energy and to the funding database maintained by this ministry. The provision can belimitedto the publicly offered information as well as the information about governmentalconsulting services and funding opportunities, since a permanence can only be guaranteed for this information.

Part 2 (Stabilization and restructuring framework)Chapter 1 (Restructuring plan)

Chapter 1 contains the provisions on the requirements for restructuring plansand the procedure for voting on such plans. Like an insolvency plan, the restructuring plan forms the basis for interventions in the claims and rights of creditors and shareholders on the basis of a majority decision of the parties involved. The restructuring plan is therefore no different from the insolvency plan as an instrument for the collective-private autonomous management of the debtor crisis.In view of these functional similarities and in view of the fact that the law on insolvency plans has proven itself in practice, the provisions on the restructuring plan are largely oriented closely to the existingregulationsunderinsolvency plan law.Amendments and supplements are only made where thisis promptedby thespecifics of the stabilization and restructuring framework. This avoids that the choice between the insolvency plan procedure and the stabilization and restructuring framework is influenced by differences in the design which are not caused by compelling factual reasons.

Since the negotiations about the plan and also the voting on it should be able to take place out of court, the provisions are in line with the regulations on procedural aids,

which the debtorcan claimagainst theresistance of creditors or shareholdersin order to implement the restructuring project,and in this respect it was placed before the bracket.

Regarding Section 1 (Formation of legal relationships)

The rules gathered in section 1 define which legal relationships can be formed on the basis of a restructuring plan. The guidelines relevant to this question can be found in the initially broad definition ofrestructuring in Article 2(1)(1) of the Directive, to which Article 8(1)(g) refers with regard to the possible content of a restructuring plan. This definitioncoversnot only measures ofrestructuring on theliabilities side(such as the reduction, postponement or conversion of receivables) but also asset-related measures such as the sale of assets, parts of companies or even the entire company. Contract-related measures such as the termination ofcontractsare alsoincluded. However, the Directive assumes that corresponding asset-related and contract-related measures, which the Directive defines as operativemeasures, are subject to the general rules of contract and property law (second sentence of recital 2). The Directivetherefore does notoblige the transposing legislatortolinkthe design effects necessary for the realization of such measuresto the majority decision made in the plan approval process.

Following the model of insolvency law, the draft distinguishes between measures thataredirectlyimplementedthrough the effects of the planand measures that are to be implemented outside the plan, but which may be linked to it through conditional connections. Withregard to the possible content of regulations thatcan be includedin a restructuring plan, the draft again follows the model of insolvency plan law. This applies both with regard to claims and rights which are subject to compulsory structuring in insolvency plan proceedings and with regard tosuch consequences which are brought about by voluntary agreement and inclusion in the plan.

In the restructuring plan,the claims and rightswhichmaybecompulsorilystructuredin the insolvency plan proceedingscorrespond to claims whichwould have to beasserted as insolvency claims in the event of the opening of insolvency proceedings(restructuring claims under section 4 para. 1 no. 1), the rights which would entitle to segregation in such insolvency proceedings (segregation entitlements under section 4 para. 1 no. 2) and the share and membership rightsof the persons involved in the debtor (section 4 para. 3). Under section 4(4)itshould also be possible to design rights to which creditorsare entitledunder asecurity providedby asubsidiary of the debtor to secure theclaimagainst the debtor.Althoughsuch interventions in group-internal third-party collateralare not yet possible under current insolvency plan law, the draft is intended to make them possible in future (sections 217 (2), 223a, 238a InsO-E).

Since in the stabilization and restructuring framework a total maturity ofall claims directed against the debtors must be waived, which is the case in insolvency proceedings via the fictional maturity of section 41 (1) InsO, claims as components of the respective underlying organizations under the law of obligations become the subject of the structuring by the restructuring plan. The latter will consequently affect the respective contractual relationships, which willcontinue to existin principleunaffected by the lis pendens of the restructuring case and will also determine the schedule of obligations of the parties involved in them for the future. Since, in accordance with the insolvency law system, only already justified claims of

However, if the parties areto be subject to the provisions of the restructuring plan, interventions inmutual contractsareonly possible with regard to the claims already established, but not with regard to claims which are attributable to a consideration not yet provided by the other party (Section 5(2)). Insofar as in a restructuring plan the future ties to a mutual contract are to be severed, this is possible under the conditions of Sections 49 et seq. However, plansmayalso contain ancillary provisionswhich result from the underlying contractual relationship (Art. 4 para. 2 sentence 1). In the case of collective financing arrangements,provisionsmay alsobe included in contracts by means of which the creditors coordinate the exercise of their rights vis-à-vis the debtor or delimit them in the sense of a relative ranking (section 4(2), second sentence).

Itshouldbe possible toinclude further measures in a restructuring plan, such as a change in property law (§ 15). However, in this respect, as in the insolvency plan proceedings, the general civil law and other prerequisites for their effectiveness must be ensured in principle, i.e. apart from the formal simplifications also provided for in the insolvency plan law. If the entire debtor's assets or significant parts thereof are sold in the course of such measures, a corrective measure under liability and rescission law is also required. This is because the proceedings under the stabilization and restructuring framework are always only partially collective proceedings, i.e. proceedings in which not all creditors are involved, the transfer of the entire assets, which inevitablyaffectsthe interests of all creditors and thus also of thecreditorswho are not involved,canonly participate in the liability and avoidance privileges to be created under Article 19 of the Directive if it is ensured that thecreditorsnot affectedby theplan can satisfy themselves with priority over those affected by the plan from the consideration appropriate to the value of the object of the transfer (§ 93 (2)).

Finally, the draft shields certain claims and rights from compulsorystructuring on the basis of a restructuring plan (§ 6). Aboveall, a restructuring plan should notbeable to interferewith the claims and rights offemale employees. Also punishments and fines as well as liability claimsfrom deliberate offencesareexcluded. In the context of restructurings based on the restructuring plan, these claims thus have de facto priority. In the absence of a plan, they are always to be paid in full, unless an adjustment is made by consensus. These exceptionscorrespond to the exceptions allowed by Article 1(5) and (6) of the Directive.

Re § 4 (Formable legal relationships)

The provision specifies which legal relationshipscan be shapedby a restructuring plan. It is essentially based on the model of insolvency plan law and therefore covers all claims, rights and legal relationships that are subject to compulsory structuring by an insolvency plan in insolvency plan proceedings (paragraphs 1 and 3). The collateral clauses and otherconditions to which these claims and rights are subject under the underlying agreementscan also be designed.(paragraph 2 sentence 1). In the case of collective financing arrangements such as syndicated financing and loans linked by intercreditor agreements,it also enablesthecontractual relations between creditors to be structured (paragraph 2 sentence 2). Finally, to improve the possibilities of group restructuring, it also allows interventions in group-internal third-party collateral(paragraph 4).

Regarding paragraph 1

According to the model of insolvency law, theclaimsagainst the debtorestablishedat the relevant point in timeand the rights to thedebtor's assets which would entitle the debtor to separate satisfaction in insolvency proceedings can be structured by the restructuring plan. These are therefore those claims and rights which can be subject to compulsory structuring by an insolvency plan in insolvency proceedings. Decisive for the question of the justification of theclaim is the time of the submission of the plan or the initiation of the court coordination proceedings; if the debtor obtains a stabilization order, thetime of the first order is decisive (para. 5).

To number 1

According to paragraph 1, point 1, claims may be created which are justified at the relevant time. For the question of the justification of the claim,recoursemust be made to the principlesaccording to which the justification within the meaning of section 38 InsO is determined. Therefore, all claims can be structured which could be asserted as insolvency claims in the event of the opening of insolvency proceedings. In order to mark the difference to the insolvency proceedings law context conceptually, the provisionrefersto theclaims as restructuring claims.

An exceptional case specifically regulated in § 52 (2) sentence 2 is theclaim for non-performance resultingfrom a termination of the contractpursuant to § 52 (2) sentence 1. Although not necessarily justified at the time of the submission of the plan, this can be shaped by the plan.

To number 2

According to No. 2, rights to objects of the debtor's assets may be createdwhichwouldentitle the debtor to separate satisfaction if insolvency proceedings were opened. Consequently, the scope of the formable security interests results from the insolvency law principles for delimiting the scope of the rights of separation. Conversely, this means that separation rights cannot be the subject of restructuring plans. Since the restructuring takes place outside of the insolvency proceedings and the term "separation" only makes sense in the context of insolvency law, the term "expectation of separation" is used to refer to the rights covered. Excluded from the structuring are, in implementation of the provisions of the Financial Collateral Directive 2002/47/EC and the Settlement Finality Directive 199826/EC and not otherwise than under insolvency planning law (section 223 (1) sentence 2 InsO), financial collateral within the meaning of section 1 (17) of the German Banking Act (Kreditwesengesetz) as well as collateral issued within the scope of payment and settlement systems pursuant to section 1 (16).

Regarding paragraph 2

Paragraph 2 sentence 1 permits, in addition to measures directly related to a restructuring claim or a right to separate satisfaction, also changes to theancillary provisions to which these claims or rights are subject under the underlying legal relationship. Thus the draft draws the consequence from the finding that theclaims and the expectation of segregation, which aresubject to the restructuring claim or the expectation of segregation according to paragraph 1, are affectedas a component ofa legal relationship which in itself continues to exist and is to be continued in accordance with its conditions and provisions. However, if the claim or the expectancy can be structured by the plan itself, there is no reason to make the conditions and ancillary provisions of a structure by the plan accessible. This applies all the more so because, inpractice, solutions can be achievedby structuring only ancillary provisions, for example in connection with an extension of the due dates and the exclusion of existing termination rights, which are less

are more drastic than interventions in the substance of the receivables or separation rights.

Thesubject matter of a design by plan can thus in particularbetheconditions and ancillary provisions commonin financial practiceaccording to which the debtor is obliged to comply with certain financial ratios or to refrain from certain management or financing measures which are likely to worsen the creditors' position. The amendment of such terms and conditions may become necessary in a restructuring situation if it is possible to prevent the entire financing from falling due and the debtor from becoming insolvent. For the same reasons, it may beappropriatefor theimplementationphase ofthe restructuring to relax or adjust excessively restrictive conditions and ancillary provisions to the restructuring situation.

Insofar as a comprehensive contractual legal relationship exists between the debtor and the creditors, which also contains provisions by which the creditorscoordinatethe exercise of their rights vis-à-vis the debtorand delimit the relative entitlements to the proceeds achievable as a result of the enforcement of these rights, not only theprovisions concerningthe relationship betweenthecreditors and the debtor but also the provisions concerning the relationship between the creditors themselvescanbe formulated (sentence 2). In such cases, the individual claims against the debtor and the entitlements to the collateral provided on the debtor's assets cannot be considered in isolation from the agreements made between the creditors.Against this background, interventions in the contractual relationship existing between the creditors can be legitimized on the same grounds that legitimize the intervention in the rights existing against the debtor: If the planned solution puts all parties involved, including those creditors who oppose the planned solution, in a better position, in particular because it is capable of preventing insolvency with its consequential costs, the objection should be surmountable under the same conditions as those that legitimize intervention in the rights existing against the debtor. In particular, consortium agreements and inter-company agreements in the context of complex financing structures are covered.

Regarding paragraph 3

If the debtor is structured as a legal entity or as a company without legal personality, subsection 3 also permits the structuring of theorganizational-legal basis of the debtor and the share and membership rightsof the persons involved in the debtor,following the model of section 225a InsO.The Directive leaves the question of the involvement of the shareholders to the transposing legislator (Articles 2(1) No. 2 and 12 (1) of the Directive). Whether and to what extent the German transposition legislatorshould make use of this is assessed differently. Manyargueinfavour of the comprehensive authorisation of company lawmeasures asprovided for in paragraph 3,following the insolvency law model. Some argue that such interventions in the positions of female shareholders not only require special justification, but also cannot be legitimized in the area of pre-insolvency restructuring, because the value of share and membership rights is not yet impaired due to the lack of insolvency. According to this view, interventions in shareholders' rights should only be permitted on a voluntary basis, i.e. with the consent of the affected shareholders, which must be obtained under company law. In essence, the concerns expressed are based on the assumption that the restructuring framework would intervene in a pre-insolvency crisis phase in which a materialinsolvency does not yet exist. In this case, the shares could not be assumed to be worthless. These objections cannot be raised against the draft. It links the possibility of intervention to the existence of imminent insolvency, which in turn paves the way for insolvency proceedings (section 18 InsO), in which comparable

interference with the rights of the unit holders is possible (section 225a InsO). In addition, each shareholder concerned may prevent the plan confirmation with the objection that it is worse off by the plan (Section 68 (1)). If, in the specific case, theparticipationofthe unit holders is to be attributed an economic value, this value can therefore be asserted against a plan which is designed to deprive the unit holders of this value.

Regarding paragraph 4

Paragraph 4 also permits the structuring of collateral provided by subsidiaries within the meaning of Section 290 (1) sentence 1 of the German Commercial Code (Handelsgesetzbuch, HGB) as security for restructuring claims against the debtor. This facilitates the restructuring of groups by avoiding the opening of insolvency proceedings or the use of the instruments of the stabilization and restructuring framework at the level of the group company providing the collateral. The collateral takers are protected by the fact that they can claim that they are worse off by the plan than they would be without the plan, also with a view to encroaching on the collateral to which they are entitled (Section 68 (1)). It follows from this that the collateral takers are to be compensated from the debtor's assets to the extent that their collateral right is valuable. The value of the collateral may in any case be impaired in individual cases because the capital maintenance obligations of the assets of the subsidiary providing the collateral exclude full access to the collateral.

Regarding paragraph 5

Therelevant point in time within the meaning of subs. 1 shall, in accordance with subs. 5, in principle be thepointintime at which the debtor of the plan renounces its consent for the purpose of a plan vote, whether in an out-of-court vote (sections 19 et seq.) or a vote in court proceedings (section 29 subs. 2 No. 1, section 45). In the case of a stabilization order, the date of the order shall take the place of the submission of the plan; if the debtor obtains several orders or subsequent orders (section 56), the date of the first order shall be decisive

Re § 5 (Conditional and not due restructuring claims; claims from mutual contracts)

Regarding paragraph 1

The provision first of all clarifies that the maturity of a claimisnota prerequisite for its formability. In principle, this already follows from the fact that according to § 4 (1) no. 1, (5) theclaimsestablished at the time of the submission of the plancan be structured. Justification does not presuppose a due date. Conditionalclaims arealsoincluded. This applies not only to claims subject to a condition subsequent, but also to claims subject to a condition precedent. This is because even claims subject to a condition precedent can put a strain on the debtor's assets and financial position and thus trigger a need for adjustment. Special features arise solely with regard to the voting weight tobe assigned to such claims in the vote. This shall bedeterminedtaking intoaccount the probability of the occurrence of the condition (section 26(2)(1)).

Regarding paragraph 2

Paragraph 2 makes it clear that claims from mutual contracts can only be structured if and to the extent that the other party has performed the service incumbent upon it. The restructuring plan is therefore not an instrument for intervention in the contractual synallagma.Under the conditions of § 4 paragraph 2, interventions in contractual relationships are only possible in

Additional provisions are possible or in the form of a termination of the contract according to §§49ff.

Re § 6 (Excluded legal relationships)

The legal relationships mentioned in § 6 cannot be structured by a restructuring plan.

To number 1

With the exception in point 1 for claims arising from the employment relationship, the draft makes use ofthe option containedin Article 1(5)(a) of the Directive. The draft is based on the one hand on the idea that the continuation of the company aimed at with the restructuringrequires afunctioning operational business, whichis not conceivablewithout the participation of the female employees. If a company is already no longer in a position to settle the claims against the employees, the crisis is usually so deepened that it cannot be adequately managed with the partial collective procedural assistance of the Stabilization and Restructuring Framework. In addition, unlike in insolvency proceedings, it is not possible to resort to insolvency money to protect employees. Against this background, it cannot be ruled out that human resourcesrestructuring measures willalsobe carriedout in the course of the restructuring project.However, these mustbecarried outincompliance with general collective and individual labor law regulations.The Stabilization and Restructuring Framework does not provide any assistance for the implementation and enforcement of such measures.

The exclusion of the inclusion of claims in connection with the employment relationship is also intended to ensure that rights arising from commitments to company pension schemesareshielded from being shaped by the plan.According to Article 1(6), this is mandatory under the Directive and is therefore expressly clarified in the wording of point 1.

To number 2

Article 1(5)(c) of the Directive explicitly allows claims arising from tortious liability of the debtor to beexcludedfrom the preventive restructuring framework.The draft makes use of this for the area of intentionally committed torts. This corresponds to theideaexpressed in section 302 no. 1 InsOand is necessary to preserve the steering effect of liability for intentional acts.

To number 3

For the non-shapability of claims for sanction payments of all kinds (fines, penalties, administrative fines and periodic penalty payments as well as such secondary consequences of a criminal offence or administrative offence that oblige to a monetary payment), thesame considerations as in the case of intentional criminal actsare initially in dispute. Inaddition, it shouldbeavoidedthatthe sanction character of these claims loses its effect bybeing borneby the other creditors with their contributions to the restructuring.This provision is reflected in the Insolvency Plan Law in § 225(3) InsO. The admissibility of such a regulation results from a first right conclusion from Article 1 (5) (c) of the Directive, which applies to claims for damages in tort.

To set 2

The limitation toclaims and rights related to the entrepreneurial activity, asprovided for in the case of debtors who are natural persons, isbased on the fact that, according to Article 1(2)(h) of the Directive, the restructuring procedure must not be available to natural persons who are notentrepreneurs. It would not be logical and wouldmeanunjustified unequal treatmentif women entrepreneurs were to have the instruments of the restructuring framework available for their private liabilities, but non-entrepreneurs were not to have them available for similar liabilities.

Re Section 2 (Requirements for the Restructuring Plan)ReSection 7 (Structure of the

Restructuring Plan)

The fundamental distinction between a descriptive and a formative part of the plan and the obligation to include certain annexes is based on §§ 219 ff. InsO. In detail, however, restructuring plans and insolvency plans may differ in structure and content, because when determining the minimum contentof the restructuring plan the extensive requirements of Article 8 (1) of the Directive must be observed. Details of the necessary contents of the plan are outsourced to the appendix to the Corporate Stabilization and Restructuring Act in order to relieve the burden and improve the readability of the legal text. Even if the contents of the plan are thus partly designed differently from insolvency plan law, thedistinction between descriptive and formative plan elements also in restructuring law reflects two basic functions of the plan: the descriptive part serves to inform those affected by the plan and the restructuring court, the formative part serves todetermine the legal effects of the restructuring plan. The formative part must clearly and completely describe the formative effects, because the court is bound by the agreed plan and can onlyconfirm or refuse to confirmthe plan as awhole and without its ownamendments. Therefore, the determination of the legal effects cannot onlybe madeby the court's confirmation order.

Re § 8 (Presenting Part)

While the formative partdefinesthe legal changes to be brought about by the plan, the descriptive part describes and explains the restructuring concept that is to be implemented on the basis of the plan and with the effect of the legal consequences provided for in the formative part. In this context,the measures that cannot or should not be brought about by the effects of the plan, but are to be implemented by other means, must alsobe described.This appliesin particular to measures of personnel management restructuring which cannot be realized either by means of the effects of the plan (sentence 1 number 1) or by means of the instrument of termination of the contract (§ 49 (2)).

Regarding paragraph 1

The regulation is based on section 220 (2) InsO. The descriptive part serves toinform those affected by the plan. They shouldbeable to basetheir decision on comprehensive and comprehensibleinformation about the measures to be taken, their effects and the consequences that are likely to arise if the plan is notadopted. This purpose is also served by the obligation to present the measures that are not to be implemented via the design effects of the plan, as those affected by the plan are onlyable tomake a properassessment of the restructuring planon the basis of an overall view of the restructuring concept.

Regarding paragraph 3

According to paragraph 2 sentence 1, the plan must contain a comparative calculation whichshows and justifiestheeffectsofthe plan regulations on the prospects of satisfaction of the plan participants.Also in this respect, the regulation is based on the insolvency plan law. Admittedly, this law has hitherto lacked an explicit provision on the necessity of asettlement calculation (cf. BT-Drucksache 12/7302, p. 182); this is to be created only with this draft (Article 5 No. 23). However, the overall legal conceptof sections 245 (1) no. 1, 247 (2) no. 1, 251 (1) no. 2 and 253 (3) no. 3 InsO expresses that a plan confirmation against the will of individual participants presupposes that the plan does not place these participants in a worse position than they would be without a plan. This can only be assessed on the basis of a comparative calculation, which is therefore part of the information which, under paragraph 1 sentence 1 and section 220 (2) InsO, is relevant for the consent of the plan participants and for the confirmation of the plan. Pursuant to sub-section 2 sentence 2, the settlement calculation must in principle be based on going-concern values if thecontinuation of the enterprise onthebasis of the restructuring plan is intended. Liquidation values may onlybe used if it isnot possible to continue or sell the company otherwise. The latter requires a well-founded justification. The debtor should not be allowed to assume liquidation without such well-founded justification and thus be able to create greater scope for intervention in the rights of those affected by the plan.

Regarding paragraph 3

If the plan provides for interventions in third-party collateral within the group (Art. 4 (4)), the descriptive part must also reflect the circumstances of the collateral provider in order to enable an assessment of the value of the collateral and the effects of the plan on the position of the collateral taker.

Re § 9 (formative part)

The regulations are essentiallymodelled onthe regulations in the Insolvency Code in theformative part.

Regarding paragraph 1

Paragraph 1 is based on the provision in section 221 sentence 1 InsO and contains a legal definition of the term "plan participants", under which the holders ofrestructuring claims, vested rights to separate satisfaction, group-internal third-party collateral and membership and share rights affected by the provisions of the structuring partare grouped.

Regarding paragraph 2

Paragraph 2 is modelled on section 224 InsO with regard to the holders of included claims and section 223 paragraph 2 InsO with regard to the holders of segregation entitlements. The wording takes into account the fact that notall creditors are necessarily included in the restructuring plan.

A parallel provision to section 223 (1) sentence 1 InsO is not necessary because only the rights included which entitle to segregationcan be structuredin the restructuring plan anyway.

Regarding paragraph 3

If the plan is intended to formulate the ancillary contractual provisions and agreements referred to in section 4 para. 2 between creditors and holders of segregation rights and between them and the debtor, it shall specify how these agreements are to be amended.

Regarding paragraph 4

Subsection 4 sentences 1 to 3 are based on the provision of section 225a (2) InsO.Theprovision in sentence 3, half-sentence 1expressesthelegal conceptexpressly regulated in section 225a (2) sentence 2 InsOthata conversion of claims into share or membership rights in the debtor against the will of an affected creditoris not permissible. If a creditor does not agree to a conversion of her claim, a cash settlement must be provided for the creditor concerned. For the determination of the amount of the cash settlement, the payment and any interest, the provisions in section 225 (5) InsO regarding the withdrawal of a person involved in the debtorapplymutatis mutandisby virtue of anexpress reference. Paragraph 4 sentences 4 and 5 are based on the provision in section 225a (3) InsO. In this respect, section 225a (4) and (5) InsO aredeclaredto beapplicable mutatis mutandis.

Regarding § 10 (selection of those affected by the plan)

In contrast to insolvency proceedings, the instruments of the Stabilization and Restructuring Framework are partially collective procedural aids. Not allcreditors are affected by the restructuring plan. In all cases, the claims mentioned in § 6 remain unaffected. In addition, the debtor must begranteda selective discretion indetermining those creditors to whom it demands contributions to achieve the residual restructuring target. Article 8(1)(e) of the Directiverequires the debtorto have acorresponding discretionarypower of selection.According to the third sentence of Recital 46 of the Directive, the transposing legislator maysubjectthis discretion to judicialreview. Thedefinition of the criteria and evaluation aspectson thebasis of which this review can be carried out is lefttothe discretion of the transposing legislator.§ Section 10 defines these standards on the basis of the criterion of appropriateness.

The selection of those affected by the plan must be made in accordance with sentence 1 on the basis of appropriate criteria. It is not at the debtor's free discretion. Thus the draft prevents the danger of manipulation, which would have to be procured in case of an unbound discretion. Although it can be assumed at the outset that rationally acting plan participantswould not agreetoa plan solution that would require them to make sacrifices thatappearunreasonableand unjustifiedin view of the fact that other creditors and participants, who are essentially equally well off, would be spared.Ensuring full transparencywith regard to the circle of included and non-included creditors by the representing part thus makes a significant contribution to preventingabuse. For this reason, the first sentence provides that the criteria used to distinguish between included and non-included creditorsmust be explained and justified. This is to enable those affected by the plan to assess not only the appropriateness of the restructuring concept on which the plan is based, but also the appropriateness and adequacy of the burden-sharing. As all creditors except for the creditors mentioned in § 6can be includedin the plan, provision must be made for those cases in which persons affected by the plan are not easily able to fully assert their interests in the residual restructuring situation. In particular, in the case of small creditors with claims of a manageable size,theremay be an imbalancebetween the effort that would be required for the proper representation of their interests and the income that such effort promises. If it concerns

besides with the concerning around small or Kleinstunternehmen or even Verbraucherinnen, then the possibility of these concerning to notice their interests in the thing is often from the beginning borders set. This is because assessing the economic appropriateness ofa restructuring plan, the plausibility of the underlying conceptand the consistency of the provisions of the structuring part willgenerallyrequireexpertise and experience in restructuring and financing matters.

Sentence 2 specifies the concept of appropriateness. According to this, there is always and without further ado an appropriate selection if the creditors not includedmay expect full satisfactioneven ininsolvency proceedings (no. 1) or if all creditors are included in the plan with the exception of the creditors mentioned in section 6 and who by law cannot be included (no. 3). Finally, according to No. 2, a proper selection shall be made if, in view of the economic difficulties to be overcome, itappearsappropriate under the circumstances.This depends primarily on the measures whichappear necessaryunder the specificcircumstancesinorder to be able to implement the restructuring solution at all. As an example, the provision of point 2 highlights arestructuring limitedtothe design of financial liabilities.Such a restructuring may be appropriate in individual cases for several reasons: First, it typicallyinvolves only professional creditors who are easily able to effectively assert their interests in the restructuring process and tointerprettheinformation in the descriptive part appropriately. In addition, a restructuring focused on financial liabilities finds its equivalent in the practice of free reorganisation and thereby does justice to the finding that it may be desirable to keep the operative business operations free of any frictions in the restructuring process. Naturally, all this does not exclude the possibility that the inclusion of receivables from supplier credits or other legal relationshipsmayalsoappearappropriateif their inclusion appears necessary in consideration of the amount of receivables and the restructuring goal to be achieved. Therefore, this list is not to be understood as exhaustive.

Re § 11 (Classification of plan participants into groups)Reparagraph 1

The provision is based on its model under insolvency plan law in section 222 (1) InsO. In addition, the distinction between secured (number 1) and unsecured claims (numbers 2 and 3) is expresslystipulatedby Article 9 (2) of the Directive.No use is madeofthe possibility of generally exempting small and medium-sized enterprises from the obligation to form groups in accordance with the third subparagraph of Article 9 (4) of the Directivebecauseno particular difficulties arisefrom the formation of themandatory groups specifiedin paragraph 1and the distinctionat least of the mandatory groups mentioned there is also necessary in the case of such debtors in the interest of a transparent presentation of the different economic situations of the creditors and shareholders concerned.

In assigning restructuring claims to the simple (No. 2) and subordinated (No. 3) classes, paragraph 1 deviates in part from the model of the insolvency order. In principle, § 4 (1) followsthe concept of the delimitation of insolvency claims, which according to § 38 InsOis to be carried outonthe basis of the merits at thetime of the opening of proceedings, in order to delimit the claims which can be structured in the restructuring plan on the basis of the merits at the relevantpoint in timepursuant to § 4 (5).However, interest and late payment surcharges in the insolvency proceedings,insofar as they are attributable to the period after the opening of the proceedings,aresubordinate insolvency claimspursuant to section 39 subsection 1number 1 of the Insolvency Statute.The stabilization and restructuring framework does not providefor acorresponding differentiation.

occasion. Also the interest amount shouldbe formableas a component of the underlying contract orother legal ground of the principal claim. The penalties and other sanctions ranking in the rank of section 39 (1) no. 3 InsO are not accessible to structuring by a restructuring plan (section 6 no. 2). The claims to free services (section 39 (1) no. 4 InsO), claims to the return of shareholder loans and from legal acts which correspond economically to such a loan (section 39(1) no. 5 InsO) and claims with agreed subordination (section 39 (2) InsO)therefore remain as subordinate restructuring claims.

The allocation of the group-internal third-party collateral to a separate planning group (sentence 2) reflects the different mode of operation of third-party and own collateral and thedifferent economic position of the creditors benefiting from third-party and own collateral.

Regarding paragraph 2

As in the insolvency plan (section 222 (2) InsO), the formation of subgroups is also permitted in the restructuring plan. Here as there, differenteconomic interestsaredecisivein the delimitationand the formation of groups is subject to a control of appropriateness. As with section 222 (2) sentence 3 InsO, the delimitation criteria must be stated in the remaining restructuring plan in order toprovidethose affected by the plan with acomplete basis of informationwhen voting on itand to enable the restructuring court to review it when confirming the plan.

The provision of sentence 3, according to which the claims of small creditors withinthegroups to be formed in accordance with subs. 1 are to be allocated to separate sub-groups, is justified by the majority requirements which deviate from insolvency law.While under insolvency plan law a cumulative head and aggregate majority is required in each of the individual groups pursuant to section 244 (1) InsO, section 27 (1) requires an aggregate majority of75% without an additional head majorityineach group when voting on the restructuring plan.Although the qualified cumulative majority of 75% reduces the risk of a majority of small creditors by large creditors, it cannot exclude it. In order to do justice to the purpose of the double majority requirement, which is aimed at protecting small creditors from such majorities, the draft provides that small creditorsare to be united in a separate group. Thefourth subparagraph of Article 9(4) of the Directive, which addresses the protection of vulnerable creditors such as small suppliers, explicitly allows for group formation requirements that serve this purpose. The circle of small creditors is not determined according to criteria that are the same for all types of enterprises. Rather, it depends on the creditor structure of the company in detail. Relative criteria (share of liabilities to the creditor concerned in the total amount of all liabilities of the debtor) and absolute criteria (absolute amount of the claims of the creditor concerned) canbe used.

Re § 12 (Equal treatment of persons affected by the plan)Reparagraph 1

The regulation is based on section 226 (1) InsO, whereby the requirement of equal treatment at this level applies exclusively within the plan participants of a group. Whether a non-included claim or a non-included right, which would have had to be allocated to the same group if it had been included, has rightfully not been included is subject to the upstream assessment under section 10.

Regarding paragraph 2

The provision goes back to § 226 (2) InsO and is linguisticallyadapted to the scope of application which is limitedto those affected by the plan.If a person affected by the plan -in particular in the interest of the success of the restructuring -agrees tobetreatedless favourably thanthe plan,and thisis documentedin alegally secure mannerinadeclaration of consentattached to the restructuring plan, there is no reason totakesuchunequal treatmentas areason to deny the plan confirmation.

Regarding paragraph 3

The regulation of paragraph 3 is based on § 226 paragraph 3 InsO. Here, too, the content of the provision only refers to those affected by the plan, as only these persons are entitled to vote in the context of the plan acceptance. Plan-affected persons are to be protected against the fact that the debtor indirectly places them in a worse position than other plan-affected persons of the same group in the context of the restructuring bytreatingall plan-affected persons of this groupequally in the plan itself,but bycompensatingplan interferences in the rights of individual plan-affected personsof the same group outside the plan.

Re section 13 (Liability of the debtor)

The provision contains an interpretation rule based on section 227 (1) InsO, whereby the presumption only refers to the claims and rights included. The legal conceptof § 227 (2) InsO is included in § 71 (2). The claims are not deemed to be waived in the sense of § 397 of the German Civil Code, but are merely unenforceable in the corresponding amount and are thus imperfectclaimsthat arenot legally enforceable.

Re § 14 (New financing)

The regulation first of all contains a legal definition of the term new financing. In addition, it clarifies the admissibility of including provisions concerning new financing in the restructuring plan. The basis of the provision is Article 2(1)(7), 8(1)(g)(vi) of the Directive; in so far as the justification of the need for new financing is required there, acorresponding provision is contained in point 8 of the Annex to the StaRUG. Since the long-term continuation of the transfer of funds already granted in the past beyond the previously agreed due date of repayment and long-term deferrals of other claims correspond economically to a new financing, extensions and deferrals are also included in the concept of new financing. The same applies to the assumption of joint liability to secure a loan, whichpromotesthe willingness of lendersto provide funds and can thus ultimately contribute to the implementation of a restructuring plan. As an integral part of the plan, new financing also falls within the scope of protection of the restrictions on avoidance under Section 94 (1).

Re § 15 (Change in property law relationships)

According to the model of § 228 InsO, property law measures in the restructuring plan can also be subject to a plan regulation. Without a correspondingregulation, the restructuring plan would only have an effect under the law of obligations. The regulation enables time and cost savings, for example, bymakingnotarizations ofdeclarations made in the plan dispensable.

Re § 16 (declaration of viability; balance sheet; profit and loss and finance plan)

Regarding paragraph 1

In addition to the provision in Paragraph 8(2), the provision in Paragraph 1 serves to implement the first sentence of Article 8(1)(h) of the Directive. A provision relating to thesecond sentenceof Article 8(1) (h) of the Directive is contained in § 80 (3).

Regarding paragraph 2

The rule in paragraph 2 is based on Article 8(1)(b) and (g)(v) of the Directive. It is based on section 229 sentences 1 to 2 InsO. There isno need fora regulationin accordance with section 229 sentence 3 InsO because from the outset only those creditorswhose claims and rights the debtor includes in the plan are countedamong the plan participants.

Re § 17 (Further Annexes)Reparagraph 1

The provision is based on section 230 (1) sentence 2 InsO. A parallel provision to section 230 (1) sentences 1 and 3 InsO is dispensable, as only the debtor may submit a restructuring plan.

Regarding paragraph 2

Following the model of section 230 (2) InsO, in the event of a conversion ofclaims into shares, declarations of consent of all creditors affected by thismustbeattachedto the plan.

Regarding paragraph 3

The model for the regulation of paragraph 3 is section 230 (3) InsO.

Regarding paragraph 4

The inclusion of an intra-group third party collateral in the debtor's restructuring plan is subject to the consent of the collateral provider in ordernot to restrictitsentrepreneurial freedom without necessity. If it decides to fully satisfy the debtor's creditor based on the third-party collateral provided, there is noreason to prevent it from doing so.

Re § 18 (Checklist for restructuring plans)

The provision implements the requirements of Article 8(2) of the Directive.

Regarding Section 3 (plan reconciliation)

This section contains rules for plan reconciliation. The debtor isgiventheopportunity to carry out the plan reconciliation on his own responsibility (sections 19 et seq.). However, it may also have the vote carried out in court proceedings (Sections 25, 45 et seq.). The majorities required for the adoption of the plan arelaid downin sections 26 et seq.

To subsection 1 (plan offer and plan acceptance)

The vote on the restructuring plan may be carried out by the debtor in accordance with sections 19 et seq.Inthis case, the plan coordination does not take place in the ways and forms prescribed by procedural law, but takes place in private self-organizationwith the aim of shaping the legal relationships affected by the plan in a privately autonomousmanner and thus exclusively in the forms of action under private law: With the offer to accept the plan directed at those affected by the plan, the debtor expresses in case of doubt that she wishes to be bound by the provisions contained in the formative part of the plan, provided that those affected by the plan are also bound by these provisions (cf. § 20) - be it as a result of an acceptance by all plan participants or as a result of a court confirmation of the accepted plan (section 71). With theirdeclaration of acceptance, the plan participants express their will to be bound by such a settlement, provided that only all plan participantsare boundbyit.Whether the plan approval is to be construed constructively as an act of decision-making by a group of persons to be conceived as a community of the plan participants, as an attempt to conclude a settlement agreement or as a simple connecting factor for the judicial shaping of law brought about by the judicial confirmation of the plan(cf. on thisdiscussion relatingto the insolvency plan proceedings and to the compulsory settlement proceedingsunder the Insolvency Act and the Settlement Rules, most recently Fritzsche, Die juristische Konstruktion des Insolvenzplans als Vertrag, p. 113 ff. In any case, the judicial confirmation of the plan is intended toacknowledge the will of a majority of the parties involved that satisfies the requirements of §§ 27 f.and to make it valid also vis-à-vis the dissenting parties affected by the plan, provided that the requirements for plan confirmation are met. Irrespective of the interpretation ofthe commitment brought about by the plan confirmation, the provisions on the plan confirmation are linked to the result of an exercise of will by the participants, whichis aimedat the realisation or non- realisation of thelegal consequences provided forin the formative part of the plan.Therefore, the provisions on declarations of intent shall apply to the plan offer and the declarations of plan acceptance, unless otherwise provided for in Sections 19 et seq. This applies irrespective of how the plan acceptance is organized, i.e. whether itiscarried outby way of a formal vote, in ameeting ofthoseaffected by the plan (Section 22) or otherwisein accordance with themodalities specifiedin the plan offer.The legal regulations and principles, especially with regard to the interpretation of the declarations, must alwaysbeapplied. This also applies in principle to the handling of deficiencies of will, for which §§ 116 ff. of the German Civil Code are decisive. However, such defects of intent can onlybe asserteduntiltheconfirmation resolution becomes legally binding.After that they are considered to be cured (§ 71 paragraph 6). Thisrestrictiontakes intoaccount the collective character of the plan approval.

The debtor is also given the opportunity to put the plan to the vote in a court voting procedure. This procedure is based on the provisions of insolvency law regarding the date of discussion and voting. The fact that the provisions on thevotecarried out by the debtor donot applyto these proceedingsdoes not mean that the declarations and actions of the parties involved cannot also include declarations of intent. Inviewoftheapplicability of the regulations based on insolvency proceedings law, this question, on which nothing in insolvency law depends, can be left open.

Re § 19 (Plan Offer)Repara. 1

The submission of the restructuring plan for the purpose of voting isreferred toas a plan offer, which requires acceptance by those affected by the plan. This offer must contain an indication that the plan, if accepted by a majority, will

can also become effective against plan participants whohavenotacceptedthe offer. In order to enable those affected by the plan to make their decision on an informed basis, the complete restructuring plan and annexes must be attached to the offer.

Regarding paragraph 2

As not all claims, separation rights, intra-groupthird-party collateral and share and membership rights of a plan participantarenecessarilyto be fully included in the restructuring plan and as several included claims and rights of a plan participant can be assigned to different groups, each plan participant must be able to see without doubt from the plan proposalwhich of the claims and rights to which it is entitled are included in the plan to what extent and in which groups itisentitled tovote and with which voting rights.

Regarding paragraph 3

In principle, it is possible to structure a vote on the restructuring plan in such a way that at no time is there a meeting of those affected by the plan or a judicial discussion and voting meeting. However, it should beensuredthat, at the request of a plan-affected party, ajoint discussion of the plan by all plan-affected parties is heldat least oncebefore the planis votedon(Section 23 (1)). To ensure that this right is known to all plan participants, it must be pointed out in the plan proposal.

Regarding paragraph 4

As arule, the plan offer is subject to the written form (§ 126 of the German Civil Code).If, in the course of negotiations on the plan, a different form is agreed between the debtor and individual plan participants, e.g. because a plan participantissatisfied with a transmission of the plan offer in text form, theagreed formapplies.For the acceptance of the plan the principle applies that the debtordeterminesthe formin which the declarations of the plan participants are to be made. If the debtor does not make a determination, the acceptance of the plan is also subject to the written form.

Re § 20 (Interpretation of the Plan Offer)

The interpretation rule states that in case of doubt the plan offerisnotdirectedat an isolatedbinding of the debtor in relation to individual plan participants who accept the offer. Rather it is to be assumed that the debtorwants to be boundto the plan only ifeither all plan concerning agree or the planis judicially confirmedafteracceptance by a sufficient majority of plan concerning. Therefore, the plan offer aims exclusively at binding all those affectedby the plan.

Re § 21 (Acceptance Period)

The acceptance period of at least 14 days is intended to ensure that those affected by the plan have a sufficient period of reflection before deciding whether to accept or reject the restructuring plan. Although it is regularly also in theinterestofthe debtor to determine a sufficient period of acceptance, because according to Section 27 the voting rights of the approving plan participants in each groupmust correspond toat least three-quarters of all voting rights in the respective group and not only to three-quarters of thevotescast.Votes not cast therefore have the same effect as rejections.However, the debtor should notbeable to exert pressureon those affected by the plan by setting an unreasonablyshort deadline in order to force them into a hasty andunjustified decision.

not to move sufficiently thought-out consent. The requirement tograntthose affected by the plansufficient time to considertheplanand toavoidbeing taken by surpriseis also satisfied if theessential contents of the plan have been brought to the attention of all those affected by the plan at least 14 daysbefore the binding offer of the plan. Aprerequisite is that the restructuring concept with allessential contents of the plan has been submitted in text form to all those affected by the plan in due time and that the provisions and their explanations show how the legal position of the affected parties is to be shaped by the plan.

Re § 22 (Voting within the framework of a meeting of those affected

by the plan) Re paragraph 1

Instead of the voting procedure without an assembly pursuant to sections 19 et seq. the debtor may immediately convene a meeting of the persons affected by the plan to vote on the plan. This can be useful, for example, if it otherwiseexpectsarequest by a plan participantfor a discussion meeting to be called under section 23(1)orifithasnot yetconclusively discussedthe restructuring planwith all plan participantsin thecourse of the precedingnegotiations. The meeting shall be convened in writing (§ 126 of the German Civil Code). Here too, the minimum notice period of 14 daysensuresthat those affected by theplan have sufficient time to considerthe plan, prevents them from being taken by surprise and ensures that those affected by the planhave sufficient time to organize their travel. Those affected by the plan can only make good use of the reflection period, also with regard to protection against surprise, if the complete restructuring plan is available to them throughout the entire period. The reduction of the period to seven days in the case of electronicparticipation refers only to the convening notice. Even if electronic participation is permitted,the complete restructuring plan or the residual restructuring concept pursuant to § 21 sentences 2 and 3 mustbeavailable to the persons affected by the plan at least 14 days before the date.

