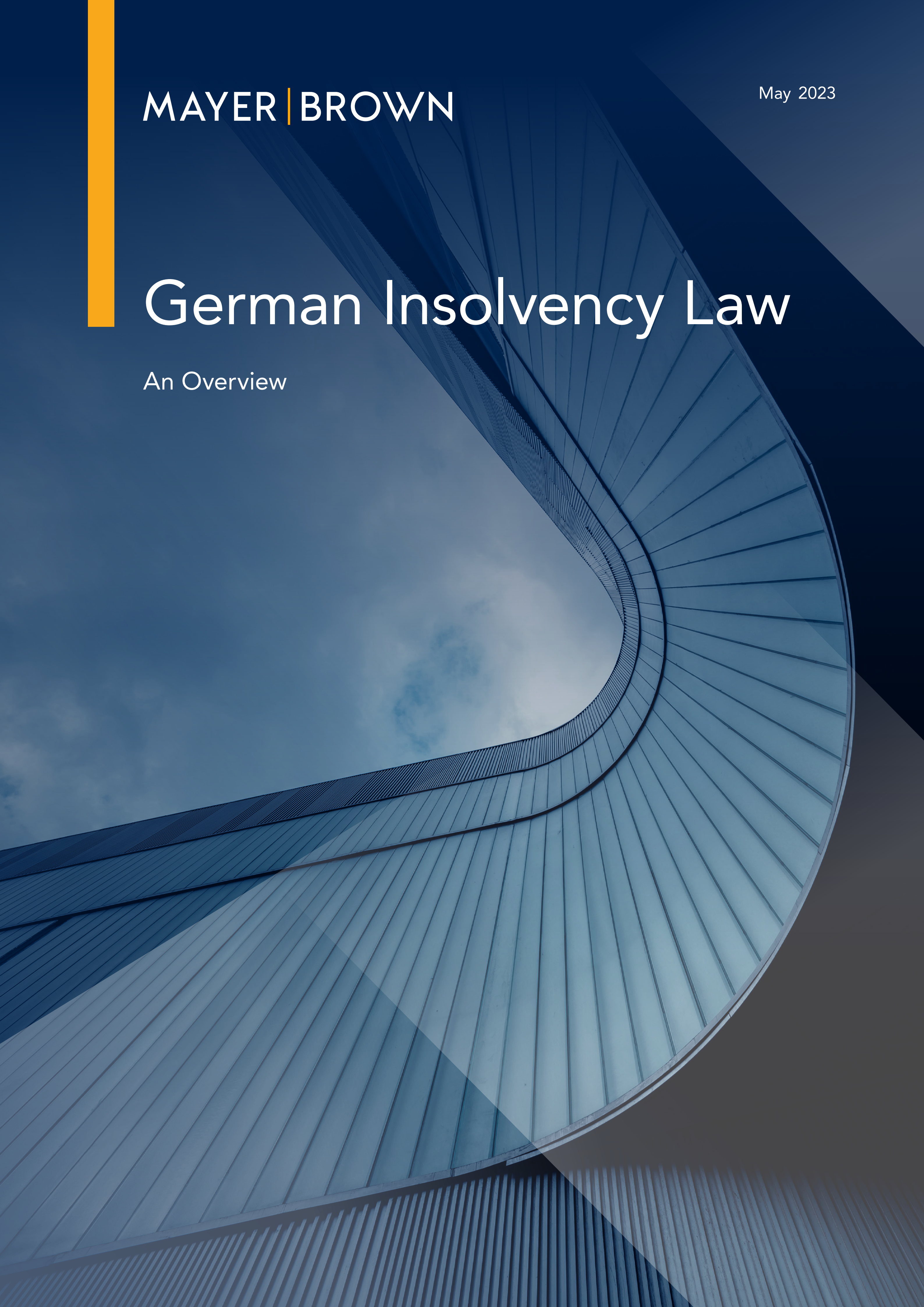
May 2023

German Insolvency Law

An Overview



German insolvency law is governed by a comprehensive Insolvency Code that entered into force on 1 January 1999 and has since then regularly been subject to amendments from time to time. There is only one primary uniform insolvency procedure that applies to both individuals and companies. In the following, we focus on companies. Insolvency proceedings can be initiated against any natural or legal person, excluding certain legal persons organized under public law, such as the German Federation or the German states. Proceedings can, in principle, also be initiated against legal entities that are not legal persons, such as private partnerships (*Gesellschaft bürgerlichen Rechts*).