Regarding paragraph 2

In order to strengthen the willingness of those affected by the plan to participate, the debtor has the possibilitytoenablethem to participate in the voting meeting also by electronicmeans. It is the debtor's responsibilitytocreatethe technicalprerequisites toensurethat all those affected by the plan who participate electronically are aware of all essential processes of the negotiation andcanexpressthemselves like thosepresent and communicate with other participants.However, it cannotrestrictthe possibility of participation to electronic communication channels, so that every person affected by the plan has the right to participate personally at the place of assembly in any case. If those affected by the planparticipateby electronic means, the debtor must prove in cases of doubt in accordance with section 67(3) that those affected by the planwho claim to have been prevented from attending in full by technical transmission difficulties were not prevented from attending for reasons within thedebtor's sphere of responsibility.

Regarding paragraph 3

The debtor as chairman of the meeting must ensure that all those affected by the planwho wish to commenton the restructuring plan or on othercircumstances relevantto the voteare given the opportunity to do so and that a discussion of the points addressed is made possible among those affected by the plan. On request, it mustprovideinformation on the plan and thecircumstancesrelevant for its assessment.Insofar as persons affected by the planhave submitted proposals for amendments to the planin good time (at least one day beforethebeginning of the meeting), theseproposals for amendmentsshall bediscussed individually. Proposals for amendments received late

can also bring the debtor to the discussion, but she does not have to. The debtorcan accept proposed amendments, but does not have to. Only the plan which the debtor ultimately puts to the vote is put to the vote; a vote on competing plans is excluded.

Regarding paragraph 4

If the debtor amends the restructuring plan sent with the notice conveningthe meeting, whether by accepting a proposal for amendment pursuant to subsection 3, sentences 3 and 4, whether on the basis of the discussions in the meeting or for other reasons, the amended plan may only be voted on in the same meeting if the amendments are limited to individual items. If the amendments go beyond this, a new plan proposal in accordance with §§ 19 et seq. or a calling of a new voting meeting in accordance with paragraph 1 is required. For delimitation, recourse may be had to the case law on section 240 InsO.

Regarding paragraph 5

Since the reconciliation is carried out separately for each group, individual plan participants who are entitled to several included claims and rights can be called up several times for reconciliation. Within the scope of its freedom to determine the voting modalities, the debtor can, for example, have the vote carried out by ballot paper or by a show of hands. The obligation to electronically confirm receipt of votes cast electronically is intended to ensure that all votes cast are correctly taken into account.

Re Section 23 (Discussion of the Plan)Repara. 1

If the debtorhasnot previouslygivenall persons affected by the plan the opportunity tojointly discuss the plan or the restructuring conceptimplementedby the plan, each person affected by the plan has the right to request the debtor to convene a discussion meeting. The request does not require any justification. If the debtor does not comply with the request, the plan may not be confirmed under section 67(1)(2) even if it is accepted with the required majorities.

Regarding paragraph 2

The minimum notice period should enable those affected by the plan topreparefor themeeting, to organize their travel and, if necessary,to contactother people affected by the plan in advanceand agree on a common line. If electronic participation is made possible, the minimum notice period is reduced toseven days, as the mandatory requirement to organize travel is no longernecessary.

Regarding paragraph 3

The order of the corresponding application of Art. 22 para. 3 has the consequence that the debtor also presides over the discussion meeting and that the rights of the persons concerned with the plan to information, statement and discussion apply.Proposals for amendments received in time shallalso bediscussedat the discussion meeting.

Regarding paragraph 4

The provision ensures that the discussion meetingcan fulfilits purposes for the plan participantswho request its convening. Therefore, after implementation

At the discussion meeting, all parties affected by the plan were again given the opportunity todecideonthe acceptance or rejection of the restructuring plan without being bound by a previously made declaration. If theyarrive at a different opinionas a result of the discussion meeting, they can alsoincludethis in their voting decision.

Re § 24 (Documentation of the vote)Reparagraph 1

The documentation of the voting result to be produced by the debtor serves to inform the parties affected by the plan and the restructuring court and enables the parties affected by the plan to check whether the perception of the debtorcorresponds totheir own perceptions, and the court to check that the voting procedure is conducted properly. The documentation represents a declaration of knowledge of the debtor and does not develop any particular evidential value.

Regarding paragraph 2

The function of informing those affected by the plan and enabling them to carry out checks can only be fulfilled if the documentationis made availableto those affected by the plan without delay.

Re § 25 (judicial plan approval procedure)

The debtor has the right to have the vote carried out in judicial proceedings in accordance with sections 45 et seq. This may be useful, for example, toavoiddoubts as to the properconduct of the voting procedure, which may lead to a refusal to confirm the plan in accordance with section 67(1) no. 2, paragraph 4.

Re subsection 2 (Voting rights and required majorities)

The regulations on voting rights and the majorities required for the adoption of the planare based on themodel of the insolvency plan procedure. In doing so, it is dispensed with making the acceptance of the plan dependent on the achievement of a double majority, in accordance with the model of § 244 (1) InsO, in which a head majoritymust be achievedinaddition to a sum majority, i.e. a majority based on the sum of the claim amounts.Rather, in the stabilization and restructuring framework, a 75% qualified majority of the total amount of claims should be sufficient. The requirement ofan additional head majorityissuitableforcounteractingthe dominance of large creditors, which can occur in the case of a pure majority of sums. However,the draft addresses this danger in a different way. According to sec. 11 para. 2 sentence 4, separate groups are to be formed for small creditors, which exclude a group-internal dominance of the large creditors over the small creditors. On the other hand, a qualified majority of 75% of the claim sums and not, as in the insolvency plan proceedings, only a simple majority shall be required for the adoption of the plan. In contrast, the statute of an additional head majority would have to provide for precautions against abusive arrangements through the short-term splitting of claims. In contrast to insolvency proceedings, for which the opening of proceedings is the relevant point in time (section 244 (2) InsO), a correspondingly suitable time would have to be determined for the stabilization and restructuring framework. Inany case, mechanisms to prevent abusive debt splitting would besuitable to complicate the coordination and plan confirmation process.

Re § 26 (voting rights)

The provisions on voting rights follow the principles of insolvency law. The voting rightis determined by the amount of the claim (paragraph 1 number 1). In the case of conditional claims not yet due or claims for unspecified amounts of money, the relevant claim amount shall be determined in accordance with the provisions of Sections 41 et seq. InsO (paragraph 2). For the holders of segregation rights or intra-group third-party collateral,the value of the collateral is decisive (paragraph 1 number 2). For the holdersof membership and share rights, the voting right is determined by theparticipation in the debtor's capital or assets, whereby, following the model of section 238(1) sentence 2 InsO, voting right restrictions, special or multiple voting rightsare nottakeninto account (paragraph 1 number 3).

Regarding paragraph 1Regardingpoint 1

Subject to the special provisions inparagraph 2, the voting right of claims shall be determined bythe amount of the claim.

To number 2

In accordance with the model under insolvency law (section 76 (2), half-sentence 2 InsO), a separate satisfaction entitlement grants a voting right based on the value of the separate satisfaction entitlement. If the debtor is personally liable to the holder of the expectancy, the voting right may be split: if the holder waives satisfaction from the expectancy or is likely to default on such satisfaction, it may be included in the group of restructuring claims with its claim against the debtor and is entitled to a voting right in this group in the amount of thelikely default claim (paragraph 3). In this respect, intra-group third-party collateral iscomparable to segregation rights, which is why the same principles for determining voting rights apply here. This isbecause here too,the creditor is only affected by an encroachment on the security interest to the extent that satisfaction can be expected at all from the realization of the collateral.

To number 3

The regulation on voting rights in the case of included share rights is modelled on Section 238a (1) InsO.

Regarding paragraph 2

Paragraph 2 contains special provisions for determining the voting rightsattributabletoclaims which are not due, conditional or whose amount cannot yet be determined.

To number 1

According to Section 5(1), conditional claims may also be included in the restructuring plan. The economic burden of such claims on the debtor or the economic value of such claims for the creditor is determined not only by the nominal amount but also by the probability of the condition being met. In deviation from theprovision of section 42 InsO, which istailoredto claims subject to a condition precedent,the nominal value must therefore beweightedwith theprobability with which the continued existence of the claimcanbeassumedinthecase of the condition precedent and the occurrence of the claim in the case of the condition precedent.

To number 2

The necessity of discounting non-interest bearing receivables not yet duecorresponds to the legal concept of section 41 (2) InsO.

To number 3

The provision allows recourse to section 45 InsO when assessing voting rights for undefined amounts of money and claims expressed in foreign currency or a unit of account.

To number 4

Thelegal principles developed inaccordance with § 46 InsO (German Insolvency Code) apply to claims for recurring services.

Regarding paragraph 3

Paragraph 3 reproduces the regulatory content of section 237 (1) sentence 2 InsO. Anyone who is the owner of a receivable which is secured by a right entitling him to separate satisfaction may notvotewith the nominal amount of the receivable in a group ofreceivablesincludedin a groupand additionally with the amount of satisfaction realizable in a group of rights entitling him to separate satisfaction upon realization of the right entitlinghim to separate satisfaction.In both groups together, the voting weight may not exceed the nominal amount of the exposure. In the group of receivables, voting rights shall only exist to the extent that the voting rights in the group ofrights entitlingto separate satisfactionfall short ofthe nominal amount of the receivables.Again, from aneconomic perspective, thesame applies to intra-group third-party collateral.In order to avoid double voting weights,an exposure secured by an intra-group third-party collateral can onlygive voting rights in the group of restructuring receivables to the extent that the value of the collateral has not already granted voting rights in the group of intra-group third-party collateral. In the group of holders of residual restructuring receivables, the voting rights are therefore based on the receivable amount remaining after deduction of the value of the third-party collateral.

Regarding paragraph 4

If a claim or a right is disputed on the merits or in the amount relevant for the calculation of the voting weight, this shall not delay the vote. The claim or right in dispute shall therefore be assigned a voting right, subject to subsequent clarification by the court.If thedebtor carries outthe vote out of court(sections 19 et seq.), it maybasethe vote on the voting weightwhichithad assignedto the holder of the claim orrightin dispute.However, it is also free to base the vote on adifferent voting weight, provided that it discloses this to the persons affected by the plan in the course of the vote. The allocation of the voting weight is verifiable by the restructuring court in the course of the examination of the confirmation requirements (Section 67 (3) sentence 2). In order to document the voting weight dispute also for a review by the court, it must be noted in the documentation of the voting resultthat, to what extent and for what reasons the voting weight was disputed.

Re § 27 (Required majorities)

In Art. 9 para. 6 subpara. 1 sentence 1, subpara. 2, the Directive leaves the transposition legislators the choice of whether the adoption of the plan in the individual groupsshould requirea simple majorityor a higher majority of up to 75%. In addition, a majority of heads may also be required in addition to a majority of totals (Art. 9 paragraph

6, first subparagraph, second sentence, of the Directive). On this point, the draft deviates from the model of § 244 (1) InsO under insolvency plan law, according to which a double majority is required in each group, i.e. a simple majority of the total and of the head.Thus, the draft avoids the complicationsassociated with the requirement of a head majoritywithregard to possible circumvention strategies.The requirement of a head majority can only fulfil its purpose if a point in time is determined which is decisive for the allocation of the demands and rights entitled to vote to the heads. Otherwise, the parties involved would be free toexpandthe base of voting headsby splitting the votingclaims and rights.Althoughit would bepossible todetermineappropriate dates for a corresponding deadline, this would burden the voting and in particular the plan confirmation procedure with a question that is susceptible to dispute. In order to relieve the procedure of such contentious issues, the draft dispenses with the anchoring of a double majority. Instead, a qualified majority of 75% is required, which will take over the function of the head majority for a long time tocounteractthe dominance of large creditors oversmaller creditors.Finally,in order to exclude such dominance,§ 11 paragraph 2 sentence 4 requires that separate groups be formed for small creditors.

Regarding paragraph 1

Following the insolvency plan law model (§ 243 InsO), each of thegroups formedaccording to § 11 votesseparately on the insolvency plan. In each of these groups,subject to the possibility of a cross-group vote ofminorities under § 28, the majority of 75% of the total amount required under paragraph 1mustthereforebeachieved. The voting weight granting a claim or right shall be determined in accordance with section 26. The sum of the voting rights attributable to theclaims or rights combinedin a group shallconstitute the reference value fordetermining the required majority of votes in favour of the plan. A majority based solely on the sum of the voting rights of the group members present is, by contrast,insufficient.

Regarding paragraph 2

In accordance with section 244 (2) InsO, paragraph 2 stipulates that votes fromjointly held claims and rights are only considered once.

Regarding § 28 (cross-group majority decision)

As in the insolvency plan procedure (section 245 InsO), it must be possible in the stabilization and restructuring framework pursuant to Article 11 of the Directive that a plancan be confirmedagainst the vote ofa group. §Section 245 Ins Olargely meetsthe requirements which Article 11 requires of a corresponding provision on majority voting across groups.Admittedly, according to Article 11 (1) (b) (i) of the Directive, such a decision should require that a group of secured creditors belongs to the majority of the approving groups, whereas § 245 (1) (3) InsO is satisfied with the approval of a majority of the groups. However, if this requirement is not met, confirmation of the plan shouldalso be possibleunder the conditions of Article 11 (1) (b) (ii) of the Directive. According to this, at least one group whose members are entitled to valuable claims or rights, taking into account the alternative scenario, must have given its consent, although Member States are free, pursuant to Article 11(1), third subparagraph, to increase the required number of consenting groups. The bottom line is that a regulation based on section 245 InsO only requires an addition to ensure that the groups in favour of the plan solutioninclude at least one group of persons entitled to separate satisfaction or of non-subordinate restructuring creditors. It is true that it is not guaranteed for every conceivable case that

non-subordinated restructuring claims in the alternative scenario have a prospect of at least partial satisfaction. However,point (b) of the first subparagraphof Article 11(1)(b)(ii) of the Directiveallows for theapplication of general rulesexcluding those groups which cannot reasonablybe expected toreceive at least partial satisfactionin the alternative scenario.

Incontrast to section 245 (2) no. 2 InsO, Article 11 (1) first subparagraph letter c) of the Directive allows a plan confirmation against the vote of a group ofcreditors even if a group of creditors which is subordinate in relation to this group receives a value under the plan, provided that only the rejecting group is placed in a better position than its subordinate group (so-called relative priority rule).However, under Article 11 (2), Member States may also follow the path taken by section 245 (2) no. 2 InsO andexcludea plan confirmation against the voteof a rejecting group as soon as a valueis assignedto a subordinate group(so-called absolute priority rule). Finally, it is also possible tofollowtheabsolute priority rule and to break it selectively (second subparagraph of Article 11 (2) of the Directive). The draft follows the latter approach. Following the model of section 245 (2) no. 2 InsO, it is based on the absolute priority rule and breaks this rule in two cases in favour of the debtor or thepersonsinvolved in it. According to this provision, a majority decision to the detriment of a group of creditors shall not be opposed to a group-wide majority decision if the debtor or a managing shareholder participating in it has undertaken to cooperate in the decision. It should also be harmless if the intervention in the rights of the dissentinggroup of creditorsislimited to a postponement of maturity.

Regarding paragraph 1

Paragraph 1 essentially corresponds to its model under insolvency plan law in Section 245(1) InsO.

To number 1

Paragraph 1(1) corresponds to Paragraph 245(1)(1) and at the same time transposes point (a) of thefirst subparagraph of Article 11(1), in conjunction with point (d) of the first subparagraph of Article 10(2) and point (6) of Article 2(1) of the Directive, as regards the criterion of the creditor's interest, according to which a creditor may not be placed in a worse position by the plan than it would have been without it. As with section 245 (1) no. 1 InsO, the next best alternative scenario is decisive in (1) no. 1, i.e. the situation in which the creditor would find herself in the event of failure of the plan; liquidation may not beassumed without further ado, but only as the next bestscenario if there isno prospectof selling the company or continuing it otherwise(cf. section 8 (2)).

To number 2

The provision based on section 245 (1) no. 2 InsO regarding the requirement of anappropriate participation in the plan value is filled out by the provisionsofparagraphs 2 et seq.

To number 3

Pursuant to section 245 (1) no. 3 InsO, the consent of at least a majority of the voting groups is required. However, notwithstanding the wording of section 245 (1) no. 3 InsO, in cases where only two groups have been formed, the consent of one group is sufficient (see recital 54 of the Directive). In order to meet the requirements of point (b) of the first subparagraph of Article 11(1) of the Directive in

Inorder to do justice to both variants, it must be demanded thatat least one group of holders of separation rights or one group of holders of restructuring claimsmustalsobe representedamong the majority of the approvinggroups.

Regarding paragraph 2

Paragraph 2, based on its model in section 245 (2) InsO, specifies the characteristic of an appropriate participation in the plan's added value and therebyimplementsthe requirements ofArticle 11 (1) subparagraph 1 letters c and d and paragraph 2 of the Directive.

To number 1

Paragraph 2 number 1 serves to implement the requirements of Article 11 (1)subparagraph 1 letter d) of the Directive and corresponds to section 245 (2) number 1 InsO.

To number 2

The overruling of a group in which a sufficient majority of those affected by the plan has not been achieved shall - apart from the special case regulated in sentence 2 - only be permitted under consideration of the absolute priority rule. In this respect, the regulation corresponds to the model under insolvency plan law in Section 245 (2) no. 2 InsO. It is clarified - also in the regulation under insolvency plan law (cf. Article 5 No. 32) - that an allocation of value to the debtor or a shareholder is harmless if it is compensated by a payment into the debtor's assets. In such a case, there is no value allocation which would be to the detriment of the senior creditors.

To number 3

The prohibition of the betterment of creditors with equal ranking who are affected by the plan isbased ontheprovision in section 245 (2) no. 3 InsO and implements the corresponding requirement of point (c) of the first subparagraph of Article 11 (1) of the Directive. In deviation from § 245 (2) no. 3 InsO, however, only creditors affected by the plan are to beincludedin the settlement. Thereason forunequal treatment vis-à-vis the holders ofclaimsnotincluded is the partially collective character of the restructuring plan. Abuses are to be counteracted by means of the control of appropriateness according to § 10.

Regarding paragraph 3

Paragraph 3 contains narrowly defined exceptions to the absolute priority rule

To number 1

Pursuant to No. 1, the absolute priority rule is broken in favour of the debtor or a managing shareholder participating in it, provided that the debtor or a managing shareholderhas undertaken to cooperate in the implementation of the plan as required. In these cases, the realization of the plan's added value - which is also in the interest of the creditors - is not possible without the debtor or the unit holder. Insisting on theabsolute priority of the creditors' claims over the claims and interests of the debtor and its shareholders would therefore not be in the interest of the creditorswhose protection the absolute priority rule is intended to serve.

To number 2

The absolute priority rule is also broken under No. 2 if theinterference with the rights of the dissenting group of creditors is so minor that it would lead to a complete displacement of the debtor or the persons involved in it as

would make it appear disproportionate. This can be assumed if no intervention is made in the substance of the creditor's claims, but adeferral of maturity of no more than one year is to be agreed.

Regarding paragraph 4

Creditors who are entitled to third-party collateral within the group should only be able to be included in this group despite the lack of a majority if the creditors concerned receive compensation commensurate with the value of their collateral.

Regarding paragraph 5

The regulation corresponds to § 245 (3) InsO

To number 1

The provision corresponds to point 1 of the third paragraph of Article 245(3) and to point (c) of the first subparagraph of Article 11(1) of the Directive.

To number 2

This provision corresponds to § 245 paragraph 3 number 3 and iswithout prejudice toparagraph 3 number 1, which may provide for unequal treatment of unit holders.

Re Chapter 2 (Restructuring and Stabilization Instruments)

Chapter 2 brings together the procedural rules governing the procedural assistanceprovided under the stabilization and restructuring framework. Inaddition, Sections 42 et seq. contain extra-procedural provisions on the obligations of the managers ofdebtors with limited liability during the lis pendens of the restructuring case and on the inadmissibility of solution clauses linked to the lis pendens of the restructuring case.

The stabilization and restructuring framework is not conceived as an integrated procedure - for example, following the model of the former settlement order - but as aframework of procedural assistance which the debtor can avail itself of in the course of a residual restructuring project pursued by it. The use of the procedural assistanceof the framework therefore does not depend on a formal opening of the proceedings, which takes place on the basis of an application for opening of the proceedings if the prerequisites for openingthe proceedings are met.The individual procedural assistance may also be claimed without such opening of proceedings and in principle independently of each other, provided that therequirements for the decision or measure sought within the framework of the procedural assistance are met. Whether and in which combination and order they are claimed, the debtor has to decide on his own responsibility whichpartyis responsible for the structuring, organization and execution of the overall process. Against this **background** , a uniform procedural relationship that integrates all procedural aids would appear to be an unnecessary formalism thatwould arouseassociations with the proceduralrestructuring options under insolvency law and thus also carry the stigmathat is sometimes attached to the latter. Instead of an application and a formal opening of proceedings following such an application, a unilateralnotification by the debtor is requiredunder § 31, by which the debtor notifies the court of the restructuring plan. This notification enables the court to familiarize itself with the remaining restructuring matter and to prepare itself for later applications by the debtor, which - as in the case of an application for a stabilization order - may be urgent. On the other hand, however, there is also a need for a connecting factor under jurisdictional law for the later use of procedural assistance. The same court (§§ 34 f.) and the same judge at this court should have jurisdiction for all decisions in a restructuring case (§ 36). In order to refer in this respect to the general

In order to be able to fall back on procedural principles, the notification of the restructuring project is deemed to have the effect of making the notified restructuring case legally pending (Section 31(3)); in this respect, a proceduralvolumeis constructed whichcombines the procedural assistance whichisto beusedfor implementing the notified projectinto one restructuring case. As aconsequence, the jurisdiction of the restructuring court in particular remains unaffected by the debtor's withdrawal (Section 261(3) (**1)** of the Code of Civil Procedure (Zivilprozessordnung- ZPO)).

The waiver of the creation of a uniform residual invoicing procedure is compatible with the requirements of the directive. According to Article 4(1) it must be ensured that debtors have access to a framework. According to paragraph 5 of the same provision, this framework may either take the form of a single procedure orpresentitself as a coherent combination of a variety of procedures, measures andprovisions. It is true that paragraph 7 of the same provision refers to the fact that the framework is available upon the debtor's request. However, this does not call into question the validity of the basic decision taken in paragraph 5 for the fundamental openness of the proceduralconcept, but merely expresses that the procedural aids of the framework can be used solely on the debtor's initiative, unless the Directive makes or permits a different provision elsewhere.

The general provisions of Section 1, which always apply when a debtor notifies or wishes to notify a restructuring project,arefollowed in Sections 2 to 6 by the special provisions on the individualprocedural aids. These are the coordination of the plan in the course of a court hearing and coordination meeting (sections 45 et seq.), the preliminary examination in the case of an out-of-court plan coordination (sections 47 et seq.), the termination of the contract (sections 49 et seq.), the stabilization (sections 53 et seq.) and the confirmation of the adopted plan (sections 64 et seq.).

Regarding Section 1 (General Provisions)

The procedural provisions of the first sub-section are followed in the secondsub-sectionbyprovisions on the notification of insolvency and over-indebtedness (§ 42), on the liability of the executive bodies (§ 43) and on the inadmissibility of certain solution clauses which arelinkedto the lis pendens of the restructuring case or the use of theprocedural assistanceofthe framework (§ 44).

Re subsection 1 (Instruments of the stabilization and restructuring framework; procedures)

Re § 29 (Instruments)

Paragraph 1 of the provision outlines the scope of application of the procedural aid under the stabilisation and restructuring framework. These are addressed to debtorswho are at the stage of imminent insolvency within the meaning of section 18 (2) InsO. Paragraph 2 lists the procedural assistance specified in more detail in sections 2 to 6 (sections 45 et seq.) and refers to them by the term instrument. Paragraph 3 clarifies that the instrumentsmayin principle be used independently of each other.

Regarding paragraph 1

Paragraph **1** identifies the sustainable management of the impending insolvency of debtors eligible for restructuring under section 30 as the objective of the stabilization and restructuring framework. In conjunction with section 33(2) no. 1, it can be concluded from this for the material scope of application that the impending insolvency of debtors capable of restructuring under section 30 is to be dealt with on a sustainable basis.

The fact thatinability topay is one ofthe prerequisites for access to theprocedural aids of the framework, which theprovisionrefers toasinstruments, and that the sustainablemanagement of this very threat of insolvency is one of the objectives of the procedural aids.

Regarding paragraph 2

Paragraph 2 contains a list of the judicial instruments of the stabilization and restructuring framework available at the debtor's request.

To number 1

The vote of the persons affected by the plan on the restructuring plan may, if the path of free plan voting pursuant to Sections 19 et seq. cannot or should not be taken, be carried out in a court discussion and voting meeting which the restructuring court shall schedule in accordance with Section 45 (subject to the provision in Section 80 para. 1) upon application by the debtor. In principle, the debtor has the choice whether to organize the voting out of court or to apply for a court hearing and voting session.

To number 2

Upon application by the debtor, the restructuring court may confirm the restructuring plan, which the parties affected by the plan have previously accepted with the necessary majorities, in accordance with sections 64 et seq. and thus bring about the effects pursuant to sections 71 et seq.

To number 3

Beforesubmittingthe restructuring plan to those affected by the plan forapproval,the debtor maysubmit the plan to the restructuring court for preliminary review pursuant to sections 47 et seq.

To number 4

In accordance with the provisions of sections 49 et seq. the debtor may request the termination of a mutual contract which at the time of filing the request has not been performed or not fully performed by the debtor and the other party. The claim for compensation of the other party resulting from the termination of the contract (section 52(2) first sentence) may then be structured in the structuring part of the restructuring plan (section 52(2) second sentence).

To number 5

The debtor mayapply for a stabilization order in accordance with sections 53 et seq.to support the restructuring negotiations with itsinvestors.

Regarding paragraph 3

Paragraph 3 clarifies that the restructuring instrumentscaninprinciple be used independently ofeach other. No legal requirements are given to the debtor with regard to whether, the selection of the instruments used and their sequence. The instrumentsareassistance offeredby the legal systemfor the implementation of a restructuring project, whichcan be usedifthe relevant conditions aremet. If the negotiations with the parties involved result in a mutually agreed settlement, it is also possible that none of the instruments need to be used.

Paragraph 3 thus also expresses that the instruments of the Stabilization and Restructuring Frameworkcanonly be used upon request of the debtorand that the debtoristhus in principle in control of the proceedings. Only the debtor can apply for restructuring instruments (with the exception of the judicial plan approval procedure in case of a necessary appointment of a restructuring officer in the cases of section 80 para 1), and no restructuring plan can be put to the vote without a plan submission by the debtor. The debtor is also free to withdraw the notification under section 31 at any time and thus terminate the lis pendens of the restructuring case (section 31(4)(1)). Moreover, only the debtor may request that public notices bemade (section 88(1), first sentence).No use is madeof the option under Article 4(8) of theDirectivetomakethe preventive restructuring framework available also at the request of creditors or employee representatives. A third-party application right would bring the stabilization and restructuring framework closer to an insolvency proceeding and bypass the finding that a reorganizationcanhardlyever succeed if it is to be enforced against the debtor's will.

Re § 30 (Restructuring ability)Repara. 1

The instruments of the stabilization and restructuring framework may be used under paragraph 1 - subject to the restrictions in paragraph 2 - by any debtorwhose assets are subject to insolvency proceedings. In principle, this includes all natural persons and legal entities (section 11 (1) sentence 1 InsO), associations without legal capacity (section 11 (1) sentence 2 InsO) and companies without legal personality (section 11 (2) no. 1 InsO).The restructuring frameworkis alsoopen toa dissolved legalentity or company without legal personality, provided that its continuation is intended.

According to the second sentence of paragraph 1, the restructuring framework is only open to natural persons if they carry out a business activity, as required by Article 1(2)(h) of the Directive. In this case, the instruments of the stabilization and restructuring framework are alsolimitedto the entrepreneurial activities of the naturalperson. This results from the word "insofar" in the second sentence of paragraph 1. For thetermination of the contract this restriction is also expressed in § 49 (2) no. 3 and for the restructuring plan in § 6 sentence 2.

Regarding paragraph 2

Paragraph 2 excludes from the restructuring framework those financial undertakings for which Article 1(2)(a) to (f) of the Directive makes this mandatory.

Inaccordance with the option provided for in Article 1(3) of the Directive, access to the restructuring framework isalso closed tocertain other financial companies. This concerns companies which are subject to special rules under which the national supervisory or settlement authorities have extensive powers of interventioncomparabletothoseexistingfor thecompaniesreferred to in Article 1(2) of the Directive.

Re § 31 (Notification of the restructuring plan)

According to Section 31, notification of the restructuring project is a basic requirement forthe use of the instruments of the stabilization and restructuring framework. In the absence of a notification or if the notification has lost its effect, in particular because the court has reversed by order the restructuring matter that became pending by virtue of the notification pursuant to paragraph 3 (section 33), the instruments of the framework cannot be used

can be taken. The immediate consequence of the notification, without the need for a court decision, is that the notified restructuring project is outlined in terms of content and becomes legally pending as a restructuring case, so that the instruments of the stabilization and restructuring frameworkcan beused for its implementation.The instruments, the use of which is thusopen tothe debtor, are combined into a single case via the lis pendens of the restructuring case. Although the individual instruments are each separate proceedings, therestructuring case brought to courtas aresult ofthenotification of the projectcombinestheminto asingle entity,particularlyin terms ofjurisdiction. The same court and the same judge is always competent for them (§ 36).

Beyondthese procedural functions, the notification has the task of informing the court about the restructuring project and giving it the opportunity to prepare for the notified restructuring case, in which, asinparticular in the case of stabilization, applications can also be expected which are urgent and must be decided quickly. For this reason, the notification shall be accompanied by a draft restructuring plan or a concept for the notified restructuring project as well as a description of the status of negotiations with the parties involved (para. 2), which shall be specified and updated in accordance with the status achieved in the matter and shall be explained by the debtor upon request by the court as part of its general duty to provide information pursuant to Section 39 para. 2. The transparency required in this respect is at the same time an expression of the idea dominating the draft that the legal system reserves the procedural assistance of the stabilization and restructuring framework for serious and well-prepared projects which are prepared and implemented with due care and diligence (section 42 para. 1), whichincludesa plannedand comprehensible procedure which must be made transparent to the court which is to grant the procedural assistance.

Regarding paragraph 1

With the notification the debtor declares that it intends to make use of the instruments of the stabilization and restructuring framework for the realization of the restructuring project which is specified in the draft residual restructuring plan or the restructuring concept to be attached to the notification pursuant to para. 2 no. 1. This is a unilateral procedural act and not an application that would require a decision by the court. The effects which the notification is intended to produce, namely the establishment of the lis pendens of the restructuring case (paragraph 3) and the further consequences linked to it, therefore occur without further ado and continue until the notification loses its effect (paragraph 4). The latter may also be the consequence of a court decision whichcancelstherestructuring casethat hasbecomelegally pending as a result of the notification(Section 33) and which, since itmayalsobelinkedtocircumstances that already existed at the time of the notification, acts as an instrument of downstream access control.

The notification of the restructuring plan is also intended to ensure that the court has a sufficient information basis and is able to make a decision on the requested instruments of the stabilization and restructuring framework, taking into account the urgency of the matter. Therefore, the notification should be made as early as possible before the debtor's first application, so that the court has sufficient time to familiarize itself with the actual circumstances and theframework conditions as well as the legal issues and tomake any organizational preparations that may become necessary.

Regarding paragraph 2

Pursuant to para. 2, the notification of the restructuring project must beaccompanied by adraft restructuring plan or a concept for the intended restructuring and adescription of the status of negotiations which the debtor has already conducted with the parties involved. If it is intended to involve also medium-sized, small or micro enterprises or even consumers in the restructuring in such a way that their claimsor rights are structured or the enforcement of such claimsisto betemporarilyblocked under a stabilization order, this must be notified - with a view to the mandatory appointment of a restructuring officer provided for in these cases (section 77 para. 1). Itmustalsobe indicated - also in view of thepossible necessity of the appointment of a restructuring commissionerin this case(section 77(2)) - whether in enforcing theconcept- possibly alreadyconcretizedin a draft plan- it can be expected that it can only be enforced against the resistance of a group to be formed in accordance with section 11.

To number 1

According to point 1, the debtor mustattach tothe notification of the restructuring plana draft plan or at least a concept which, on the basis of adescription of thenature, extent and causes of the crisis to be overcome, describes the objective of the restructuring and the measures envisaged to achieve that objective.This is based on the idea that the seriousness and prospects ofa restructuring project can only be understood on the basis of a concrete plan or at least a sufficiently concrete concept and that the aid provided by the stabilization and restructuring framework should only be achievable if the debtor makes its project transparent on the basis of such a concept. Itis not ignored that in practice, restructuring efforts initially start from a rough concept, which in the course of furtherefforts and negotiations grows into a detailed and operationalizable full concept that can be translated into a complete plan (see Philipp/An-dersch/Henn, INDat Report 3/2019, p. 30 ff.). Paragraph 3 therefore links the lis pendens of the restructuring case solely to the notification made. Even the consequences linked to the legal lis pendens of the restructuring case, such as in particular the conversion of the obligation to file for insolvency into an obligation to notify the restructuring court of insolvency (§ 42 para. 1), do not depend on the fact that the draft plan or the concept stands up to an examination to be carried out according to substantive criteria. Deficiencies in the plan or concept may, however, have an effect on the progress of the restructuring case if they are not remedied. Where the debtor does not yet attach a fully developed plan or concept to the notification of the restructuring project, therequirements set out in No. 1 will developtheir full force in the further course of the case, in particular if the debtor applies for the issuance of a stabilization order, which is not possible if no comprehensible concept is available (section 55(1)). In such a case, the debtor shallconcretize and updatethe draft plan or concept inaccordance withthestatus achievedin the course of the restructuring process(section 54 para. 2 no. 1). If the debtor does not succeed in remedying any incompleteness or other deficiencies which, according to the status of the project, should be remediable, even irrespective of the use of a specific instrument, this may justify the assumption that the debtor's intention to restructurelacks thenecessary seriousnessand that the debtor does not operate the restructuring matter with the diligence of a prudent and conscientious restructuring manager; in these cases, therefore, a cancellation of the restructuring matter may also be considered (section 33(1) no. 4). For if the debtor is not able toconveyto the courton the basis of which facts and by which means she is aiming at which goal, it cannot be assumed that she is able to persuade the creditors and other parties involved to make concessions. If the court is unable to make a complete

and conclusive concept are presented, there is no reason from the point of view of the legal system to give support against assistance for the implementation of measures which are to be enforced against the will of those affected by them.

To number 2

The information on the status of negotiations with creditors,persons involvedin the debtorand third parties enables the restructuring court toassess whether and what support the restructuring project has and what resistance can be expected, which may have to be overcome by using the instruments of the stabilization and restructuring framework.

To number 3

The procedural aid provided under the stabilization and restructuring framework is made available for therealization of serious and conscientious restructuring projects. The debtor is therefore not only obliged to prepare the project properly on the basis of a concept. Rather, the debtor must also comply with the extensive obligations under section 32, which are intended to ensure that the debtormakes responsible use of the instruments made available to it under the stabilization and restructuring framework in the interests of the creditors. In doing so, the debtor must bein a position to act accordingly with regardto its obligations towards thecreditors. If the debtor is not in a position to do so on his own initiative, he has to make use of the expertise of consultants who, on the basis of their experience and expertise, can put the debtor in a position tomeet the requirements ofcreditor-protectingconductin particular.

Regarding paragraph 3

Since the stabilization and restructuring framework is a loose combination of procedural assistance whichisnotintegratedinto the framework of a uniformprocedure, a connecting factor is required in terms of jurisdictional lawtoensure the uniform jurisdiction of a court and the same judge (section 36) for the applications with which the debtorwishes toavail itself ofthe procedural assistance fortheimplementation of the notified restructuring project which forms a uniform subject matter. Since this effectis to occurwithout a courtdecision, it is directly linked to the notification by the debtor. This has the particular consequence that the jurisdiction of the originally competent court does not change as a result of circumstances occurring at a later date, such as a withdrawal of the debtor from the district of the court, and that the use of instruments of theframework at another court is not permitted (Section 261 (3) ZPO).

The lis pendens shall be deemed to be established by the notification without the need for a decision by the court in this regard. In particular, it is irrelevant whether thedraft restructuring plan to be attachedpursuant toparagraph 2 or the concept or the presentation of the state of negotiations to be attached alternativelymeetcertainrequirements withregard to content. This is because the lis pendens of the restructuring case are linked to further consequences which do not tolerate legal uncertainty as to whether the lis pendens have occurred. These include, above all, the conversion of the existing obligation to file for insolvency under § 15a InsO into an obligation to notify the restructuring court (§ 42 (1)). For even if the debtor's managerscan fulfiltheir duty of disclosure by filing aninsolvency petitionthat meets the requirements of § 15a InsO, there must be no doubt about the existence of both duties, if only because of the punishment of both duties. The debtor's need for the greatest possible transparency vis-à-vis the court is therefore satisfied by the obligation toupdate and concretise the annexes to the notification (section 32 (2)) and the requirements set out in the

Consequences in the event of non-compliance (Section 33(1)(3) and (4)(a)) must be taken into account.

Regarding paragraph 4

Paragraph 4 regulates the circumstances in which the notification loses its effectiveness.

To number 1

The cessation of lis pendens in the event of a withdrawal by the debtor isan expression of her dominance of the proceedings. Only the debtor has access to the stabilization and restructuring framework. Creditors have the possibility to bring about a corporate reorganization without or against the debtor's will only under the conditions and within the framework of the insolvency proceedings.

To number 2

Once a restructuring plan has been legally confirmed, all that is required is its execution and the restructuring case can be dismissed. This can be different only if the confirmation has been denied. In this case, it should not be ruled out a limine that the debtor will continue the restructuring project on the basis of a new plan or concept.

To number 3

The notification also loses its effect if the court, in accordance with § 33, overrides the restructuring case made legally enforceable by the notification.

To number 4

The instruments of the stabilization and restructuring framework are notdesignedtobe used indefinitely. In particular, a suspension of enforcement and liquidation obtained by means of a stabilization order may be drawn upon for a maximum offour months, if not only the judicial confirmation of an adopted plan is still outstanding. As arule, it should thereforebe assumed thatthe restructuring plan can be implemented within six months. In exceptional cases, the debtor shouldbeable to extendtheperiod of validity of the noticeonce.

Re section 32 (Duties of the debtor)

The provision lays down basic obligations of the debtor, the breach of whichmay be linked to thecancellation of the restructuring matter and thus to the denial of access tothe instruments of the stabilization and restructuring framework (§ 33). This is intended to ensure the appropriate use of the instruments of the framework and to prevent misuse and abuse.

Regarding paragraph 1

The instruments of the Stabilization and Restructuring Framework aremade availablefor therealization of serious restructuring projects that safeguard the interests of creditors and must therefore be carried out with due care and diligence. Incontrast to the formal framework of the insolvency proceedings, the debtor is granted more extensive freedom to shape and organize the overall process on his own responsibility. The inherent freedom of design and organization in achieving legal consequences thatburdenthe parties involved in theprocess requires a return to the goal of protecting the interests of the creditors. In particular, the stabilization and restructuring framework should not be used to

delay and delay in the crisis management process required under § 2 in the interest of the creditors may be abused or even tocarry outmeasuresthat endangeror disadvantagecreditorsunder the guise of a stabilisation order. If the debtor manifestly and seriously violates its obligations to operate the project conscientiously while safeguarding the interests of the creditors, this may also result in the cancellation of the restructuring matter (section 33 para. 1 no. 4 letter a).

Regarding paragraph 2

According to paragraph 2, the debtor is obligedto informthe court of any material changeconcerning the subject matter of the notified restructuring plan and the description of the status of negotiations. This is to be understood against the background that it will not always be possible at the beginning of a project to present a fully developed and thoroughly negotiated concept or even a draft plan. Ittherefore also followsfrom thisobligationthatthe draft plan orconceptattached tothe notificationmust be specified and updated in line with the progress of the restructuring case, in particular the status of the negotiations with the affected parties (sentence 1). The provision in sentence 2 ensures that the debtor's obligation under sentence 1 in the special case of an already obtained stabilization orderpursuant to sec. 54 also extends to such changes whichaffectthe restructuring plan.This provision ensures that the court, in the context of a stabilization order which interferes with the rights of the creditors concerned to a particular extent, can obtain information at an early stage and on an ongoing basis which is relevant for assessing the debtor's continued solvency and whichis intended toenablethe courttoterminatethe stabilization order under section 63 if the debtor becomes insolvent.If a restructuring commissioner has been appointed, the obligations under sentences 1 and 2 shall also apply to him.

Regarding paragraph 3

The instruments of the Stabilization and Restructuring Framework are generally not available to companies that are ready for insolvency (Section 33 (2) sentences 1 and 2). The occurrence of an inability to pay within the meaning of section 17 (2) InsO or, if this is also a reason for opening insolvency proceedings, over-indebtedness within the meaning of section 19 InsOgenerallyrequiresthe opening of insolvency proceedings. These reasons for opening insolvencyproceedingsmark in-depth stages of insolvency which, in the interest of all creditors, requiremanagement within the framework of overall proceedings involving all creditors. The stabilization and restructuring framework is generally not suitable as a summary of only partial and collective procedural assistance. Exceptions are only conceivable if the intended restructuring is about to be completed, in particular because the confirmation of an already adopted restructuring plan is imminent and it can be expected that it will alsoleadto the elimination of theinsolvency situationthat has occurred(§ 33 para. 2 no. 1). In order to give the court the opportunity to examine whether the use of the instrumentsshouldexceptionallycontinue to be possibledespite the fact thattherestructuringplan ismaturefor insolvency(§ 33 (2) sentence 3) or whether the restructuring matter should be cancelled, the debtor is required under (3) to notify the court immediately if the insolvency situation has occurred. In contrast to the obligation set out in section 42 para. 1, which is directed at the debtor's managers, theobligation set outinpara. 3 is an obligation of the debtor whose non-compliance has the procedural consequence of terminating the restructuring matter and thusaccessto theinstruments of the stabilization and restructuring framework. The duty of notification always applies, irrespective of the legal form of the debtor, toinsolvency pursuant to section 17 (2) InsO (sentence 1), and in the case ofcorporate bodies withlimited liabilityalso to over-indebtedness pursuant to section 19 (2) InsO (sentence 2). It must be distinguished from the duty of disclosure under section 42 (1), whichisdirectedat the managers ofdebtorswith limited liability.

If the envisaged restructuring has sufficient prospects of being implemented, in particular if it is expected that arestructuring planalreadysubmittedfor approvalwill be accepted and confirmed, the envisaged design effects of the restructuring plan can be taken into account in the examination of over-indebtedness and insolvency by taking into account the claims subject to the regulations of the design part with the due dates and in the amount they are to receive under the plan.

Regarding paragraph 4

If the notified project has no prospect of success, in particular because it is evident that it lacks the support of those on whose approval the feasibility of the project depends, there is no reason to continue toprovidethe debtor with the instruments of the stabilization and restructuring framework.The lack of prospect of implementation is to be assumed if the rejection of the projectissowidespreadamong those whose consent would be required as parties affected by the planthat itcannot be expected that a restructuring plan representing the project can be adopted with the required majorities (sections 27 et seq.). However, the rejection musthave been expressedin a serious and final manner.A negative attitude which isopen toconcessionsby negotiation is therefore harmless at least as long as these concessions do not call into question the feasibility of the restructuring plan.

Re § 33 (cancellation of the restructuring matter)

The restructuring case brought to court by notification is annulled by the court by order if the reasons stated in the provision are present. Since such a cancellation can also refer to circumstances that existed at the time of the notification, the possibility of cancellation also has the function of a downstreamaccess control. The revocation is made ex officio. As the lis pendens of the restructuring case alone do not yet affect the rights or interests of third parties, we do not provide for a right of third parties to file an application. However, third parties do have the right to apply forthe cancellation of a stabilization order (Section 62 (2)).

Regarding paragraph 1Regardingpoint 1

Insolvency proceedings already opened in respect of the debtor's assets claim priority over the use of restructuring instruments pursuant to point 1. This already follows from the fact that the preventive, insolvency averting purpose can no longer be achieved if insolvency proceedings are opened. In addition, a reorganization of the company can also be implemented in insolvency proceedings, and insolvency law provides many legal and judicial support instruments for such a reorganization in the opened proceedings, even beyond the possibilities of the restructuring framework. A coexistence of insolvency proceedings and the use of instruments of the stabilization and restructuring framework does not promise any benefit. An exception is made in the unlikely event that insolvency proceedings have been opened contrary to the blocking effect of a stabilization order (Section 62 (2)) and must therefore be discontinued without further ado.

To number 2

The lack of local jurisdiction of the court also constitutes a ground for annulment.At thelatest at the time when the debtor makes use of restructuring instruments, the court must examine its jurisdiction. If the restructuring court requested by the debtor is not competent, it must inform the debtor of this and set a deadline for the submission of a request for referral or, if competence is lacking in

Germany is not given to set for the withdrawal of the advertisement. After the unsuccessful expiry of the deadline,the court must set aside the restructuring case.

To number 3

The procedural aids of the stabilization and restructuring framework are offered for appropriate use. Debtors whocarry outa restructuring project with the necessary seriousness and conscientiousness should be able to make use of them.This includes a planned and comprehensible procedure which must be made transparent to the court at all times.The instruments of the framework are not createdfor debtorswho are unable to commit themselves to a concept, to specify such a concept according to the state of the negotiations, or who in the course of their management jeopardize the achievement of the restructuring goal or the interests of the creditors. Since the legal effects of the notification occur without an admissibility examination by the court, the court has the possibility toset a reasonable time limitfor the debtor tosubmitadraft restructuring plan or a mature and coherent restructuring conceptin cases where the attachments to be attached to the notification do not meet the requirements that can be imposed on a debtor who pursues a restructuring project with the necessary seriousness and conscientiousness.The appropriateness of the deadline has to be based on the objectives of thisframework and the status of the project at the time of the deadline setting, whichcan be expectedfrom arestructuring manager operatingtheproject properly and conscientiously. If this period expires without success, this allows the conclusion that the debtor is not in a position to operate the restructuring project with the diligence of a prudent and conscientious restructuring manager and therefore justifies the cancellation of the restructuring matter in order to protect the interests of the creditors.

To number 4

Serious breaches of duty by the debtor demonstrate its unsuitability formaking use of the instruments of the stabilization and restructuring framework. This is because these show that the debtor is not willing or able to protect the interests of all creditors, whichis aprerequisite for theintervention in the rights of the creditors associatedwith theinstruments.

The instruments of the Stabilization and Restructuring Framework aremade availablefor therealization of serious restructuring projects that safeguard the interests of creditors and must therefore be carried out with due care and diligence. In particular, the stabilization and restructuring framework should notbe misusedto delay or delay thecrisis management process requiredunder section 2 in the interests of creditorsor even to implement measures that endanger or disadvantage creditors under the guise of a stabilization order. If the debtor manifestly and seriously violates its obligations to operate the project conscientiouslywhile safeguarding the interests of the creditors, this may also result in thecancellation of the restructuring matter (section 32 para. 1 no. 4). The limitation to serious breaches of duty is aimed at measuring the debtor's breach to be sanctioned not by the degree of her fault, but rather by focusing on the quality of a breach of duty and thedanger tothe interests of the creditors as a whole, which must be safeguarded within the restructuring framework, and therisk to their legal and asset positionsassociated with such a breach of duty.Even by a slightly negligent breach of an elementary duty, the debtor can express that she is notable toprotectthe interests of the creditors.For example, a slightly negligent breach of an elementary duty can result in a serious duty toprotect the interests of the creditors.

This can constitute a breach of duty if it has a considerable impact on the work of the restructuring officers and is of considerable relevance to their performance of their duties, e.g. if the breach of duty makes itconsiderably more difficult or impossible tosafeguard the interests ofcreditorsin need of particular protection.

Even if the wording of the law expressis verbis does not contain any specifications as to when the court is to intervene, this provision is tobe seenin the overall concept of the restructuring framework as a non-formal procedure andas involving the courtonly on a case-by-case basiswith the consequence that the court does not have an unrestricted duty of official investigation without cause and thus indirectly also a duty of supervision of the court; thus, the court does nothave toproactivelymonitor the debtor's compliance with its dutiescontinuouslyand without causeby appointing a restructuring agentand to investigate violations. However, if there are sufficient suspicions for the existence ofserious violations of duties by the debtor, the court mustinvestigatethesecircumstances and determine the existence of violations of duties.

To letter a

Bookkeeping a) flanking the provision of § 32, in which seriousviolations ofthe dutiesincumbent onthe debtorunder this provisionare sanctioned ex officio by a cancellation of the restructuring case. In particular, the obligations set out in section 32(1) and (2) are an expression of the principle that the procedural aids of the stabilization and restructuring frameworkareoffered for appropriate use.They should be available to debtors who carry out a restructuring project with the necessary seriousness and conscientiousness. This includes a planned and comprehensible procedure thatmust be made transparent to the courtat alltimes.The instruments of the framework are not createdfor debtors who are not in a position to orientate their management towards the interests of the creditors andwhoare unable to commit themselves to a restructuring concept, tospecifysuch a conceptaccording to the state of negotiations, or who in the course of theirmanagementjeopardizethe achievement of the restructuring goal and thus the interests of the creditors.

Re point (b)

Letter b)refersto the other general obligations of the debtor towards the court or the restructuring agent to cooperate and provide information,in particular under section 39 subs. 2 and section 80 subs. 5.

Subparagraph (b) enables the court tosanctionthe debtor by setting aside the remainder of the invoicing case of its own motion in the event of serious breaches of itsgeneral obligations to cooperate and provide information. Inparticular, violations of the obligation to provide correct and completeinformation, in particular by concealing or withholding relevant information which is important for the assessment of the prospects of restructuring or the effects of the execution of the plan on the rights and claims of creditors who are particularly worthy of protection, as well as wastage of assets which impairs the interests of all creditors, shall be considered. Furthermore, the nonobservance of deadlines set by the court for the clarification of the facts in connection with the examination of the applications filed by the creditors can also be considered.

Re paragraph 2Topoint 1

The occurrence of an inability to pay within the meaning of section 17 (2) InsO or, insofar as this also constitutes a reason for opening insolvency proceedings, over-indebtedness within the meaning of section 19 of the Insolvency Code generally requires the opening of insolvency proceedings. These reasons for opening insolvency proceedings mark deepened stages of insolvency which, in the interest of all creditors, require management within the framework of comprehensive proceedings involving all creditors.The stabilization and restructuring frameworkisgenerally notsuitableas a summary of only partial and collectiveprocedural assistance.After insolvency or over-indebtedness has occurred, it can generallybeassumedthatthe insolvency proceedings, but not the stabilization and restructuring framework, is the appropriate and correct place for coping with the debtor crisis.

Exceptions are only conceivable if the intended restructuring is about to be completed, in particular because the confirmation of an already adopted restructuring plan is imminent and it can be expected that it will also lead to the elimination of the insolvency situation that has occurred (Section 33 (2) No. 1 Sentence 2). In such a constellation, the transition to insolvency proceedings with the associated disadvantages and additional costs cannot be in the interest of all creditors. In this case, the court may refrain from setting aside the restructuring case. However, the court can only make this decision if it becomes aware that the debtor is ready for insolvency; the debtor is therefore obliged under Section 32(3) to notify the court that the debtor is ready for insolvency. A breach of this duty to notify shall be deemed to constitutegrounds for setting aside under subsection 1 No. 4a.

If the debtor hasgivennotice ofinsolvency maturity in accordance with its obligation under section 32(3)or if the court is aware of circumstances indicating that the debtor is insolvent, the restructuring matter shall in principle be cancelled. Since the circumstances known are to be taken into account, the restructuring court is notobliged todetermine allcircumstances relevant for the assessment of the question whether the debtor is insolventwithout cause, irrespective of the applicable principle of official investigation. However, if the Restructuring Court is aware of circumstances which give reason to assume that the debtor may be ready for insolvency, the duty of official investigation applies. The court can obtain knowledge of an insolvency in particular through the debtor's exemplary notification. However, reports and notifications by restructuring officers and applications by creditors may also be taken into consideration if they have substantiated the facts (section 63(2)).

To number 2

If the notified project has no prospect of success, in particular because it is evident that it lacks the support of those on whose approval the feasibility of the project depends, there is no reason to continue toprovidethe debtor with the instruments of the stabilization and restructuring framework.The lack of prospect of implementation is to be assumed if the rejection of the projectissowidespreadamong those whose consent would be required as parties affected by the planthat itcannot be expected that a restructuring plan representing the project can be adopted with the required majorities (sections 27 et seq.). However, the rejection musthave been expressedin a serious and final manner.A negative attitude which isopen toconcessionsby negotiation is therefore harmless at least as long as these concessions do not call into question the feasibility of the restructuring plan.

To number 3

According to No. 3, access to the stabilization and restructuring framework is blocked if the debtorhasalreadyobtaineda stabilization order in a previous restructuring case(letter a) or if the previous restructuring case has been cancelled due to serious violations by the debtor of the obligations incumbent on it under section 32 (letter b). This is intended to prevent the instruments of the framework frombeing used arbitrarily, without any objective orientation and by circumventing the maximum durationfor stabilization orders to the detriment of the creditors affected by them. On theother hand, the termination of the restructuring case due to a serious breach of the debtor's obligations should notbeeasilyreversed by simply renewing the notification by the debtor.If the crisis that gave rise to the notification of the former case of residual restructuring has been overcome in the meantime, the former case of restructuring should not have any blocking effects. Itis assumed that the previous crisis has not yet been overcome ifless than three years have passedsince the last use of the instruments.

According to Art. 4(4) of the Directive, Member States may limit the number of accesses to the preventive restructuring process for a certain period of time. This option is to be used topreventabuse of the procedure by multipleinterventions in the legal positions of creditors or shareholders. Instead of a rigid deadline regulation, a rule presumption is established.On the one hand,this givesthe debtor, where a new need for restructuring arises, e.g. due to an unforeseeable event, theopportunity to restructure again with the help of the preventive restructuring procedureeven within the period of the presumption.On the other hand, those debtors canbe deniedrenewed access to theprocedure if there is essentially no new, but a continued need for restructuring. In such a case, the refusal of access can also be pronounced after the three-year period of presumption.

Regarding paragraph 3

Subs. 3 shall ensure that in the cases referred to in section 63 subs. 3 the lis pendens of the residual insolvency case shall remain pending as long as the courtrefrains fromterminating the stabilization order inorder toensurean orderlytransition to insolvency proceedingsin the interest of all creditors.

Regarding paragraph 4

Since the cancellation of the restructuring framework blocks the debtor's further access to the instruments of the stabilization and restructuring framework, the debtor must be granted legal protection by opening an immediate appeal.

Re § 34 (Local court as restructuring court)

The assignment of jurisdiction to local courts, which as insolvency courts areresponsibleforopening regular insolvency proceedings (second sentence of paragraph 1), follows the functional and substantive similarities of restructuring and insolvency cases and thusthesame idea that is also behind the establishment of uniform qualification requirements for the activities of insolvency and restructuring judges (cf. the extension ofSection 22(6) of the Judicial Association Act (GVG), which currently refers to female insolvency judges, to restructuring judges by Article 2(1) of the draft). In order toensurethat restructuring cases aredealt within an appropriate, professional and efficient manner in the long term and that the legal and economic complexity of restructuring cases is taken into account, jurisdiction is also to be concentrated at the level of the districts of the Higher Regional Court (paragraph 1). Such aconcentrationwillensure a sufficient and constant number of cases and thus

can build up the necessary expertise and experience in the restructuring courts. A more far-reachingconcentration, i.e. one that transcends the boundaries of the Higher Regional Court districts,as well as the concrete allocation of jurisdiction within a Higher Regional Court districtis made possible for the state governments under paragraph 2.

Regarding paragraph 1

Subject to a deviating allocation of jurisdiction by the state legislator (paragraph 2), those local courtsin whose district a higher regional court has its seatarecompetentfor restructuring cases. However, if such a court is not competent to conduct regular insolvency proceedings, it shall be replaced by the local court which has jurisdiction for regular insolvency proceedings at the seat of the Higher Regional Court. This ensures in any case that the Restructuring Court can only be a local court which, as an insolvency court, is responsible for corporate insolvencies. For the reference to regular insolvency proceedingsdoes nottakeinto accountthe isolatedcompetences for consumer insolvency proceedings, estate insolvency proceedings, insolvency proceedings relating to the joint property of a continued community of property and insolvency proceedings relating to the jointly administered joint property of a community of property, which will in future be made possible by section 2 (2) sentence 2 InsO-E (see Article 5 number 1 letter b).The concentration of jurisdiction at the level of the districts of the Higher Regional Courts and the uniform jurisdiction for restructuring cases and corporate insolvency proceedings promotes the sustained training and further development of the skills and expertise requiredtoensure that restructuring cases are handledappropriately, professionally, efficiently and in a manner that does justice to the legal and economic complexity of restructuring cases.

Regarding paragraph 2

Paragraph 2 allows countries to have individual rules of jurisdiction tailored to their particular situation. However, only a differentallocation of jurisdiction in the districts of the Higher Regional Courts (number 1) or amore extensive concentrationbeyond the district boundaries ofthe Higher Regional Courtsis possible.

To number 1

The regulation is an expression of the organizational sovereignty of the states. They may, by statutory orderin a district of the Higher Regional Court,designatea different but not an additional local courtas restructuring court.

To number 2

The regulation allows the states to voluntarily increase theconcentration of jurisdiction for restructuring proceedingseven more, if there areseveral higher regional courts in a state. According to sentence 2, the state governments may transfer the authority to the state justice administrations.

Re § 35 (local jurisdiction)

The regulation follows the insolvency proceedings law model in § 3 InsO.

Re § 36 (Uniform jurisdiction)

The provision makes it clear that during the lis pendens of a restructuring case, the same judge remains competent for all instruments throughout.

Re § 37 (Group Court of Jurisdiction)Reparagraph 1

An appropriate restructuring of corporate groups requiresthe coordination of the restructuring concepts of the individual group companies. This coordination is made much easier if the same judge is in charge of the restructuring matters of all group companies. For this reason, the debtor-dispositive possibility oftransferringall restructurings ina group of companies to the jurisdiction of one courtis created, following the example of the insolvency proceedings law provisions on group jurisdiction (sections 3a ff. InsO).The group concept of § 3e InsO is decisive. As is also the case with the model definition under insolvency procedural law, the priority principle applies in principle: anyrestructuring court with jurisdictionfor a groupcompany may, upon application by a group company, alsodeclareitselfresponsibleforthe restructuring matters of other groupcompanies, provided the applyingcompany is not merely of minor importance within the group. It is required that the applying company has already filed an application to use an instrument in its restructuring case. It is not sufficient for the lis pendens of the case to be established by a notification pursuant to Section 31. Although the restructuring court may also set aside the case on the grounds of lack of jurisdiction (§ 32 (1) no. 2), it is only the application in connection with the first claim that causes the local jurisdiction to be examined (see § 88). It istherefore expedientthat the establishment of the group jurisdiction shouldonly be possible on this occasion.

Regarding paragraph 2

By way of reference to the insolvency lawprovisions on group jurisdiction,the regulation adoptsthe existing concept of the Insolvency Code. Applicableare the regulations on the concretization of the concept of subordinate importance in the group (section 3a (1) sentences 2 and 4 InsO) and on the dissolution of competitionofsimultaneouslyfiled applications (section 3a (1) sentence 3 InsO). A group jurisdiction once established also remains in place even if the restructuring matter fromwhich it was established is cancelled (section 3b InsO). It is also ensured that the judge responsible for the restructuring case from which the group jurisdiction was established is responsible for all group subsequent proceedings (section 3c (1) InsO). Finally, the referral rules of section 3d (1) sentence 1 and (2) sentence 1 InsO as well as therequirements set outin section 13a InsOfor the application to establish the group jurisdictionalso apply.

Regarding paragraph 3

Paragraph 3 also makes it possible to concentrate insolvency proceedings as a follow-up to group insolvency proceedings in the restructuring court where a group jurisdictionis establishedunder paragraph 1, in order also to deal with cases where insolvency proceedings are opened in respect of some group entities while other group entities make use of the instruments of the stabilisation and restructuring framework.

Re § 38 (Applicability of the Code of Civil Procedure)

The subsidiary application of the ZPO ensures that the stabilization and restructuring framework is based on a comprehensive procedural law, which can be used in the absence of concrete regulations or in case of doubt. This makesregulations necessary only in cases where the provisions of the Code of Civil Procedureareto be deviatedfrom.

Sentence 2 clarifies that in meetings and appointments, e.g. in the case of a discussion and voting meeting under Section 45, under Section 128a of the German Code of Civil Procedure (ZPO) the restructuring court shall, at its discretion, give individual or all participants the opportunity toparticipateeither physically at themeeting or appointment location or virtually by means of video and audio transmission.Secret recordings are inadmissible and in the case of non-public dates constitute a punishable offence under § 201 of the German Criminal Code. Against this background, it must beexpressly pointed outin thesummonsthatno image and sound recordings may be made and that third parties may not be given the opportunity to secretly follow the image and sound transmission.

Re § 39 (Procedural Principles)Repara. 1

Contrary to the ZPO, the principle of official investigation applies in restructuring proceedings, not the principle of contribution. In terms of content, the provision corresponds to § 5(1) InsO, although the wording of the lawcontainsan express reservation of deviatingprovisions. This reservation is intended to take account of the limitations of the principle of official investigation, which the lawprovides forinvarious places tospeed up the procedureinparticular.

Regarding paragraph 2

The general clause ensures that the debtormust supportthe restructuring courtto the extent necessary for a decision on the applications filed by providing information and in any other reasonable manner.

Regarding paragraph 3

The possibility of taking decisions without oral proceedings serves toaccelerate and simplify the procedure. Acceleration is also served by theexclusion of the simplifications for requests to change the date of the hearing in accordance with § 227 (3) sentence 1 ZPO.

Re § 40 (appeal)

The provision is based on the model of § 6 InsO.

Regarding paragraph 1

Only those decisions of the restructuring court are subject to appeal for which this law expressly declares an immediate appeal admissible. Therestriction of the right of appeal serves to promote the rapid progress of the remaining restructuring process. Contrary to § 569 (1) sentence 1 ZPO, the immediate appeal can only be lodged with the restructuring court.

Regarding paragraph 2

The duration of the appeal period is based on § 569 (1) sentence 1 ZPO and is therefore two weeks. Notwithstanding § 569 (1) sentence 2 ZPO, the period begins with the pronouncement or - if no such pronouncement is made - with the notification of the decision.

Regarding paragraph 3

The regulation, according to which the decision on the appeal onlybecomes effectivewhen the appeal becomes final, is intended to prevent a decision of the restructuring court that has been overturned by the appeal court but confirmed by the appellate body on appeal from first becoming invalid and then being overturned by

new must be met. Whether the court of appeal orders the immediate effectiveness of the decision is at its discretion.

Re § 41 (Notifications)

The regulation regulates domestic service. For cross-border service in member states of the European Union or third countries, thelegal instruments agreedwith these statesare decisive. Otherwise, the provisions ofRegulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("Service of documents") and repealing Regulation (EC) No 1348/2000 of the Council (OJ L 324 p. 79) and the HagueConvention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and other international agreements of 15November 1965 (BGBl. 1977 II p. 1452).

Regarding paragraph 1

The provision modifies the general rules on service of process in §§ 166 ff. ZPO, which apply accordingly via § 38. It corresponds to § 8 (1) InsO. Here as there, the aim isto provide an unbureaucratic service procedure for proceedings with potentially manyparties involved. The provision thus serves to simplify andaccelerate the procedure.

Regarding paragraph 2

The provision corresponds to § 8 (2) InsO.

Regarding paragraph 3

The provision corresponds to § 8 (3) InsO, whereby the insolvency administrator is replaced by the restructuring officer. The possibility of transferring the notifications to the restructuring commissioner, if one has been appointed, is intended to relieve the restructuring courts.

Regarding paragraph 4

In cases where no restructuring agent has been appointed, the court may relieve itself in the cases specified in this Act (e.g. Section 45 (3) sentence 3) by instructing the debtor to serve the restructuring notice. Such notifications are then governed by Sections 191 et seq. ZPO.

Subsection 2 (Restructuring Right)

The sub-section contains liability and contractual provisions which, in connection with the lis pendens of a restructuring case,deviatefrom general provisionsconcerning the obligation to file for insolvency (§ 15a InsO, § 42 (2) BGB), the liability ofmanagersofcorporate bodies with limited liability (§ 2) and the admissibilityofthe agreement from contract dissolution or structuring rights.

Re § 42 (Notification of insolvency and overindebtedness)

Theobligation to file for insolvencypursuant to § 15a InsO and § 42, Subsection 2, BGB, which is linkedto the inability to pay or overindebtednessof legal entities with limited liability, is replaced during the lis pendens of the restructuring case by an obligation to notify the insolvency maturity (Subsection 1). According to paragraph 2, this obligation may also be satisfied by filing a petition for insolvency. Pursuant to para. 3, if there is a reasonable prospect of acceptance and confirmation of a plan that is ready for acceptance

In the event that the restructuring plan is submitted to the Board of Directors, the Board of Directors is obliged to take into account receivables, which are to be subject to a design by the plan, in the amount and with the maturity that they are to receive under the plan. If there is a corresponding prospect of implementation, this also applies to receivables which areto be subject to a structuringin a sufficientlyconcrete restructuring concept. According to paragraph 4, the obligation to file for insolvency pursuant to section 15a InsO and section 42 paragraph 2 BGB (German Civil Code) revives after the termination of the restructuring matter.

Regarding paragraph 1

The obligation under subs. 1 to notify the residual restructuring court of the insolvency maturity is, with regard to the content of the required notification, identical to the notification obligation under section 32 subs. 3, which also applies to the restructuring court. While the latter is directed at the debtor and, in the event of non-compliance,becomes the starting point for procedural consequences such as the cancellation of the remaining restructuring case (§ 33 para. 1 no. 4), the obligation set out in para. 1 replaces the obligation tofile an applicationwhichceases toapplywith the lis pendens of the restructuring caseand is therefore also directed solely at the managers ofcorporate bodieswithlimited liability.

A temporary suppression of the obligations to file for insolvency pursuant to § 15a InsO and § 42(2) BGB is required by the law. According to Article 7 (1) of the Directive, an existing obligation of the debtor under national law to file an application for insolvency must be suspended during the period of suspension of enforcement measures (Article 2 (1) No. 4) if the insolvency proceedings to which the obligation to file an applicationrelates may result in the liquidation of the debtor. The latter applies to the German insolvency proceedings, which, as uniform proceedings, are open to all possible outcomes and may in particular end in liquidation. Since the suspension of the obligation to file an application under Article 7(1) of the Directive is mandatory only during a suspension of enforcement measures, it would also be possible to limit it to the period during which stabilization orders are issued under Sections 58 et seq. However, in order to ensure legal clarity and to counteract the adverse incentivethatthe debtorworks towardsthe issuance of a stabilization order solelybecause he wants to dispense with the obligation to file an application that is subject to criminal prosecution and liability, paragraph 1 provides that the obligation to file an application is already automatically suspended with the lis pendens of the restructuring case. This does not create a liability gap. The obligation to file an application is replaced by the duty to notify under paragraph 1, which enables the restructuring court to examine whether the restructuring case can be continued regardless of the insolvency proceedings or whether it must be terminated in the interest of the creditors (section 33(2) no. 1).AlthoughtheDirective does not provide forsuch a duty of disclosure, it does not exclude it either. Incontrast to an obligation to file an application, an obligation to notify does not force the debtor into insolvency proceedings. The obligation to notifyis thus not likely toimpairthepurpose of the preventive framework, whichis aimed at avoiding insolvency proceedings. It serves to create transparency. It enables the court to decide whether the continuation of the restructuring case is still in the interest of the joint creditors, whose interests and rights are directly endangered when the insolvency proceedings are initiated. This is permitted by the Directive. In the case of insolvency, this already follows from the fact that Article 7(3) allows for these exceptions to the requirement to suspend the obligation to file for insolvency; here, it would even be permissible to retain an obligation to file for insolvency. In the case of over-indebtedness, the admissibility of terminating the restructuring case follows from the fact that the Directive leaves it up to the Member States to make access to the instruments of the framework conditional on a viability review, Article 4(2) of the Directive. Since a lack of viability in the form of a negative forecast for continuation(section 19 (2) sentence 1 InsO) is a prerequisite for over-indebtedness and, conversely, over-indebtedness can be assumed to exist, the refusal of access to the instrumentsof the

framework, including the suspension of enforcement measures. This applies all the more so as the negative prognosis of continuationis usually communicatedvia the lack ofacceptance of the project by the creditors concerned, which in turn justifies the termination of the suspension of enforcement measures (Art. 6(9)(a) of the Directive).

The scope of application of the provision follows the scope of application of theprovisions on the duty to file an applicationwhichitsupersedes, i.e. section 15a InsO on the one hand and section 42 (2) BGB on the other. Pursuant to para. 1 sentence 2, the shareholders of an unmanagedlimited liability companyare alsosubject to the obligation to notify, unless they are unaware that the company is insolvent. Insofar as the duty to notify replaces the duty to file an application pursuant to § 15a InsO, the violation of this duty is also subject to a penalty, whereby the same penalty limits apply as for the violation of the duty to file an application. The duty of notification forassociations and foundations, on the other hand, is not subject to punishment, nor is the duty to file an application (section 15a (7) InsO).

Regarding paragraph 2

A manager can also meet the obligation to file an application pursuant to paragraph 1 by filing an application that meets the requirements of § 15a InsO. This is because the suppression of the duty to file an application by the duty to notify has the sole purpose of protecting the debtorfrom being compelled to file an application to openinsolvency proceedings. If the debtormakessucha request, which he is not obliged to do, this shall at the same time be deemed to be fulfilment of the duty of disclosure pursuant to sub-section 1 which replaces the duty tomake the request.

Regarding paragraph 3

The violation of the obligation to notify should be punishable as the violation of the obligation to apply, which is waived by the obligation to notify. The relevant provisions on the scope of penalties follow the regulatory model in § 15a InsO.

Regarding paragraph 4

Since the obligation to file for insolvency pursuant to section 15a InsO and section 42 (2) BGB only turns into an obligation to notify for the duration of the lis pendens of the restructuring case, it is revived after the end of the lis pendens of the restructuring case. Paragraph 4 clarifies this.

Re § 43 (Liability of the organs)

On the one hand, the provision ties in with the general provision in section 2, according to which the managers and members of the supervisory bodies of legal entities with limited liability are obliged to safeguard the interests of the creditors in the stage of imminent insolvency pursuant to section 17 (2) InsO. On the other hand, it ties in with the specific obligations of the debtor which these have during the legal validity of the restructuring case pursuant to section 32 (1). Accordingly, the debtor mustconductthe restructuring case with the diligence of a prudent and conscientiousrestructuring manager and in doing sosafeguardthe interests of allcreditors. In particular, the debtor must refrain from taking measures which are not compatible with the objective of the notified restructuring concept or which jeopardize the prospects of success of the envisaged restructuring. These duties imposed on the debtor in the interest of the creditors also concretize the schedule of duties of her managers. The concretization of the dutiesis to be understood againstthebackground that the debtor expresses with the notification of the restructuring plan that she is threatened with insolvency and that she will be obliged to paythe costs of the restructuring.

In order to cope with the threat of insolvency, the company would like to make use of the instruments of the preventive restructuring framework. Since these are for their part aimed at interventions in the legal positions of creditors in particular, there is a declared concrete danger to creditors, to whom an increased obligation to safeguard the interests of creditors corresponds. In contrast to the general case of § 2, in which the violation of the obligations to safeguard the interests of the creditors results inan internal liability towards the debtor, claims due to the violation of these obligations can also be asserted by the creditors in the pending stabilization and restructuring framework. The external liability is justified by the external effects of the restructuring project as set out in the notification.

Re section 44 (Prohibition of dissolution clauses)Reparagraph 1

The provision implements Article 7(5) of the Directive. According to this provision, the member states must ensure that neither the application for or opening of proceedings of the preventive framework nor, in particular, the granting of a suspension ofindividual compulsory enforcement may provide the connecting factor for contractual clauses which allow the debtor's contractual opponents to easily dissolve the contract, to form it, to render performance due or to refuse performance. Such contractual clausesmust be ineffective if therightsto declare the contractdue, to dissolve the contract, to formit,or to refuse performance are based solely on the aforementioned circumstances.Consequently, clauses that are additionally linked to other reasons, such as in particular a default of the debtor or other default in performance, may remain unaffected.

Paragraph 1 first clarifies that the lis pendens of the restructuring case or the use of instruments of the stabilization and restructuring framework by the debtor do not automaticallygrantthe counterparty a righttoterminate the contractual relationship, to demand payment, to refuse performance, to adjust or otherwise form the contract (first sentence). All the more so, the validity of the contract remains unaffected (sentence 2). These clarifications form the point of reference for the invalidity of deviatingagreementsexpressed in paragraph 2.

Theterm "recourse" includes not only the granting of theprocedural assistance soughtunder therespective instrument, but also thedebtor's application forsuch assistance. Overall, it should be ensured that the fact that the debtor has made the restructuring case pending and is making use of the instruments of the framework does not have any negative consequences for the existence and settlement of existing contractual relationships.

Regarding paragraph 2

According to paragraph 2, contractual clauses whichlinkthe legal consequences referred to in paragraph 1to the lis pendens of the restructuring case or thedebtor'srecourse toindividual instruments of the framework areinvalid. Since paragraph 1 merely clarifies that these legal consequences may not be linked to the aforementioned facts without further ado, clauses which additionally or solelylinkto furthercircumstances, such as in particular to a default or other default of the debtor, remain permissible.

Regarding paragraph 3

Transactions which may form the subject matter of an agreement on liquidation netting in accordance with section 104 (3) and (4) InsO are excluded from the prohibition in paragraph 2. These are the commodity futures and financial services agreements mentioned in section 104 (1) sentences 1 and 2 InsO, including financial collateral within the meaning of section 1 (1) (2) InsO

16 of the German Banking Act (KWG) and transactions that are subject to the offsetting of claims and benefits within the framework of a system within the meaning of section 1 (17) of the KWG. This serves toimplement the requirements of the Financial Collateral Directive 2002/47/EC and the Settlement Finality Directive 1998/26/EC, the provisions of which are not affected by the Directive (Art. 31 (1) of the Directive). In addition, the restructuring strength of the liquidation netting ensured by paragraph 3 takes into account the purposes that also support the insolvency strength of these arrangements. The transactions covered by them do not tolerateuncertaintyas towhether or not they will be carried out. This purpose could also be achieved by a strict termination mechanism along the lines of section 104 (1) InsO. However, the restructuring framework lacks a starting point for such a far-reaching legal consequence comparable to the opening of insolvency proceedings. Therefore, the draft leaves it at the recognition of the agreement on liquidation netting and thus alsomeetsthe basic idea of Article 7(5) of the Directive, according to which the contractual relationships entered into by the debtorshould in principle be preserved. The exception to this requirement is based on Article 7(6), according to which netting arrangements may be exempted from the consequences of suspension also to the extent that this is notenforcedby the Financial Collateral ArrangementsDirective or the Settlement Finality Directive.

Regarding Section 2 (Voting on the Plan by the Court)RegardingSection 45

(Discussion and Voting Date)RegardingParagraph 1

The debtor may entrust the organization and implementation of the coordination of the parties affected by the planon the restructuring plan to the restructuring court and thus avoid risks whichmay arisefrom an out-of-court plan coordination(e. g. the risks of proof resulting from Section 67 para. 3). Paragraph 1 is based on section 235 (1) sentences 1 and 2 InsO.

Regarding paragraph 2

The requirement toattachthe complete restructuring plan with allannexestothe applicationis intended toensurethat the restructuring court and the parties affected by the plan are fully informed about the subject of the discussion andvoteto beheld. In addition, when the application is sent together with the plan, the date of the submission of the plan (Section 4(1), Section 26(2)(2)) is also fixed.

Regarding paragraph 3

All persons affected by the plan in the sense of § 9 paragraph 1 are to be invited to the meeting.Inorder to ensure that individual duly invited plan participantscannot thwartthe discussion andcoordination meeting by simply not attending, the meeting may also be held if not all plan participants attend. This must be pointed out in the invitation. However, the voting rights of the non-participating plan participantsthen have the same effect as rejections with regard to the provision in § 27 (1). The court may instruct the debtor to serve the summons, which shall then be in accordance with section 41(4). A summons period is not regulated by law, this period must be properly determined by the restructuring court when the debtor is instructed to serve the summons; the debtor must then ensure that allnotifications are effected in good time so that the summons period determined by the courtiscomplied with.

Regarding paragraph 4

The decision on this voting right to be taken by the restructuring court in the event of a dispute over a voting right in the period prior to the vote is relevant to the question of whether

the plan has reached the required majorities (subject to a deviatingdecision in the proceedings on an immediate appeal against the plan confirmation decision pursuant to Sec. 70), but does not fix the extent to which the holder of the right in questionmay assert its right against the debtor. A laterdeviating determination (in particular by the competent court in the course of alegal dispute to be conducted outside the restructuring case), which does notinfluencetheresult of the vote, but does influence the amount in which the claim or right can be asserted against the debtor, remains possible (cf.) No voting right decision by the restructuring court is required on non-contentious voting rights or on such voting rights which are initially contentious, but in respect of which the parties involved can reach agreement in due time. In this case, the voting right which is undisputed by the debtor or the voting right on which the parties have agreed in the appointment is permanently valid for the voting result. In corresponding application of § 239 InsO, the registrar of the office records in a register which voting rights the parties to the plan are entitled to according to the result of the discussion at the meeting. Due to the reference to § 240 InsO, changes are possible to the same extent in a restructuring plan without thwarting a vote on the amended plan in the same meeting as in an insolvency plan.However, neither the restructuring court nor the persons affected by the plan or a restructuring officer can make changes to the restructuring plan. As a rule, the plan can only be accepted or rejected in its entirety as it is put to a vote by the debtor. Therefore only the debtor canmake changesto therestructuring plan. As in the insolvency plan, a separate date may be set by the restructuring court for the vote on a restructuring plan in corresponding application of section 241 InsO. In these cases, a written vote may also be taken in accordance with section 241 InsO. The provisions of Sections 26 et seq. on voting rights, the required majorities andthemajority decisionacross groupsshallalso apply mutatis mutandis, whereby Section 26 (4) with regard to the provision of Section 45 (4) sentence 2 shall only apply to the extentthat it is to be recorded in the court appointment record to what extent and forwhat reason voting rights were disputed.

Re § 46 (preliminary examination date)Repara. 1

The possibility of a preliminary examination of the included claims and rights enables the debtor torelieve the actual voting dateifthere areindications for the controversial nature or uncertainty of individual included claims and rights and the resulting voting rights.Here, concerns about the existence or enforceability of receivables can be discussed because the inclusion of non-existing or unenforceable receivablescandistort the voting rights.The Restructuring Court may alsobe consultedon concerns about theinclusion or non-inclusion of individual claims and rights and the appropriate classification of claims and rights. If a Restructuring Officer has been appointed, he or she maybring to bearhere the knowledgehe orshehas gainedon individual claims or rights in the course of his or her work,inparticularin thecourse of his or her own investigations and from thedebtor'sbooks and business papers.The discussions may cause the debtor to change the content of the restructuring plan and, for example, toremoveindividualclaimspreviously includedfrom the plan or to include them in a modified amount. Thesubject of the preliminary examination may also be the existence of imminent insolvency as aprerequisite for confirmation under Section 67 (1) no. 1. Theother issues that may be the subject of a preliminary examination application include, for example, whethera new financing arrangement under section 67(2)isnot subject to confirmation.

Regarding paragraph 2

The court summarizes the result of the preliminary examination in a notice order.This does not have any binding effect on the further proceedings. However, in order to preserve the right to be heard, the restructuring court, if itwishes to deviate from its decisionto issue a notice in the furthercourse of the proceedings,willhave to point outthe intendeddeviation in due time and give the parties involved the opportunity to comment.

Regarding paragraph 3

If the Restructuring Court can see on its own initiative that certain points which could be the subject of a preliminary examination date pursuant to subsection 1arecontentious or doubtfuland require more extensive discussion, the court mayalso scheduleaseparate preliminary examination date ex officio in order torelievethe latervoting date and, if necessary, to give the debtor the opportunity to amend problematic provisions in the plan in good time.

Re Section 3 (Preliminary Examination)Re§ 47 (Application)

If the debtor has doubts about certain issues that are important for the subsequent confirmation of the restructuring plan, e.g. because these issues were discussed in dispute between the debtor and the prospective plan participants in the course of the negotiations on the plan, the debtor can also apply for a court order to provide information on these issues if it wants to organize the voting procedure out of court.

Thesubject of the preliminary examination can (as in the context of a preliminary examination date in thejudicial plan approval procedure pursuant to § 45) be the selection of the plan participants and the grouping, in particular the appropriateness of the selection and the grouping.

According to Section 45, the assessment of voting rights may also be subject to a preliminary examination outside the judicial plan approval procedure.

The list of possible subjects of a preliminary examination mentioned in the regulation is not exhaustive. Here too, therefore, e.g. the confirmation harmlessness of a new financing under § 67 (2) can be submitted to the court for examination. In the same application, the debtor may alsosubmitseveral preliminary examination questions to the restructuring court.

Since this law only provides the debtor and, if applicable, the restructuring officer with a few concrete guidelines for the implementation of the out-of-court plan approval process in order not to hinder practical solutions, but on the other hand,limits tothefreedom of design ariseinparticular from the requirement to safeguard the rights of those affected by the plan, the possibility is also expressly opened upofhavingquestions on the design ofthe plan approval process examined beforehand by the restructuring court.

Re § 48 (Procedure)Repara. 1

The requirement of prior consultation of the persons affected by the preliminary examination questionsserves on the one hand to grant these persons a legal hearing. On the other hand, objections of the persons affected by the plan becomeknownto the restructuring court.Thus it can be avoided that the court later on solely for this reason is not able to hear the objections of the

must move away from the opinion expressed in the decision to refer the matter to the supervisory authority pursuant to paragraph 2 because it only later becomes aware of the objections which those affected by the plan already had at the time of the preliminary examination decision.

Regarding paragraph 2

Like the decision to issue a notice in the preliminary examination in the judicial plan approval procedure pursuant to Sec. 46 (2), the decision to issue a notice on the preliminary examination outside thejudicial plan approval procedure does not have any binding effect. The restructuring court maybasesubsequent decisions, in particular the plan confirmation decision,on a different legal interpretation(after a corresponding notification and the renewed granting of a legalhearing).

The target period of two weeks for a decision on the preliminary examination request serves toaccelerate the procedure. In the case of a high number of preliminary examination questions or a high degree of complexity, a longer decision period may also be justified in individual cases.