Special rules apply in the case of the insolvency of specifically regulated entities e.g., banks (in particular, Sections 46 to 47 German Banking Act – *Kreditwesengesetz, KWG*), payment institutes (Section 16 Payment Services Supervision Act – *Zahlungsdienste-aufsichtsgesetz, ZAG*) or insurance companies (Section 88 German Insurance Supervision Act – *Versicherungsaufsichtsgesetz, VAG*).

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OBJECTIVE

Historically, the objective of the proceedings provided by the Insolvency Code (*Insolvenzordnung, InsO*) or its predecessor, the Bankruptcy Code (*Konkursordnung, KO*) has been the collective, non-discriminatory satisfaction of creditors on a pro rata basis. To achieve this objective, the proceedings provide a framework for the liquidation of the insolvent debtor's assets by an independent court-appointed insolvency practitioner, either by way of asset-stripping or the sale of the debtor's entire business, followed by a distribution of the proceeds to the creditors.

Following an increasing trend toward strengthening the chances for a restructuring of the debtor's business as opposed to liquidating it, the Insolvency Code also provides for reaching an arrangement with all stakeholders by means of an insolvency plan procedure designed to reorganize the business and enable the enterprise to continue as a going concern, including by way of self-administration (or debtor-in-possession) proceedings.

INSOLVENCY STAGES

The insolvency proceeding can be divided into the preliminary insolvency proceeding and the final insolvency proceeding. Both stages are supervised by the Insolvency Court. Proceedings commence when the initial financial crisis of the company has led to an insolvency situation within the meaning of the Insolvency Code (see "Grounds for Filing for Insolvency"), prompting the management (or, in certain cases, the shareholders) to file for insolvency with the competent Court in order to avoid personal criminal and financial liability. Aside from filings by the management itself, filings for insolvency by creditors are also possible and common. As a rule, the Insolvency Court will react to the filing by appointing a preliminary creditors' committee and a preliminary insolvency administrator whose task it is to secure the assets of the debtor and to prepare the ground for the Insolvency Court's decision whether or not to open final insolvency proceedings.

GROUNDS FOR FILING FOR INSOLVENCY

Generally, and subject to the temporary exemptions further mentioned below, final insolvency proceedings will be opened if the Court finds that:

(i) the debtor is illiquid (i.e., unable to pay its debts when due (*Zahlungsunfähigkeit*)); or

(ii) in the event that the debtor is a legal person or a legal entity that does not have at least one natural person who is personally liable without limitation, the debtor is over-indebted (i.e., the debtor's assets do not cover its liabilities, unless the circumstances indicate that it is more likely than not that the company will be able to continue as a going concern in the next 12 months (*Überschuldung*)).

Pursuant to case law, illiquidity does not exist in the event of certain limited temporary liquidity gaps. However, the debtor is deemed to be illiquid in any event if it has stopped making payments as they fall due. The debtor itself can also file a petition voluntarily on the grounds of pending illiquidity (i.e., if it is predominantly likely that the debtor will become unable to meet its payment obligations when they fall due in the future (*drohende Zahlungsunfähigkeit*)). In general, a forecast period of the current and following financial year is to be used, but the period can be longer or shorter.

Regarding the question of whether or not a debtor is over-indebted, the crucial question is whether a positive business continuation forecast (*positive Fortführungsprognose*) can be made. The minimum requirements for the affirmation of such a positive forecast are the debtor's intention to continue its business and a continuously updated liquidity planning pursuant to which the debtor is predominantly likely to stay in business during the next 12 months and be able to pay its debts when due during the foreseeable future. The debtor's management should diligently document these facts, and, depending on the situation, it might be advisable to have an outside counsel prepare a professional opinion as to whether the requirements are met.

By temporarily modifying the above rules (currently limited until the lapse of 31 December 2023), the German Federal Government has, in the context of rising energy and raw material prices, passed the Act regarding the Mitigation of Consequences of a Crisis under Restructuring and Insolvency Laws (*Sanierungs- und insolvenzrechtliches Krisenfolgenabmilderungsgesetz* – "**SanInsKG**"). The SanInsKG has, in particular, (i) reduced the above-mentioned prognosis period regarding the debtor's business positive continuation forecast (*positive Fortführungsprognose*) from 12 months to only 4 months (thus allowing companies to more easily avoid the obligation to file for insolvency for over-indebtedness (*Überschuldung*)) and (ii) increased the maximum period for filing for insolvency due to over-indebtedness (*Überschuldung*) from six weeks to eight weeks (see also below).