Regarding Section 4 (Termination of Contract)

Under the provisions of sections 49 to 52 the debtor may, under strict conditions, also bring about the termination of a mutual contract which has not yet been fully performed by both parties. For this purpose it is necessary that the other party is not prepared to make the necessary adjustments or terminate the contract in order to implement the restructuring project and the debtor is threatened with insolvency. Under these circumstances,a termination of the contract is justified within the stabilization and restructuring frameworkbecause, due to the possibility of the debtor to open insolvency proceedings in view of its imminent illiquidity, it is justified under the provisions of Sections 103 et seq. InsO would be possible. Against this background, the termination of the agreement anticipates the intervention possible in the insolvency proceedings framework.The other party mayliquidateits interest in performanceby means of the claim for non-performance to which it is entitled (§ 52(2) sentence 1). This can be planned (§ 52 (2) sentence 2) so that it cannot normally be fully realized by the other party. However, this only reflects the economic finding that the interest in performance is already devalued in any case due to the debtor's financial difficulties. Even in insolvency proceedings, the other party could lose the interest in performance which it has acquired as a result of the termination of a contract under sections 103 et seq. InsO only as a claim for insolvency(sections 103 (2) sentence 1, 109 (1) sentence 3, (2) sentence 2 InsO), whichin turn can be planned.

Such interventions in contractual relationships are not forced by the provisions of the Directive, but are compatible with it. According to Article 2(1)(1) of the Directive, the measures covered by the concept of restructuring also include operationalmeasures such as the modification and termination of contractual relationships (third sentence ofrecital2). Although the Directive assumes that such measures are generally subject to the general rules of contract law, the transposing legislator is free to provide for facilitations (second sentence of recital 2). The draft Dutch law on the confirmation of out-of-court settlements provides for corresponding facilitations. Contract-related measures are also possiblewithin the framework of those reorganization procedures under English law such as the companyvoluntary arrangement and the scheme of arrangement, which were used by German companies in the past precisely in order toadaptthe existing contracts to the reorganization situationwithin theframework of the intended reorganization.Corresponding reorganization migrations are usually complex and expensive. They have therefore remained a privilege of larger companies.Incontrast, it must be a desideratum of insolvency and restructuring legislation not only to provide anefficient restructuring framework that avoids the imposition of avoidable costs and circumstances, but also to provide smaller companies with a realisticframework for restructuring.

and affordable refurbishment options. The literature, like the Gravenbrucher Kreis (ZInsO 2020, 260, 261), hasspoken outpredominantly against the introduction of contract-related measures, namely contract termination options (Bork, ZRI 2020, 457 ff.; Fritz/Scholtis, BB 2019, 2051, 2056; Hofmann, NZI supplement 1/2019, 22, 25; Thole, ZIP 2017, 101, 108; Vallender, Festschrift Wimmer, 2017, 537, 553). However, the objections raised stand and fall on the assumption that the instruments of the preventive restructuring framework to be createdwill be available at a point in time well before the reasons for opening insolvency proceedings arise.However, this assumption loses its viabilitywith the decision of the draft to link it to the existence of imminentilliquidity, which also opens the way to the insolvency proceedings (section 18 (1) InsO). Inaddition, theintroduction of the termination instrument as a preventive measure is opposed by thefear that the insolvency proceedingswouldnot have an independentscope of application. However, legislation geared to increasing the effectiveness and efficiency of the insolvency and restructuring system cannot be aimed atsecuringa monopoly for a particular variant of the procedure to implementcertain restructuring measures. Finally, the opening of the possibility to terminate a contract does not involve any uncontrollable risks of abuse.Termination is only permissible under strict conditions, under which insolvency proceedings, the opening of which must already have been initiated, are unavoidable. The verification of this requirement is in any case incumbent on anindependent restructuring officer appointedby the court(§ 77 (1) No. 3).

Re § 49 (Termination of contract)Reparagraph 1

Paragraph 1 lays down the conditions under which a contract may be terminated.Itis required that the debtor is threatened with insolvency and that theburdens arising from the contract must be adjusted or eliminated in order to achieve the restructuring objective. In such a case, if the other party is not prepared to adjust or terminate the contract, the court may terminate the contract at the debtor's request. The court's decision has the consequence that no performance is owed for the future and the other part is referred to a claim for non-performance (Art. 52)

It must be a mutual contract that has not yet been completely fulfilled by both parties. The burden it places on debtor j must be such that the restructuring objective cannot be achieved without adaptation or termination of the contract. This usually precludes the debtor from using the instruments of the Stabilization and Restructuring Framework solely for the purpose ofterminating a contract. The termination of the contract must be embedded in a restructuring concept on the basis of which the debtor's crisis can be overcome as a whole.

The other party must refuse to amend or terminate the contract. The debtor must therefore have made a serious attempt to persuade the other party to adapt or terminate the contract. Only when the other party has indicated that it refuses such a solution can the debtor bring about the termination of the contract.

The debtor must finally be threatened with insolvency. In a state of imminentinsolvency, she could also choose to enter insolvency proceedings in which the contract would also be subject to termination in accordance with sections 103, 105, 109 InsO.

Since the decision on the termination of the contract pursuant to § 50 para. 1 sentence 1 must be issued at the same time as the decision on the plan confirmation, it is provided that the two applications shall also be filed jointly. This is an expression of the internallink between the termination of the contract and the plan confirmation of the compensation claim(§ 52 para. 1 sentence 2 and para. 2).

Regarding paragraph 2

Contracts which would be subject to the administrator's right of election in accordance with § 103 InsO or which could be terminated in accordance with § 109 InsO in the event of the insolvency of the debtor are subject to termination. This does not include in particular service and employment relationships. Because § 112 InsO is not mentioned in the regulation.

Regarding paragraph 3

Paragraph 3 makes it clear that certain contractsareinaccessible to a termination of contract under § 49. These are transactions which are covered by section 104 (1) InsO and can therefore form the subject matter of a liquidation netting agreement pursuant to section 104 (3) and (4) InsO as well as transactions whichare subject tooffsetting ina system pursuant to section 1 (17) KWG.

Re § 50 (decision of the court)Reparagraph 1

The decision of the Restructuring Court is made by aseparate decision issuedat the same time as thedecision confirming the restructuring plan.

Regarding paragraph 2

Since the termination of the contract encroaches on the rights of the contractual partner, the latter must be granted a legal hearing before the decision is made. In the interest of accelerating the proceedings, it is atthe dutiful discretion of the restructuring court whether a hearing is held or the hearing is conducted in another manner.

Regarding paragraph 3

Because the termination of the contractcausesa particularly intensiveinterference with the rights of the affected contractual partner, which isnotprescribedby the Directive, doubts as to the existence of the preconditions, e.g. the imminent inability to pay and the inevitability ofinsolvency proceedings without the contract being amended, are at the expense of the debtor.

Regarding paragraph 4

The service of the order is related to the contestability byimmediate appeal according to § 51. Here, too, in order to accelerate the proceedings, it iswaived to prescribe a date of pronouncement to the restructuring court.

Re § 51 (Immediate appeal)Reparagraph 1

A rejection of the request for termination of the contract only affects the rights of the debtor making the request, so that only the latter is entitled to file a complaint. Conversely, the

rights of the debtor are not affected if the request is granted, so that inthis case the other party may lodge an appeal. The Restructuring Court may only terminate or not terminate the agreement, so that no decisions are possible that would interfere with the rights of both the debtor and the other party. No decision on the amount of the claim for compensation under section 52(2), first sentence, shall be taken in the decision on termination of the contract.

Regarding paragraph 2

Contract termination and plan confirmation form a unit in two respects.On theone hand, the termination of the contract is only permissible if it is necessary to achieve the restructuring objective (§ 49 (1)). On the other hand, the claim to which the other part is entitled according to § 52 (2)isusuallyincludedin the plan because of the non-performanceand thus has to be arranged. A termination of the contract without confirmation of the planis therefore just as unsuitable to achieve the restructuring target. In order to take account of this unity in procedural law as well, the decision on the plan confirmation must be taken at the same time as the decision on the termination of the contract (Section 50 (1) sentence 1). In order to be able to take this unit into account even if an early execution of the plan isto bemadepossibleon the basis of a release decision pursuant to § 71 para. 4, para. 2 provides that the immediate appeal against the decision on the termination of the contract is to be rejected if the appeal against the decision on the plan confirmation is to be rejected pursuant to § 74 para. 4 and the interests of the other party are safeguardedby the fact thatsufficient funds are made available by the planfor thefulfilment of the claims for non-performance.

Re § 52 (Legal consequences of the termination of the contract)Reparagraph 1

The decision by which the court grants the debtor's request for termination of the contract has the consequence that from now on no performance under the contract can be demanded. If the contract is a continuing obligation, the decision to terminate the contract has the same effect as a notice of termination with three months' notice. If a shorter period of notice is applicable, this shall be taken into account.

These effects shall take effect upon service of the resolution, unless otherwise provided for in § 38 sentence 1 i. in conjunction with section 570(2) or (3) of the ZPO, the execution of the orderis suspended. From that time on, the debtor shall have nofurther claimsagainst the other party, and the other party shall only have a claim against the debtor for non-performance under subsection 2 first sentence.

The termination of the contract is only effective for the future.Therefore,services already rendered arenotto bereturned, but mustbetaken into accountin the assessment of the claim for compensationaccording to paragraph 2 sentence 1.

Regarding paragraph 2

The other part shall lose its claims for performance. However, it should be able to assert its interest in performance on the basis of a claim for non-performance. The claim is directed to the compensation of the damage caused by non-performance. However, this claim can be structured and thus in particular reduced by the restructuring plan. In this case, the parties affected by a termination of contract form anindependent subgroup within the meaning of § 10 (2).

To Section 5 (Stabilization)

In order to maintain the prospects of a successful conclusion of negotiations on a residual restructuring concept or a restructuring plan, the

§§ This can prevent in particular that the basis of the restructuring project is withdrawn by the affected creditors unilaterally enforcing their claims without regard to a restructuring solution that is in the interest of all parties involved. Measures of individual enforcement of rights are alsosuitable to have a negative effect on the willingness of other creditors to support the project by a contribution to the restructuring or even to make it possible in the first place. Sections 53 et seq. also implement the requirements of Articles 6 and 7 of the Directive.

Re § 53 (Principle)Reparagraph 1

To the extent that this is necessary to safeguard the prospects of the restructuring plan being realized, the court shall, upon application by the debtor under subsection 1, order freezes of enforcement and realization. According to Article 2(1)(4) of theDirective, the suspension of individual enforcement measures maybe grantedby a judicial oradministrative authority or may be instituted by law. Paragraph 1 provides that suspension of individual enforcement measures (hereinafter also referred to as stabilization measures) shall be ordered by the restructuring court upon application by the debtor. Due to the interventions associated with stabilization orders, thecourt orderispreferable.At thesame time,it hasthe advantageover a validity by operation of lawthatanyspecial features can be taken into accountby examining the respective individual case.

If the order of suspension of enforcement also covers the debtor's immovable assets, the court of enforcement is responsible for the enforcement of the suspension. Thedetails are regulated in the new § 30g ZVG-E.

A prior hearing of the creditors is not required.As a rule,the stabilization orderis an urgent measure which is comparable in content and function to the order of protective measures in the temporary insolvency proceedings (section 21 (2) nos. 3 and 5 InsO), in which a hearing of the creditors concerned is also not necessary. The creditors concerned may apply for termination at any time, provided theycan substantiatea reason for termination(section 63 (2)). This is compatible with the provisions of the Directive. The directive evenallowsa ban on enforcement to be imposed by law.Moreover, the second subparagraph of Article 6(9) of the Directive requires the possibility of an order without prior hearing of the parties concerned.

Regarding paragraph 2

The stabilization orders should only be able to be issued in relation to claims that can be shaped by a restructuring plan. Paragraph 2 sentence 1, therefore, stipulates that claims which, according to § 6, cannot be structured by a restructuring plan cannot be subject to a stabilization order either. This ensures in particular that the claims of female employees cannotbe subjectedto the blocking effects ofa stabilization order.

Itfollows from sentence 2 that stabilization orders are generally applicable andcancoverall creditorsor alternativelybe restrictedto one or more creditors or groups of creditors. In this respect, the draft takes up the possibility opened up by Article 6 (3) of the Directive to design the stabilization regime flexibly in order to allow for a use appropriate to the situation.

Regarding paragraph 3

Paragraph 3 allows the stabilisation order to be extended to rights arising out of an intra-group liability assumed by a subsidiary orany other third-party guarantee provided by such an entity. According to Article 2(1)(4) and recital 32, third sentence, of the Directive, the suspension of individual enforcement measures may also beappliedto third parties providing collateral,including guarantors and issuers of collateral, if national law so provides.

Re § 54 (Application)Reparagraph 1

Stabilization measures are ordered by the restructuring court in accordance with § 53 (1). Paragraph 1 regulates what information the debtor's application for an ordermust contain.

Regarding paragraph 2

According to paragraph 2 sentence 1, the application shall be accompanied by a restructuring plan. This plan must firstcontaina draft of the restructuring plan updated to the date of application or a concept for the restructuring updated to that date.This willensurethatthe court has the current concept,irrespective of thedocumentssubmitted in the context of the notificationand any concretization and updating that may have taken place in the meantime.In addition, the remaining restructuring plan must contain a financial plan covering a period of six months and a well-founded presentation of the sources of financing which are to ensure solvency during this period. This is toensure that the debtor is fully financed beyond the maximum order period pursuant to Section 57 (1) and (2). Pursuant to sentence 2, the debtor must also declare whether there is a delay in the fulfillment of certain liabilities, whether there have been any blockades of enforcement and realization in a previous restructuring framework or preliminary insolvency proceedings in the last three years and whetherthe obligations under commercial law arising from Sections 325 to 328 or Section 339 HGB have been violatedin the last threecompleted fiscal years. This is based on the consideration that the order for a stabilization measure should not be easier to obtain than anorder for provisional self-administration.

Re § 55 (Order)Reparagraph 1

Paragraph 1 specifies the conditions under which the restructuring courtmust orderthestabilization measures applied for. From the wording "submitted restructuring plan is complete and conclusive and no circumstances are known" it follows that the court examines the restructuring plan for its formal completeness and otherwise only carries out a plausibility check of the restructuring plan. This is intended to ensure that the stabilization order, which may be time-critical under certain circumstances, cannot be issued only after a lengthy examination, for which the involvement of an expert may even be necessary.Theexclusion of the order if certain circumstances are known is intended toprevent the court from having to order a stabilization measure against its better knowledge although it has knowledge of incorrect information provided by the debtor (No. 1), the restructuring is futile because there is no prospect that a plan implementing the restructuring concept will be accepted by those affected by the plan.

The restructuring plan must be approved bytheBoard of Directors or by the court (point 2),there is no threat ofinsolvency (point 3) or the requested order is not necessary to achieve the restructuring objective (point 4).

If the restructuring plan has remediable shortcomings, it should be possible to improve it. Paragraph 1 sentence 2 therefore stipulates that in the case of remediable deficiencies, the restructuring court shallissuethe order for amaximum periodof20 days. If the deficiencies areremediedwithin the set time limit, the restructuring court will finally order the requested stabilization measures.

Regarding paragraph 2

In the case of substantial arrears of payment to employees, from pension commitmentsor the tax debt relationship, to the social security institutions andsuppliers or violations of the disclosure obligations under commercial law, the order of a stabilization order should not be generally excluded in parallel with the new provisions in the InsO on self-management, butshould be tiedto specialconditions. Here the court must be convinced that the debtor is nevertheless willing and able to protect the interests of the creditor community. The same also applies if the debtorhasalready been subject to liquidation or enforcement blockades in previous restructuring or preliminary insolvency proceedings.

Regarding paragraph 3

By serving the order on all creditors affected by it, it is intended toensure that they do not attempt to enforce it in ignorance of the stabilization measures.

Regarding paragraph 4

Paragraph 4 clarifies that the court decides on the application for a stabilization orderby order. The debtor is entitled to an immediate appeal against the decision of the restructuring court if the restructuring court determines in its decision that the debtor is insolvent.

The legal remedy of immediate appeal, which is limited to the examination of the existence of insolvency, is intended to take account of the fact that the determination of the existence of insolvency by the restructuring courtmay triggersignificantlegal consequences for the debtor, in particular an indicative effect in subsequent insolvency proceedings or criminal proceedings for breach oftheobligation to file for insolvency pursuant to section 15a InsO ormay triggerthe effects ofcertain contractual clauses.

Re § 56 (subsequent order, new order)

If the prerequisites for the order of stabilization measures are met, the order should beable to beextended to further creditors, to be extended in contentor to be extended in timeas a subsequent order.In addition, if the requirements for the order of stabilization measures are still met but the original order periodhas already elapsed and therefore no extension is possible, a new order should be possible.

Subsequent orders in all forms and new orders may be issued cumulatively and repeatedly within the scope of the permissible order duration according to § 57.

Thepossibility of follow-up and new orders is intended to take account of the factthat the dynamics of the restructuring process may make it necessary to make other or renewed stabilization orders.

Re § 57 (Duration of the Order)Repara. 1

According to Article 6(4) of the Directive, the initial duration for stabilisation orders maybe set at up to four months. The period of up to three months for the initial order is based on the maximum period of three months for the preparation andpresentation of an insolvency plan in the protective umbrella procedure. This period shouldregularlybesufficient to develop a restructuring plan andmake progressinnegotiations with creditors.

Regarding paragraph 2

Pursuant to paragraph 2, follow-up and new orders may in principle onlybeissuedwithin the maximum order duration ofparagraph 1. If the debtorhas submitteda plan offerand no circumstances are known which indicate that an acceptance of the plan is not to be expected within one month, the maximum order period shall be extendedby one month. The purpose ofthis extension of the maximum order period is to enable thedebtor tomaintainthe chances of plan acceptance by issuing corresponding orders.With the presentation of the plan offer, the debtor has specified which claims are to be included in the plan. Orders whichfallwithin theperiod of the extension of the maximum order period are therefore only directedagainst those affected by the plan.

This provision also respects the requirements of Article 6(7) of the Directive for renewals and re-arrangements.

Regarding paragraph 3

If only the judicial confirmation of arestructuring plan acceptedby the plan participants is stilloutstanding, follow-up and new orders may beissueduntil theplan confirmationbecomeslegally binding, but not more than eight months afterthefirst orderwasissued. The acceptance of the restructuring plan by the plan participantsjustifies this extension of the maximum order duration.However,a furtherrestriction of the creditors' possibilities of enforcement and realization isonly justified if the confirmation of the restructuring plan is not alreadyobviously invalid. Sentence 2 therefore stipulates that the extension does not apply if the restructuring plan is obviously not confirmable.

Regarding paragraph 4

Pursuant to the second subparagraph of Article 6(8) of the Directive, for proceedings in which no public announcements are made, the total duration of the suspension is limited to a maximum of four months if the center of the debtor's main interestshas been transferred to another Member Statewithin a period of three months prior to the submission of an application for theopening of preventive restructuring proceedings. The provision in paragraph 4 implements this requirement of the Directive. The design of the preventive restructuring procedure in this Act does not foresee an application for opening. Therefore, the first use of instruments of the Stabilization and Restructuring Framework is taken into account.

Re § 58 (ban on utilization)

Based on the consideration that preventive restructuring proceedings are in principle not intended to enable any further intervention in creditors' rights than is possible in insolvency proceedings, § 58, following the provision of § 21para. 2 sentence 1 no. 5 of the Insolvency Statute,stipulatesthat creditors affectedby a ban on liquidationare in principle to be paid the interest due and that a loss in value resulting from the use of the assets is to be compensated by current payments. According to sentence 2, this does not apply insofar as satisfaction from the proceeds of realisation is not to be expected.

Re § 59 (Effects under contract law)Reparagraphs 1 and 2

The provisions of paragraphs 1 and 2 serve to implement Article 7(4) of the Directive. According to the first subparagraph of Article 7(4) of the Directive, creditors affected by stabilisation measures shall be prevented, in respect ofdebts incurredprior to thesuspension and solely on the grounds that the debts have not been repaid,fromrefusingperformance of material contracts yet to be performed, terminating such contracts, rendering them due prematurely or otherwise modifying them to the detriment of the debtor. According to the second sentence of the first subparagraph of Article 7(4) of theDirective, contracts yet to be performed which are necessary for the continuation of the day-to-day operation of the business, including contracts whosesuspension would leadto thecessation of the debtor's business activities, areto be understood.

Paragraph 1 sentence 1 shall link up with the situation in which the debtorhasowed a creditor a performance contractually owed at the time of the stabilisation order. The other party may then not assert any rights to disrupt performance, such as above all the refusal to perform its obligation, or rights to terminate or amend the contract, solely on the basis of the existing arrears. Conversely,the other party may invoke circumstances which, either in isolation orinconnection with the existing arrears, give rise to a right to disrupt performance.In particular, a default of the debtor arising after the relevant date of the order shall entitle the debtor to all consequences whichmaybelinked to such default in the individual case.

According to paragraph 1 sentence 2, the time of the first order of stabilization is always decisive.

Under paragraph 2 the other party may object that the debtor is not dependent on the contractual performance of the other party for the continuation of the business. As long as the latter has not been determined, it can be assumed in case of doubt thatthere isacorresponding need forthe debtor to continue the business.

Regarding paragraph 3

Paragraph 3 sentence 1 ensures that the order of a stabilization measuredoes not affectboth the plea of uncertainty pursuant to § 321 BGB and the lender's right of terminationpursuant to § 490 BGB. Even after the order of a stabilization measure the creditors should still have the possibility to protect themselves against a furtherincrease of their economic risk. The stabilization order is intended toprevent creditors affected by individual enforcement measures fromanticipating the effects of a plan by previously satisfying themselves unilaterally. It is not compatiblewith this objective, which is aimedat maintaining the status quo, to expect a creditor who is obliged to pay in advance to reduce her insolvency risk

through further advance payments, without being able to take precautions against this.

Re Section 60 (financial collateral, payment and settlement systems, liquidation netting)

Regarding paragraph 1

The provision corresponds to the provision of section 21 (2) sentences 2 and 3 InsO. Like the insolvency law model regulation, it corresponds to European directive law, namely from the Financial Collateral Directive 2002/47/EC and the Settlement Finality Directive 1998/26/EC. Pursuant to Article 31 (1) of the Directive, the latter acts take precedence over theprovisionsofthe Directive.

Regarding paragraph 2

Paragraph 2 ensures that agreements on liquidation nettingare not affected bytheorder for a stabilisation measure. In particular, the individual transactions to be included in the netting are notsubject to the provisions of § 59. This is permitted under the first subparagraph of Article 7 (6) of the Directive. Sentence 2 provides that the net claim resulting from the implementation of liquidation nettingmay be subject to an enforcement blockand, to the extent permitted under paragraph 1, also to a liquidation block.

Re section 61 (Liability of the debtor and his organs)Repara. 1

According to paragraph 1, the debtor is liable for damagesuffered bycreditors as a result of anorder culpably obtained on the basis of false information. The fault-based liability was included, since the order under section 55 is notpreceded bya fulljudicial review.

Regarding paragraph 2

If the debtor is not a natural person, the liability under subsection 1 shall be joined by the liability of the members of the management. The members of the management board shall only be liable if they are at fault. The recourse against themembers of the management thus presupposes fault on the level of the debtor and the respective member of the management. If several persons are liable to pay compensation for the same damage under paragraph 1 and paragraph 2, they shall be jointly and severally liable.

Re § 62 (Insolvency application)

§ Paragraph 62 serves to transpose Article 7(2) of the Directive, which provides that the suspension of individual enforcement measures for the duration of the suspensionleadsto thepostponement of creditors' insolvency agreements.

Re § 63 (Termination)

Regarding paragraph 1

Paragraph 1 regulates when the restructuring court must overturn the order.

To number 1

According to point 1, the order shall be revoked if the debtor so requests. This implementsthe requirement of Article 6(9), first subparagraph, point (b), alternative 1. The debtor should be able to bring about a termination at any time. This is appropriate, as the debtor is usually best placed to assess whether the stabilization order isstill appropriate.

To number 2

According to No. 2 alternative 1, the order shall be revoked if the notification under § 31 (4) loses its effect. Effective notification under section 31 is a prerequisite for the use of instruments under this Act. If a notification loses its effect, the basis for an order already made shall be withdrawn with the consequence that it shall be revoked. Furthermore, a cancellation shall be effected in accordance with No. 2 alternative 2 if the prerequisites for cancellation of the legal effects of the notification ex officio in accordance with sections 31(4) No. 3, 33 are met. In order to protect the interests of the creditors, this provision ensures that it is notnecessary to wait forthe legal force of aresolution cancellingthe legal effectsof the notification before cancelling the stabilisation order, but that the stabilisation order must be cancelledif there is reasonto fear that the interests of the creditorswill beseriously jeopardised.

To number 3

Number 3 standardizes further reasons for termination. Number 3 is based on the idea that the order shall be revoked if circumstances are known from which it follows that the debtor is not willing andable toalignits management with theinterests of the creditors. Thisis always and irrefutably to be assumedin thecases mentionedin letters a) and b), but this can also result in other ways (letter c)). By basing the provision on the fact that the restructuring court is aware of circumstances, it is made clear that there is no obligation of the restructuring court to carry out an official investigation, so that the court does not have to investigate ex officio circumstances leading to cancellation or breaches of duty under the provisions mentioned. Such circumstances may become known to the court from the reports or notifications of the remaining restructuring commissioners or in any other way by persons involved in the restructuring matter.

To letter a

If the restructuring planisbasedin material respects on incorrect facts, itcannot justifyencroachments on the rights of creditors and collateral takersby a stabilization order. This applies initially if the debtorhas basedthe restructuring plan on incorrect facts from the outset.However, the same applies if the circumstanceshave changed and the changed circumstances make the restructuring futile or the order is no longer necessary to achieve the restructuring goal. If the circumstances have changed significantly and the debtor does not comply with its obligation to make adjustments pursuant to Sec. 32 para. 2 second sentence, third sentence, the order shall already be revokedunder No. 2 in conjunction with Sec. 31 para. 4 No. 3 and Sec. 33 para. 1 No. 4 lit. a).

Re point (b)

Incomplete or deficient accounting and bookkeeping, whichdo not allowanassessment of the restructuring plan, in particular the finance plan, would prevent the issuance of a stabilization order pursuant to Section 54 (1) and therefore, if such circumstances become known, constitutes a ground for setting aside. These circumstances lead to the irrefutable assumption that the debtor is not in a position to align the management of its business with the interests of the creditors.

Re letter c

Subparagraph (c) shall serve as a catch-all clauseif it is apparent in any other wayoutside the abovecircumstances that the debtor is not willing and able to align its management with the interests of the creditor community.

Regarding paragraph 2

Paragraph 2 shall also give any creditor affected by the order the opportunity toapply forcancellation onthegrounds referred to in paragraph 1, points 2 and 3. Entitlement to apply is restricted to the creditors affected by the order. A prerequisite for revocation on the basis of an application by a creditor is the substantiation of the reason for termination.

Regarding paragraph 3

According to paragraph 3, the restructuring court may provisionally refrain from a cancellation in order to enable an orderly transition to insolvency proceedings in the interest of the creditor community. The requirement of setting a deadline within which the debtor must prove to the court that he has filed for insolvency proceedings is intended toensurethatthe order is not maintained longer than necessary. The time limit specified in sentence 2 represents a maximum period and is based on the maximum period for filing an application for insolvency due to inability to pay pursuant to section 15a (1) InsO.

Regarding paragraph 4

According to paragraph 4, the order also ends with the legally binding decision on the plan confirmation. With the confirmation of the restructuring plan, the order is no longernecessaryto safeguard the prospects of achieving the restructuring objective.If the confirmation of the plan is denied, there is no longer any prospect of achieving the restructuring target. In both cases, the order is therefore no longer necessary.

To Section 6 (Plan Confirmation)

Re subsection 1 (Confirmation procedure)

Re § 64 (motion)

The provision firstly clarifies that a court confirmation of arestructuring plan acceptedby the plan participantswith the required majorities is only permissible upon application by the debtor. Neither on application by individual creditors or shareholders or the restructuring officers, nor on the basis of aresolution of the majority of those affected by the plan, nor even on the unanimous request of all those affected by the plan, may the restructuring court confirm a restructuring plan if no application by the debtor has been filed. The conditions under which the restructuring court must refuse to confirm the plan are set out in § 67.

The provision also stipulates that in the event that no court discussion and voting meeting has taken place, the debtor must provide the restructuring court with all information and documents required for the confirmation decision together with the confirmation request.

Re § 65 (hearing)

Before the decision on the confirmation of the plan, those affected by the plan and - if applicable - the restructuring officer musthavehad the opportunity to comment.Insofar as those affected by the plan had the opportunity to participate in a court discussion of theplan, the restructuring plan must be approved.

In order to ensure that the plan participants are able to participate in the discussionand vote at a time when the plan participants could have expressed their views,it isnotnecessary to give themafurther opportunity to express their views in an efficient manner (Article 10(4) of the Directive). This also applies to those plan participantswho did not attend the meeting despite having been duly summoned. If the plan approval has taken place in court proceedings, the whether and how of a hearing is therefore at the discretion of the restructuring court. If thevotehasnot taken place in court proceedings, a hearing of the plan participants musttake place and this hearing must take place on a hearing date.

Re § 66 (Conditional Plan)

The standard is modelled on § 249 InsO. The conditions to which the restructuring plan can be bound include in particular the implementation of such residual restructuring measures which are outside the scope of the restructuring plan, e.g. the sale of assets. This also includes the amendment of bond conditions by a resolution in accordance with § 5 of the German Bond Act.Thisis because, pursuant to Section 19 (6) of the German Bond Act, the terms andconditions of abondcan alsobeamendedoutside the formative part of the restructuring plan in accordance with the provisions of the German Bond Act.Since the stabilization and restructuring framework - unlike the insolvency proceedings -is designedto provide largely nonproceduralsupport by the courts for a reorganization plan which is essentially to be organized independently by the debtor and the parties affected by the plan, and since the plan confirmation can only be considered upon separate application by the debtor, it does not appear necessary toprovide foraprovisioncorresponding to Section 249 sentence 2 of the Insolvency Statutefor the refusal of the plan confirmation due to the non-occurrence of a condition after expiry of a time limit set by the court. The debtor is required tofilethe request for confirmationregularly only after the conditions for confirmationhave been met.

Re § 67 (Refusal of confirmation)Repara. 1

The provision standardizes requirements for the confirmation of the restructuring plan, which are designed as reasons for refusal and thus as negative confirmation requirements.

To number 1

The stabilization and restructuring framework should in principle onlybe available if an insolvency is imminent but has not yet occurred (Section 33 (2) no. 1 sentence 1). However, an insolvency which has already occurred at such an advanced stage of restructuring, in which the restructuring plan has already been accepted by those affected by the plan, should not lead to a refusal of the plan confirmation if the effects of the plan confirmationeliminatethe insolvency(§ 33 para. 2 no. 1 sentence 2).

To number 2

The provision is based on § 250 No. 1 InsO. In implementation of the requirements of Article 10 (2), first subparagraph, letter a), as far as the procedure of plan acceptance is concerned, and letter c) of the Directive, therestructuring court mustexamine the properconduct of the voting procedure and the existence of the required majorities. According to Article 10(3) of the Directive it must be ensured that the restructuring court can refuse to confirm the restructuring plan if there is no reasonable prospect that the plan will prevent the debtor's insolvency or

would guarantee the company's viability. In this respect,No. 2 refers to the provisions on the content of the plan, among other things also to § 16 and the reasoned declaration required there as a plan annex. Insignificantdefectsareirrelevant. Removable material deficiencies are only of significance if they are notremediedwithin a reasonable period of time set by the restructuring court.This also implementsthe requirements of Article 10(2), first subparagraph, point (a)with regard to the plan content and point (b) of the Directive.

To number 3

According to point 3, the court has to examine the feasibility of the plan, however, limited to a test of obviousness, in so far as the feasibility of the claims created by the plan and the claims of the plan participantsandthose not included in the plan are concerned.

Regarding paragraph 2

The provision implementsthe requirements of Article 10(2), first subparagraph, point (e) of the Directive and regulates the conditions for plan confirmation in cases where the restructuring plan provides for new financing. Also in this respect the court is limited to a conclusiveness test and the consideration of obvious deficiencies

Regarding paragraph 3

If the plan is not approved in a court of law, there is a lack of prior judicial control and monitoring of the approval process. Therefore, doubts about the proper execution of the plan approval process and about theoutcome of the approvalprocess are at theexpense of the debtor.

In the court discussion and voting meeting, the voting right pursuant to § 45 (4) sentence 2 shall be bindingly determined by the restructuring court if noagreement can be reached between the parties present. If, on the other hand, the acceptance of the plan has not taken place in the court proceedings, the court shall determine the voting rights in the dispute within the framework of the plan confirmation in accordance with Section 26 paras 1 to 3 and shall not beboundby the debtor's provisional determination in the documentation of the voting result pursuant to Section 24 para 1 and in the basis of the voting rightpursuant to Section 26 para 4.

Regarding paragraph 4

Following the example of section 250 no. 2 InsO, the provision in paragraph 4 is intended tocounteractabusivepractices in the course of plan negotiations and plan coordination.

Re § 68 (Protection of minorities)Reparagraph 1

The provision implements the requirements of point 6 of Article 2(1) in conjunction with point (d) of the first subparagraph of Article 10(2), second subparagraph, of the Directive. In doing so, the provision is based on section 251 (1) InsO.

However, the comparison to be made in the insolvency plan proceedings of the position ofa dissenting creditor with the situation in which this creditor would probably find itself without a planrefersto the regular insolvency proceedings in which the course is set - in case of doubt and subject to a different vote by the creditors' meeting (section 156 InsO) - for the liquidation of the debtor's assets (section 159 InsO). In contrast, the planning procedure of the restructuring framework cannot be based on a

insolvency proceedings, but only to an out-of-court negotiation situation, in which the course is in any case not immediately directed towards liquidation, but in principle other alternatives can be considered (continuation on the basis of an alternative restructuring concept or even without concreterestructuring measures).

The provision in sentence 2 ensures that the comparison to be made in accordance with sentence 1 is made from the perspective of the point in time that is also decisive for the structuring of restructuring receivables and rights to separate satisfaction in the restructuring plan. For example, deteriorations in the value of collateral items that occurred after the initial order of a stabilization order butwould probably not have occurred without the order because the creditor concerned would then have achieved a timely realization should not be taken into account. Conversely, legal measures taken by the creditor in response to the plan submission should not be included in the settlement consideration.

Regarding paragraph 2

The model for the regulation of paragraph 2 is § 251 (2) InsO. The regulation serves toprovidethe debtor as the creator of the restructuring plan and the other parties affected by the planwith clarity as early as possible as to whether a review of the criterionof creditor interest and the related company valuation (Article 14 (1)(a), (2) of the Directive) becomes necessary so that, if necessary, an alternative restructuring plan can be drawn up to avoid further time losses. The applicant's assertion (in the case of an out-of-court vote) or credibility(if the vote is carried out in court proceedings)is only a prerequisite for the admissibility of the application. At the level of the examination of the merits, the restructuring court can only refuse to confirm the plan in accordance with paragraph 1 if it is fully convinced that a worse position exists (§ 39 paragraph 1 sentence 1). In this context, expert evidence can alsobe submittedex officio(§ 39 (1) sentence 2, Article 14 (2) of the Directive).

Regarding paragraph 3

Paragraph 3 is based on section 251 (3) InsO. The provision is without direct precedent in the directive, but is compatible with it, because the funds to be provided can compensate for a worse position of the plan participants, which is claimed by one of them.

Re section 69 (Announcement of the decision)Reparagraph 1

Like the resolution in which the decision on the confirmation of an insolvency plan is to be decided (Section 252 (1) of the Insolvency Statute), the resolution with the decision on the confirmation of a restructuring plan must also be announced. The restructuring court may promulgate the order either in a separate promulgation meeting or, if such a meeting has taken place, in the discussion and voting meeting under section 45 or in the hearing meeting under section 65. Only if the debtor has filed a request under section 88 subs. 1 to make public announcements, the order shall be publicly announced under section 89 subs. 1 No. 3.

Regarding paragraph 2

The provision is based on section 252 (2) InsO, whereby here a copy of the plan or a summary of its essential contentneedonlybesent to those affected by the planbecause only they are entitled to file a complaint under section 70 (1).

Re § 70 (Immediate appeal)Reparagraph 1

Notwithstanding section 253 (1) InsO, the immediate appeal against the plan confirmationis only available to those affected by the plan and against the refusal of the plan confirmation only to the debtor. It would not make sense for the debtor to have the right to appeal against the plan confirmation because a restructuring plan can only be put to a vote by the debtor and only the debtor can apply for the plan confirmation. Conversely, as aconsequence of the debtor's procedural dominance over the rest of the restructuring plan, only the debtor can challenge the rejection of the plan confirmation.

Regarding paragraph 2

Paragraph 2 is modelled on § 253 (2) InsO, but with a deviation from § 253 (2) no. 1 InsO, which is due to the differences in the permissible organizational forms of voting. Because there is no mandatory date for the vote. If the vote is conducted without a meeting of those affected by the plan in accordance with § 22, a person affected by the plan mustclearly object tothe plan inanother wayso that hecanlaterlodgea permissible immediateappeal against the plan confirmation resolution.

Regarding paragraph 3

In order to avoid as far as possible delays in plan implementation which could jeopardize the success of the plan-based restructuring, the standards for an order of the suspensive effect of an immediate appeal against the plan confirmationas in insolvency plan proceedingsareraised. Thus, an order of suspensiveeffect pursuant to section 570 (2) or (3) ZPO outside the scope of applicationofparagraph 3 presupposes that the appealis admissibleaccording to a summary assessment, does not appear to be without prospects of success in the matter and the complainant is threatened with irreparable or in any case greater disadvantages than therespondent (Lipp in Münchener Kommentar zur InsO, 5th ed. 2019, section 253 InsO, marginal no. 9 m. w. N.). Paragraph 3 goes beyond this in that thedisadvantages threatening the complainantmustbe serious anddisproportionatetothe advantages of immediate execution of the plan.

Regarding paragraph 4

Paragraph 4 follows the model of section 253 (4) InsO. However, deviations arise from the fact that there are no insolvency assets from which a claim for compensation for the damage caused by the execution of the plan could be satisfied, so that the claim isdirected directly against the debtor and she is liable for it with all her assets.

Re subsection 2 (Effects of the confirmed plan; monitoring of plan fulfilment)

Re section 71 (Effects of the Plan)Repara. 1

In contrast to the insolvency plan proceedings, where the effects specified in the formative part of the plan do not take effect until the confirmation resolution becomes legally binding (§ 254 para. 1 of the Insolvency Statute), in the case of the restructuring plan they take effect as soon as the confirmation resolution is announced (§ 69 para. 1). The derogation is based on thefirst subparagraph ofArticle 16(3) of the Directive, which - subject to the possibility of a separate order of suspensive effect under the second subparagraph of Article 16(3) of the Directive - provides that the effects specified in the first subparagraph of Article 16(3)of the Directive are not to apply to the restructuring plan.

line - does notprovide fora suspensiveeffectfor an appeal against the plan confirmation resolution.The fact that the effects of the plan design are linked to the judicial plan confirmationalso implementsthe requirements of Article 10 (1) (a) and (b) of the Directive. Restructuring plans that lead to the loss of more than 25% of jobs (Article 10 (1) (c) of the Directive) are not permitted.

Regarding paragraph 2

If general partners of partnerships had to continue to be liable without limitation for that part of the claims against the Company which the creditors concerned waive in the restructuring plan, such a waiver of claims would be largely devalued. Although the direct liability access of these creditors to the partnership's corporate assets would be eliminated, they couldstill enforce their claims against the entire assets of the personally liable partners, which in turn include their shares inthe partnership.Thepartnersconcernedwould also have an incentive to withdraw the amounts to be paid to the creditors from the partnership. Insofar as the plan provides for direct structural interventions in the share rights according to § 4 (3), a double burden on these partners would result in connection with the default liability of the partners concerned for the shares in company liabilities, which are waived by structural interventions according to § 4 (1) number 1. This would alsocontradictthe evaluations of § 28 (2) sentence 3, which, in the context of the group-wide majority decision, allows an assisting partner to retain a share under certain circumstances.

Regarding paragraph 3

With theexception of the reservations of the special provisions for intra-groupthird-party collateral pursuant to Section 4 (4), theprovision corresponds tothe parallel provision for insolvency plans in Section 254 (2) of the Insolvency Statute. Accordingly, a creditor affected by a plan can continue to satisfy its claim in full from third-party collateral, irrespective of the effects of the restructuring plan on the relationship between it and the debtor, while the debtor can assert a right of recourse against the third-party guarantor against the third-party guarantor with the restrictions resulting from the restructuring plan.

Regarding paragraph 4

In accordance with the provision of section 254 (3) InsO, a creditor who has been satisfied by the debtor beyond the amount to be claimed according to the plan does not have to surrender the additional amount paid up to the amount of her unreduced claim. This is because the claims not covered by the plan continue to exist as recoverable but unenforceable bonds in kind.

Regarding paragraph 5

In terms of content, the provision corresponds to section 254 (4) InsO. In restructuring plan law, it is also justified by the fact that the debtor can draw up the plan itself and, within the framework of the requirements of section 10, determine the group of included claims and the extent of their inclusion and that, in contrast to insolvency proceedings, there is no filing and ascertainment of claims.

Regarding paragraph 6

The regulation to remedy deficiencies in the plan approval procedure and deficiencies in the will of the plan offer and plan acceptance ensures that legal certainty is created for the debtor and those affected by the plan with the legally binding confirmation of the restructuring plan.

Re **section 72 (Other effects of the restructuring plan)Reparagraph 1**

The provision contains a fiction corresponding to section 254a (1) InsO of the formalsubmission of declarations of intent which have become part of the plan.

Regarding paragraph 2

Paragraph 2 deviates in sentence 1 from its model (section 254a (2) sentence 1 InsO) in part. On the one hand, the wording is narrower because typically only a subset of creditors is included in a restructuring plan and the shareholders do not necessarily have to be included in full. On the other hand, the standard is broader in scope than in the case of declarations of intent which are included in a plan without the inclusion of share rights, all formal requirements for declarations of intentshould be able to be metbyincluding them in the plan. Sentence 2 corresponds to section 254a (2) sentence 2 InsO. There is no person corresponding to the insolvency administrator with authority to dispose of the debtor's assets in the restructuring framework, so that no provision corresponding to section 254a (2) sentence 3 InsO is provided.

Regarding paragraph 3

Paragraph 3 is modelled on § 254a (3) InsO.

Re § 73 (resurrection)

Regarding paragraph 1

Following the model of section 255 (1) InsO, also in the restructuring plan law, on theone hand, inorder to protect the creditors affected by the plan and to discipline the debtor, a considerable arrears in performance of the debtorshouldbe sanctioned by withdrawing the effects of the plan from the debtor in the form of a deferral of claims or a partial remission with regard to the claims affected by the arrears in performance. On the other hand, in this case, too, arrears of the debtor should not immediatelyleadto the severe legal consequences of the loss of the effects of the planning with regard to the affectedclaims, but the debtordoes not havetomake up forthe fulfilment of the plan even after a written reminderwith a grace period of at least two weeks.

Regarding paragraph 2

In accordance with the provision in section 255 (2) InsO, the opening of insolvency proceedings on the debtor's assets before the plan has been completely fulfilled also in the case of the restructuring plan leads to the cessation of all deferments and waivers of claims regulated in this plan. This is intended to prevent creditors affected by the plan frombeing doubly burdenedin the event ofsubsequent insolvency by firsthaving to acceptthe structure of theirclaim in the restructuring plan and then being allowed to register their claim in the insolvency table only in the amount reduced by this.

Regarding paragraph 3

As in insolvency plan law (section 255 (3) InsO), only such deviations from paragraphs 1 and 2 are permissible in restructuring plan law which do not have a detrimentaleffect on the debtor. This is intended to ensure that the restructuring planprovidesa sufficiently reliable basis for the debtorand those affected by the plan toproceed.

Re **section 74 (Disputed claims and default claims)Reparagraph 1**

Although the restructuring plan determines in a binding manner to which form a receivable is to be subjected, it does not specify the existence and amount of the receivable prior to its structuring. Amechanismcomparable to the filing of a claim and table determination in insolvency proceedingsdoes not exist in the restructuring framework. Outside of the restructuring framework, the existence and amount of disputed claims must be determined and their titling mustbebrought about, e.g. by filing a suit with the competent court, by a tax assessment notice and, if necessary, by challenging it, etc.

Since the debtor determines in the course of the preparation and submission of the plan whichclaims are to be included in the restructuring plan and in what amount, and since a creditor has no possibility todemandthe inclusion ofits own claimwhichhas not yet been included in fullor to demand the inclusion of a claim which has already been included and which has a higher value, the effects of the plan on the design of the restructuring plan must also belimitedto the partial amount of a claim included by the debtor, evenifthe debtorhasintentionally or erroneouslyincludedthe claim only partially.Acceptance and confirmation of the plandoes notprevent the creditor of a consolidatedclaimfromassertingagainst the debtor a claim amount exceeding the value set in the plan in full and without restrictions by the plan.The limitation of the reference value of a percentagereduction of the claim to the amount stated in the plan submitted by the debtor shall on the one hand take into account the right of the debtor to deliberately include a claim only partially in the plan within the scope of the control of appropriateness pursuant to sec. 10. On the other hand manipulations of the debtor are to be prevented, e.g. by a consciously too low beginning of a tax demand with the goal that the tax office can be overruled first, then however on the taxes higher fixed after a later audit an accordingly increased demand reduction must accept.

However, if it later turns out that the claim was actually lower than the amount set in the plan, the design effects must be related to the lower amount. This is the case, for example, if a tax claim in the plan is setat an amount of 10,000 Euro inaccordance with an existing assessment subject to review and is reduced by 20 % by way of plan structuring, and later, in the context of a change in the tax assessment pursuant to § 164 paragraph 2 of the German Tax Code, the tax claim (before reduction) is reduced to 6,000 Euro. In this case, the 20% reduction is to be applied to the lower assessment of. 6,000 Euro and thus amounts to only 1,200 Euro, so that the debtor still has to pay 4,800 Euro. In this way it is ensured that the creditor concerned (here: the tax authorities) is ultimately not burdened more than the other creditors who were assigned to the same group within the meaning of § 11.

Regarding paragraph 2

As with section 256 (1) InsO, for the purpose of planning security, a performance arrearsfor the purpose of revival (section256 (1)InsO or section 73) in the case ofincluded claims or default claimswhich have not yet been finally determined shallbeassessed according to the valueon whichthe court based the assessment of the voting rights.

Differences to § 256 (1) InsO result from the fact that in the restructuring framework there is no filing of claims by the creditors and no table determination. Rather, the debtor, as the creator of the plan, determines (within the framework of the substantive justice control pursuant to section 10) the group of claims included and therights entitlingto separationand, if applicable, also the amount with which a claim is included in the plan and thus subject to the design effects of the plan

will. If the debtor sets a claim too low, the excess part shall remain undiminished and otherwise enforceable without change (para. 1). If the debtor sets a claim too high, this may lead to the restructuring court setting a lower voting right on corresponding notice of defects.However,the voting right decisionof the restructuring court has no influence on the substantive amount of the claim and its enforceability. The creditor in question cannot therefore rely on the restructuring plan as such to establish a permanent right to enforce ahigher claim than it is actually entitled to. In the event of a dispute, the applicable amount of the claim must be finally clarified by the competent substantive court, and the finaldesign effects of the plan will then - subject to the limitation to theapproach in the submitted plan according to paragraph 1 - be related to this claim. However, until final clarification by the competent court, the debtor maybaseits payments onthe amount ofthe claim thatthe restructuring court assessed in its assessment of the voting rights, andmaybaseits payments on this amount of the claim, taking into account therelated structuring effects.

Regarding paragraph 3

Inaccordance with section 256 (2) InsO, paragraph 3 provides for an obligation to make subsequent payments afterthe amount of the claim or default claim has beenfinallydetermined. Here, too, the consequences of resurrection (section 73 (1)) only arise if the debtor fails to make the subsequent payment despite a reminder with a grace period of at least two weeks.

Regarding paragraph 4

According to the model of section 256 (3) InsO, in deviation from section 71 (4), in the case of a claim which is still disputed at the time of plan confirmation or which is for other reasons uncertain in terms of its amount in a restructuring plan, the economicresult which would have been achieved even if the amount of the claim in question had been fixed from the outsetis to be achieved.

Re section 75 (Enforcement from the plan)Reparagraph 1

The provision is based on section 257 (1) sentences 1 and 3 InsO. If the debtoritself includes a claim in the restructuring plan, it appears justifiedtoallowthe creditor of this claim to enforce the claim on the basis of theplan which has beenlegallyconfirmed by a court if the amount of the claim is not disputed between the debtor and the creditor concerned. In such a situation, it would not seem efficient if the creditor would have to go to court again to obtain a title. If the debtor wants to prevent the titling effect because the amount of the claim is disputed and she has only included the claim in the plan in the full amount claimed by the creditor in order to ensure a comprehensive structuring effect with regard to section 74(1), she must assert the status of the claim as disputed in the confirmation proceedings and thus work towards a corresponding statement in the plan confirmation resolution. Aparallel provision to section 257 (1) sentence 2 InsO is not provided for, because no procedureexistsfor table application, objection to filed claim andremoval of such objection.

Regarding paragraph 2

The model for the regulation in paragraph 2 is § 257 paragraph 2 InsO.

Regarding paragraph 3

The regulatory content of paragraph 3 corresponds to section 257 (3) InsO.

Regarding paragraph 4

Whereas in insolvency proceedings a general ban on individual compulsory execution applies from the opening of proceedings pursuant to Section 89 InsO, Paragraph 4 orders such a ban only forclaimsincluded in the planto the extent of inclusion, only from the time of the legal validity of the plan confirmation resolution and only for titles issued prior to this time. Older titles remain enforceable to the extent that they contain a higher amount of title than the restructuring plan was based on. After the validity of the plan confirmation, a further title may be issued for a claim included in the plan, e.g. a judgement in a claim for payment or an amended tax assessment.However,the titledclaim can then only be enforced in accordance with the effects of the plan, which are to be determined on the basis of § 74 (1) and which are not eliminated by the later title.

Re section 76 (Plan monitoring)Repara. 1

In accordance with section 260 (1) and (2) InsO, monitoring of plan fulfilment may be ordered in the formative part of the plan.

Regarding paragraph 2

If a Restructuring Officer has already been appointed, this person must be entrusted with monitoring the plan. Otherwise, a Restructuring Officer must be appointed for the first time for the purpose of plan monitoring.

Regarding paragraph 3

Since a creditors' committee does not exist in the restructuring procedure, theregulatory model in § 262 InsOismodified to the effect that the notification of the non-fulfilment of claims subject to monitoring must be made directly to the creditors affected by the plan and to the restructuring court.

Re paragraph 4Topoint 1

As with the parallel provision of section 268 (1) no. 1 InsO, the monitoring of the fulfillment of a restructuring plan must also be lifted if all claims whosefulfillment is monitored are fulfilled or it is ensured that they will be fulfilled. This is because this eliminates the need for monitoring.

To number 2

After a period of three years (based on section 268 (1) no. 1 InsO), it can typically be assumed that a previously proper fulfillment of the plan will continue.

To number 3

According to Section 73 (2), the opening of insolvency proceedings eliminates the design effectsof a restructuring plan that has not yet been fully implemented and thus also the need to monitor its implementation.

Re Chapter 3 (Restructuring Officer)

The debtor can in principle make use of the procedural aids of the stabilization and restructuring framework independently and on her own responsibility. The aim of the Stabilization and Restructuring Framework is to make the advantages of private autonomous initiative, organization and design fruitful. However, where participants are involved in the restructuring process who are not easily able to effectively assert their interests, a corrective measure is needed to ensure that the interests of these participants - who are worthy of protection in this respect -canbe safeguarded.At the same time, there may be a need to ensure the integrity and efficiency of the process by a third and neutral person as mediating and coordinating authority. And finally, such a neutral person can also mediate between the participants. Sections 77 f. provide for the appointment of a third and neutral person as restructuring officer for these purposes.

To Section 1 (Necessary order)

Re § 77 (Necessary order)

Regarding paragraph 1

Paragraph 1 regulates the basic cases in which a restructuring commissioner must be appointed by the court if necessary.

To number 1

Pursuant to paragraph 1, point 1, a representative shall be appointed if the rights of female consumers or medium-sized, small or micro-enterprises are to be affected in the course of the restructuring, in particular because their claims or rights to separationare to beshaped by the restructuring plan or the enforcement of suchclaims or rights to separation is to be blocked by a stabilization order. Thus the draft takes into account the finding that in these cases the basic assumption of the draft cannot be taken as given that the persons affected by the restructuring matter are able to effectively assert their interests and rights, negotiate among themselves and thus come to a reasonable and appropriate result. The aforementioned affected parties usually lack experience in dealing with restructuring and the knowledgenecessaryfor theeconomic classification of the plan proposal. Inmost cases, these creditors willalso be affected with relatively small claims, which make it seem uneconomical toinvesteffort and costs for an appropriate participation in theprocess and the individual proceedings. They are not in a position to coordinate their interests without further ado. Therefore, a neutral authority is needed to represent the interests of these typically creditors worthy of protection in the process and in the individual proceedings.

Aprerequisite for the appointment is that the rights of the aforementioned affected partiesare to be affected in the context of the restructuring. This is particularly the case if these rights are to be shaped by the restructuring plan or if their enforcement is to be temporarily suspended on the basis of a stabilization order. Ifsuch interventionsareenvisaged, the debtor must notify the court of this in the context of thenotification of the restructuring matter pursuant to Section 31 (2) sentence 2. If this notification has not been given and it becomes known by other means that interference with the rights of thecreditors mentioned above is intended, in addition to the appointment of the representatives pursuant to No. 1, a cancellation of the restructuring matter pursuant to section 33 para. 1No. 4 letters a and bmayalsobe considered if the failure to give notification was without valid reason.

To number 2

Point 2 addresses the case of a generalstabilisation order, i.e. covering all creditors with theexception of thecreditors excludedby section 6. In such a case, the restructuring case takes on the character of an insolvent quasi-complete procedure. In such cases, it is indicated that theeconomic difficulties which are the cause of the restructuring case are of a serious nature which may make it necessary to entrust a neutral body with monitoring tasks.

To number 3

Pursuant to No. 3, an appointment is required if the debtor makes use of the possibility of encroaching on intra-group third-party collateral (Art. 4 par. 4) or the possibility of terminating the contract (Art. 49 ff.). In the first case there is a need for an agent because the circumstances of thesubsidiaryproviding the collateral alsobecome the basis and subject of the plan regulation, which therefore must be made transparent. In the second case, it is an intrusive instrument that does not derive its internal legitimation additionally from a qualified majority decisionofsimilarly affected parties and thepresumption of correctness linkedto such majority decision.In both cases it isappropriate to commission a neutral representative with the independent examination of the conditions for the taken up, special instruments.

Number 4

Orders in accordance with No. 4 shall be placed in connection with the agreement of plan monitoring.

Regarding paragraph 2

Pursuant to paragraph 2, a restructuring commissioner shall also be appointed if it is foreseeable that a submitted plan or a restructuring concept to be implementedcanonly beimplemented against the resistance of affected persons who form a majority in a voting group to be formed pursuant to Section 11, so that a majority decision across groupsis required pursuant to Section 28. The appointment must be made if therequirement of a group-spanning majority decision is foreseeable. This must be notified separately by the debtor in the notification of the restructuring plan (section 31 para. 2 sentence 3). However, the appointment is not made if the restructuring affects only financial sector enterprises and their legal successors or holders of money market or capital market instrumentsas holders of restructuring claims and rights to receive benefits under the restructuring plan. The draft assumes from these parties that they areable toeffectively assert their interests.

The case group of the appointment of a moderating restructuring officer toassist in the negotiation and elaboration of the plan if the plan has to be approved by the courtdue to a cross-class cram-down(Article 5(3)(b) of the Directive) should not be implemented, as this case group is contradictory in itself. Whether or not judicial confirmation of the plan by a cross-class cram-down is required will usually only be determined after the negotiations on the plan have been concluded, so that the appointment of a moderating agent to draft and negotiate the plan will then be in vain. Article 11(1) of the Directive requires for a cross-class cram-down that the (prepared and negotiated) plan has not been adopted in all classes before,i.e. that it hasalready been voted on in its finalversion.

Regarding paragraph 3

Paragraph 3 permits the appointment of a restructuring officer for the purpose ofassisting and relieving the court.Ifthe debtor applies for a stabilization orderand does not submit a decision of a tax advisor, auditor, attorney or a person withcomparable qualificationsexperienced in restructuring and insolvency matters, the court mayusea commissioner as a quasi-experttoclarifydoubts about the existence and continued existence of the conditions fora stabilization order. However, this should notleadtothecourtnot issuinga requested stabilization order due to (non-penetrating) doubts until these doubts have been finally resolved. Rather, the order may be issued despite doubts, but it may have to be rescinded after clarification by the Commissioner if necessary. if the doubts are confirmed.

This expert and court-relieving role of the restructuring commissioners is laid down in the Directive (e.g. Recital 68) and is also expressed bythe fact that the commissioner is required to comment on the debtor's declaration under Section 16(1) when a restructuring plan is submitted (cf. Article 8(1)(h) of the Directive).

Re section 78 (Appointment)Reparagraph 1

Articles 26 and 27 of the Directive contain general provisions on the requirements and legal position of administrators in restructuring, insolvency and compensation proceedings, which also include the restructuring officer in preventive restructuring. Accordingly, the representatives must above allhavethenecessary expertisefor theindividual casein questionand be independent and impartial. Inaddition, the work of the commissioners must be subject to judicialsupervisionwith the possibility of sanctions. According to Recital 88 of the Directive, the Member States have a certain degree of discretion, for example with regard to the procedure for selecting and appointing restructuring commissioners in individual cases. Article 2(1)(12) of the Directive requires that the restructuring commissioner must in any event be appointed by a court or administrative authority.

In order to meet these requirements, section 78 (1) first contains a provision similar to sections 56 (1), 274 (1) InsO for female insolvency administrators and trustees, according to which the representativemust besuitable for the respective individual case, in particularindependent, and is selected and appointed by the restructuring court (in the starting point). This general provision ensures that access to the activity as restructuring agentisnotlimitedto certain professional groups from the outset. Thus, contrary to what is suggested in parts, there is also no restriction to a tax advisor, auditor or lawyer experienced in insolvency matters or a person with comparable qualifications analogous to section 270b (1) sentence 3 InsO. The criterion of suitability in individual cases allows the specialcircumstances of the specific restructuring case (e.g. size of the company, number of creditors, cross-border remuneration, cf. Article 26 (1) (c)) and thespecific skills of the agents (training, expertise and experience, cf. Article 26 (1)(a) and (c) and Article 27 (1)) to be reconciled in the specific appointment decision in conformity with the Directive.

Since the independence and impartiality of the agents is an essential criterion under the Directive (cf. Article 27 (1) of the Directive) and is also mandatory to ensure the function as "guarantor", proposals on the person of the agents should be made by the debtor, persons involved in the debtor or by

creditorsmust be taken into accountin the starting point under subs. 1 sentence 2 only by the court. By having to take them into account, it becomes clear at the same time that the mere fact that a party has proposed the agent does notcalltheirindependenceintoquestion. Independence of the debtor, however, also includes independence from the persons involved in the debtor.

As with female trustees and insolvency administrators, only natural persons should be able to act as restructuring agents. In this respect, too, it is a highly personal office that requires a basic personal commitment.Article 2(1)(12) of the Directivecannotbe interpreted as meaning that themere omission of a referenceto national law does not imply an obligation to admit legal persons as restructuring agents.

Furthermore, the restructuring officer is to be selected by the court in individual cases from among all persons willing to take over the company, which is likely to lead to the courtskeepinggeneral pre-selection lists - as is the case with female insolvency administrators and trustees.Although such a list system is not without disadvantages, it enables the court to make a quick appointment decision in individual cases under the regular time pressure. According to Recital88 ("Pool"),such a system iscompatible with the Directive.

Regarding paragraph 2

Subsection 2 then regulates binding proposal rights of the debtor and of persons affected by the planfor the specific person or selection of the representatives by the court. This is primarily intended to enable the debtor to "bring along" a restructuring commissioner.

This is compatible with the Directive, which does not provide for selection powers to be vested in the courts alone. It is true that the Directive requires, as is clear from Article 27(1) of the Directive, that the restructuring agent performs his tasks impartially and independently. Recital 88, however, allows for a discretionary assessment of both the debtor and thecreditors with regard to expertise, experience and the requirements of the specific case.Inaddition, Member States shouldbe able todeterminethe procedural channels for refusing the selection or appointment of a representative or for applying forthereplacement of the representative.

In order to increase the plannability and attractiveness of preventive restructuring for debtors and to give them an incentive to make use of the instruments of the stabilization and restructuring framework and to achieve efficiency gains, it should be possible for a debtor, upon presentation of a certificate from a professional experienced in restructuring and insolvency matters stating that she fulfils the requirements under section 54 subs. 1 and 2, to submit to the court a proposal for the person of the restructuring agent which is in principle binding on the court unless the person is obviously unsuitable. This corresponds to the applicableprovision in section 270b (1) sentence 3 and (2) sentence 2 InsO for self-administered restructuring proceedingsin insolvency.

The debtor's right of proposal is equivalent to a blocking minority of those affected by the plan, which, however, is only binding for the court if it is not bound by the debtor's right of proposal. By referring to such a blocking minority of the plan-affected persons it is to be prevented that individual chord disturbers use the instrument of the assigned ones abusively. Deviations from theproposals shall be justified by the court.

No use is to be made of the proposal to involve a creditors' committee when selecting a restructuring officer analogous to section 56a InsO (see also recitals 68, 69). As a rule, preventive restructuring will, differently

than in insolvency proceedings, should not be an overall procedure but only a partial collective process, so that the formation of a creditors' committee, for example if only one creditor groupor at least only a few creditor groupsaretoparticipate in the vote, hardly seems practicable and justified. By dispensing with a creditors' committee,the problem ofthenon-representative or debtor-driven composition of creditors' committees,which is wellknown from insolvency proceedings,and the problem of "selected" declarations of readiness for the creditors' committeearealsoavoided, especially in smaller proceedings.

Regarding paragraph 3

In cases in which a "brought along" restructuring commissioner is appointed, the court should nevertheless have the possibility toaddress any doubts about a sufficiently neutral and independent control of the debtorby appointing another restructuring commissioner as a "special representative" analogous to newly created special experts.

Re § 79 (legal status)

In accordance with the regulations for insolvency administrators and trustees in sections 58 to 60, 274 (1) InsO, the restructuring agent should be under the supervision of the court appointing her, be able to be dismissed by the court for good cause and be obliged to pay damages to the affected parties in the event of breaches of duty. This also serves to implement Article 27 (1) of the Directive on the Supervision of Female Restructuring Officers in Preventive Restructuring. In addition, the implementation of Article 26(1)(d) is to provide in particular for the right of the debtor and individual creditors torefusethe agentor have it replaced due to a conflict of interest.

Regarding paragraph 1

Subsection 1, following § 58 (1) InsO, initially stipulates that the restructuring officer is under the supervision of the restructuring court appointing him. The court shall at any time beentitled to demandindividual information or a status report from the Representative.

Regarding paragraph 2

In accordance with § 59 (1) InsO, the representative shouldbeable to be dismissedby the court at any time forgood cause. The dismissal shallbe effectedex officio or, uponapplication of the agent, the debtor or a creditor. In deviation from section 59 (1) InsO and in implementation of Article 26 (1) (d) of the Directive, the right to file an application should also be available to the debtor and an individual creditor,but limited to the assertion of a lack of independence of the agent.The reasons for the application must be substantiated and the authorised representative must beheardbefore the dismissal.

Regarding paragraph 3

In accordance with section 59 (2) InsO, the Commissioner isentitled toappeal against their dismissal and the unsuccessful applicants areentitledto appeal against thecourt decisionadversely affecting them.

Regarding paragraph 4

If the Restructuring Officer is to act as a "guarantor" in cases where an appointment is necessary, he or she must also have a civil-law

Take responsibility for any misconduct. Accordingly, paragraph 4 provides, in line withsection 60 (1) InsO, that the authorised representative must perform his duties with due care and conscientiousness and, in the event of culpable breach of hisduties, is obliged to pay damages to those affected. Just as in the case of insolvency administrators and trustees, the claim shallbecome statute-barredin the regular three-year limitation period. For persons affected by the plan and addressees of a stabilization order, the claim shall become statute-barred at the latest in three years from the point in time at which the notification of the restructuring plan loses its effect. This is because the restructuring project is formally terminated from this point in time and the parties involved can be expected to examine and enforce any claims for damages against the Commissioner.

Re § 80 (Duties and powers)Reparagraph 1

From the monitoring function of the restructuring commissioners in cases ofnecessary appointment, the task and duty of the commissioners should firstly follow that they are obliged to notify the court immediately if the commissioner becomes aware of circumstances that justify the cancellation of the restructuring case, e.g. in case of insolvency of the debtor. The wording "circumstances become known" is intended to make it clear that the Restructuring Agent does nothave toactively and continuouslyreviewthe debtor's circumstancesfor the existence of these reasons, but that the duty to notify will intervene if the Agent becomes aware of such circumstances in the course of its activities and the performance of its duties. Inthis case, the debtor should in principleno longer be allowedtocarry out a restructuring. This duty of disclosure corresponds to the task of the custodian in insolvency proceedings in self-administration to report circumstances which lead to the expectation that the continuation of self-administration will lead to disadvantages for the creditors.

Regarding paragraph 2

Subsection 2 regulates the cases in which the appointment of the agents is mandatory under Section 77 (1) Nos. 1 and 2 and (2). These cases are characterized by the fact that it cannot be assumed that all parties involved are equally capable of asserting their interests in the proceedings (section 77 (1) no. 1) and that the cases covered by their nature and the effects of the procedural assistance provided by the framework can hardly be distinguished from the effects of insolvency proceedings conducted under their own administration (section 77 (1) no. 2 and (2)). In these cases a neutral body is required which safeguards the interests of the parties involved and mediates between the interests of the parties involved, taking into account the interests of the whole. In these cases, on the one hand, the commissioner should be able to determine the pan voting process (number 1). In addition, with a view to thecomparability of the circumstances with the situation in insolvency proceedings, the court should beable to assign additional powers to the Commissioner in order to bring the profile of the Commissioner closer to that of a custodian in self-administration proceedings (point 2).

Regarding paragraph 3

Par. 3 sets out the programme of tasks and examinations for the restructuring agent if a stabilization order is issued in favour of the debtor. In this respect, the Representative is to continuously review whether the conditions for the issuance of the stabilization orderstill exist.

Regarding paragraph 4

Paragraph 4 follows on from Article 8(1)(h) of the Directive, which allows Member States to provide that the debtor's justification for the prospects of success of the restructuring plan be confirmed by the restructuring officer

must. For this purpose, the restructuring officer pursuant to para. 4 shall comment on the correspondingdeclaration of the debtor pursuant to section 16 para. 1 and shall also comment on the dispute about the existence and amount of restructuring claims and segregation entitlements and thus indirectly also on voting right disputes. This has acourt-relieving effect byfacilitatingthecourt's examination in the context of the plan confirmation.This statement should also be made available to those affected by the plan before the vote in order to provide them with a basis for a decision on the plan.

Regarding paragraph 5

If a termination of the agreement or an intervention in intra-group third-party collateral by the restructuring plan is applied for, the restructuring officer shall, pursuant to paragraph 4, examine the requirements of such interventions in creditors' rights and report to the court on this in the report pursuant to paragraph 3 sentence 1 on the restructuring plan and its suitability for success, so that the courtcan decideon the requested termination of the agreement and the justification of the intervention in intra-group third-party collateral in thedecision on the plan confirmation.

Regarding paragraph 6

In order for the Restructuring Officer to be able to perform her duties, she isdependentoninformation about the debtor's circumstances. For this reason, the debtor is to be obliged to provide information and tolerate the inspection of business records and documents pursuant to para. 6 analogous to sections 22 para. 3, 97 InsO, but the agent is also to be authorized to enter the debtor's business premises andconductinvestigations there.

Regarding paragraph 7

In accordance with section 8 (3) InsO, the restructuring court should be able to instruct the restructuring agent pursuant to (7) to carry out the service of documents incumbent on the court. This serves to relieve the court and an efficient process design, especially in the case of a large number of persons affected by the plan, because the commissioner will rather have the necessary infrastructure and office organization.

Re Section 2 (Optional Appointment)ReSection 81 (Application)

The optional appointment of a restructuring officer takes up the type of moderating or supporting restructuring officer provided for in the Directive, in accordance with Article 2(1)(12)(a) in conjunction with Article 5(3) of the Directive. This should only be appointed upon request. Appointments of anassisting or moderating agent ex officio should notbeprovided for.It is not apparent why the court should have or could have appointed a mediator if the parties do not wish to do so.

Regarding paragraph 1

In order to implement Article 5(3)(c) of the Directive, a restructuring commissioner (supporting the parties involved) is to be appointed by the court if the debtor or - if costs are borne - a blocking minority of creditorsso request. A right of individual creditors to file an application would run the risk that they would use their right to file an application to slow downor disruptthe restructuring process.

In the interaction of paragraph 1 with Section 83, the Commissioner should then in principlehavethetask and function of promoting negotiations between the parties involved by assisting them in the negotiation of the restructuring concept and plan. Thus, unlike in the case of the necessary appointment of a restructuring commissioner pursuant to section 77, the starting point for the optional commissioner is not to monitor the debtor or to examine the conditions for intervention in creditors' rights in order to protect creditors' interests, but to advance the rest of the restructuring process in the interest of all parties involved, to balance information asymmetries and to act as a mediator of the various interests, who with her know-how in restructuring matters is able to help "reconcile them".

Regarding paragraph 2

Paragraph 2, however, also allows, upon application, especially by a creditor, toinvolvea restructuring officer with supervisory and reviewing tasks and powers under section 80 optionally - and thus beyond the cases of the necessary appointment under section 77.However, it should notbepossible tospecifically and exclusively authorize the representativeto enter the debtor's business premises and to conduct investigations there.

Re § 82 (Appointment and legal status)Reparagraph 1

For the appointment of the optional representatives the provision in sec. 82 subs. 1 shall apply mutatis mutandis, i.e. aperson suitablefor therespective individual case shall be appointed by the court, whereby the courtshall take into account proposals from the debtor and creditor side.

Regarding paragraph 2

Paragraph 2 provides for a binding right of proposal of a representative group of creditors for the person of the optional representatives, provided that the person proposed is not obviously unsuitable and the debtor does notobject inprinciple. This serves the purpose of creditor participation, but on the other hand is intended to prevent a restructuring commissioner from being imposed on the debtor for the purpose of promoting and supporting negotiations, even though the debtor is ultimately supposed to be the "master of the process". However, the debtor's right of objection can only be relevant as long as the representative only pursues supportive tasks. If the debtor is at least also entrusted with examining or monitoring tasks, it cannot be the debtor's responsibility to influence the person of the agent examining or monitoring her by veto. The court shall give reasons for any deviation.

Regarding paragraph 3

Section 79 shall apply mutatis mutandis to the legal status of optional commissioners. This concerns the supervision, dismissal and liability of the optional agents.

Re § 83 (Tasks)

The provision supplements and concretizes the general assignment of tasks of the optional restructuring commissioners from Section 80 (1), according to which the commissionersare to promotenegotiationsbetween the parties involved by providing support in the preparation and negotiation of the restructuring concept and plan. In this context, support does not mean that the commissioner draws up the concept and plan himself.

Regarding Section 3 (Remuneration)

Re § 84 (Right to remuneration)

The appointment of a restructuring officer would frustrate the objectives of the Stabilization and Restructuring Framework if this resulted in cost burdens for the debtor whichwould largely or even completely erodetheimprovements in the debtor's financial situationbrought about by the restructuring contributions of those affected by the plan.Even if the costs were to be borne by those affected by the plan, they would indirectly burden the debtor because the willingness orability of those affected by the plan to make restructuring contributions would be reduced.Therefore, binding guidelines for the remuneration of restructuring officers are needed. To ensure that these requirements cannot be circumvented, it is envisaged that theremuneration will be determined by the restructuring court and that direct payments to the restructuring commissioners will only be made from the state treasury. The transfer of costs to those parties involved (in most cases the debtor), which they are ultimately to pay (Section 25a of the Court Costs Act (GKG)), is carried out in a second step byallocatingthem to theexpenses to be reimbursedunder thecourt costsaccording to number 9017 of the Cost Schedule to the GKG.

Re § 85 (Regular Remuneration)Repara. 1

As arule, the restructuring officer is to receive a fee, whichisto be calculatedon thebasis ofhourly rates and is thus based on the time spent by the restructuring officers and the qualified employees they employ. In this respect,the standard remuneration for the restructuring commissioner differs significantly from theremuneration of the administrator, who is active in insolvency proceedings with self-administration. The deviation is justified by the fact that, with the exception of the cases referred to in § 87 (1) no. 3, theduties and activity profile of a restructuring agentdeviates significantly from that of a female administrator.

Regarding paragraph 2

Separate remuneration for the necessary deployment of qualified employees is necessary in the case of hourly rate based remuneration in order to be able to appropriately reflect restructuring projects in which more qualified activities are required than a restructuring officercan handleon his own in the limitedtimeavailable.Qualified employees are those whose tasks go beyond purely administrative activities and relate to specific activities to be performed in the context of restructuring, whichrequirespecial legal orbusiness management knowledge and who can prove that they have such knowledge by virtue of appropriate training.

Regarding paragraph 3

The restructuring court shall set hourly rates for the restructuring commissioners and the individual employees appointed by it, taking into accountthecriteria set outin theAct, i.e. the size of the company, the nature and extent of the debtor's economic difficulties and the qualifications of the remaining restructuring commissioners or qualified employees. The regulatory framework of up to 350 Euro for the restructuring commissioners themselves and up to 200 Euro for qualified employees may also be exceeded in special individual cases in accordance with section 87 para. 1 sentence 1.

Regarding paragraph 3

In order to ensure that the restructuring officers and the cost debtors within the meaning of Section 25a of the Court Costs Act are able to assess the financial basis for the activities of the restructuring officers from the outset,the hourly rates and an hourly budget must befixed by the restructuring court whenthe restructuring officersareappointed and thus before they begin their work.The hourlyrates are permanently binding, the hourly budgets limit the claims for remuneration and reimbursement of expenses of the restructuring commissioners upwardsas long as no adjustment is made in accordance with paragraph 6. Therefore, the Restructuring Officer and all cost debtors shall be granted a hearing before the decision of the Restructuring Court.

Regarding paragraph 5

By linking the appointment of an optional restructuring officer to the payment of an advance by the party liable for expenses, the public authorities are to be protected from having to pay the costs in advance and possibly not being able to realize the claim for compensation against the party liable for expenses later.

Regarding paragraph 6

It is not always possible to foresee with sufficient clarity at the time of appointment of the restructuring officers what amount of time it will take them and their qualified employees to fulfil their tasks. Therefore, the restructuring officer can request a budget adjustment, but must sufficiently justify the need for an increase. A later determination of fees beyond the original budget or the budget expressly increased by the court is excluded. It is therefore in the restructuring commissioner's own interest that she notifies the restructuring court of any recognizable need for a budget adjustment in good time so that a decision can be made before the budget is used up. If the commissioner acts beyond the budget before adecision has beenmade on the request forbudget adjustment, she runs the risk that the request will not be granted and that she will therefore not be remunerated for the hours exceeding the budget.

Regarding paragraph 7

In addition to the fee, the restructuring officer also receives reimbursement of expenses. The reference to section 5 (2) sentence 1 number 2 as well as sections 6 and 7 and section 12 (1) sentence 2 number 4 of the Judicial Remuneration and Compensation Act (Justizvergütungs- und -entschädigungsgesetz) serves to exonerate the text of the law with regard to the details of the reimbursement of expenses.

Re section 86 (Determination of the remuneration)Reparagraph 1

The claim of the Restructuring Commissioners for payment of their fees and reimbursement of expenses is directed against the State Treasury and shall be determined by the Restructuring Court after the termination of the office of the Restructuring Commissioners at their request.

Regarding paragraph 2

In cases in which the representative has been appointed at the request of creditors, the restructuring court must also decide in accordance with subsection (2) on who, andtowhat extent,isto bearthe expenses pursuant to § 25a subsection (2) GKG and number 9017 of the list of costsinthe GKG.

Regarding paragraph 3

With the immediate appeal, not only the determination of the remuneration and theexpensesto bereimbursed pursuant to subsection 1 can be challenged, but also the determination of thehourly rate pursuant to section 85 subsection 4 and the determination of the maximum amount pursuant to section 85 subsection 4 or its adjustment pursuant to section 85 subsection 6, because these decisions have a binding effect on the determination of the remuneration to the extent that the hourly rates cannot be deviated from and the maximum amount cannot be exceeded. Apart from the debtor, only those persons who have to bear the expenses according to No. 9017 of the GKG cost schedule are affected by the decisions mentioned in para. 2.

Regarding paragraph 4

The provision is based on Section 3 of the German Judicial Remuneration and Compensation Act and is intended to prevent the restructuring officer from having to make unreasonable advance payments.

Re § 87 (Remuneration in special cases)Reparagraph 1

Exceptionally, the maximum amounts of the regulatory framework for hourly rates for the activities of the restructuring officers may be exceeded, or remuneration may not be based on hourly rates. However, if the remuneration is to be assessed as a percentage of a certain assessment basis, following the model of section 63 (1) InsO, no unmodified recourse to theinsolvency estate relevantfor theremuneration of the insolvency administratorwill be considered as a rule,because the activity of a restructuring agent will typically not relate to the entire assets, which would be part of the insolvency estate if insolvency proceedings were opened.

To number 1

A remuneration deviating from the principles of Section 85 appears to beappropriateon aregular basis if the restructuring commissioner whoisto receivethe remunerationand the parties involved, who ultimately have to bear the expenses according to No. 9017 of the List of Costs of the GKG,agreeon theremunerationto be determined.In these cases, too, the restructuring court must, however,review whether the agreed remuneration is appropriate and, in particular, whether it does not lead to significant disincentives for the restructuring officers or to a significant threat to the prospects of satisfaction of creditors not involved in the agreement.

To number 2

Cases are conceivable in which no suitable person is willing to take over the office under the conditions of the standard remuneration pursuant to § 85. This could be the case, for example, in cases thatrequirespecial knowledge on the part of the restructuring officers, which is only available to persons whocantypicallyearn considerably higher income per hourwith it elsewhere, or in cases in which an exceptionally high liability risk is offset by an average expenditure of time and therefore cannot be adequately reflected in a remuneration based on hourly rates.

To number 3

In special cases, in particular where the examples of rules referred to in point 3 exist, the tasks of the restructuring officers may be similar to those

a custodian in insolvency proceedings opened in self-administration. In such cases it seems appropriate to remunerate the restructuring agent in a similar way to a custodian.

Regarding paragraph 2

If the persons liable for expenses not onlyagreeto theapplication of different remuneration principlesin accordance with paragraph 1 number 1,but the appointment of theagents has been made at their request or proposal and they have concluded a remuneration agreement with the agent, the restructuring court may only apply a remuneration arrangement which deviates from this agreement ifthis would otherwise result in an unreasonable remuneration. Unlike in the cases of paragraph 1, point 1, the restructuring court shall have no discretion todeviatefrom theagreementdespite the existence of thepositive and the absence of the negative conditions of paragraph 2.

Regarding Chapter 4 (Public Restructuring Cases)

Sections 88 to 92 enable the debtor topursuethe case of restructuringpublicly. For this purpose, it is necessary for the debtor to file an application directed to this effect before the first decision in the restructuring case is made (section 88(1)). If such an application is not filed by the time of the first decision or is withdrawn by then, nopublic announcements will be made in the restructuring case. As the Stabilization and Restructuring Framework, if made public, fulfilsall the characteristics of insolvency proceedings within the meaning of Article 1(1) of Regulation (EU) 2015/848 of theEuropean Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19; L 349, 21.12.2016, p. 6 - EulnsVO), it is intended to register publicly listed restructuring cases as Annex A of the EulnsVO. This opens up the possibility of recognition of the results of the proceedings via the recognition mechanismsof the EulnsVO. As public restructuring matters are therefore insolvency proceedings within the meaning of the EulnsVO, the relevant provisions of Article 102c of the Introductory Act to the Insolvency Act aredeclared to be applicable accordingly (§§ 88 (2), 92).

Re § 88 (Application and first decision)Repara. 1

Even if restructuring measures to avoid negative publicity effects are primarily carried out in a confidential context,theremay be a needto create publicity inindividual cases. If the restructuring matters are included in Annex A of the EulnsVO, the publicity of the restructuring matter may, in particular, enable the results achieved in the stabilization and restructuring framework to be recognized. In addition, the public shall ensure that creditors who are not specifically involved by the debtor can also take note of the restructuring matter.

The debtor must decide at the beginning of its restructuring project whether it wishes to operate the restructuring matter publicly or not. In the first case, she must request with the first application in the restructuring case that itbe conducted publicly. After the first decision of the restructuring court in the restructuring case, the application can no longer be filed and a previously filed application cannot be withdrawn. The application is thereforebinding for the entire restructuring casefrom the firstdecision.

If the stabilization and restructuring framework isincludedin Annex A of the EulnsVO, public restructuring cases are insolvency cases.

drive in the sense of the EuInsVO. The first decision in the restructuring casethen functions as an opening decision within the meaning of Article 2(7) of the EuInsVO. It must therefore, in accordance with the second sentence of Article 4 (1) EuInsVO, also relate to the reasons on which the court bases its international jurisdiction (paragraph 2). For this reason, the debtor is required under the third sentence of paragraph 1 in conjunction with Article 102c § 5 of the EC Insolvency Regulation to provide additional information in the application which will enable the court toexaminetheinternational jurisdiction.

Regarding paragraph 2

Since the first decision in a restructuring case is considered to be an opening decision within the meaning of Article 2(7) EuInsVO, it must state the reasons on which the international jurisdiction of the court is based (first sentence). Paragraph 2 sentence 2 ensures the public disclosure of the mandatory information under Article 24 (2) EUInsO. Paragraph 2 sentence 3 regulatesthe legal remedies under Article 5 of the EU InsolvencyRegulation by reference to Article 102c § 4 of the Introductory Actto the Insolvency Regulation.

Re § 89 (Special provisions)Reparagraph 1

Paragraph 1 specifies information which mustbe made publicin public restructuring cases. In addition to all decisions made in the restructuring case, these are also the time and place of court hearings.

Regarding paragraph 2

Paragraph 2 is based on §§ 235 paragraph 3 sentence 3, 3rd HS, sentence 4, 241 paragraph 2 sentence 2 of the Insolvency Statute.

Re § 90 (public announcement)Reparagraph 1

The provision corresponds to § 9 (1) InsO. The norm only applies to cases in which the restructuring framework is public and the law expresslyprovides fora publicannouncement. If a public announcement is made, the provision is intended to ensure that the publicationtakes placeon a central and transnationalplatform which can be assumed to be known to the legal circles concerned and also used by them.

Regarding paragraph 2

The purpose of the ordinance authorization is torelievethe legal text of the technicaldetails of the public announcement. In view of the only partially collective character of the proceedings, there is noneed for furtherpublications under state law in accordance with section 9 (2) sentence 1 InsO in restructuring law,particularly as no filling state law has been issued to date in respect of section 9 (2) sentence 1 InsO (Madaus in BeckOK InsO, 16. ed. as at 15.10.2019, section 9, marginal no. 22).

To number 1

The provision corresponds to section 9 (2) sentence 3 number 1 InsO.

To number 2

The provision corresponds to section 9 (2) sentence 3 number 2 InsO.

Regarding paragraph 3

The provision serves to simplify the procedure by making individual notification to a possibly large number of affected persons unnecessary in public restructuring frameworks.

Re § 91 (Restructuring Forum)Reparagraph 1

The provision is intended toenablethose affected by the plan, in particular those with small voting rights, to come into contact with each other in the run-up to the plan coordination, to organize themselves, to jointly represent their interests and to agree on joint coordination strategies or proposals for amendments to the restructuring plan.