COMMENCEMENT OF INSOLVENCY PROCEEDINGS

In general, the insolvent company itself or any creditor can file for insolvency of the company with the competent Insolvency Court, thus initiating preliminary insolvency proceedings. In the case of legal entities and companies without legal personality (*ohne Rechtspersönlichkeit*), every member of the representative body (*Mitglied des Vertretungsorgans*) or every personally liable shareholder, as well as every liquidator, are entitled to initiate preliminary insolvency proceedings. The Insolvency Court is, however, not entitled to initiate insolvency proceedings "ex officio". In the event of a creditor filing for insolvency of the debtor, the debtor's legal representatives are entitled to be heard by the Court. Creditors should therefore make sure to prepare the filing carefully and liaise with suitable insolvency practitioners in order to maximize their influence on the subsequent proceedings.

MANAGEMENT DUTIES

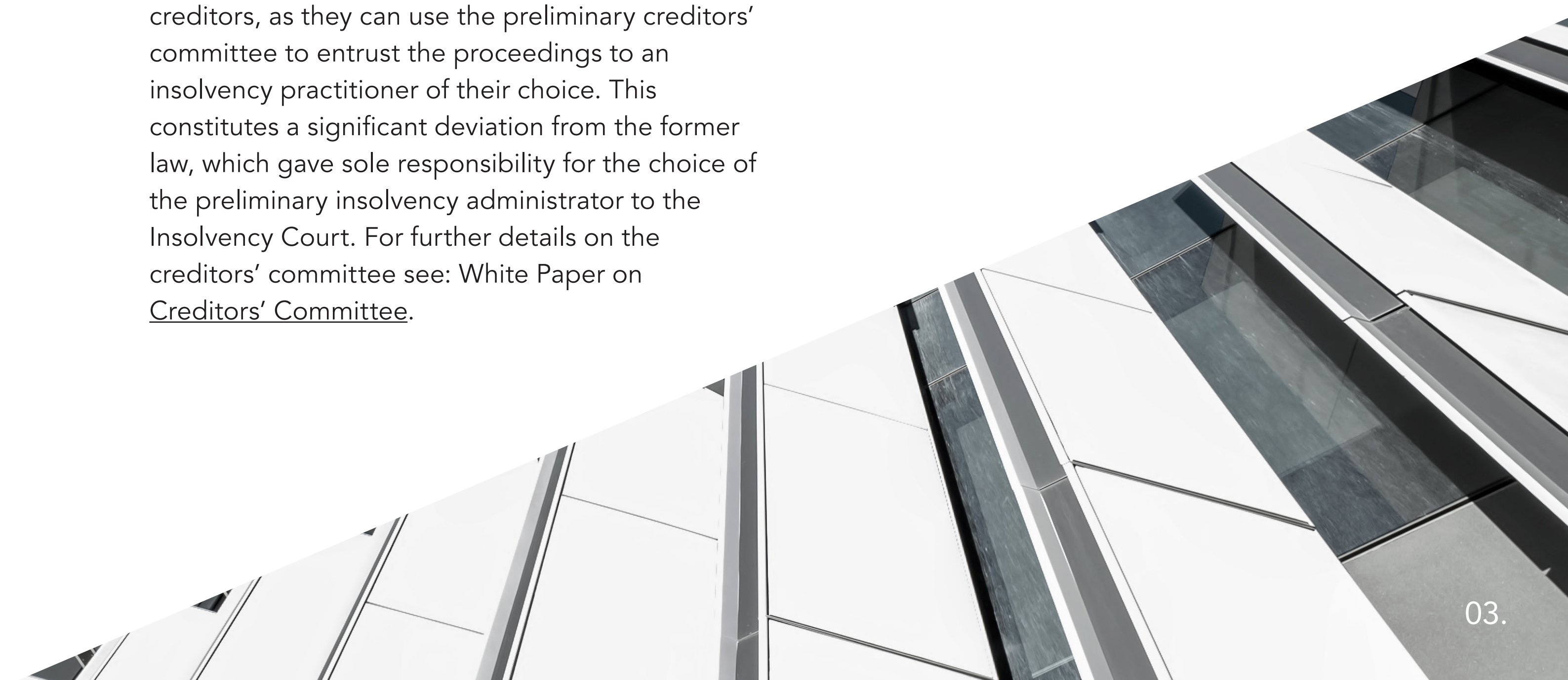
If there are indications for the existence of grounds for the opening of insolvency proceedings, the debtor's management must assess the company's financial status. In the event illiquidity or over-indebtedness exists, the members of the representative body or the liquidator(s) are personally obliged to file for insolvency, at the latest within three weeks after the occurrence of illiquidity or within six weeks (eight weeks until 31 December 2023 under the SanInsKG) after the occurrence of over-indebtedness. The same applies in the case of companies without legal personality where no natural person is (indirectly) a personally liable shareholder. If a company is without management (*Führungslosigkeit*), the debtor's shareholders or the members of its supervisory board are obliged to file for insolvency, unless this person is not aware of the insolvency or over-indebtedness or the lack of management.