Regarding paragraph 2

Paragraph 2 specifies the information to be provided in the invitation and to be published in the restructuring forum, which should enable other parties affected by the plan to understand the views of the inviting parties and the content of their proposal and to contact them in good time before the vote.

Regarding paragraph 3

In order to facilitate contact, the requesting party canhavethe datapublishedforelectronic contact.

Regarding paragraph 4

If the debtor wishes to ensure that the other plan participantstake note ofhiscounter-statement to a request of a plan participant, he may publish his counter-statement on his website andhaveareference to the statement and to the website where it can be accessed publishedin the Federal Gazette.

Regarding paragraph 5

The authorization to issue ordinances is intended to relieve the legal text of technical details.

Re § 92 (Applicability of Article 102c of the Introductory Act to the Insolvency Code)

This provision stipulates that and to what extent the provisions of Art. 102c of the Introductory Actto the Insolvency Statute (Einführungsgesetzzur Insolvenzordnung - EGInsO), insofar as their correspondingapplication has not already been explicitly ordered elsewhere in this section,shallapply mutatis mutandisinpublic restructuring cases. Thecorrespondingapplication of the provisions of Art. 102c of the Introductory Act to the Insolvency Regulation (EGInsO) mentioned in Section 92 is necessary as it is planned to file the public restructuring cases to Appendix A of Regulation (EU) 2015/848)with the consequence that they are covered by the scope of application of the directly applicable Regulation (EU) 2015/848.

The provisions to be applied mutatis mutandis are provisions of the EC Insolvency Regulation which, within the scope of application of Regulation (EU) 2015/848, define the localjurisdiction of the court (Art. 102c, Sections 1 and 6), the avoidance of conflicts of jurisdiction (Art. 102c, Section 2), the discontinuation of proceedings in favour of another Member State (Art. 102c, Section 3, Subsections 1 and 3), the confirmation of the plan (Art. 102c, Section 15) and the remedies

against decisions under Article 69(2) (Article 102c(25)) and Article 77(4) of Regulation (EU) 2015/848 (Article 102c(26)).

These arethose provisions of Art. 102c EGInsO which do notconcerntheapplication of the specific domestic insolvency proceedings of the InsO in relation to Regulation (EU) 2015/848. A correspondingapplication of Art. 102c § 3 (2) EGInsO is therefore not necessary, as in a restructuring case no legal acts with respect toa restructuring case will be performedbefore the restructuring plan becomes final and absoluteor no effects can occur which are notlimitedto the duration of the lis pendens of the restructuring case.

Regarding Chapter 5 (Law of Contestation and Liability)

According tothe requirements of Articles 17 and 18 of the Directive, certain legal acts, namely new financing, interim financing and transactions which are appropriate and directly necessary for the negotiation or implementation of a residual restructuring planmustbe adequately protected. The minimum requirements of theDirectiveare thatno adverse legal consequences may be attached to the mere fact that all creditors are disadvantaged by the above measures.The measures maynotbedeclaredvoid, voidable or unenforceable for this reason alone,nor may donors of new andbridge financingbesubject to civil, administrative or criminal liability for this reason alone. Optionally, the Directive allows Member States to provide for more extensive protection for the above measures.

These requirements are met by the applicable law. In itself, no new regulations are required.Althoughall elements of avoidance under the Insolvency Code and the Act on Avoidancepresuppose that creditors are disadvantaged (section 129(1) InsO, section 1 (1) AnfG), they are also subject to further requirements, such as the debtor's insolvency, the knowledge of theother part of such insolvency (sections 130 (1), 132 (1) InsO), the incongruity of the cover provided by the legal act in question (section 131 (1) InsO), the debtor's intention to disadvantage the creditors, orand the knowledge of the other part of such intention (section 133 (1) sentence lInsO) Nor are there any provisions in German law according to which discrimination againstthe creditor groupalone would result inthe invalidity of financing or othertransactions or lead to thembeingdeclared unenforceable.Nor are there any provisions according to which lenders are subject tocivil, administrative or criminal liabilitysolely because thefinancing they provideor the collateral they provide puts the creditor community at a disadvantage.

Since the area of contesting insolvency and liability foractsdetrimental to creditorsis largely shaped and defined by case law, a clarifying provision is to be created which excludes the possibility that the parties involved may be disadvantaged under the law of contestation or liability simply because they are aware of the lis pendens of the restructuring case or the use of instruments of the stabilization and residual restructuring framework (§ 93 (1)). For the rare cases in which the debtor notifies the court that the restructuring matter is ready for insolvency and the court does not annul the restructuring matter, it must also be clarified that knowledge of the insolvency maturity alone does not imply the assumption of a creditor's disadvantage or knowledge of such a disadvantage (section 93(2)). Furthermore, it should be ensured thatin this situation the managers are not liable for payments in the ordinary course of business due to violation ofpayment prohibitionsundercompany law(Section 92 (3)). Furthermore, it is advisable to shield the planning consequences and the execution of plans from the risk of rescission (Section 94 (1)). Finally

An exception to this rule may be made for liquidation plans which from the outsetaffect the interests of all creditors (Art. 94 para. 2).

Re § 93 (legal acts performed during the lis pendens of the restructuring case)

Regarding paragraph 1

Paragraph 1 prevents the risk that the debtor's business partnersmay bedeterred from continuing their business relationshipsolely by the lis pendens of the restructuring case or the use ofinstruments of the stabilization and restructuring framework because of concerns about subsequent insolvency challenges. These circumstances alone must therefore not give rise to the assumption that the debtor acted with the intention of disadvantaging its creditors or that a contribution to the delay in filing for insolvency was made.

The same shall also apply with regard to a possible liability due to a violation of moral standards (§§ 138, 826 BGB) on the basis of the case law of the Federal Court of Justice on the immorality ofthe granting or collateralization of loans (ruling of April 12, 2016 - XI ZR 305/14, BGHZ 2010, 30, marginal no. 39 m. w. N.). Nor should such liability be based solely on the debtor's use of the instruments of the Stabilization and Restructuring Framework.

Regarding paragraph 2

Even in the event of insolvency which has already occurred or, in the case of adebtor falling withinthescope of section 15a InsO, overindebtedness of the debtor, the use of the instruments of the stabilization and restructuring framework is not generally excluded under section 33 (2) no. 1. However, this only applies under the condition that the opening of insolvency proceedingswouldobviously not be in the interest ofall creditorsin view of the status achieved in the restructuring case.The elements of liability and avoidance, which paragraph 1 restricts, are in turn intended toservethe interests of the creditorsas a whole.Under these conditions, it would appear contradictory to expose business partners of the debtor to an increased risk of liability or avoidance solelybecause they were aware of insolvency or over-indebtedness, even though the restructuring court came to the conclusion after examinationthattermination of the restructuring case was not in the interest of the creditor community.

Regarding paragraph 3

After the occurrence of insolvency or over-indebtedness, the managers ofcompanies with limited liability are obliged to provide a mass security. Inaccordance with § 64 GmbHG, § 92 Paragraph 2 AktG, § 130a Paragraph 1, also in connection with § 177a Sentence 1 HGB and § 99 GenG, after this point in time there is a ban onpayments withliability, with the exception of those which are also compatible with the diligence of a prudent manager in this phase (emergency management). If, however, the restructuring court comes to the conclusion in its examination under § 33 (2) No. 1 that a continuation of the reorganisation within the framework of the stabilisation and restructuring processinstead of opening insolvency proceedings is in the interest of the creditor group as a whole, it does not seem appropriate toforcethe managers to switch to emergency managementbecause this could jeopardise the reorganisation and thus run counter to the purposes of § 33 (2) No. 1.

Re section 94 (Consequences of the plan and execution of the plan)Reparagraph 1

The provision privileges the execution of the court-approved restructuring plan, in line with Article 18(5) of the Directive. The parties involved should in principlebe able toassume the stability of the plan and the actions taken in its execution.

Regarding paragraph 2

In the special case that all or almost all of the debtor'sassets are transferred, this particularly affects the economicinterests of creditors not affected by the plan in maintaining the liability mass. In this case, the protection against avoidance under subsection 1 can only be granted ifthe creditors not affected by the planhave a preferentialpossibility of satisfaction from the proceeds of the transfer and these proceedsare appropriatetothe value of thetransferred assets.

Part 3 (Moderation of restructuring)§ 95 (Proposal)

Irrespective of the restructuring and stabilization framework and its instruments, section 95 is intended to enable the debtor toobtain assistance in the event ofeconomic orfinancial difficulties by recourse to a court-appointed reorganization moderatoras a person competent in reorganization and restructuring mattersto work out a solution to overcome the economic or financial difficulties, in particular to conclude a reorganization settlement under section 96.

A reorganization moderator willcomethereby particularly for such micro and smallenterprises into consideration, which cannot afford an advice and support by professional reorganization advisors for bringing about a free reorganization, but are dependent on support from third party. However, it can also be an option for any type of debtor ifthere isa need for aneutral mediatorin restructuring negotiationsor as a preliminary stage to the possible use ofinstruments of the stabilization and restructuring framework. The use of such a restructuring facilitator as an intermediary should be possible as long as the debtor is not solvent or, if the debtoris alegal entitywithlimited liability, no obvious over-indebtedness has occurred (para. 1 sentences 2 and 3 and para. 2). This serves the protection of the creditor group and is intended to avoid the dilution of insolvency.

In analogy to the provision for the insolvency administrator and custodian in sections 56 (1), 274 (1) InsO, it must be apersonsuitable for the individual case, in particular anindependent person, who, however, does not necessarilyhave to be listedin court as beingfundamentally admissiblefor taking upoffice (section 1 sentence 1).

The application to be submitted to the restructuring court must be accompanied by the object of the company and the nature of its economic or financial difficulties as well as a list of creditors and assets as minimum information for the court (paragraphs 2 and 3).

Re § 96 (Appointment)Repara. 1

In order to prevent inefficiencies, abuse or even the protraction of insolvency, the period for the appointment of a restructuring moderator pursuant to § 94 (1) shall be limited in principle to three months, whereby this period may be extended by up to a further three months with the consent of the moderator and all parties involved. If a reorganization settlement is applied for pursuant to § 96, the period until the decision on the settlement may be extended in order to prevent the reorganization from failing at short notice due to the resignation of the moderator as an important reference person.

Regarding paragraph 2

Finally, in order to preserve the confidentiality of the restructuring moderation and thusincrease its chances of success, the appointment of a restructuring moderatorshouldnotbe made public (paragraph 2). This also serves to protect the debtor's reputation, as a moderator may be called upon well in advance of a possible insolvency.

Re § 97 (reorganization moderation)Reparagraph 1

The restructuring moderator should have the task of mediating between the debtor and her creditors in order to overcome the debtor's crisis as far as possible.

Regarding paragraph 2

In order to be able to fulfil this task, the moderator - like a (provisional) insolvency administrator or a custodian pursuant to sections 22 (3), 97, 274 (2) sentence 2 InsO - must be able to inspect the debtor's business papers in order to gain an impression of the debtor's economic or financial situation from his own point of viewand to verify the informationprovided.

Regarding paragraphs 3 and 4

In order to prevent inefficiency, abuse or even delaying insolvency by the debtor, the restructuring moderator reports monthly to the restructuring court that appointed her on the progress and progress of the restructuring moderation. This also serves the moderator's accountability to thecourtappointing herabout her work.Ifthe debtor is insolvent or, in the case of thedebtor'slimited liabilityconstitution, over-indebted, the moderator will inform the court as soon as she becomes aware of this.

Regarding paragraph 5

In accordance with the provision on the restructuring officer in Section 79(1), the restructuring moderator should also be under the supervision of the court. The supervision by the court is limited to the compliance of the restructuring moderator with the duty to reportpursuant to para 3. The supervision does not only extend to the compliance with the monthly deadlines, but also includes an examination of the reports to the extent that they essentially contain statements on the points on which the restructuring moderatorshall at least report. This does not involve an examination of the reports for accuracy of content, unless the reports are obviously incorrect or are based on obviously incorrect assumptions.

If the reorganization moderator does not or obviously insufficiently fulfill her reporting duty, she can be dismissed by the court for good cause.

Re § 98 (confirmation of a reorganization settlement)

§Section 98 opens up the possibility for the debtor tohaveasettlement concludedwith its creditorsconfirmed by a court (subs. 1). The court mayrefuse the confirmation only under limited circumstances, on the existence of which the moderator shall give the court an objective opinion (para. 2). In this context, a restructuring moderation isonly feasible if the debtor has declared in the application pursuant to § 95 that she is not insolvent or overindebted. The advantage of a court confirmationis thatthe settlement is thus insolvency-proof, although thisshouldonlybe possibleunder the sameconditions as a confirmed restructuring plan according to § 94, which is declared to be applicable accordingly. This means that insolvency-proofis not possible inparticular if the confirmation of the restructuring settlement was based on incorrect or incomplete information provided by the debtor and the other party was aware of this (paragraph 3).

Re § 99 (Remuneration)

The remuneration of the restructuring moderator should follow the same principles as the remuneration of the restructuring officers. In principle, remuneration should therefore be based on hourly rates. With the agreement of the debtor, who isthe sole debtor of the expenses according to number 9017 of the GKG cost schedule, and the restructuring moderator, otherremuneration modelsshould alsobe permissible.

Re § 100 (dismissal of the restructuring moderator)

The restructuring moderator shall berecalledinaccordance with subs. 1 No. 1 at his own request or at therequestofthe debtor. Since the moderatorisonlyappointedat the debtor's request, she should in principle only be removed at her own request or at the debtor's request, e.g. if the relationship of trust between the debtor and the moderatoris destroyed. The request does not need to be substantiated. Subsection 2 enables the debtortomake a request for the appointment of another moderator after the dismissal, taking into account section 94.

In addition, the moderator pursuant to para. 1 no. 2 shall be dismissed ex officio by the court if the debtor is ready for insolvency after notification by the moderator pursuant to section 95 para. 4, because then a restructuring moderation is no longer feasible to protect the interests of the creditor community.

Re Section 101 (Transition to the stabilization and restructuring framework)

§ Section 99 regulates the interaction between restructuring management and the stabilization and residual frameworks. If a restructuring moderator has been appointed and the debtor makes use of instruments of the stabilization and restructuring framework, the moderator remains in office until she is dismissed by the court of its own motion or at the debtor's request in accordance with section 98 or, if the debtor is insolvent, until the court of its own motion is dismissed ex officio by the court or until the restructuring court appoints a restructuring commissioner in accordance with sections 77 et seq.whereby the courtmayalsoappointthe restructuring moderator as restructuring commissioner. Thelatter will come into consideration in particular if, at the request of the debtor or a creditor, an optional commissioner with supportingtasks pursuant to sections 80 et seq. is to be appointed.

Notes (Necessary information in the restructuring plan)

Point 1 implements the requirements of Article 8(1)(a) of the Directive and specifies them in such a way that the debtor is clearly identified. The information required in point 2 is based on Article 8(1)(b) of the Directive and that required in point 3 on Article 8(1)(c) of the Directive. Paragraph 4 reflects Article 8(1)(d) of the Directive and paragraph 5 corresponds toArticle 8(1)(e) of the Directive. Paragraph 6 is based on Article 8(1)(f) of the Directive, paragraph 7 on Article 8(1)(g) (iii) and (iv) of the Directive and paragraph 8 on Article 8(1)(g) (vi) of the Directive, whereby only the reasons for inclusion are given here, whereas the inclusion of the new financing as such in the plan must already be presented in accordance with paragraph 14. The information required by Article 8 (1) (g) (i) and (ii) of the Directive is regulated in the provisions on the formative part in § 9, the optional possibility of requiring information on the debtor's expected financial flows under Article 8(1) (g) (V) of the Directive is included in § 16 (2), second sentence.Article 8 (1) (h) of the Directive is implemented by Art. 16 (1).

Re Article 2 (Amendment to the Judicial System Act)RePoint 1

According to Article 1(1)(a) of the Directive,the restructuring framework serves to avert probable insolvency and also has many other references to insolvency law. In order to perform their duties properly, restructuring judges must be able to see what the result would be if insolvency proceedingswere opened instead of recourse to the restructuring framework.They must also understand what the consequences would be of a later insolvency proceeding in the event of failure of the residual restructuring plan. Therefore, judges involved in restructuring cases need to have a legal knowledge comparableto that of judges involved in insolvency cases. For this reason, the special qualification requirements prescribed by law for insolvency judges are also extended to restructuring judges. Furthermore, the canon of legal fields in which insolvency judges are required to demonstrate demonstrable knowledge is extended to restructuring law. In particular in insolvency proceedings thatwere preceded bya reorganisation projectusing restructuring instruments of the restructuring framework, the insolvency judge must take into account the legal effects of the restructuring instruments.

To number 2

The provision of § 71 paragraph 2 of the German Court Constitution Act (GVG) regulates the substantivejurisdiction of the Regional Courts without regard to the value of the subject matter in dispute. The new provision of Section 71 (2) no. 6 providesthat the Regional Court shall have jurisdictionfor claimsbroughtagainst the debtor, the members of the debtor's management, the debtor's executive bodies or the restructuring agentin a restructuring case on the basis of the Corporate Stabilization and Restructuring Act. Since the amounts in dispute in the case of the liability claims in question will regularly lead to the regional courts having jurisdiction and the local courts are therefore likely to have jurisdiction in only a small number of cases, and sincethe canon of duties of the persons acting or entrusted with supervision, which is to be defined by case law on liability claims, will at the same time contribute to the success or failure of the newly introduced pre-litigation restructuring proceedings, it must beensuredthatby concentrating on certain courts sufficient attentioncan bepaid to thecase and the development of specialized knowledge can be made possible. A well-founded case law contributes to ensuring the

Success and acceptance of the procedure by the persons concerned necessaryconfidence in the functioning of the various mechanisms of the Corporate Stabilization and Restructuring Act to guarantee their rights and interests.

The jurisdiction of the regional courts, which is independent of the value of the dispute, is intended to enable specialization of the courts and thus a more time-saving organization of work and to make the advantages of decision-making in a collegial body in complex questions of commercial law available. At the same time, this will ensure that appeals can be lodged with the Federal Supreme Court.

To number 3

The addition of § 72a, Subsection 1, No. 7, GVG, in theversion applicableas of January 1, 2021,serves the purpose of promoting efficient and resource-saving processing and decision making in proceedings by ensuring that within the court,the decisive panels aremore frequently concerned with the above-mentioned matters (recommendation for a resolution and report of the Committee for Law and Consumer Protection on the Federal Government's draft for the reform of building contract law, Bundestag document 18/11437, p. 45). Subsequent to the amendment of the law on the value limit for the non-admission complaint in civil matters, on the expansion of specialization at the courts and on the amendment of other civil procedural regulations ofDecember 12,2019 (BGBl. I S. 2633) in § 72a para. 1 no. 7 GVG, this special chamber is to besupplemented by the competence for disputes andappeals under the Corporate Stabilization and Restructuring Act because of the systematic references to insolvency law.

Disputes under the Corporate Reorganization and Restructuring Act include all liability and damage claims thatmay be assertedagainst the debtor, the members of the debtor's management, the debtor's executive bodiesor the restructuring officerin a restructuring case on the basis of the Corporate Stabilization and Restructuring Act

To number 4

This is a consequential amendment to Section 62 (2) of the German Corporate Stabilization and Restructuring Act.

To number 5

The amendment to Section 119a (1) No. 7 of the German Constitution Act (GVG) in the version applicableas of January 1, 2021, provides, in accordance with the amendment to Section 72a (1) No. 7 of the German Constitution Act (GVG) (see explanatory memorandum to No. 3), for the extension of the competence of the special panel to be established at the level of the Higher Regional Courts as well, because of the systematic references to insolvency law, to include competence for disputes and complaints under the German Corporate Stabilization and Restructuring Act.

Regarding Article 3 (Amendment to the Code of Civil Procedure)

To number 1

The table of contents is updated as a consequential amendment to number 2.

To number 2

Section 19b establishes exclusive local jurisdiction for actions in restructuring cases at the place where the restructuring court at which a residual restructuring case was pending is located. The proposed provision counteracts the fragmentation of local jurisdiction based on different jurisdictions that might result from the otherwise relevant jurisdictions of the defendant's domicile or the tort.

The effect of concentration at the regional courts in whose districts the restructuring courts have their seat in connection with the insertion of a new No. 6 in Section 71 (1) of the Courts Constitution Act will enable the factual connection with the restructuring cases to be preserved and the court's familiarity with thesubject matter to be ensured. The canon of duties of the persons acting in restructuring cases or entrusted with supervision is determined by the courts in the application of law. The emerging case law contributes to the success of the restructuring process and creates the necessary confidence of the persons concerned in the functioning of the various mechanisms of the Corporate Stabilization and Restructuring Act to guarantee their rights and interests. The specialization of thecourts, which goes hand in hand with the concentration on a few regional courts,can also enable them to organize their work in a more time-saving manner and therefore make sense for reasons of procedural economy.

Regarding Article 4 (Amendment of the Act on Foreclosure Auction and Administration)

§ Section 30g (1) ZVG-E regulates the competence of the enforcement court for the execution of a temporary suspension or prohibition of the compulsory auction.The restructuring court must examinewhether theconditions for a suspension of execution under § 53 (1) sentence 1 number 1 of the Corporate Stabilization and Restructuring Act are met and whether the extension of the order to the real estate is necessary to preserve the restructuring prospects.

Thecondition in the new paragraph 2 stipulates that for the duration of the discontinuation of the forced sale procedure, the interest owed on an ongoing basis in accordance with Section 58 of the Corporate Stabilization and Restructuring Act for movablesmust be paid and any loss of value resulting from the use of the movable property must be compensated by ongoing payments. This does not apply according to sentence 2, if according to the amount of the claim as well as the value and other encumbrance of the real estate, the creditor cannot be expected to be satisfied from the auction proceeds.

Paragraph 3 is based on the provisions of § 30f paragraphs 1 and 3.

Re Article 5 (Amendment of the Insolvency Code)

To number 1

The authorization of the Land governments to designate additional local courts for the purpose of expedient promotion or faster settlement of insolvency proceedings shall be limited to consumer insolvency proceedings and the special types of insolvency proceedings of Part Eleven of the Insolvency Statute. This takes up a recommendation of the ESUG evaluation. In order to build up specific expertise for ESUG proceedings, theresearch reportrecommendsconcentrating jurisdiction on a maximum of one local courtper district and prefers a more far-reaching approach, according to which only one local court should be responsible for each district of the Higher Regional Court (ESUG evaluation, research report, p. 239). As a result of the changes, one insolvency court per

District Court district for corporate insolvencies. A furtherconcentration is not mandatory, but can be carried out by the federal states.

Re point 2(a)

Thisprovision is intended toensureefficient and simplified processing of proceedings as well ascontinuityinthe insolvency courts. The insolvency court, which was already responsible as a restructuring court, is particularlyfamiliarwith thespecial features of the debtor company and the persons acting as well as part of the creditors and can apply this knowledge in a process-friendly manner and ensure smooth and competent handling of the proceedings.

Since the use of the instruments of the stabilization and restructuring frameworkrequiresan in-depth examination and case assessment by the restructuring court, but not all insolvency courts are restructuring courts at the same time, it seems appropriateto grant the debtor an option in the envisaged constellations and to establish an additional place of jurisdiction for insolvency proceedings at the insolvency court which is also the restructuring court. The expertise of the restructuring court from a previous restructuring project can thus also be used and made available for subsequent insolvency proceedings.

Otherwise it would be conceivable that the insolvency court which is also the seat of the restructuring court is not responsible for subsequent insolvency proceedings. This would lead to synergy losses and inefficiencies. For this reason,paragraph 2 provides for an additional place of jurisdiction for those debtors who have made use of instruments of the stabilization and restructuring framework pursuant to section 29 of the Corporate Stabilization and Restructuring Act in the six months prior to filing the application. As the aforementioned considerations of practicability and efficiency can only come into effect if insolvency proceedings are filed in the immediate vicinity of a previous restructuring attempt under the Stabilization and Restructuring Framework, the additional place of jurisdiction is limited to applications filed within the envisaged six-month period.

Re point (b)

This is a consequential amendment to insert the new paragraph 2.

To number 3

This provision supplements Section 37 (3) of the German Corporate Stabilization and Restructuring Act. As there will be fewer restructuring courts than insolvency courts due to the concentration of jurisdiction to a maximum of one restructuring court per district of the Higher Regional Court (Oberlandesgerichtsbezirk) as provided for in Section 34 of the Corporate Stabilization and Restructuring Act, the aim is toensurethat insolvency and restructuring cases within a group of companies are combined as far as possiblebyallowingall group follow-up proceedingstobebroughtbefore one restructuring court.

To number 4

The amendment to section 4 InsO opens up the possibility for the insolvency courtstoallowthe debtor, creditors and other persons entitled to participate to attend creditors' meetings and discussion and voting meetings without being physicallypresent at the meeting place by means of video and audio transmission. This is intended to

the hitherto controversial question of the admissibility of participation in creditors' meetings by means of remote communication be clarified (For this: Ehricke/Ahrens, MünchenerKommentar zur Insolvenzordnung, 4th ed. 2019, § 76, marginal note. 13; Busch/Rennert/Rüntz/Vallender, NZI 2010, 417, 422; Hofmann in Kübler, HRI - Handbuch Restrukturierung in der Insolvenz, § 16, marginal 41; Pleister/Palenker, ZRI 2020, 245; critically with reference to the currently still missing legal basis Knof in Uhlenbruck, 15th ed. 2019, § 76, marginal 18; Preuß, ZIP 2020, 1533, 1534).

The new regulation does not result inanynew obligationsfor either the insolvency courts or those entitled to participate, butonly in additional voluntary options. For it is at the discretion of the court in each individual case whether eallows the possibility of virtualparticipation at all. Whenexercising this discretion, it willhave to be taken into account inparticularwhether the insolvency court has technical equipment at its disposal which works sufficiently reliably, takes data protection and data security concerns into account, allows for the effective management of the meeting,ensuresthe reliable verification of identity and eligibility to participate and voting rights prior to each individualvote andenablesall participants to effectively exercise their rights, including the inspection of documents and communication with the court and all other participants.

If the insolvency court opens up the possibility of virtual participation on the merits of the individual case, it is also at its discretion whether it opens up this possibility to all those entitled to participate or restricts it to a properly delimited part of them (e.g. in the case of proven restrictions on the ability to travel or if thedistance to the place of assemblyisparticularly great). Limiting the number of virtual participants to a small number can also alleviate many of the above-mentioned problems that already play a role in the exercise of the power of resolution.

All those entitled to participate continue to have the right to attend in person in the meeting room, even if the insolvency court has allowed them to participate virtually. The prescribed references to the inadmissibility of image and sound recordings as well as the granting of access to those not entitled to participate serve to protectconfidentiality in meetings that are not public. The possibilities for the insolvency court to effectively monitor these prohibitions are limited. However, this is not a viablereason tolegally excludevirtual participation in non-public meetings and otherappointments, especially since the application of § 128a of the German Code of Civil Procedureis also permissible in other cases of non-public appointments in other thoroughly sensitive areas (e.g. § 32 paragraph 3 of the Act on Proceedings in Family Mattersand in Matters of Voluntary Jurisdiction). Inthis respect,the punishment of secret image and sound recordings in non-public appointments (§ 201 of the German Criminal Code) appears sufficient.

To number 5

Electronic creditor information systems are already maintained by many insolvency administrators. The new regulation of § 5 para. 5 is intended to make the electronic retention of information by the administrator mandatory above a certain size of the debtor company. In addition to making it easier for creditors, who will then beable toretrieve information electronically without any problems, the regulation is also intended to relieve the burden on the courts, which are likely toreceivefewerinquiries from creditors about the status of proceedings and the status of debt examinations.

Inprinciple, all creditors whohave expressed their wish to participate in the insolvency proceedingsby filing a claim are entitled to inspectthe documents. Whether the creditor position exists is to be determined by the insolvency administrator before the assignor.

of the access data. In a large number of cases, thecreditor position can be determined simply by comparing it with the debtor's accounting. In these cases, the access can alsobemade available before the examination date.Access must begrantedat thelatest immediately after the judicialdetermination of the registered claim.

To number 6

Inpractice, preliminary coordination with the insolvency court is cited as a key success factor for successful self-administration (ESUG evaluation,research report, p. 22). The provision of § 10a for the first time legally regulates the debtor's right to a preliminary talk. The debtor is entitled to a preliminary talk if, on the basis of the size criteria of section 22a para. 1, a preliminary creditors' committee is to be set up in principle. In order for the court to be able to examine whetherthe debtorisentitled to a preliminary talk, it mustbe explainedto the courtwhich company is involved, that the court has local jurisdiction and that the company fulfils two of the three criteria of section 22a para. 1. The preliminary talk serves to prepare for possible insolvency proceedings.All matters relevant to the proceedings can be discussedin it; the list ofpossible matters in paragraph 1 is not exhaustive. With the debtor's consent the court may, after the preliminary talk, hear creditors anddiscusswith theminparticular their willingness to become members of the temporary creditors' committee(subs. 2). Thepurpose of this provision is toenablethe rapid establishment of a temporarycreditors' committee after the application has been filed. The preliminary talk shall establish the competence of the judge conducting the talk for subsequent insolvency proceedings concerning the debtor's assets (para. 3). Apart from that, the preliminary talk does not have any legal consequences; neither does it establish or fix a local jurisdiction nor does the preliminary talk establish a substantive obligation of the court or even a claim of the debtor to certain decisions.

The court may also hold preliminary discussions if the requirements for the establishment of a temporary creditors' committee under section 22a subs. 1 are not met,butisnot obliged todo so. In such cases, too, it will be appropriate for the preliminary talk to establish the competence of the judge conducting the talk for subsequent insolvency proceedings. However, the courts may also regulate this otherwise.

On point 7

If a creditor's petition to open insolvency proceedings is dismissed because the petitioning creditor is unaware of the fact that a stabilization order was issued in a residual restructuring framework which was not made publicand of which the creditor could not have been aware, it is equitable not to charge the petitioning creditor with the costs.In such a case,thecosts should be borne by the debtor whoapplied forthe stabilization orderand thus brought about the reason for rejection.

To number 8

With regard to the restructuring efforts to eliminate insolvencyand over-indebtednessthat haveoccurred, thenew regulation differentiates. In thecase of insolvency,the uncertainty about a restoration ofthe company's solvency ismaintainedfor a maximum of three weeks. However, up to six weeks will be available in the future to eliminate over-indebtedness. The extension is intended to enable the debtor tobringongoing restructuring effortsto a successful conclusion out of court, or, if necessary, to carry out a restructuring within a preventive restructuring framework or on the basis of an equitycapital increase.

to prepare the administrative proceedings properly and conscientiously.In allother respects,however,it remainsthe case thatafter the occurrence of insolvency or over-indebtedness, a request to openproceedingsmust be made without culpable hesitation. This means that the maximum time limits may not be exhausted if it is clear at an earlier point in time that alasting elimination of the insolvency or over-indebtedness cannot be expected (see Uhlenbruck/Hirte, 15th ed. 2019, InsO § 15a marginal no. 16). If it is evident that restructuring efforts have no (further) chance of success, the insolvency application must be filed immediately.

Regarding number 9

The period for the elimination of over-indebtedness will in future be up to sixweeks (section 15a InsO-E). Theextension of the maximum application period is intended topreserve chances of reorganization and tobeable to preparea reorganization properly and conscientiously.Only a few companies would succeed in maintaining their business operationsfor more than three weeks within the framework of emergency management in such a waythat chances of reorganization are preserved. Without an accompanying regulation, theextension of the period for the elimination of over-indebtednesswouldtherefore in practiceoften run dry. §Section 15b InsO-E therefore provides that in the event ofover-indebtedness payments made in the ordinary course of business, in particular those payments which serve to maintain business operations, are deemed to have been made with the due care of a prudent and conscientious manager within the meaning of section 64 sentence 2 GmbHG, The provisions of § 92 Paragraph 2 Sentence 2 AktG, § 130a Paragraph 1 Sentence 2, also in conjunction with § 177a Sentence 1, HGB and § 99 Sentence 2 GenG are compatible, as long as the parties obliged to make the application carry out the preparation of the application or measures for the sustainable elimination of over-indebtedness with the care of a prudent and conscientious manager. In this respect the persons obliged to apply should notbe restrictedby the narrow limits of theregulations mentioned.

To number 10

Thenew Section 18 (2) sentence 2 stipulatesthata forecast period of 24 months is generally to be taken as a basisforthe impending insolvency.This provision removes uncertainties regarding the duration of the forecast period of the impending insolvency. For the forecast period, periodsbetween a few months and three years or the due date of the latest claimare currentlyproposed (see Graf-Schlicker/Bremen, InsO, 5th ed. 2020, section 18 marginal no. 12 mwN). The ability to make forecasts decreases with the extension of the forecast periods and the prevailing opinion is currently based on the current and the following financial year for the forecast period (see MüKolnsO/Drukarczyk, 4th ed. 2019, InsO § 18 marginal no. 63). The decreasing certainty of the forecast the more future events are, argues in favor of not choosing too long a forecast period, which is usually the basis for the forecast. A link to fiscal years may beappropriatefrom a planning perspective, but this results in different forecast periods. Depending on thepoint in time in the current fiscal year, the forecast periods for the current and the following fiscal year range from just over 12 months to just under 24 months. This different length of the forecast period is not convincing, which is why the forecast periodisusually fixed at 24 months.The forecast period applies "as a rule". In individual cases, a shorter or longer forecast period may also be used.Inthis way,special features of the debtor or its business operationscanbe taken into account.

On point 11

Over-indebtedness is maintained as a mandatory reason for filing for insolvency for legal entities and other legal entities with limited liability. The draft thus shows

convinced that over-indebtedness should continue to play an important role in the insolvency law of legal entities with limited liability. Theobligation to file an application linkedtoover-indebtedness forces managers toplanahead, which in turn is a basic prerequisite for the early detection of signs of crisis. Inaddition, over-indebtedness represents a sufficiently serious threat to the interests of creditors, to which an obligation tofile an application should be linked. If the debtor is no longer in a position to continue his business within a foreseeable period of time and if in such a situation the debtor's assets are not sufficient to cover all liabilities, there is reason to remedy this threat to creditors' interests within the framework of insolvency proceedings. Therefore, the draft does not see any reason to abandon over-indebtedness as a mandatory application for legal entities withlimited liability.

However, the period on which the forecast for the continuation of § 19 para. 2 sentence 1 is to be based shall be limited to twelve months following a proposal submitted by Brinkmann, in: Ebke/Seagon/Piekenbrock, Überschuldung: Quo vadis?, 2020, 67, 75 f. This would eliminate the legal uncertainties regarding the length of the relevant forecast period (Brinkmann, ibid., pp. 67, 75 f.). In addition, the specification of a twelve-month forecast period also eliminates thedifficulties and uncertainties associated with longer forecast periods. A forecast period limited to twelve months can be better handled by the parties involved without affecting the over-indebtedness in its function of encouraging the managing director to file an application at a relatively early stage.There is no regulatory or liability gapfor cases in which the going concern of the companyis no longer assuredafter the expiry of thefuture twelve months. For according to § 2 StaRUG a general duty to protect the interests of creditors sets in, which can condense into concrete duties to act, if only the danger of a failure becomes sufficiently large. Even if this does not result in an obligation to file an application, the managers are urged to safeguard the interests of the creditors.

The limitation of the forecast period for over-indebtedness to twelve monthsalsoleadsto a reduction ofthe factual overlap with impending insolvency(section 18 InsO). In the area of overlap, the bankruptcy relationship already existing today will remain. However, this is still to be dissolved in such a way that a prognosis for the continuation of the company which excludes over-indebtednesscanalsoresultfrom the predominantprobability of a reorganisation or restructuring project.

To number 12

The reference in section 21 (2) sentence 1 number la is extended to section 67 (3) InsOinaccordance with the proposal of the ESUG evaluation (ESUG Evaluation, Research Report, p. 231). The main purpose of the amendment is to enable representatives oftrade unions to be appointed as members of a provisional creditors' committee. The previous reference had been limited to section 67 (2), since the Legal Committee assumed that for the important and far-reaching decisions in the preliminary insolvency proceedings, which often have to be taken under considerable time pressure, a direct connection to the debtor and practical knowledge of her business operations would be useful, which a noncreditor would first have to acquire (BT-Drs. 17/7511, p. 33). However, the participation of trade union representatives, even in the preliminary proceedings, can be particularly beneficial for the proceedings, since trade unionsoften play a decisive role in a restructuringand theymay knowthe circumstances of the companybetter than suppliers, customers or other creditors (see Haarmeyer/Schildt, MüKO InsO, 4th ed. 2019, § 22a marginal no. 51).

On point 13

The amendment of § 55 para. 4 of the Insolvency Codeaimsatequal treatment ofprovisional self-administration with cases in which a provisional insolvency administratorhas been appointed.

The provision contains a privileged treatment of tax claims that have been established by a temporary insolvency administrator or by the debtor with the consent of a temporary insolvency administrator. These claims are considered as a mass liability after the opening of the insolvency proceedings. So far, this applies to all types of taxes, but not to provisional self-administration (BGH, ruling of 22.11.2018 - IX ZR 167/16, BGHZ 220, 243).From this point of view, provisional self-administrationis therefore advantageous for the masses compared to provisional regular administration, because in the phase up to the opening of insolvencyproceedings,justified tax debtscanonlybeentered in the table as insolvency liabilities.This results in a false incentive for actually unsuitable debtors to strive for provisional self-administration only for this reason.

At the same time, the scope of application is limited to VAT, for which it has always been of practical relevance. Thus, the regulation continues to take into account the fact that, according to the established case law of the ECJ (judgment of B. 5. 2019 - C-127/18, A-PACK CZ s. r. o. / Odvolací financní "reditelství, DStRE 2020, 34, marginal no. 22 m. w. N.) acts as "tax collector for the account of the state".

To number 14

The new section 56 subs. 1 second sentence stipulates that the person who has acted as restructuring commissioner or restructuring moderator in a restructuring matter of the debtor may be appointed as insolvency administrator only with the consent of the temporary creditors' committee. The draft is aware that the activity of the moderator or representative could also be used as an opportunity todenythem access to the office of administrator with regard to possible conflicts of interest, as wellas to persons who have advised the debtor beyond a general level. However, the draft also departs from the provision in section 271 sentence 2 InsO, according to which the previous insolvency administrator can become the administrator if a regular procedure is converted into a self-administration procedure. Conversely, the appointment of the previous administrator as insolvency administrator is also possible if the self-administrationis converted into a regular procedure (section 272 (3) InsO). Theneed toavoid frictional losses, whichcouldnotbeavoided if the office holders were changed,speaksinfavour ofpersonnel continuity when the procedural framework is changed. Inaddition, the change from a self-administration to a regular procedure, just as the transition from a restructuring case to insolvency proceedings, candependonfactors that lie exclusively within the sphere of the debtor and give no reason to assume that there are conflicts of interest. Therefore, the draft places the decision that is appropriate for the individual case in the hands of the creditors' committee and the court.

Re point 15(a)

The regulation strengthens the participation of creditors in the appointment of administrators. The consultation of the preliminary creditors' committee can only be omitted if the delay caused by the consultation obviously leads to an adverse change in the debtor's financial situation within two working days. A waiting period of up to two working days gives sufficient time for the constitution and decision of the temporary creditors' committee and will bepossible in many casesdespite the urgency ofthe appointment decision.

Re point (b)

Sentence 1 introduces an obligation to give reasons for a failure to hear the provisional creditors' committee. This increases the transparency of the procedure. The new sentence 2 reflects the regulatory content of the previous paragraph 3.

To number 16

The amendments are intended to implement Article 26(1)(d) of the Directive, which requires that, in order to avoid conflicts of interest, debtors and creditors have the possibility torefuse toselect or appoint anadministrator or to request his replacement.

Re point 17(a)

By the new version of paragraph 2 it is sufficient in future tomake itpublicly knownin the case of remuneration resolutionsthat sucharesolutionhas been issued andcan be inspectedat the office.In view of the decision of the Federal Court of Justice (BGH) of 14 December 2017 (Ref. IX ZB 65/15) and the inconsistentpublication practiceas shown in BR-Drs. 67/20, thenew provision is intended toensure legal certainty and at the same timeto protectanyinterests of the partiesworthy of protectionwhich could be affected by a publication. The decision shall continue to be served to the administrator, the debtor and the members of any creditors' committee, so that they do not need to inspect it in order to take note of the decision. In addition, it will beeasierto take note of theentire resolution in proceedings in which a password-protectedelectronic creditor information system is to be maintained, since the resolutionisto be made available for retrievalbytheadministrator via such asystem.

Re point (b)

As aresult of the new version of paragraph 2, less information on thedetermination of compensationwill be madepublicin thefuture.This may, especially if noelectronic creditor information system is available, result in a creditor needing more time to prepare and lodge an appeal against the remuneration determination. For this reason, the period for lodging an immediate appeal against remuneration decisions is extended from two to four weeks. If the administratoris obliged to maintain an electronic creditor information system, the period for lodging the appeal for creditors does not start before the remuneration decision is made available in the system. This is to ensure that the entire resolution is made available to the creditors in a timely manner via the creditor information system if such a system is to be maintained for the proceedings.

To number 18

The shift from section 66 subs. 1 second sentence to the new subs. 4 stipulates that the final account is entirely at the creditors' disposal. The rendering of accounts is in the interest of the creditors and if they waive the rendering of accounts in the plan, no judicial preliminary examination ofthe final accountshallbe necessaryfor the termination of the proceedings.

To number 19

The addition of sentence 2 ensures that a prohibition of liquidation preceding the (provisional) insolvency proceedings in accordance with section 53 of the German Corporate Stabilization and Restructuring Act (Unternehmensstabilisierungs- und -restructur-rierungsgesetz) does not generally result in the

creditor must waive the interest owed for more than three months. This can only occur if the obligation to pay compensation under § 169 sentence 3 ceases to apply.