In the case of an obligation to file for insolvency, the filing must be made without delay, within a maximum limit of three weeks starting with the occurrence of the illiquidity or six weeks (eight weeks until 31 December 2023 under the SanInsKG) after the occurrence of the over-indebtedness. The filing should only be delayed this long if realistic options exist to avert insolvency. The obligation to file for insolvency also applies to the management of companies incorporated under the law of foreign jurisdictions if the actual center of main interests of such a company is in Germany. Omission or delay in filing leads to criminal and/or financial liability of the company's management personnel. For further details on the managing directors' obligation to file for insolvency, see: White Paper on German Insolvency Law – The managing directors' obligation to file for insolvency

PRELIMINARY PROCEEDINGS

The interim period between the filing for insolvency and the decision of the Insolvency Court whether or not to open final insolvency proceedings is often referred to as the preliminary insolvency proceeding (*vorläufiges Insolvenzverfahren*) or opening proceedings (*Insolvenzeröffnungsverfahren*). The Insolvency Court does not automatically open insolvency proceedings upon receipt of a corresponding filing. During the preliminary proceedings, it determines whether an insolvency ground does, in fact, exist. Except in cases where the debtor is a small company and does not reach certain economic thresholds, where its business operations have been discontinued, the appointment would be disproportionate or where the delay associated with the appointment would lead to an adverse change in the debtor's financial position, the Court will appoint a preliminary creditors' committee (*vorläufiger Gläubigerausschuss*). This committee's most important right at this stage is that it can nominate a candidate for appointment as the preliminary insolvency administrator by the Insolvency Court. In principle, the Court cannot depart from this suggestion if it is unanimous and the candidate is suitable. Therefore, the preliminary insolvency proceeding is a crucial stage for creditors, as they can use the preliminary creditors' committee to entrust the proceedings to an insolvency practitioner of their choice. This constitutes a significant deviation from the former law, which gave sole responsibility for the choice of the preliminary insolvency administrator to the Insolvency Court. For further details on the creditors' committee see: White Paper on Creditors' Committee.

Usually, upon appointing the preliminary insolvency administrator, the Court will also order that all or certain transactions of the debtor require the preliminary administrator's consent, otherwise leaving the debtor's legal representatives in charge of conducting the debtor's business. However, it is in the Court's discretion to grant further powers to the preliminary administrator and even transfer the administration of the debtor's business entirely to the preliminary administrator. For creditors that are doing business with the insolvent company at this stage, it is important to determine what kind of power has been vested in the preliminary administrator and what other restrictions the Court has imposed (e.g., a stay of individual enforcement measures). Depending on such powers of the preliminary administrator, the creditor's claims resulting from business transactions with the debtor may be preferential or not. Generally, claims arising from transactions entered into by the insolvency debtor with the consent of the preliminary administrator rank only as unsecured insolvency claims. Creditors should therefore make sure to sufficiently secure their claims arising from transactions conducted during this phase of the preliminary insolvency proceedings in a way that is resistant to being contested. For further details on how to deal with a supplier in crisis, see: White Paper on Dealing with supplier in crisis.



FINAL INSOLVENCY PROCEEDINGS/LEGAL CONSEQUENCES/ REORGANIZATION BY THE ADMINISTRATOR

Final insolvency proceedings are opened by the Court if, based on the assessment of the preliminary administrator, it arrives at the conclusion that:

(i) an insolvency ground exists; and

(ii) the debtor's estate comprises sufficient assets to at least cover the costs of the insolvency proceedings.

Otherwise, the opening of insolvency proceedings will be rejected due to insufficient assets.

The Court's order to open the insolvency proceedings imposes a stay on individual actions and enforcement measures initiated by creditors against the insolvent company. Creditors can no longer enforce their rights regarding claims in existence as of the opening of the insolvency proceedings outside of the insolvency proceedings, with exceptions applying for the realization of certain securities.

Upon ordering the opening of insolvency proceedings, the Court usually appoints a (final) insolvency administrator charged with the administration of the debtor's assets and business. Hence, the management of the insolvent company and the preliminary administrator are no longer in charge of the company's affairs. Ordinarily, the same person who was appointed as preliminary administrator is also appointed as final administrator. The (final) administrator is authorized to enter into transactions that bind the insolvency estate and grant creditors preferential claims (*Masseforderungen*). The administrator may try to maintain the insolvent company as a going concern, at least until the first creditors' meeting (*Gläubigerversammlung*) has taken place. This first creditors' meeting is to be held at the latest three months after the opening of final proceedings. On the basis of a report compiled by the administrator, the creditors' meeting decides whether the company is to be liquidated or provisionally continued and restructured. It can also instruct the administrator to prepare an insolvency plan (see below). If the administrator wants to shut down the debtor's business or parts thereof prior to the first creditors' meeting, the consent of the creditors' committee is required (to the extent appointed).

Both the preliminary and final administrator are under the supervision of the Insolvency Court. The creditors can exert influence by way of the creditors' meeting and the (preliminary or final) creditors' committee. The creditors' meeting also has the power to either confirm or exchange the final insolvency administrator. Decisions are made by a majority that represents the majority of the value of the claims against the debtor, whereas subordinated claims confer no voting rights. Major creditors can, to a certain extent, force their will upon a minority (e.g., to accept a certain transaction). However, upon a corresponding application by a creditor, the Court can repeal a creditors' meeting's resolution on the grounds that it contradicts the common interest of all creditors.

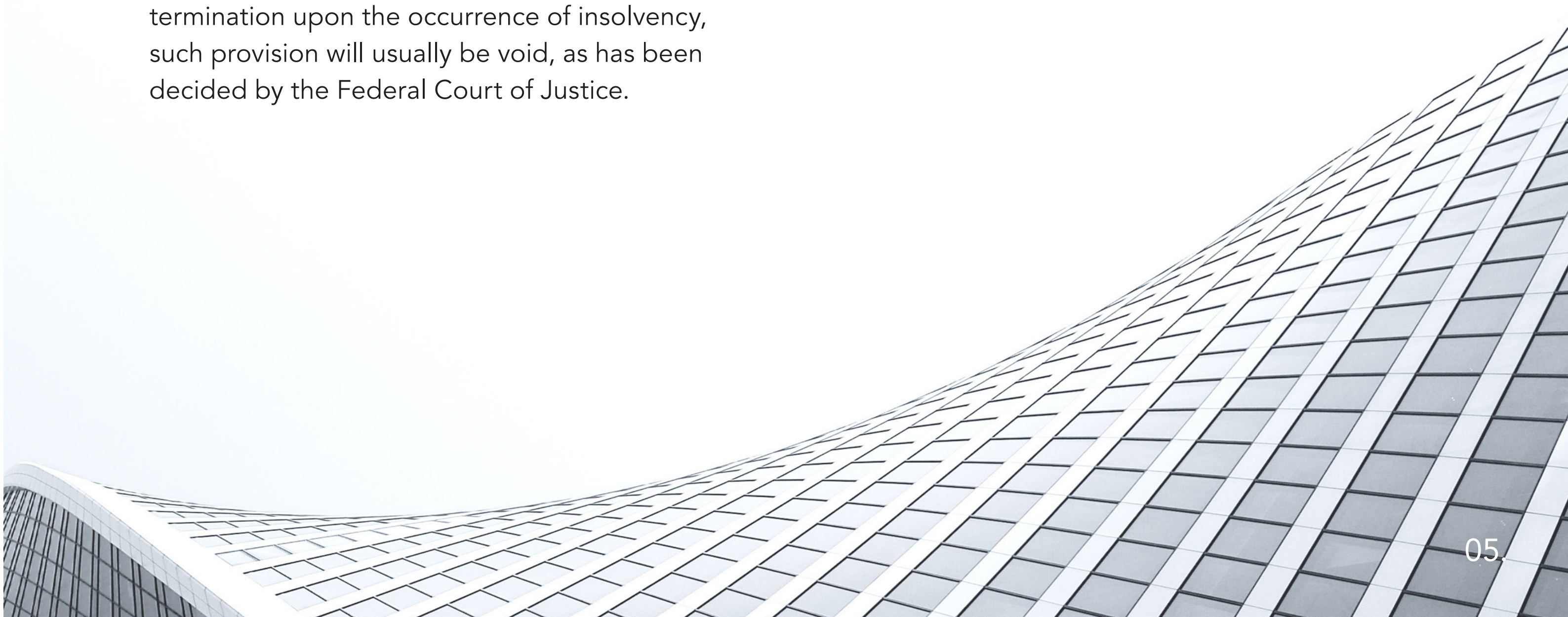
The administrator must submit certain major decisions to a vote by the creditors' meeting. The creditors' meeting also decides on whether or not the appointment of a preliminary creditors' committee by the Court is to be upheld or, in case no preliminary creditors' committee has been appointed, whether to appoint a creditors' committee.