To number 20

The target regulation, according to which documents in paper formshouldgenerally be submitted subsequently even in the case of an electronic filing of claims approved by the insolvency administrator, is no longer applicable. Now, in the case of an electronic filing of claims, the documentary evidence can also be submitted in electronic form. The submission of originals, paper copies or printouts is now onlynecessaryafter a separaterequest by the insolvency administrator or by the insolvency court.In addition, it is clarified that an electronic invoice according to the e-invoice regulationis one of the documents from which the claim arises within the meaning of § 174 (1) sentence 2.

To point 21

The new version of § 210a No. 2 clarifies that the non-lower-ranking creditors of the insolvency proceedingstakethe place of the subordinated creditors in full.

To number 22

§Section 217 (2) InsO-E extends the objective regulatory competence of insolvency plans and for the first time creates the possibility ofstructuringthe rightsofholdersofinsolvency claims to which theyare entitledfrom third-party collateralin an insolvency plan. The regulation of the new paragraph 2 is intended to facilitate group reorganizations. The possibility of including rights under third-party collateral is thereforelimitedto third-party collateralprovidedby direct or indirect subsidiaries of the debtor.

Up to now, an insolvency plan has not been able to shape the rights of holders of insolvency claims to which they are entitled under third-party collateral. This is expressly excluded by the special provision of § 254 para. 2 sentence 1, which is based on the Bankruptcy Code and the case law of the Reich Court (see e.g. Piepenbrock in: Jaeger, Insolvenzordnung, 1st ed. 2019, § 254, GeneralEffectsofthe Plan). Third-party collateral is not part of the insolvency estate, and thesecured creditor can currently, pursuant to § 254 para. 2 sentence 1, claim the third-party collateral provider in fullfrom the third-party collateral,irrespective of the structure of the secured claim in the insolvency plan.The third-party collateral provider, for its part, may enforce its recourse claim on the basis of the recourse block regulated in § 254 para. 2 sentence 2 only in the amount which the creditor has received under the confirmed insolvency plan.

Since third-party collateral is not part of the insolvency estate, an intervention in the legal positions granted by them is not necessarily necessary to achieve the purposes of the insolvency plan proceedings. However, particularly in the case of group reorganizations, there is often a need to include collateral provided within the group in the restructuring process inorder to preserve the value of the group andpreventsubsequent insolvencies of group companies.Currently, the inclusion of third-party collateral is onlypossiblewith the consent ofthe secured creditors. If it is not possible to reach a consensus with these creditors, an attempt may be made to implement a group restructuring by means of parallel insolvency plan proceedings. Insolvency proceedings involving the assets of one oreven several collateral providers will at best only result in greater effort and additional costs, but may also lead to the failure of the entirereorganization project. This is highly inefficient if thedebtor's creditors, who aresecuredby third-party collateral,in the event of a claim against the collateral provider, are in theend no longer able to obtain a total of

when they received third-party collateral directly in the debtor's insolvency plan in the case of the design of the group-internal third-party collateral. Therefore, the new regulation provides that an insolvency plan can also structure the rights of the holders of insolvency claimsto which theyareentitled from group-internal third-party collateral.

In ordernot to underminethe purpose of the creation of third-party collateral, i.e. to protect the collateral takerespecially in the event of the debtor's inability to perform, it must be ensured that the collateral taker cannot be forced to waive the value of third-party collateral to which it is entitled. The new 223a InsO-E expressly stipulates that the encroachment on rights under third-party collateral within the Groupmust be adequately compensated. In addition, the prohibition of unfavourable treatment under sections 245 (1) no. 1, 251 (1) no. 2 InsO applies.

To number 23

To letter a

To double letter aa

According to thecase law of the BGH, the representing part of an insolvency plan must contain all information on the basis and effects of the plan whichare relevantfor the creditors' decision on the approval of the plan and for its judicialconfirmation (BGH, order of 15 July 2010 - IX ZB 65/10 -, marginal no. 42, juris; BGH, order of 26 April 2018 - IX ZB 49/17 -, marginal no. 33, juris). The change in sentence 1 means that this is now also reflected in the wording of the provision.

To double letter bb

With the supplement the settlement account as a central element of the insolvency plan is for the first time expresslymentionedas an element of the descriptive part of the insolvency plan in section 220. With the further addition that for a continuation plan it must also be assumed in principle for the determination of the probable satisfaction without a plan that the enterprise will be continued and the following exceptions, a recommendation of the ESUG evaluation (Research Report, p. 191)is taken up. The regulation is intended to prevent the satisfaction rate without a plan from being artificially low.

Re point (b)

The provision contains a clarification of the necessary explanations in the insolvency plan in the event that it provides for interventions in the rights of insolvency creditors from third-party collateral provided within the group (cf. explanatory memorandum to No. 22).

To number 24

The supplementimplementsthe recommendation of the ESUG evaluation for an extension of section 221 InsO to the effect that the insolvency administratorcan be entrustedwith implementation measures, in particular payments to creditors, even after theproceedingshave been terminated.

To number 25

The allocation of third-party collateral to a separate plan group reflects thedifferent way in which third-party and own collateral works and the differenteconomic position of the creditors benefiting from third-party and own collateral.

To number 26

This provision is intended toeliminateany uncertainties for dealing with authorized persons fromthird-party collateral providedwithin the group. At the same time, it regulates the compensation for intervention claims secured by third-party collateral provided within the group.

To number 27

The inclusion of an intra-group third party collateral in the debtor's insolvency planis subject to the consent of the collateral provider in order not to restrict its entrepreneurial freedom without necessity. If it decides to fully satisfy the debtor's creditor on the basis of the third-party collateral provided, there is no reason to prevent it from doing so.

For points 28 and 29

Theamendment of § 231 as well as the amendment of § 232adaptthe preliminary examination procedurein such a way that the opportunity to submit comments is already granted during the preliminary examination procedure and the decision on a possible rejection ofthe plan can only be taken after the expiry of the period set for comments. These amendments take upa proposal of the ESUG evaluation (Research Report, p. 194).

Contrary to what was suggested in the ESUG evaluation, the court must alsogive the parties involved in simple cases the opportunity to submit comments in accordance with § 232. In the interest of speeding up the procedure,a short period of timemay beset for comments, especially in simplecases.

Comments submitted within the time limit set shall be taken into account by the court in the decision on a possible rejection of the plan. They must be evaluated with caution, as the opinion of the parties involved on the plan may still change (see BGH, decision of 16 December 2010, IX ZB 21/09, marginal no. 3 on theconsideration of comments of creditors). For this reason alone, it is not possible forthe court to be bound by the comments of the parties involved.

In view of the urgent nature of the insolvency proceedings, nogeneral obligation to forward comments receivedwasestablished. The court has to forward received comments to the other parties entitled to comment and to the submitter of the plan for further comment within a maximum period of one week only if they contain new submissions on which the courtintends to baseitsdecision.

To number 30

By ordering the corresponding application of § 8 para. 3 of the Insolvency Statute it is clarified that the insolvency court may entrust the insolvency administrator with the summons to a discussion and voting meeting and with the transmission of the insolvency plan or a summary of the plan. The transfer is at the court's dutiful discretion.

Re point 31

The provision regulates the determination of voting rights for creditors whose rights from third-party collateral provided within the Group are to be encroached upon.

To number 32

To letter a

To double letter aa

The insertion clarifies that an allocation of value which is fullycompensatedeconomicallydoes not block the application of the obstruction prohibition. The full economic value compensation ensures that an appropriate economic participation of the (senior) creditors is not affected by the value allocation.

To double letter bb

If a plan can only be implemented with the personal commitment of the debtor andonly the added value of the plan can ultimately be realized, it may be appropriate in individual cases to provide the debtor with a value for this commitment for the continuation of the business whichisnot or not completely economicallycompensated. In such a situation, it should also be possible in the interest of the creditor community to legallyreplacethe lacking consent of obstructing creditors. Thenew regulationbreaksthe absolute priority principle of § 245 para. 2number 2 of the Insolvency Code for this special constellation. The court must assess whether, despite the assignment of value to the debtor, there is an appropriate participation of the obstructing group. The situation that agoing concern is only possible with the personal commitment on the debtor's side can not only occur with natural persons as debtor. Sentence 3, the new regulationthereforeextendsto holders of share or membership rights involved in the management of thecompany.

Re point (b)

Creditors who are entitled to third-party collateral within the Group should only be able to be included in this group despite the lack of a majority if they receive appropriate compensation for the value of the collateral to which they are entitled.

To number 33

Theregulation of the new § 245afacilitatesthe examination of a probable worse positionin insolvency plans of natural persons. On the one hand, in case of doubt it can be assumed that the debtor's income and financial circumstances willremain unchanged. This provision is modelled on Section 309 (1) sentence 2 number 2.On theother hand, it is presumed that the discharge of residual debtwilloccurat the end of the maximum period.Both presumptions can be refuted.

To number 34

By ordering the corresponding application of § 245a, the presumption rulesfor facilitating the examination of an anticipated worse position in the case of insolvency plans of natural persons alsoapplyin the context of minority protection applications.

To number 35

By ordering the corresponding application of section 8 subs. 3 it is regulated that the insolvency court may entrust the insolvency administrator or the custodian with the transmission of the insolvency plan or a summary of the plan. This provision is intended to help relieve the burden on the courts. Whether and to what extent use is made of the possibility of transfer is at the court's dutiful discretion.

To number 36

By ordering the corresponding application of § 245a, the presumption rulesfor facilitating the examination of an anticipated worse position in the case of insolvent plans of natural persons alsoapplywithin the scope of the complaint procedure against a plan confirmation.

Re point 37

This isa follow-up adjustment due to the new provisions of section 217(2) and section 223a InsO-E, whichallowthe inclusion of rights from third party collateral within the Groupin the insolvency plan.

To number 38

Theamendment to Section 258 (3) takes up the suggestion of the ESUG evaluationtodeterminethe date of cancellation in the cancellation resolution - following the provision on the opening resolution in Section 27 (2) no. 3 for the opening date.On the one hand, this is intended to achieve a simplification, since the dateof publication by the court can no longer be predicted. On the other hand, a new fiscal year begins with the cancellation of the insolvency proceedings and the determination of the cancellation date (e.g. end of the month) can simplify accounting. If the resolution to terminate does not contain a date for termination, the termination will becomeeffective as soon as two additional days have elapsed after the date of publication.

To number 39

The regulations on the self-management procedure will be revised for the most part, prompted by the study on the evaluation of the ESUG.The focus is onregulating access to the self-administration procedure. In the current version, this is essentially controlled by the absence of disadvantages for creditors (section 270 (2) no. 1 InsO), which due to its abstract naturefavoursinconsistenthandling and burdens practice with legal uncertainty. With the sections 270 et seq. InsO-E are intended on the one hand to offer debtors a legally secure and plannable option for access to the proceedings.On theother hand, this access is tobe providedby means ofrequirements which prima facie justify the assumption that the self-administration applied for will be aligned with the interests of the creditors. An essential component of this access is a self-administration plan, with which the debtorhas to present aconcept for managing the insolvencythat is traceable to the causes and symptoms ofthe crisisand to show how thegoing concern can be guaranteed and financed in the next six months. The plan must also include a description of the cost implications of self-administration in comparison to the standard procedure. If a complete and conclusive plan is submitted, the debtor should onlybe able to be deniedaccess to provisional self-administrationif circumstances are known which show that theplanis basedon incorrect facts in essential points. It is also contrary to the order if there are significant payment arrears to employees or other material creditors, if the debtorhas not complied with its disclosure obligations under commercial law in thelast threefiscal years or if insolvency proceedings under its own administration were already pending in the last three years prior to the application or if the debtor has made use of instruments of the stabilization and restructuring framework. In all these cases, the order of provisional administration is not excludedper se. However, it can only be considered if the court is convincedthatthe debtor is willing and able to align its management with the interests of the creditors despite these circumstances.

Theconcerns of the ESUG evaluation study regarding the independence of female cover pool administratorsappointedon the basis of a proposal of the provisional creditors' committee binding on the court (§§ 270a para. 1 sentence 2, 274 para. 1, 56a para. 2 sentence 1)(Research Report, p. 90 ff.) are countered by the draft by the possibilityofappointing a special female cover pool administrator to pursue contestation or liability claimsinorder torelievethe cover pool administrator appointed by the creditor side of taskswhere conflicts of interest may exist. This should also apply to the trustee brought along by the debtor in the protective shield procedure.

The draft takes the new adjustments in self-administration law as an opportunity toregulatethe hitherto unresolved question of the liability of the debtor and her organs for breaches of dutyin thecontext of self-administration. It takes up the decision of the Federal Court of Justice of 26 April 2018 (IX ZR 238/17) and places it on a broader basis. The scope of application of the provisions of §§ 60 et seq. InsO areextendedto the self-administering debtor and - if the debtoris a legal entity withlimited liability- to the debtor's managers. This already applies to the provisional self-administration. Insofar as this liability applies, it is intended to displace the liability due to the infringement of payment prohibitions under company law (§§ 64 sentence 1 GmbHG, 92 Paragraph 2 Sentence 1 AktG, 130a Paragraph 1 Sentence 1, 177a Sentence 1, 99 Sentence 1 GenG).

Re section 270:

The new section 270 InsO-E corresponds to the current section 270 (1) InsO. The previous paragraphs 2 to 4 are merged into §§ 270a et seq. InsO-E. Therefore, the provision is nowpreceded bytheheading "Principle".

Re section 270a:

§Section 270a InsO-E sets requirements for the debtor's application for the order ofself-management.Inaddition to a self-management plan, the application must beaccompanied bystatements on payment behaviour towards certain creditors, on compliance with disclosure obligations under commercial law and on previous recourse toprocedural assistance underreorganization law, including that of insolvency proceedings conducted under self-management. The prerequisites for the order of provisional self-management (section 270b InsO-E) and thus indirectly also for self-management (section 270f InsO-E) are linked to the subject matter of these applications: Pursuant to section 270b (1) InsO-E,provisional self-management isorderedin the case of complete and conclusive self-management planning,unless circumstances are known which show that the planning is based in material respects on incorrect factual statements, thatthere arematerial payment arrearsto certain creditors, that the debtorhasnot complied withitsdisclosure obligationsundercommercial law for the last three financial yearsor has already made use of procedural assistance under the German Company Stabilization and Restructuring Act or the German Insolvency Code in the last three yearsor cost considerations argue against the order (section 270b (1) and (2) InsO-E)

The requirement to submit a self-management plan in accordance with paragraph 1achievesthree things.Firstly, a debtor seeking self-management is required to prepare it carefully, to document this preparation properly and toassurehimself of the sense and feasibility of the self-management project. Secondly, a debtor who carefully prepares the self-management and submits a complete and conclusive plan based on the actual circumstances will be shown a legally sound way to self-management. And thirdly, the debtor has to make use of the information provided during the self-management process to make sure that the company is in compliance with the law.

Thefinancial plan, the crisis management concept and the cost effectsof self-administration can be measured. Actions and measures that are incompatible with the submitted concept or even jeopardize its implementation, the disclosure of undisclosed circumstances or a breach of the cost estimate framework, as well as incomprehensible changes in the concept pursued, can be the starting points for terminating self-administration.

Pursuant to subs. 2, the debtor must also declare himself on the facts to which a more comprehensive examination of the conditions of access is linked under section 270b subs. 2. These are: considerable arrears of payment to certain creditors such asemployees and suppliers, the violation of disclosure obligations under commercial law and the use of procedural assistance under reorganization law in the recentpast. Behind this is the idea that in these cases it cannot be assumed without further adothat the debtoris willing or able to alignher management with the interests of thecreditors. In the case of a deepened insolvency, the prospects of continuation are generally not given or only under favourable circumstances. And in violations of commercial law disclosure obligations, anentrepreneurial understandingmanifests itselfthat is not very much characterized by consideration of creditors' interests. Finally, the repeated use of procedural assistance under reorganization law is an indication that the company has not succeeded in overcoming the crisis in the past. In all these cases, self-administration should only be considered ifan overall assessment of all circumstances shows that the debtor, despite the existence of these circumstances, is willing and able to align its management with the interests of the creditors.

The term "self-management planning" serves as a collective term for the documents to be submitted in accordance with paragraph 1. These documents shall be prepared and submitted by the debtor. This does not exclude the possibility that the debtor assists in the preparation of the self-management plan or has it prepared entirely by third parties. However, this is not necessary.

According to paragraph 1, the self-administration planning must contain the following elements: afinancial plan, a concept for managing the insolvency, a presentation of thestatus of negotiations, a presentation of the arrangements for fulfilling the obligations under insolvency law and a presentation of the expected costs of self-administration.

The financial plan (number 1) must show that the going concern is fully financed for the next six months. The liquid assets available or to be made available during this period must enable the company to continue its normal business operations and at the same time cover the costs necessary to overcome the crisis. The general business managementprinciplesapply to the preparation of the planning.The planning mustbe drawn uptakinginto account the costs of the (provisional) self-administration procedure, which include in particular consultancy costs. In theplanning, the available funds for the next six months may also include such funds whose access is not yet certain, but which can be expected with a high degree of probability, for example so-callednon-genuine mass loans, the conclusion of whichisstill subject to the opening ofprovisional insolvency proceedings and the authorization to establish mass liabilities. In order to enable an examination of the plausibility of the planning, the sources of liquid funds and in particular the financing sources must be presented.

Part of the self-management planning is a concept for managing insolvency (number 2). Based on a description of the nature, extent and causes of the crisis, this concept must describe the goal of self-management and the measures that are envisaged toachieve this goal. It must be based on the actualcircumstances. The depth and level of detail of the presentation depends on the size and the concrete circumstances of the company. The concept must

Enableplausibility check of the required presentation of the goal and themeasures planned toachieve the goal. It can - like all other elements of self-management planning - be created by the debtor herself.

Furthermore, the self-management plan mustincludea description of the status ofnegotiations with the parties involved (point 3). As a rule,the filing of the application ispreceded by negotiations with creditors, the persons involved in the debtor and, if necessary, also third parties on the desired restructuring. Thisstate of negotiations shall be described. If negotiations have not yet taken place, this must also be noted in the self-administration plan.

The fulfillment of the obligations under insolvency law must be ensured both in the preliminary and in the opened self-administration proceedings. In the self-administration plan, the debtor must state what precautions it has taken to ensure that the obligations under insolvency law are fulfilled (No. 4). In case of an appropriate expertise the fulfilment of the obligations under insolvency law may be performed by the debtor itself or by its executive body members. However, the fulfillment of obligations under insolvency law may also beensuredby general representatives or advisors with appropriateexpertise (BGH, Order of 22 September 2016 - IX ZB 71/14 Rz. 81.).

In the presentation of any additional or reduced costs thatarelikely to be incurredin thecontext of self-managementcompared witha standard procedure (point 5), the costs likely to be incurred in self-management must be set out. This includes in particular all consultancy costs, including those which are not shown in the six-month financial plan due to a later due date.In addition, any expected indirect value-preservingeffects of a self-management procedurecan, but do not have to,be presented.

Re section 270b:

Under subs. 1 the court shall appoint a temporary custodian instead of a temporary insolvency administrator if the self-administration planning is complete and conclusive (No. 1) and the self-administration planning is notbased on incorrect factsin notinsignificant pointsto the knowledge of the court(No. 2).

If a complete and conclusive self-administration plan is available, the court isrequired to order provisional self-administration. This only does not apply if the court is aware of circumstances which show that the planning is based in essential points on incorrect statements of fact or that a case of paragraph 2 exists. Without knowledge of such circumstances, the court may therefore not refuse to order provisional self-administration because it first wants to clarify the facts of the case with a view to possible circumstances that could justify a refusal of the order.Paragraph 1 is based on the idea that a debtor who submits a complete and coherent planshouldbeable toexpect the order of provisional self-management as long asitis not obvious that the plan is not based on the actual circumstances in essential points or that a case of paragraph 2 exists. The plausibility check of the information and its closer examination is rather the task of the cover pool administrator (section 270c (1)).

If the self-administration plan shows remediable deficiencies, the court may nevertheless order provisional self-administration and set a deadline for remedying the deficiencies. The period for remedying the deficiencies may not exceed three weeks. Thisprovision is intended to give the debtor the opportunity to rectify the self-administration plan.

Paragraph 2 ties in with circumstances which prima facie suggest that it would not be in the creditor's interest to carry out self-management. In these cases

The provisional self-management should only be ordered if an overall assessmentofthe facts shows that the self-management is in the interest of the creditors despite the existence of these facts. Thelimitation of the basis of the judicial decision to knowncircumstances, which isapplicablewithin the framework of paragraph 1,does not apply here. The court is obliged to investigate all relevant circumstances and to base its decision on them. In the course of the required overall assessment, a contraindication may lose weight, in particular if measures are taken which deprive the contraindication of its viability.If,for example, the debtor has not properly complied with its disclosure obligations under commercial law, but has in the meantime not only failed to comply with its obligations but has also taken personnel and organizational measures to ensure that the causes of the breaches of duty are permanently eliminated, the mere fact that the breaches of duty occurred in the past no longer allows the conclusion to be drawn that the debtor lacks the ability or the will to protect the interests of the creditors. In addition, considerable arrears of paymentto the creditors mentioned in section 270a sentence 2 number 1are relativizedif the debtor proves that due to the negotiations conducted with these creditors and in view of the measures taken to finance the business operations, a continuation ofthe company is predominantly probable. Additional costs of self-administration can also be compensated by the expected advantages of self-administration making use of the knowledge and experience of the previous management.

Paragraph 3 is based on the provision of the current section 270(3). The possibility forthe provisional creditors' committeeto participateis strengthened by the new provision. Theconsultation of the provisional creditors' committee can in future only be omittedif the delay caused by this obviously leads to an adverse change in the debtor's financial situation within two working days, which can only be averted by appointing a provisional insolvency administrator.The court is bound byaunanimous decision of the provisional creditors' committee supportingtheprovisional self-administration- as is also the case under the current legal situation. Forthe first time it is regulated that in case of a unanimous vote of the preliminary creditors' committeeagainst the provisional self-administration, the order is omitted.

Paragraph 4 is based on the current Section 270(4). If the court appoints a temporary insolvency administrator contrary to the debtor's request, the decision shall state the reasons for the decision. This enables the creditors' meeting to decide, on the basis of the reasons given, whether a subsequent order of self-managementshould be applied forin accordance with § 271(see BT-Drs. 17/5712, p. 39).

Re section 270c:

Pursuant to paragraph 1 the court may instruct the temporary custodian to reporton the completeness, conclusiveness and plausibility of the self-administration planning, in particular whether it is based on the recognized and recognizable actualcircumstances and appears feasible (number 1), the completeness and suitability of the accounting and bookkeeping as a basis for the self-administration planning, in particular for the financial planning (number 2) and the existence of liability claimsof the debtor against acting or former members of the organs (number 3). Whether a report is commissioned is at the discretion of the court. A commissioning may be appropriate in particular if there are doubts as to whether the provisional self-administration pursuant to section 270e (1) no. 1 InsO-E is to be revoked.

Paragraph 2 stipulates a notification obligation for significant changes that affect self-management planning. This is intended to enable the court and the temporary custodian to decide on a suspension of self-administration or to work towards a suspension.

Paragraph 3, first sentence, corresponds to the current Section 270b(2), third sentence, first half-sentence. The court may order provisional protective measures under Section 21, in particular it mayset upaprovisional creditors' committee, prohibit enforcement measures, order a provisional suspension of mail and order that objects in respect of which a right of separation or segregation exists may not be disposed of or confiscated but may be used for the continuation of the business. However, the appointment of a provisional insolvency administrator and the order of a general prohibition of disposition are not possible as provisional security measures, as they are not compatible with maintaining the debtor's administrative and disposal authority. Ifprovisional self-administration is ordered pursuant to section 270b (1) sentence 2 InsO-E, the court may also order as provisional security measures that orders of the debtor require the consent of the provisional administrator. Such an ordertemporarily restrictsthe debtor's power of disposal whichisto be maintainedunder (provisional) self-administration.This is justified because it has not yet been determined whether the deficiencies in the self-administration planning will be remedied within the set period and the provisional self-administration will therefore remain in place or whetheritmust be revoked pursuant to section 270e (1) no. 2 InsO-E. As soon as it is established that the deficiencies have been remedied within the time limit, an order issued pursuant to section 3 sentence 2 must be revoked.

Subsection 4 sentences 1 and 3 correspond to the current section 270b (3). The postponement of the regulation of the previous section 270b (3) to the new section 270c (4) sentence 1 InsO-E and the new section 270c (4) sentence 2 InsO-E is accompanied by a change in content. At the request of the debtor, the court must also order in the future that the debtor establishes liabilities in the insolvency assets. This, however, only if the corresponding liability is included in the financial plan submitted as part of the self-administration planning. In order not to undermine the commitment to the finance plan, only individual authorizations will beconsideredin the future, both in the preliminary self-administration procedure and in the protective shield procedure.The establishment of mass liabilities for liabilities not included in the finance plan is not excluded. It is at thediscretionofthe court and must be specifically justified in accordance with sentence 2. Inorder to enable the courtto issue an appropriate order if necessary, the debtor mustjustifyin the applicationwhy the order should also cover liabilities whicharenotincluded in the budget.

The provision of paragraph 5 corresponds to the current provision of Section 270a

paragraph 2. Re Section 270d:

The provision of paragraph 1 corresponds in essence to the current provision of Section 270b paragraph 1.

The regulation of paragraph 2 corresponds in essence to the current regulation of § 270b paragraph 2 sentence 1 and 2.

The regulation of paragraph 3 corresponds to the current § 270b paragraph 2 sentence 3 last half sentence.The possibility of ordering measures in accordance with section 21 (1) and (2)no. la, 3 to 5, which is currently regulated in section 270b (2) sentence 3 first half-sentence, will in future result from section 270c (3) InsO-E.

Paragraph 4 corresponds to the current provision of section 270b (4) sentences 2

and 3 InsO. Re section 270e:

Pursuant to subs. 1 No. 1, provisional self-administration shall beterminatedby the appointment of aprovisional insolvency administrator if the debtor seriously violates obligations under insolvency law or if it becomes apparent in any other way that

it is not willing or able toalignthe management with the interests of the creditor community.According to the examples given in paragraph 1, this may in particular be the case if the self-administration planningwas basedon incorrectfactsin essential points(letter a), if the accounting and bookkeeping are so incomplete or deficient that they do not allow an assessment of the self-administration planning, in particular of the financial plan (letter b), or if liability claims exist against acting or former members of the debtor's organs whose enforcement in self-administration could be made more difficult (letter c). The court may commission areport on these issues from the cover pool administrator pursuant to section 270c (1) InsO-E.Pursuant to sub-section 1 no. 2, provisional self-administration must be terminated if deficiencies in self-administration planning have not been remedied within the period set in accordance with section 270b (1) sentence 2 InsO-E. No. 3 stipulates atermination in theevent that the achievement of the self-management objective, in particular a targeted reorganisation, proves to be futile. An indication of this may beprovidedby the notification of materialchanges affecting the self-administration planningrequired pursuant to section 270c (2) InsO-E.The wording "proves to be hop eless" covers both an initial hopelessness and ahopelessness that has occurred in themeantime. Under No. 4, provisional self-management mustalsobeterminated if so requested by the provisional administrator with the consent of the provisional creditors' committee or by the provisional creditors' committee. The provisional cover pool administrator shall be given his own right of initiative for the petition for termination with the settlement but mustobtainthe consent of the provisional creditors' committee.The consent requirement was included in ordernot to weakenthe creditors' autonomy.The provisional creditors' committee can in turnbring aboutthe termination of provisional self-administration without the agreement of the provisional administrator.If the debtor side is no longer willing to carry out the provisional insolvency proceedings under its own administration, a forced continuationas provisional self-administration proceedings does not make sense. Paragraph 5 therefore provides for the termination of the provisional self-administration upon request of the debtor.

According to para. 2, provisional self-administration must also be terminated if a creditor entitled to separate satisfaction applies for its termination and substantiates that the requirements for an order of provisional self-administrationare not met and that it is threatened with considerable disadvantages due to self-administration. The requirement of prima facie evidence as well as the hearing of the debtor (sentence 2) are intended toensurethatindividual creditors are not able to obtain the revocation of provisional self-administration for motives unrelated to the matterin hand.Pursuant to sentence 3, the creditor filing the petition and the debtorareentitled toanimmediateappealagainst the court's decision.The right to appeal presupposes a need for legal protection, which is only given on the creditor side if the court does notterminatethe provisional self-administration.

Paragraph 3 provides that the previous provisional administrator may be appointed as provisional insolvency administrator.

Paragraph 4, first sentence, provides for consultation of theprovisional creditors' committee in the event thatthe court intends to revoke provisional self-management under paragraph 1, point 1 or 3. Pursuant to sentence 2, which declares section 270b (3) sentence 2 InsO-E to be applicable mutatis mutandis, the consultation can only be omitted if thedelay causedtherebyobviouslyleadsto an adversechange in the debtor's financial situationwithin two working days, which cannot be averted by an order pursuant to section 21 (1) and (2) sentence 1 nos. 3 to 5. In theother cases of subs. 1 and in the cases of subs. 2,however,consultation of thetemporary creditors' committee shall never be necessary. Thecourt's duty to state reasons in the case of the appointment of a temporary insolvency administratorenablesthe creditors' assemblyto decide on the basis of the reasons whether a subsequent

order of self-management according to § 271 should be applied for (see BT-Drs. 17/5712, p. 39).

Re § 270f:

The provision of paragraph 1 first clarifies that the order of self-administrationcan only be considered if the debtor makes a corresponding request. Self-management is to be ordered if the prerequisites for the order for provisional self-management pursuant to section 270b InsO-E continue to exist and there is no reason to set aside the provisional self-management pursuant to section 270e InsO-E.

Paragraph 2 corresponds in content to the previous provision of section 270c InsO.

Pursuant to (3), section 270b (1) sentence 1, (2) and (3) InsO-E are to beappliedmutatis mutandis. A temporary creditors' committee must be consulted as a matter of principle insofar as the delay caused thereby does not exclude the duty of consultation. The court is alsoboundby a unanimous resolution supporting self-management and a unanimous resolution of the temporary creditors' committee rejecting self-management.The court's duty to give reasons in the event of a negative decision enables the creditors' meeting to decide on the basis of the reasons whether a subsequent order of self-management pursuant to section 271 InsOshould be applied for (see BT-Drs. 17/5712, p. 39).

To number 40

The new numbering of the previous § 270d InsO is a consequence of the reorganisation of theprevious regulations.

Re point 41(a)

The regulation on the abolition of self-management will be adapted. The grounds for termination of paragraph 1, nos. 1 and 2 are new and correspond to the grounds for termination for provisional self-management under section 270e (1) no. 1 InsO-E. The grounds for setting aside in section 1 nos. 3 and 5 correspond to the provisions of the current section 270 (1) nos. 1 and 3 InsO. The provisions of (1) No. 4 essentially correspond to the current provisions of section 270 (1) No. 2; the reference to theconditionsfor provisional self-managementhas been adapted to the changes in the preceding provisions.

Re point (b)

The change in paragraph 2 is due to the change in numbering in paragraph 1.

To number 42

The basic division of tasks between the debtor, who conducts the day-to-day business, and the administrator, who controls, supports and advises the management, as well as the tasks such as the insolvency challenge, which are primarily assigned to the insolvency administrator in the interest of the creditors, should be maintained. There are, however, areas in which support by the administrator, even with insolvency law expertise on the debtor's side,can beprofitable for the proceedingsand in which there is nothreat ofimpairment of independence andmonitoring, including support in the pre-financing of insolvency money, accounting under insolvency law and discussions with customers andsuppliers (Kampshoff/Schäfer, NZI 2016, 941, 942 f). §Section 274 InsO is thereforesupplementedto theeffectthatthe insolvency court may order that the custodian

in the pre-financing of insolvency money, the insolvency-legal bookkeeping anddiscussions with customers and suppliers can support.

To number 43

If the temporary administrator was selected by the temporary creditors' committee or the debtor,a special administratormay beappointed at the same timeas the order of self-administration pursuant to section 274a(1) InsO-E. This is intended topreventtheappearance of possible conflicts of interest.

The tasks of the special administrator pursuant to subs. 1 nos. 1 and 2 are to examine whether liability claims of the insolvency estate exist or contestable legal acts exist and, if applicable, to assert liability and contest the legal acts.

Pursuant to subs. 2 section 56 subs. 1 first sentence andsubs. 2, section 58, section 59shallapplymutatis mutandisto theappointment of the special administrator, to the supervision of the insolvency court and to the liability of the special administrator, provided thatin the event of an application for dismissal by thecreditors' committee or the creditors' assembly the existence of good cause must be substantiated by the applicant, and sections 60 and 62 first and second sentencesshall applymutatis mutandis. The non-applicability of section 56 subs. 1 third sentencetakesaccount ofthe factthatthe appointment of a special administratoris intended to preventthe appearance of any conflict of interestsand therefore requires absolute independence. A right to propose the appointment of a particular person as special representative could call into question the independence and impartiality, so that any appearance of influence on the appointment decision by the debtoror creditors must be avoided.

Paragraph 3 stipulates a far-reaching right to information. This is intended to ensure that the special administrator receives all information necessary for the performance of her task.

Theremuneration pursuant to para. 4, which is dependentonthe amount of theclaimsrealized by the special administrator in favor of theassets involved in the insolvency proceedings,shall provide an incentive toconscientiously determine and assertexistingclaims within the scope of the competence pursuant to para. 1. However, since there may be cases in which no corresponding claimsexist or existing claims are not realizable, abasic remuneration which isindependent of success is required. In order not to increase the overall burden on the masses unduly, the remuneration of the special administrator is reduced by the performance-related part of the special administrator's remuneration. This is also not inequitable from the point of view of thespecialadministrator, because shedoes not have to act with regard to the claims to be determined and pursued by the special administrator.

To number 44

To letter a

The previous wording of § 276a InsO becomes § 276a (1) InsO-E.

Re point (b)

The new paragraph 2 closes the gap in liability law which the current version left in the case of self-administration of legal entities with limited liability. The new paragraph 2 does not take into account the legal loophole that was left by the current version in the case of self-administration of legal entities with limited liability according to § 270 paragraph 1 sentence 2 in conjunction with §§ 60 ff. InsO,no substantial contributions to the satisfaction of the liability creditorsare to be expected from the liability of thedebtor who administerstheassets himself in view of the confiscation of the assets of the liability estate(BGH, judgment of 26 April 2018 -

IX ZR 238/17 Rz. 28). While the threat of liabilityin the case of a natural person with regard to the

If thecontinued liability is at least suitable to set behavioral incentives, this control effect is notapplicableto legal entities with limited liability. Here, in accordance with theexisting insolvency-related obligations of the female managers (§ 15a InsO, § 42Paragraph 2 BGB and §§ 64 Sentence 1 GmbHG, 92 Paragraph 2 Sentence 1 AktG, 130a Paragraph 1 Sentence 1 HGB, also in connection with 177a Sentence 1 HGB and § 99 Sentence 1 GenG),it isnecessary to address the female managers as liability addressees (BGH, loc. cit., Rz. 27 ff., 52 ff.).

By way of the new paragraph 3, paragraphs 1 and 2 shall also apply prior to the opening of proceedings if provisional self-management or another protective measure has been ordered.

To number 45

Thenew sentence 2 creates the possibility for the temporary creditors' committeeto instruct the temporary custodian to draw up an insolvency plan already in the opening proceedings. In this way, reorganizations can be accelerated and the provisional administrator can be entrusted with the insolvency plan at an early stage or involved in its preparation as a neutral person of trust. The adjustment in the new sentence 3 also ensures thatthe provisional administrator is involvedin aplan drawn upby the debtor in the opening proceedingsand contributes her expertise at an early stage.

To number 46

The amendment is intended to implement Article 26(1)(d) of the Directive.

To number 47

These are consequential amendments to point 2.

Re Article 6 (Amendment of the Insolvency Remuneration Ordinance)

To number 1

The increase of the standard rates in § 2 is the central measure to ensure that the remuneration of the insolvency administrators remains appropriate and constitutional in the future.

The impetus for the increase in the standard and minimum remuneration rates was providedbyajoint initiative of the professional associations Neue Insolvenzverwaltervereinigung Deutschlands e. V. and Verband Insolvenzverwalter Deutschlands e. V. In accordance with thejoint proposals which these professional associationssubmittedto theFederal Ministry of Justice and Consumer Protectionin autumn 2019andpublishedon the internet on 19 November 2019(https://www.vid.de/initiativen/gemeinsame-reformvorschlaege-von-nivd-und-vid-zur-reform-der-insolvenzrechtlichen-verguetungsverord), both the Federal Working Group of Insolvency Courts andthe state justice administrationsexpressed the opinion by alarge majority that an increase in the standard rates of remuneration for insolvency administrators would be appropriate, even though there is no agreement on the specific level of appropriate remuneration and the structure of its payment.

The demand of the professional associations consists in an increase of the step limits of § 2 para. 1 by 40% to compensate for the general price and income development and of the percentages in the individual steps by an average of 20% to compensate for increased demands on female insolvency administrators. In addition, an increase in the minimum compensation rates by 65% is demanded.

The basic justification for an increase in the standard remuneration for female insolvency administrators is largely acknowledged, but there is disagreement about theextent to which an increase is appropriate. The increase of 40% in each of the tiered thresholds proposed by the associations is supported by the state justice administrations of most of the countries that have commented on the proposal. OnlyBremen denies a need for a remuneration increase in its entirety, Schleswig-Holstein wants the graduated limits to remain unchanged and advocates only a moderateadjustment of the percentages, and North Rhine-Westphalia demands that at least the lower graduated levels beleft unchanged. The Bundesarbeitskreis Insolvenzgerichte e. V.also considers the proposed increase in the graduated limit values to be appropriate. The additionalincrease of the percentages in the individual scale levels, however, is rejected by themajority either in principle (Hamburg, Baden-Württemberg, Bavaria) or at least in the amount demanded (Thuringia, Lower Saxony, Saxony, Rhineland-Palatinate, Bundesarbeitskreis Insolvenzgerichte e. V., Fachverband der Kommunalkassenverwalter e. V.). Also the increase of the minimum remuneration is rejected by the majority after the reason (Berlin, North Rhine-Westphalia, Bremen) or at least in the demanded height (Thuringia, Lower Saxony, Saxonia, Rhineland-Palatinate, Hessen, Federal working group insolvency courts registered association, professional association of the localcash managers registered association).

The fact thattheremunerationofthe insolvency administratorsis a burden onthe other parties involved in the insolvency proceedingsis asignificant argument in favour of not raising the remuneration too much. Since they are part of the procedural costs which, according to §§ 53, 54 number 2 of the Insolvency Statute, must be rectified from the insolvency estate in advance, they reduce the quota to be paid out to the insolvency creditors. Insofar as the assets involved in the proceedings do not suffice for their correction, they shall continue to burden the debtor even after discharge of residual debt has been granted (reverse conclusionto § 301 para. 1 sentence 1 of the Insolvency Statute). In addition, they shall be charged to thestate budgetsifthe procedural costsaredeferred in accordance with section 4a of the Insolvency Statute, the assets are insufficient to cover them, the insolvency administratorcan assert a claim against the state treasuryinaccordance with section 63subs. 2 of the Insolvency Statute and the debtorisunable to correctthe procedural costs until expiry of a possibly extended deferment periodinaccordance with section 4b of the Insolvency Statute. In the case of small masses, an increase in the remuneration for the insolvency administrators also leads to an increase in the number of cases in which insolvency applications are to be rejected for lack of assets (§ 26 of the Insolvency Statute), which impairs the regulatory function of the insolvency proceedings.

The step limits in Section 2 (1) and the minimum remuneration rates in Section 2 (2)shall be increased by 40% in each case. Although this percentage is higher than the development of the consumer price index published by the Federal Statistical Office, which rose by 31.7% from 1999 to 2018, it remains below the increase in the average gross wages of female employees, which, according to the Deutsche Bundesbank,amounted to 45.6% from 1999 to 2018.

It istrue that the provision of Section 2 (1), according to which the standard remuneration depends on the value of the insolvent assets, leads to a certain extent to a continuous increase in theremuneration if the averagenominal valuesofthe insolvency assetsalsoincreasein thecourse of the general price development. However,due to the degressive structure of the standard compensation,this effectcannot fully compensate forthe loss of real income, whichwould result from inflationifthe compensation regulationsremained unchanged. Where the Regulation specifies fixed amounts, as is the case with the minimum remuneration in § 2 (2), inflation will have its full impact on the real level of remuneration.

Inorder to avoid a widespread rejection ofinsolvency petitions for lack of assets,especially in the area of small-scale proceedings, the percentages in the individual stages of section 2 subsection (1) will only be moderately increased from the second stage onwards. In this

way, the orderly function of the insolvency proceedings is also ensured in this area. The fact that the demands on female insolvency administrators have been reduced in the past two decades in

in some areas is widely recognized. More extensive accountingand tax obligations have to be fulfilled and the need for training and further education of insolvency administrators and their employees has increased. However, the federal states object that female insolvency administrators are also increasingly using external services, where the fees for the service providers have to be paid from the masses, and that rationalization effects are also occurring as a result of increasing digitization. However, it is notpossible toprovide a concrete figure for an inflation-adjusted increase in the costs of processing insolvency proceedings to be borne from remuneration since the introduction of the Insolvency Remuneration Ordinance.There is a lack of valid data on the costs of comparable proceedings from the time when the current remuneration law came into force and from the present. For this reason, the increase of the percentages in the individual scale levels remains clearly behind the demands of the professional associations. At the highest level, an increase in the percentage isalso dispensed with, since empirically, especially in cases with very high masses, it cannot be determined under current law that the fees do not cover the costs of the insolvent administrator's offices orappearunreasonable for other reasons.

The increase of the step limits by 40% does not lead to a sudden increase of the average remuneration in the same amount when the new regulation comes into force. Also in combination with the increase of the percentages, the increase of the remuneration will be consistently well below 40%. For example, a value of the insolvent assets of EUR25,000 in the range above the minimum compensation rates will not result in any increase in the standard compensation. At a value of 35,000 Euro, instead of a standard compensation of 12,500 Euro under the previous law, there will be a standard compensation of 14,000 Euro under the new law, which means an increase of 12%. At a value of 10,000,000 Euro, the standard remuneration under the previous law is 227,750 Euro and under the new law 260,600 Euro,which is an increase of 12.6%. The increase of the step limits will onlycompensate for the part of the loss of real incomethat has not already been cushioned by the inflation-related increase in the average nominal values of the insolvency assets. The further increase due to the increased demands on the insolvency administrators results solely from theincrease inthepercentages in the individual stages. Without this increase in percentages, i.e. solely from the increase in the threshold values of the stages, the example with a mass of 10,000,000 Eurowould resultin a remuneration of 238,850 Euro, which would correspond to an increase of only 4.6%.

The limitation of the rate of remuneration in the new final stages to 0.4% for the amount of the assessment basisexceeding EUR350,000,000 and to 0.2% for the amountexceeding EUR 700,000,000takes into account the idea that the additional expenditure incurred by the insolvency administrator as a result of an increased insolvency estate is degressive. In view of some examples of insolvency masses in the billions in recent years, it is clear that the previous limit of the highest tariff level is not appropriate to economic reality, even if itis increased by 40%in line with the other level limits.

To number 2

An explicit regulation for the amount of the reimbursement of expenses in the case of the transfer of the notifications according to § 8 para. 3 of the Insolvency Code does not exist so far. The fact that these are reimbursable expenses is admittedly recognized. However, the courts set very different amounts per service. The range is from 1 Euro to 4.50 Euro (Budnik in BeckOK InsO, 15. Ed. status 25 July 2019, § 4 InsW, marginal no. 15). The new regulation establishesa uniform rate of currently 3.50 euros. A further consequence of the corresponding application of number 9002 of Appendix 1 to § 3, paragraph 2 of the Court Costs Act is that a claim for reimbursement of expenses onlyexists from the 11thservice in the proceedings. The regulation corresponds to the joint proposals of the

professional associations and is alsosupportedby the Bundesarbeitskreis Insolvenzgerichte e. V.(Federal Working Group of Insolvency Courts) andalmost unanimously by the federal states.

To number 3

The new regulation concretizes the previous regulation byreplacingthe undefined legal terms ofthe special liability risk and the appropriate additionalinsurance by concrete amount specifications. It thus serves to ensure legal certainty and the predictability of reimbursement of expenses. It largely corresponds to the joint proposal of the professional associations, to which the Bundesarbeitskreis Insolvenzgerichte e. V. and almost unanimously also the Länder have agreed. However,there is adeviation from theproposalto theeffect that the reimbursement of expenses for the additional insurance premiums does not take place in addition to the lump sum pursuant to § 8 (3), butcanonlybe claimedin thecase of individual settlement.Systematic considerations argue in favour of this. The lump sumis intended to eliminate the need for individual proof of expenses in cases where expensesare only incurred to the usual extent, but do not result in a hidden increase in the standard remuneration.

To number 4

For the amendment of § 8 para. 3 sentence 1, the comments on number 1 shall applyaccordingly. The monthly maximum amount shall be increasedby 40% to EUR350. There is no need for anadditional increase in the percentages specified in Section 8 (3) because these relate to the standard compensation rates in Section 2 and therefore an appropriate adjustment is ensured by raising them alone. In addition, there is still thepossibility to make a concrete statement of expenses instead of the lump sum. This ensures that the insolvency administratorscan actually haveall their reimbursable expenses reimbursed.Thistakes account ofthe concernsthat have beenraisedby the federal states, the Bundesarbeitskreis Insolvenzgerichte e. V. and the Fachverband der Kommunalkassenverwalter e. V. against the increase in percentages proposed by the professional associations, while at the same time reflecting the general price and income trend.

To number 5

The addition to § 10 is an editorial adjustment to the new provisionson the remuneration of the temporary custodian in the new § 12a.

To number 6

For the amendment of § 12 (3), the statements made under number 1 shall apply accordingly. The increase by 40% to 175 Euro serves to compensate for the general price andincome development. The complete deletion of § 12 paragraph 3 demanded by the professional associations will not be implemented. In accordance with the negative comments of the Bundesarbeitskreis Insolvenzgerichte e. V., the Fachverband der Kommunalkassen-verwalter e. V. and most of the federal states, it can be assumed that female administrators typically have a more limited scope of duties than male administrators. In addition, the possibility of individual settlement of expenses does sufficient justice to the interests of the cover pool administrator.

Re number 7To§ 12a:

The Insolvency Remuneration Ordinance does not yet contain any regulation on theremuneration of the provisional administratorappointedin the opening proceedings with the order ofprovisional self-administration.

The Federal Court of Justice (decision of 22 June 2017 - IX ZB 91/15, ZInsO 2017, 1813, marginal no. 10, 11 m. w. N.)assumes that under the Insolvency Codethereis no independentclaim for remuneration by the provisional administrator. Accordingly,theactivity as provisional administrator is a circumstance whichleadsto a surcharge for theadministrator's remuneration. If the cover pooladministrator has acted as provisional cover pool administrator, she shall receive a surcharge of 25 per cent on her remuneration, i.e. a total standard remunerationof 85 per cent of the remuneration pursuant to § 2 (1). The remuneration shall be determined on a uniform basis. Prior to this the cover pool administrator may receive an advance on application. Thebasis for calculating the remuneration of the temporary custodian's workshall beidenticaltothat of the final custodian. If the temporary custodian isreplaced or is not also appointed as custodian, his or her remuneration shall befixed pro rataat theend of the proceedings (Federal Supreme Court, Order of 21 July 2016 - IX ZB 70/14, NZI 2016, 796, marginal no. 28 m. w. N.).

This means that under the previous law, provisional insolvency administrators who have an independentclaim to remuneration and provisional custodians whodo not havesuch aclaimaretreated unequally withoutthere beinga viablereasonforthis unequal treatment. Inaddition, the existing remuneration regulation for theprovisional administrator is linked to an estate to which her activity does not relate.

Thenew regulationgrantsthe provisional administrator an independent claim to remunerationwhich is linked to the assets to which heractivity relates and which is structured in parallel with the remuneration regulation of the provisional insolvency administrator.

The opinion of the associations and countries is divided in this respect. Some Länder rejectinprincipletheregulation of an independent claim to remuneration for provisional female trusteesor are in favour of the establishment of the jurisdiction of theFederal Court of Justice (Schleswig-Holstein, Bremen). The provision largely corresponds to the proposals of the professional associations, but deviates from them in terms of content to the extent that it is based even more closely on the structure of the provision for the temporary insolvency administrator in § 11 and in particular alsocontainsa provision corresponding to § 11 (2) for the case ofadeviationbetweenthe actual proceeds of realisation and the estimatedvalues of the assetson whichtheremunerationis based. Inaddition,theproposal of the professional associations is deviated from to the extent that, in accordance with the comments of the Bundesarbeitskreis Insolvenzgerichte e. V.(Federal Working Group of Insolvency Courts), the Fachverband der Kommunalkassenverwalter (Association of Local Cash Managers) and some Länder (Bavaria, Saxony), the 25%is not related to the remuneration of the insolvency administrator (100% of the standard rates pursuant to § 2) but to theremuneration of the custodian (60%), i.e. it amounts to 15% of the standard rates pursuant to § 2. This is because the proposal of the professional associations, which North Rhine-Westphalia has also supported, corresponds in this respect to the case law of the Federal Court of Justice, but fails to recognise that a provisional administrator can typically be assumed to have a more limited scope of duties than a provisional insolvency administrator.

Re § 12b:

Subsection 1specifies in more detail the basic remuneration of the special administrator provided for in § 274a subsection 4 sentence 2 of the Insolvency Statute on the basis of hourly rates,following the model of § 17 subsection 1 of the InsolvencyRemuneration Regulation. In doing so, an increasedframeworkisprovidedcompared to § 17 para. 1 of the Insolvency Remuneration Regulation, since a more extensivequalification is requiredfor the activity as a special administratorthan for the activity as a member of the creditors' committee.

Paragraph 2 shall specify the specific break for the distribution of the cover pool administrator's remuneration under section 274(4) third sentence. In this context, the numerator shall correspond to all payments actually made to the masses in respect of

claims which the special custodian has realised within the scope of her competence. The denominator contains the entire calculation basis pursuant to § 1 of the Insolvency Act.

legal remuneration regulation including theamountsto be included in the numerator. The result must bemultipliedby the cover pool administrator's remuneration to be calculated in accordance with § 12 inorder to determine the additional remuneration of the special cover pool administrator's remuneration.

Paragraphs 3 and 4 are based on § 18 of the Insolvency Remuneration Regulation. This also means that the special administrator cannotclaimeither a separate lump-sum payment for her expenses under section 8(3) or a share in the lump-sum payment of the cover pool administratorunder section 12(3), but can only have her expenses reimbursed on the basis of individual evidence.

To number 8

For the amendment of § 13, the provisions of No. 1 shall apply accordingly. The complete abolition of § 13 as demanded by the professional associations does not appear necessary. The Bundesarbeitskreis Insolvenzgerichte e. V.(Federal Working Group of Insolvency Courts) and the federal states have convincingly demonstrated in their negative comments that in the cases of § 13 there is typicallya significant reduction in workload.

Regarding number 9

For the amendment of § 14, the statements made under number 1 shall apply accordingly. However, an increase inthepercentages in the individual tiers does notappearnecessaryhere beyond the increase in the tier limits,because a significant increase in therequirementsplacedon the trustees since the previousremuneration regulationscame into forceis not discernible andhasnotbeenspecificallyexplainedby the professional associations.The massive furtherincrease in the minimum remuneration of the trusteedemanded by the professional associationsis not comprehensibly justified and is rejectedby the Bundesarbeitskreis Insolvenzgerichte e. V.(Federal Working Group of Insolvency Courts), the Fachverbandder Kommunalkassenvertreter e. V.(Professional Association ofLocal Cash Representatives) and the federal states.

To number 10

For the amendment of § 15, the provisions of No. 1 shall apply accordingly. Deviatingfrom the proposal of the professional associations and in accordance with the opinion of theState of Schleswig-Holstein, the increase will also be limited here to approximately 40%.

On point 11

The increase in the framework for the remuneration of the members of the Creditors' Committee goes well beyond the other increases in remuneration. Insolvency administrators, insolvency judges, representatives of the banking industry, the tax authorities and trade unions are almost unanimous in reporting that itis becoming increasingly difficult to find suitable creditors' committee members and that one ofthemain reasons for these difficulties is the insufficient amount of the maximumremuneration. The current remuneration rates neither dojustice totheprofessional qualifications of creditors' committee members requiredin more demandingprocedures nor to the liability risks to which they are exposed. For this reason, the professional qualification of the respective creditors' committee member is also expresslystandardizedas acircumstanceto betaken into account. In the countries, the mood with regard to the amount of the increase of the framework rates is not quite uniform. However, an increase in the basic level is almost universallysupportedby the state justice administrations.

In addition, an editorial follow-up adjustment to the new regulations on self-administrationin the Insolvency Codewill bemade.

To number 12

The transitional regulation ensures that at the time of filing for insolvency the remuneration of the insolvency administrator, the temporary insolvency administrator, the administrator, the trustee and the members of the creditors' committee and the temporary creditors' committee can be sufficiently planned by all parties involved. A retroactive effect of the new regulations, which are potentially burdensome for the insolvency creditors and debtors, is avoided.

Regarding Article 7 (Amendment to the Regulation on public notices in insolvency proceedings on the Internet)

To number 1

As a result of the extension of the Regulation by points 2 and 3, the title will be updated and on this occasion an official abbreviation will be added to make iteasier to quotetheRegulationinfuture.

To number 2

By ordering the corresponding validity of the InsBekV for public announcements in residual invoicing matters, duplication in the text of the ordinance shall be avoided.

To number 3

The requirement for a separate deletion period for the publication of data from a restructuring case arises from the specific features of the stabilization and restructuring framework, in particular its flexible and modular character. For this reason, a link is made to the individual instrument.

Re Article 8 (Amendment of the Introductory Act to the Insolvency

Statute) Re point 1

The new versions clarify in each case that Section 6(3) of the Insolvency Statuteappliesin the context of appeal proceedings pursuant to Article 102c §§ 4, 9, 20 and 26 of the Introductory Actto the Insolvency Statute.

To number 2

As with other planned amendments to the Insolvency Code, the old law will continue to apply to proceedings whose opening was applied for before this law came into force.

Regarding Article 9 (Amendment of the Insolvency Statistics Act)

The amendments to the Insolvency Statistics Act serve to implement Article 29 of the Directive on Restructuring and Insolvency, which requires Member States to collect, aggregate and transmit to the European Commission certain data on restructuring, insolvency and debt relief proceedings.

For statistical purposes, data on restructuring cases in accordance with the newly created Corporate Stabilization and Restructuring Act will be collected.

To the numbers 1, 2 and 4

These are editorial changes resulting from the fact that data in restructuring cases will now also be collected.

To number 3

To letter a

This is an editorial change.

Re point (b)

As aresult of the amendment, certaininformation on insolvency and residual debt discharge proceedingsisnow tobecollectedat the time of filing for insolvencyinorder toobtain reliable data not only on the insolvency and residual debt discharge proceedings that have been opened, but also on those that have already been applied for. The information about theapplicant is already collected when the proceedings are opened and in the future will be collected when the application is filed.

Inorder tobe able to makeastatement inaccordance with Article 29(2) of the Directive on Restructuring and Insolvencyas to how many debtorsarealready thesubject of insolvency proceedingsthree years after they have obtained a confirmed restructuring plan in a restructuring case, this information is now to be recorded statistically at the time of application.

Points (c) and (d)

To the double letters aa and bb

These are editorial changes.

To double letter cc

In order to be able to make a statement on the average duration of the insolvency and residual debt discharge proceedings from the opening of insolvency proceedings pursuant to Article 29 (1) (b), (4) of the Directive, the date of the opening of insolvency proceedings should nowbe expressly recorded as a survey characteristicat theopening of proceedings and no longer only as an auxiliary characteristic pursuant to Section 3 (1) No. 1 InsStatG. According to § 10 paragraph 1 sentence 2 and 3 of the Federal Statistics Act (BStatG), auxiliary features are not used for statistical purposes, but only for technical purposes.

Concerning the letters e and g

The addition of the recording of procedural costs and the satisfaction rates ofsatisfied rights to separate satisfaction and proportionate insolvency claims should make it possible, in accordance with Article 29(3)(a) and (b), (4) of the Directive, to collect and transmit to the European Commission the average procedural costs and the average satisfaction rates for secured and unsecured creditors in insolvency and residual debt discharge proceedings.

Although such a survey is only optional under the Directive, it should be carried out in order to better assess the efficiency of insolvency and residual debt discharge proceedings and,where the right to choose among the Member States is used,tocomparethemthroughout Europe.

To letter f

By supplementing the data of the final decisions in residual debt discharge proceedings, Article 29(1)(b) of the Directive aims to make it possibleto calculate the average duration of residual debt discharge proceedings from the opening of insolvencyproceedings.

As the application for discharge of residual debt under section 287(1) sentences 1 and 2 in conjunction with section 20(2) of the Insolvency Statutemust be filedjointly or in direct temporalconnection with the application to open insolvency proceedings, separate or additional recording specifically of the application for discharge of residual debt in addition to the application to open insolvency proceedings for the purpose of calculating the duration of the proceedings is unnecessary.

To number 5

These are editorial changes, in particular as a result of the changes in § 2 InsStatG.

To number 6

The newly created Sections 4a to 4c now - in implementation of Article 29 (1), (2), (3) (a) and (b) and (4) of the Directive - alsoprovide forthecollection of statistical data for restructuring cases under the Corporate Stabilization and Restructuring Act,whichmust or may besubmitted to the European Commission. Here too, the number and average duration of restructuring cases, for example, should and must be collected. There isnocollection of "other procedures" under Article 29 (1) (c) of the Directive due to the lack of applicability underGerman law.

The new regulations are based on the data collection for the insolvency and residual debt discharge proceedings according to § 2 to § 4 InsStatG-E, but are coordinated with the architecture of the restructuring cases according to the Corporate Stabilization and Restructuring Act, which, for example, does not provide for an application for the opening of proceedings, but for a notification of the restructuring project.

The information to be collected is to be provided by the competent local court as restructuring court and - since restructuring casesaregenerallyconductedin self-administrationand the appointment of a restructuring officer is not always made in every case - by the debtor. According to § 4c (3)no. 4 InsStatG-E,the information shouldonlybe submittedby the companies once a year by March 31 of the following yearfor the year of the survey in order to avoid bureaucracy during the restructuringprocess.Section 11a (2) and (3) of the Federal Statistics Act appliesdirectlyto the transmission by the corporate debtorto the statistical offices, according to which the transmission is carried out electronically, provided that appropriate transmission channelshave been opened.

On point 7

The addition of a new paragraph 3 and a new paragraph 4 to § 5 InsStatG creates the legal basis for the data transmission by the Federal Statistical Office to the European Commission, asprovided forin Article 29 paragraphs 6 and 7 of the Directive.

With regard tothe breakdown characteristic of the "size of the enterprise" (see Article 29 paragraph 4 letter a of the Directive), the number of employees is to be taken into account according to § 5 paragraph 4 number 1 InsStatG-E, as is also provided as an option in recital 93.

According to Article 29(6) and (7) of the Directive, the transmission of data to theEuropean Commission requires the establishment of a standard data transmission form by means of an EU implementing act, to which the start of data collection and, indirectly, the transmission of data is also linked. It is then stipulated that the data transmission (but not the data collection, which isto beginon 1 January 2022, irrespective of the Directive and the transmission form, when the amendments come into force) is to be carried out for the first time for the full calendar year as the year of collection following the date of first application of the EU implementing act.

To number 8

Theamendment creates the legal basis in § 5a InsStatG for the operator of the electronic information and communication system for publicannouncements in restructuring matters on the Internet to be able to transmit data on public announcements in restructuring matters to the statistical offices. This is intended to serve - just like the existing regulation for insolvency and residual debt discharge proceedings - to check the plausibility of the statistics.

Regarding number 9

The transitional provision in Section 6 (3) InsStatG-E ensures that local courtsand debtorsareonly required to provide information for restructuring cases or projectswhich - according to the planned entry into force - will be notified after December 31, 2021 or January 1, 2022, respectively.

Regarding Article 10 (Amendment of the COVID-19-I Insolvency

Suspension Act) Regarding § 4:

As a result of the economic impact of the COVID 19 pandemic and themeasures takento containthis pandemic, a large number of companies haveseen theirrevenues plummet. For many of these companies there are alsoconsiderable uncertainties in forecasting. In order to avoid as far as possible that insolvency applicationshave tobefiled solely due to the forecast uncertainties, Section 4 COVInsAG-E provides for a shortening of the forecast period for the examination of the continuation forecast of Section 19 (2) sentence 1 InsO. If the debtorwasnotinsolventas of December 31, 2019(No. 1), generated a positive result from ordinary activities in the last financial year ended prior to January 1, 2020(No. 2) and the sales from ordinary activities in the calendar year2020 declined by more than 40 percent compared to the previous year (No. 3), the forecast period is shortened to four months. However, this is only to apply on a temporary basis until the economic situation returns to normal, which is expected; for this reason, the regulation is limited until December 31, 2021.

Re § 5:

Due to the COVID 19 pandemic, especially in the particularly hard hit industries, companies can become insolvent, which, if the pandemic and its economic implications are not considered, would not have gone bankrupt. In these cases the occurred insolvency is not an indication for an improper crisis management, which is suitable to question the trust in the willingness and ability of the debtor to align the management with the interests of the creditors. Therefore, in these cases, access to the protective shield procedure and the self-administration procedure should not already fail due to the fact that insolvency has occurred.

However, to facilitate access to the protective shielding procedure (sentence 1) and the provisional self-management procedure (sentence 2), the debtor must

certificate in accordance with section 270d (1) sentence 1 InsO, confirming that it was not insolvent as of December 31, 2019 (sentence 1 number 1),generateda positive result from ordinaryactivitiesin the last financial year completed before January 1, 2020(sentence 1 number 2), andrecordedasignificant slump in salesin 2020, amounting toat least 40% of the previous year's sales.

The instruments of the Stabilization and Restructuring Framework arein principle only available to debtors who are neither overindebted nor insolvent. Notwithstanding the above, insolvency maturity under the conditions set out in paragraph 1 does not prevent the use of instruments under the stabilization and restructuring framework if insolvency maturity is notified to the restructuring court.

Regarding Article 11 (Amendment of the Law on Court Costs)

To number 1

To letter a

This is a consequential amendment to § 13a (new).

Re point (b)

This is a consequential amendment to § 25a (new).

Re letter c

This is a consequential amendment to § 58a (new).

To number 2

The new regulation includes restructuring cases within the scope of the German Law on Corporate Costs.

To number 3

Theprocedural fees owedunder No. 2510 et seq. of the Schedule of Costs under the Law on Court Costsshallbecomedueupon receipt of the notificationor upon submission of the application directed to the first instrument of the Stabilization and Restructuring Framework.

To number 4

In order toensurethe payment of the procedural fees of the instruments of the Stabilization and Restructuring Framework requested by the debtor and the reimbursement of theremuneration and expenses paidbythe treasuryto the restructuring agent or restructuring facilitator, the Restructuring Court shall consistently not act before corresponding payments by the debtor on the respective fees and expenses have been made. As the stabilization and residual restructuring framework is designed to be used exclusively bycompaniescapable of being restructuredin an early stage of a crisis, this seemsjustified. This is because an entrepreneur who is not even able to cover the costs associated with her restructuring seems unsuitable for the stabilization and restructuring framework. Also for those affected by the plan who want to have an optional appointment of a restructuring officer, it seems appropriate to tie the appointment to an advance payment. Because the facts of the necessary appointment of a

Ex officio restructuring officers cover cases where anappointment is required to protect plan participants. Therefore, in restructuring cases there is generally no provision for legal aid.

To number 5

Apart from the cases regulated in sentence 2, only the debtor shall be charged with the fees and expenses incurred in residual invoicing matters.

The only exception to the debtor's general obligation to bear the costs intervenes according to sentence 2 if a restructuring commissioneris appointed by a qualified creditor group (section 81 para. 1 sentence 2 of the German Corporate Stabilization and Restructuring Act) upon application by a qualified creditor group (section 81 para. 1 sentence 2 of the German Corporate Stabilization and Restructuring Act)if therequirements for a necessary appointment arenot met(section 77 of the German Corporate Stabilization and Restructuring Act). In this case, the remuneration of the restructuring commissioners and the expenses to be reimbursed to the commissioners shall only be borne jointly and severally by those creditors who have applied for the appointment. However, as arestructuring agent appointedon anoptionalbasis uponcreditors' request may be assigned further tasksupon application by the debtor (Section 83 para. 2 of the Corporate Stabilization and Restructuring Act) or ex officio (in case of subsequent intervention of reasons for a necessaryappointment within the meaning of Section 77 of the Corporate Stabilization and Restructuring Act), the creditors filing the application owethe remuneration and reimbursement of expenses to the agent only to the extent that they are attributable to their application.

To number 6

According to Paragraph 1, the value of the claims and rights created by the restructuring plan is normally the basis for calculating thefeesfor the restructuring cases mentionedin numbers 2410 ff. of the List of Costs of the Court Costs Act.This seems appropriate because this amountcorresponds tothe economic importanceoftheproceedingsfrom the point of view of the debtor who owes the fees.

Since in many cases a restructuring plan is not yet available when a restructuring agent is appointed and typically no restructuring plan is available when a restructuring moderator is appointed, paragraph 2 provides that in these cases the amount of the claims and rights which aretobeshapedby the restructuring planor included in the reorganization settlementaccording to the debtor's restructuring concept must be assumed.

In particular, if there is no restructuring plan yet, the amount of the receivables and rights to be included in the later plan may still be uncertain, so that an estimate can be made in accordance with paragraph 3.

Re point 7(a)

The adaptation of the structure is an editorial adaptation to the insertion of a new main section 5 for the fee facts in restructuring cases.

Re point (b)

Since the notification of the restructuring project already triggers the lis pendens of the restructuring case, but typically does nottrigger anysignificant judicialactivity, only a fixed fee is provided for this purpose (No. 2510). Only the first application for an instrument of the stabilization and restructuring framework resolves

then a value fee (paragraph 2511), which is reduced if the restructuring case is terminated before ithas reachedthe stage of a more intensive judicialinvolvementofthe restructuring court in the adoption and confirmation of the restructuring plan (paragraph 2512). The restructuring moderation will bechargedalower fee compared to the stabilization and restructuring framework (number 2513), which in turn may be reduced if the restructuring case is terminated early (number 2514). In the event of a transition to the Stabilization and Restructuring Framework, the fee for the reorganization moderation is creditable against the fee for the Framework. Fees are also incurred for the procedure for immediate appeal (numbers 2520, 2521) and appeal on points of law (numbers 2522, 2533).

Re letter c

This is an editorial follow-up adjustment to the insertion of the new 4th main section and the introduction of the Corporate Stabilization and Restructuring Act.

Re letter d

The addition of the disbursement facts according to No. 9017 of the List of Costs to the Court Costs Act ensures that the amounts initially payable from the state treasury to the restructuring commissioner or the restructuring moderator are charged on to those persons who owe them according to § 25a of the Court Costs Act.

Regarding Article 12 (Amendment of the Lawyers' Fees Act)

Regarding No. 1

This is an editorial adjustment to the introduction of the new § 28a of the German Lawyers' Fees Act.

To number 2

The provision clarifies that the remuneration for the activity asrestructuringmoderatoror restructuring agent is not based on the German Lawyers' Fees Act, but on §§ 84 et seq. and § 99 of the German Corporate Stabilization and Restructuring Act.

To number 3

The value of the subject matter in the event of assignment by the debtor in the context of a restructuring case is based on the general provision in § 23 of the Lawyers' Fees Act. For the assignment by a creditor or aperson involvedin the debtor, the remuneration of the lawyer shall, in deviation from this, only be calculated according to the value of the claims and rights of the client which are affected by the debtor's residual restructuring concept, because the clientis not directly affectedby theinterventions in the claims and rights of other persons and these are at best indirectly the subject matter of the lawyer's activity.

Re point 4(a)

This is a consequential editorial amendment to the changes in Part 3 Section 3 Subsection 5.

Re point (b)

This is also an editorial consequential amendment to the changes in Part 3 Section 3 Subsection 5.

Re letter c

The changes are related to the amendment in number 3317 of theSchedule of Fees to the Attorney Remuneration Act. Several ordering plan participantswith different claims and rights trigger separatefees.

Re letter d

A 1.0 fee is also incurred for legal services in a restructuring case pursuant to Section 31 (3) of the Corporate Stabilization and Restructuring Act.

Re letter e

The amendment to No. 3318 stipulates that the 1.0 fee mentioned there also arises if the legal work relates to representation in a restructuring plan case.

Regarding Article 13 (Amendment of the Civil Code)

The provision makes it clear that the conveyancecanalso bedeclaredeffective in a legally bindingrestructuring plan.

Re Article 14 (Amendment to the Commercial Code)Repoint 1

Reference may be made to the explanatory memorandum to Article 16 (Amendment to Section 64 of the Law on Limited Liability Companies).

To number 2

This is a consequential amendment to number 1.

Re Article 15 (Amendment of the German Stock Corporation Act)

To number 1

Reference may be made to the explanatory memorandum to Article 16 (Amendment to Section 64 of the Law on Limited Liability Companies).

To number 2

Theamendment makes the legally confirmed restructuring planequivalent toa legallyconfirmed insolvency plan. The dependent company should also beable to contributeto averting insolvency at the controllingcompanywithin the framework of a restructuring plan.

Regarding Article 16 (Amendment to the Law on Limited Liability Companies)

The new regulation resolves the conflict between the obligation to provide mass security in the event of insolvency maturity, the violation of which isfollowed bythe obligation tocompensate the members of the management bodyin accordance with § 64 sentence 2 of the Law on Limited Liability Companies, § 92 para. 2 sentence 2 of the Stock Corporation Act, § 130a para. 1 sentence 2, also in conjunction with § 177 sentence 1 of the Commercial Code and § 99 sentence 2 of the Cooperatives Act, and theobligation to pay taxes,which also involves liability, in accordance with § 69 sentence 1 and sentence 2 of the Tax Code, infavour of the obligation to provide mass security.

The insolvency administrator, who is usually appointed in the preliminary regular insolvency proceedings with the reservation of consent, may not give her consent to the payment of taxes due to the insolvency law obligation to provide mass security. Thus, the managing director violates her obligation to pay taxes pursuant to § 34 para. 1 sentence 1 of the German Tax Code (Abgabenordnung) to theextent that the tax is due in the provisional regular insolvency proceedings. Thisis because theFederal Court of Finance (ruling of 22.10.2019 - VII R 30/18, ZIP 2020, 911) is of the opinion that the obligation to securethe assetsdoes not take precedence over the managing director's obligation to pay tax in theprovisional regular insolvency proceedings. A tax liability according to § 69 of the Insolvency Statute would only cease to exist in the absence of fault if the provisional insolvency administrator with reservation of consent refused to pay the tax and themanaging director had taken the reasonable steps against the provisional insolvency administrator with reservation of consent in the individual case.

In the provisional self-administration, there is a lack of supreme court rulings on the relationship between the obligation to provide mass security and the obligation to pay tax. Insolvency and finance courtshave given inconsistent rulings (Against a precedence of the mass security obligation over the tax payment obligation Finance Court Münster, ruling of 16.5.2018 - 7 K 783/17, EFG 2018, 1156. The Federal Fiscal Court dismissed the appeal of non-admission lodged against it as unfounded, decision of June 4, 2019 - VII B 101/18 (n.v.); a.A. District CourtHamburg, decision of July 14, 2014 - 67b IN 196/14, ZIP 2014, 2101)However, bothduties may, if violated, result in personal liability of the managing director. The managing director finds herself in a dilemma because she is faced with two opposing and liability-based obligations. Therefore it is clarified that in the future after entrance of the insolvency maturity the tax payment obligationsteps back behind the mass security obligation.

Inthe area of turnover tax, the interests of the tax authorities aresafeguardedby the simultaneous extension of the scope of application of § 55 (4) of the Insolvency Code toprovisional self-administration, whichisjustified by the special feature of turnover tax thatthe entrepreneur here only acts as a tax collector on behalf of the state (Court of Justice of the European Union, judgment of B. 5. 2019 - C-127/18, A-PACK CZ s. r. o. / Odvolací financní "reditelství, DStRE 2020, 34, marginal note 22 m. w. N.). Moreover, the equal treatment of the tax creditor with other creditors in the phase after the occurrence of insolvency appears appropriate. In addition, this also makes alternative arrangements superfluous, e.g. the widespread practice offirst making the tax authorities act inbad faith, then first paying off the tax liability and then, after the opening of insolvency proceedings, withdrawing the payment back to the estate by way of avoidance.

The change in sentence 2 represents a linguistic correction.

Regarding Article 17 (Amendment of the Cooperatives

Act)

Reference may be made to the explanatory memorandum to Article 16 (Amendment to Section 64 of the Law on Limited Liability Companies). The linguistic correction made there in sentence 2 is not necessary here.

Re **Article 18 (Amendment of the Bonds Act)RePoint 1**

This is an editorial adjustment to the introduction of a new paragraph 6 in Section 19 of the German Bond Act.

To number 2

The debtor seeking to restructure its crisis company using the Stabilization and Restructuring Framework candecideat its own discretionwhether it wishes to structure the claims of bondholders in the restructuring plan, whether, if provided for in the bond terms and conditions, it wishes to bring about their amendment in accordance with the provisions of Sections 5 et seq. of the German Bond Act, with or without a link to the restructuring plan via a condition in accordance with Section 66 of the German Corporate Stabilization and Restructuring Act, or whether it waives the inclusion of the bonds in its restructuring concept altogether. If it chooses the first option, theprovisions of the German Corporate Stabilization and Restructuring Actshall apply to thecreditors' resolutions, unless otherwise provided for in paragraphs 2 to 5 of this Article, which shall only apply mutatis mutandis.

Regarding Article 19 (Amendment of the Tax Consultancy Act)

According to the current case law of the BGH, tax consultants are obliged to audit and, if necessary, to provide information and warnings regarding the ability of thecompanyconcerned to continue as a going concern when preparing annual financial statements for their clients(see BGH, Urt. v. 26.01.2017 - IX ZR 285/14 -, BGHZ 213, 374-394, marginals 19 and 44).

The BGH has clarified that the tax advisor commissioned with the preparation of the annual financial statements basicallyowesanannual financial statementthatcomplies with the regulations under commercial law, does not exceed the limits of permissible structuring options andiscorrectinthis sense. In accordance with § 252 (1) No. 2 HGB, the valuation in a commercial balance sheet must be based on the continuation of the company's activities, unless this is contradicted by factual or legal circumstances.According to § 252 (2) HGB,deviationsfrom these principles are only permitted in justifiedexceptional cases. § Section 264 (2) sentence 1 HGB also stipulates that the annual financial statements must give a true and fair view of the net assets, financial position and results of operations of the corporation in accordance with the principles of proper accounting. In view of thetax consultant's professional competence,the client may expect the tax consultanttopreparethe annual financial statementsin fullinaccordance with the content of the documents made available to the tax consultant and the circumstances otherwise known to the tax consultant, toclarifyvaluation questions,if necessary in cooperation with the client, and, in the case of open questions, to clarify the associated problems and tobring abouta decision by theclient. The tax consultant therefore has a correspondingobligation toexamine andinform the client, which alsoextendsbeyond the specific subject matter of the mandate, insofar as the risksareknown to the tax consultant or are obvious to himor are imposed on him in the course of proper handling of the mandate and if he also has reason to assume that his clientis not aware oftherisks. This applies in particular if the risks affect the client's interests whichareclosely related to the subject of the mandate.

Corresponding information and warning obligations are also alreadyanchoredin the pronouncements of the Federal Chamber of Tax Consultants on the principles for the preparation of annual financial statements. In the notes to this pronouncement with regard to circumstances that stand in the way of the assumption of a going concern, it is stated in paragraph 98 that the tax consultant has a duty to inform and warn the client "if the

tax advisor recognizes a reason for insolvency within the scope of his assignment (inability to pay according to § 17 InsO, imminent inability to pay according to § 18 InsO as well as over-indebtedness according to § 19 InsO) or serious indications for a possible reason for insolvencyare obvious and he must assume that the client is not aware of the possible insolvency maturity".

The information and warning obligations are an instrument for the early recognition ofa company'sexistenceas a going concern within the meaning of Article 3(1) and (2)(c) of the Directive and should therefore also be clarified by law. As a prerequisite for the implementation of the information and warning obligations, the duty to examine is also to be clarified by law.The clarification merelyconcretizesthe duty to conscientiously exercise a mandate, which in any case arises from § 57 paragraph 1 of the Tax Consultancy Act (StBerG),so that no new duties and consequently no new liability facts arise for the tax consultant in connection with the exercise of the mandate.

Following the system of the StBerG, tax representatives are alsoincludedin the clarification.

Regarding Article 20 (Amendment to the Law on Provisional Regulation of the Law of Chambers of Commerce and Industry)

Article 3(1) of the Directive obliges Member States togive debtors engagedinbusinessactivities access to one or more early warning systems "capable of detecting circumstances which may lead to imminent insolvency andsignallingto debtorstheneed to act promptly". Examples ofpossible early warning systemsare listed in Article 3(2) of the Directive, including advisory services provided by public or private organizations. Such advisory services are already available with the advisory services offered by the Chambers of Industry and Commerce, although the advisory services are not yet explicitly mentioned in the law. The addition in § 1 (2) of the Act serves to clarify andensurethatthe Chambers of Industry and Commerce will continue to provide such consulting services to individual companies in the future.

Regarding Article 21 (Amendment to the Auditors' Code)

Within the framework of the audit of the financial statements of a company, a certified public accountant hasthe reporting obligation codified in § 321 (1) sentence 3 HGB (German Commercial Code)iffactsexistwhich endanger the company's existence or impair its development. In connection with the audit of public interest entities, such duty is also definedin Article 11 (2) subparagraph 1 letter i of Regulation (EU) 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements for the statutory audit of public interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77; L 170, 11.6.2014, p. 66).

In addition, pursuant to Section 321 (1) Sentence 1 of the German Commercial Code (HGB), the auditor mustcommentin his audit report inadvance on the assessment of the company's situation by the legalrepresentatives, with particular reference to the assessment of the company's continued existence and future development taking into account the management report, insofar as the audited documents and the management report permit such an assessment. Pursuant to Section 322 (2) Sentence 3 of the German Commercial Code (HGB), the auditor mustseparately commentin his audit opinionon risks that could jeopardize the continued existence of the company.

If an auditor is commissioned to prepare annual financial statements, the IDW Standard S 7 of the Institute of Auditors (IDW) provides for corresponding duties of disclosureto the respective company. When preparing annual financial statements

the depth of insight intothecompany's assets, financial and earnings position is determinedby the different types of orders (with and without plausibility assessments). In any case, however, the auditor mustinformthe company ofany risks that couldendanger its existence, insofar as he has identified such risks during the execution of the preparation order. This duty to provide information shall be complied with in the preparation report or in any other suitable manner (marginal no. 78).

It follows from these obligations that an auditor must in principle examine the company to be audited for risks that could endanger the existence of the company, at least to the extent that the documents to be audited and, if applicable, the management report permit such an assessment. This applies within the scope of his duty to conscientiouslyexercise his mandate (§ 43 (1) sentence 1 WPO) even if he is already commissioned to prepare annual financial statements.

The duties of examination and information constitute an instrument for the early detection ofcompany crises within the meaning of Article 3(1) and (2)(c) of the Directive, which, in the light of the current case law of the Federal Court of Justice (BGH) on the examination and, where applicable, information and warning duties of a tax adviser with regard to the ability of his client's company to continue as a going concern (see BGH, Urt. v. 26.01.2017 - IX ZR 285/14 -, BGHZ 213, 374-394, marginal 19, 44) and the decision of the OLG Düsseldorf of 20.12.2019 -10 U 70/18 - on the audit and information duties of an auditor should also be clarified by law. The clarification merelyconcretizes theobligation to conscientiously perform the mandate,which in any case arises from Section 43(1) sentence 1 of the German Auditors' Ordinance and Section 323 (1) of the German Commercial Code,so that no new obligations and consequently no new liability elements arise for the auditor in connection with the performance of the mandate.

Regarding Article 22 (Amendment of the Trade Code)

To number 1

This is a consequential amendment to number 2.

To number 2

To letter a

This is a consequential amendment to point (b).

Re point (b)

In its current version, the provision suspends the application of trade law prohibition, withdrawal and revocation provisions for certain periods of time, thus ensuring that no decisions contrary to insolvency law can be taken on the continuation of the business. A comparablesituation of interest also exists if a restructuring with the help of restructuring instruments according to the Corporate Restructuring Act is being seriously pursued and is already in an advanced phase. This is typicallyassumedifa restructuring officer has been appointed, a moratorium has been ordered or a restructuring plan has been submitted to the restructuring court for preliminary review, for the purpose of obtaining a court hearing and vote or for confirmation.

Regarding Article 23 (Amendment of the Craft Code) Reference is made to the

explanatory memorandum to Article 20.

Consultancy services within the meaning of Article 3(2)(b) of the Directive also include consultancy services provided by chambers of skilled crafts. The addition to § 91 serves to clarifyand safeguard these advisory services in the Crafts Code.

Re Article 24 (Amendment of the Pfandbrief Act)

To number 1

This is a consequential amendment to Article 5(39).

To number 2

This is a consequential amendment to Article 5(41).

To number 3

This is a consequential amendment to Article 5(39).

Re Article 25 (Amendment of the Occupational Pensions Act)

The provision serves to protect the insolvency insurance institution from the fact that the insolvent debtor, in cooperation with other creditors,specifically directsthe plan designtowards overruling the insolvency insurance institution. According to the new version of Section 9 (4) sentence 1, in future insolvency plans whichprovide for the continuation ofacompany or businessmust inprinciple form a separate groupfor the insolvency protection provider. The formation of a separate group can only be dispensed with if the insolvency protection provider does not wish to be classified in a separate group. This strengthens the position of the insolvency protection institutions in insolvency plan proceedings. This strengthening takes place, since the carriers of the insolvency protection with the safety device of the operational age precaution for the case of the insolvency of an employer or an employer an important task carry out.

Regarding Article 26 (Amendment of the Third Book of the Social Code)

The provision makes it clear that the obligation to issue the certificate under Section 314(1) of Book 3 of the Social Security Code alsoappliesin cases of insolvency proceedings inself-administration not to the administrator but to the employer.

Re Article 27 (Entry into force)Reparagraph 1

Inorder to make the reorganization options created by the draftavailableto practice as quickly as possibleinview of the ongoingcrisis phenomena and their effects on the financial situation of alarge numberofcompanies, the law is to come into force on January 1, 2021. This short-term nature willpose considerable challenges for thepractice,especially the court organization, but must be accepted in order to make the instruments available as quickly as possible. Exceptions may be made for those elements of the draft whose immediateavailabilityisnot immediately necessaryto cope with the mass ofproceedingsexpected asaresult of the crisis.These are the provisions on insolvency and residual invoicing statistics (paragraph 2) and the provisions on public proceedings (paragraph 3).

Regarding paragraph 2

In order to avoid distortions caused by surveys during the year or changes in data collection during the year, the amendments to the Insolvency Statistics Act should first

come into force on January 1, 2022. In any case, a data transfer to the European Commission pursuant to Article 29 of the Directive does not have to take place until the model form for data transfer has been introduced by EU implementing legislation.

Regarding paragraph 3

In order to allow sufficient time for technical implementation, the adjustments to the Insolvency Notification Ordinance and the provisions in Sections 88 to 92 of the Corporate Stabilization and Restructuring Act on public residual invoicing matters, making use of the maximum implementation period under Article 34(2) of the Directive, are not to enter into force until 17 July 2022.