The administrator must pay particular attention to securing the debtor's assets, the collection of outstanding claims, and the decision as to whether to continue the business based upon an economic evaluation of the enterprise and the reasons for the insolvency. If the decision is made that the insolvent company's business will not be continued, the assets of the business will be liquidated and the proceeds distributed to the creditors (see below for a more detailed description of the distribution). After the proceeds have been distributed, the company is dissolved, and any residual claims of the creditors are essentially of no value. The Insolvency Code provides opportunities for the administrator to reorganize the company's business. Certain types of agreements, such as assignment contracts (*Auftrag*) and agency agreements (*Geschäftsbesorgungsvertrag*), entered into by the insolvent company as principal (e.g., sales agency agreements) are automatically terminated as of the opening of the insolvency proceedings, regardless of their term. Furthermore, the administrator can decide to refuse further performance of certain agreements entered into prior to the opening of proceedings that have not been fully performed by both parties. Depending on its choice, the creditor's respective claim is either preferential or a mere insolvency claim. Different provisions and legal consequences apply to different types of agreements, such as financing arrangements, rent and lease contracts, contracts regarding the purchase of goods under retention of title clauses, and employment/service contracts. For further details on the insolvency administrator's right to choose or reject performance, see: White Paper on Insolvency Administrator's Right To Choose Or Reject Performance.

Creditors are, in principle, not prevented from exercising contractual termination rights by the opening of insolvency proceedings. However, if a contractual clause provides for a right of termination upon the occurrence of insolvency, such provision will usually be void, as has been decided by the Federal Court of Justice.

CLAW-BACK RIGHTS

The administrator can challenge certain transactions entered into prior to the opening of insolvency proceedings that constitute an unfair preference and have an adverse effect on insolvency creditors as a whole ("**claw-back right**"). Transactions carried out within a period of three months prior to the filing for insolvency, as well as the period between the filing and the opening of proceedings, are particularly sensitive. However, longer challenge periods of up to 10 years exist, depending on the nature of the transaction. The repayment of a shareholder loan or a similar transaction (e.g., credit on goods granted by a group company) is challengeable if it occurred within the year before filing for insolvency. Gratuitous benefits granted by the debtor and transactions entered into with the intention of inflicting damages on other creditors are challengeable if they were entered into within a period of 4 years (in case of gratuitous benefits or transactions willfully granting security or satisfaction) or 10 years (in other cases of willful prejudice) prior to the filing for insolvency, if the other party was aware of the debtor's intent at the time of the legal action. Gratuitous benefits are challengeable even without the intention of inflicting harm if they were granted four years before filing for insolvency. For further details on the challenge rights, see: White Paper on Challenge Rights.



CREDITORS' RIGHTS

Creditors can be differentiated as secured creditors (*absonderungsberechtigte Gläubiger*), unsecured creditors and preferential creditors (*Massegläubiger*).

Preferential claims against the insolvency estate are satisfied in priority to the claims of unsecured creditors and can be enforced by legal action against the insolvency estate.

Secured creditors may, depending on the nature of their security right, have a direct claim against the insolvency estate for the surrender of collateral or the payment of the proceeds resulting from the realization of a security by the administrator (after deduction of certain fees). To the extent the security was not sufficient to cover the total amount of the secured claim, the remaining claim will, in principle, be treated as an unsecured insolvency claim. In order to improve their chances to enforce their claims and realize the security successfully, secured creditors sometimes enter into so-called "pool-agreements," which can reduce complexity and sometimes improve their leverage in negotiations with the administrator. Unsecured creditors must file their insolvency claims (*Insolvenzforderungen*) for registration with the insolvency claims schedule (*Insolvenztabelle*) in order to receive (partial) payment, if any. The administrator either rejects the filed claim or registers it with the insolvency schedule. In the case of a rejection, which can be due to insolvency specific reasons, such as a claw-back right or due to general principles, a creditor can bring a legal action to enforce acceptance. Accepted insolvency claims entitle unsecured creditors only to a collective, equal and non-discriminatory satisfaction on a *pro rata* basis in accordance with the insolvency quota (*Insolvenzquote*). The insolvency quota is determined by the insolvency administrator (under supervision by the Court and the creditors' meeting and committee) at the end of the insolvency proceedings. It is calculated by setting into proportion the distributable assets of the insolvency estate (i.e., in essence, the proceeds from the liquidation of all assets after deduction of all preferential claims, all security interests to the extent paid off or settled and the cost of the proceedings, including court fees and the administrator's fees), to the total amount of accepted and unsecured insolvency claims.

Certain claims are subordinated and rank even lower than unsecured claims. This affects, *inter alia*, claims for repayment of shareholder loans and similar transactions. Exceptions can apply for loans granted by certain minority shareholders, as well as for lenders that have become shareholders during the company's crisis for restructuring purposes. Subordinated claims will only be settled in the very rare case that all higher-ranking claims have been entirely satisfied.

INSOLVENCY WITHIN INSOLVENCY

In the event that the insolvency estate does not contain enough assets to satisfy all preferential creditors, the administrator will notify the Court that a state of mass insufficiency (*Masseunzulänglichkeit*) has occurred. This declaration creates an "insolvency within insolvency." Transactions entered into by the administrator after the date of this notification are now preferential. The "old" preferential creditors, similar to unsecured creditors prior to the "insolvency within insolvency," are now confined to a claim against the "old" insolvency estate and are satisfied only on a *pro rata* basis and after the "new" preferential creditors have been fully satisfied. In an "insolvency within insolvency," unsecured insolvency claims will not be satisfied at all. In the event that a mass insufficiency notification becomes necessary, the administrator can be personally liable to compensate damages incurred by the "old" preferential creditors.

EMPLOYEE RIGHTS

Employees are protected by so-called "insolvency money" (*Insolvenzgeld*), which covers wages for the period of three months. Contracts of employment are not automatically terminated by the initiation of the insolvency proceedings but may be terminated with three months' notice or, if applicable, with a shorter notice period. Certain other employee rights are limited in insolvency proceedings as well.

SELF-ADMINISTRATION

Apart from the above-described administration by a Court-appointed insolvency administrator, the Insolvency Code also provides companies with the possibility to enter insolvency proceedings under self-administration (*Eigenverwaltung*), a proceeding comparable to Chapter 11 of the US Bankruptcy Code, which leaves the debtor in possession. In self-administration proceedings, the debtor's own management remains in charge of the administration of the debtor's assets throughout the insolvency proceedings. In doing so, it is both advised and supervised by an insolvency trustee (*Sachwalter*) appointed by the Insolvency Court. Certain rights entrusted to the insolvency administrator in regular insolvency proceedings, such as the right to challenge transactions, reside with this insolvency trustee.

Preliminary self-administration proceedings (*vorläufige Eigenverwaltung*) are ordered by the Court if applied for by the debtor and, in general, provided that the debtor has developed a comprehensive and conclusive turn-around plan (*Eigenverwaltungsplanung*) to be implemented by way of self-administration proceedings and the Court is not aware of any circumstances that indicate that key aspects of the filed turn-around plan are based on incorrect assumptions. The preliminary creditors' committee can force the Court to approve a motion for self-administration if it so resolves unanimously. The order of self-administration can be subsequently revoked by the Court if certain requirements are met (e.g., upon the motion of the creditors' meeting). A motion for self-administration should be filed with the initial filing for insolvency so that the Court appoints a preliminary insolvency trustee instead of an preliminary administrator. In case the self-administration is to be combined with an insolvency plan, the debtor can also apply for a so-called "Protective Shield Proceedings" (see below). To be successful, self-administration requires thorough preparation prior to the filing for insolvency. In practice, the debtor must gain the support of its main creditors, prepare restructuring measures, and, ideally, add additional members with restructuring experience to the existing management.

INSOLVENCY PLAN

The insolvency plan proceedings (*Insolvenzplan*) are aimed at preserving the business of the debtor as a going concern and may be initiated if the economic evaluation of the debtor's business leads to the conclusion that it can, in fact, be restructured. An insolvency plan can be prepared prior to, and submitted together with, the filing for insolvency, or it can be developed by the debtor or the administrator after the opening of insolvency proceedings. The insolvency plan can contain provisions with regard to assets of the debtor, insolvency claims, certain secured claims or shares in the debtor, and it can provide for all types of measures permissible under corporate law, such as a debt-equity swap by which creditors, subject to their approval, acquire an equity participation in the debtor. In order to become effective, an insolvency plan must be approved by a vote of the creditors and the shareholders. For the sake of voting on the plan, the creditors and shareholders are divided into different groups according to their type of claim or stake, such as employees, suppliers, senior secured lenders, junior secured lenders, etc. The plan must provide for equal treatment of all members within one group (i.e., each must be offered the same quota). The grouping is of strategic importance, as, in principle, the approval by a majority of members by heads and by total amount of claims is required in every group. Refusal by individual groups to approve the plan can be overcome if the Court holds that the plan does not worsen that particular group's position compared to its situation in the absence of an insolvency plan and if the plan provides such group's members with a reasonable economical share of the assets that are to be distributed on the basis of the insolvency plan ("**cram-down rule**").

In case the insolvency plan is approved, the insolvency proceeding ends with the payment of the creditors pursuant to the plan.

PROTECTIVE SHIELD PROCEEDINGS

If a company faces imminent illiquidity (*drohende Zahlungsunfähigkeit*) and/or is over-indebted (überschuldet) but not illiquid (*zahlungsunfähig*), it may also file for preliminary self-administration "protective shield" proceedings (*Schutzschirmverfahren*), unless – from a third-party perspective – there is no reasonable chance for a successful restructuring. Upon such filing by the debtor, which must be endorsed by a certificate of an insolvency law expert, the Court will appoint a preliminary trustee (*vorläufiger Sachwalter*), prohibit enforcement measures (other than with respect to immovable assets) and set a deadline of no more than three months for the debtor to submit a draft insolvency plan. Upon the debtor's further motion, the Court must grant the debtor the right to incur preferential debt for the three-month period, and it may also implement other preliminary measures to protect the debtor from creditor enforcement actions until the deadline expires. During that period, the debtor shall prepare an insolvency plan, which ideally shall be implemented in formal self-administration proceedings (*Eigenverwaltung*) after formal insolvency proceedings have been opened.

END OF INSOLVENCY PROCEEDINGS

If, after a successful recovery, the administrator can repay the company's debt, the company will be released from administration. However, in the overwhelming majority of cases, creditors receive only partial satisfaction, if any. The debtor is then either deleted from the Commercial Register or released from the insolvency proceeding, stripped of all assets.

STABILIZATION AND RESTRUCTURING FRAMEWORK FOR COMPANIES

On 17 December 2020, Germany adopted the (EU) Restructuring Directive of 20 June 2019 (Directive (EU) 2019/1023) into German law through the Act on the Further Development of Restructuring and Insolvency Law (*Gesetz zur Fortentwicklung des Sanierungs- und Insolvenzrechts* - "**SanInsFoG**"). The SanInsFog introduced a comprehensive legal framework for pre-insolvency, out-of-court restructurings in Germany. The centerpiece of the SanInsFog is the Act on the Stabilization- and Restructuring Framework for Companies (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen* - "**StaRUG**"), which contains a preventive restructuring framework. This framework makes it possible to carry out restructurings outside of insolvency proceedings (i.e., without involvement of the Court), even against the will of individual parties, and regulates the content of a restructuring plan with which a company can carry out its restructuring prior to insolvency.

The relevant criteria for the initiation of a pre-insolvency restructuring under the StaRUG is the existence of mere pending illiquidity. The instruments mentioned in the StaRUG can only be used for the sustainable elimination of the pending illiquidity. If illiquidity or over-indebtedness has already occurred, the restructuring framework is no longer available, and only the "normal" insolvency proceedings can be pursued.

For further details on the stabilization and restructuring framework under the StaRUG, see: White Paper on The New Act on The Stabilization and Restructuring Framework for Companies.

INTERNATIONAL INSOLVENCY LAW

Germany has not adopted the UNCITRAL Model Law. International insolvency law is regulated in the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, which became effective on 26 June 2017 (the "**Regulation**"), and, to the extent applicable, Sections 335 et seq. Insolvency Code, as well as in Article 102 Introductory Act to the Insolvency Code (*Einführungsgesetz zur Insolvenzordnung, EGInsO*). Insofar as applicable, the Regulation, which introduced procedural rules on the coordination of the insolvency proceedings of members of a group of companies, takes precedence, providing, *inter alia*, for:

(i) the general recognition of the commencement of insolvency proceedings in all European Community Member States (except Denmark);

(ii) rules regarding the international jurisdiction in insolvency proceedings; and

(iii) the competence of the insolvency administrator.

Under Article 3 of the Regulation, the venue for a main insolvency proceeding is where the debtor has its center of main interests (COMI), which shall generally be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. In this regard, there is a rebuttable presumption that the COMI is where the debtor has its registered office. However, such presumption only applies if the registered office has not been moved to another Member State within the three-month period prior to the insolvency filing.

As a rule, foreign insolvency proceedings also cover the debtor's domestic assets if the courts of the state in which the proceedings were initiated have international jurisdiction. In spite of the recognition of foreign proceedings, special insolvency proceedings may be initiated in Germany with respect to the debtor's domestic assets (*Partikularverfahren, Sekundärinsolvenzverfahren*).

Outside the scope of the Regulation, particularly regarding insolvency proceedings of insurance companies and financial institutions, Sections 335 et seq. Insolvency Code apply.