MAYER | BROWN

KNOWLEDGE NUGGETS

WITHDRAWAL OF AN INSOLVENCY PETITION

CONTACT

PARTNERS
DR. MARCO WILHELM
FRANKFURT +49 69 7941 2731
MWILHELM@MAYERBROWN.COM

PARTNER
DR. MALTE RICHTER
FRANKFURT +49 69 7941 2533
MRICHTER@MAYERBROWN.COM

COUNSEL
TINA HOFFMANN
FRANKFURT +49 69 7941 1281
THOFFMANN@MAYERBROWN.COM

I. WHY THIS TOPIC IS IMPORTANT

Filing for insolvency is a significant step for companies, entailing far-reaching legal, economic, and reputational consequences. In practice, however, it is not uncommon for a company's financial situation to improve after the filing—for example, through a successful out-of-court settlement with creditors, an infusion of fresh liquidity, or the resolution of insolvency grounds by other means. In such circumstances, the question arises whether and under what conditions the insolvency filing may be withdrawn.

However, caution is advised: The withdrawal of an insolvency filing is not permissible without limitations. Section 13 para. 2 InsO (*Insolvenzordnung*, InsO) sets clear time limits; once these are exceeded, withdrawal is generally precluded. Furthermore, different standards apply to the withdrawal of a debtor's own insolvency filing as compared to the withdrawal of a filing submitted by a creditor. Procedural errors may result in the insolvency proceedings being opened nonetheless—with all related consequences for the company and its governing bodies.

II. LEGAL BASIS AND REQUIREMENTS

Pursuant to Section 13 para. 2 InsO, an insolvency filing may be withdrawn only until the insolvency proceedings have been opened or the petition has been finally dismissed. In case of legal entities, however, the filing obligation under Section 15a InsO must be observed: A withdrawal does not relieve the entity of the obligation to submit a new insolvency filing if insolvency or over-indebtedness persists. Where the filing was submitted by a creditor, only that creditor may withdraw it—typically after the claim has been satisfied or an alternative arrangement has been reached. Once insolvency proceedings have been opened, withdrawal of the insolvency filing is no longer permissible.

However, the law offers two ways to dismiss proceedings that have already been opened:

1. **Dismissal due to cessation of the grounds for opening the insolvency proceeding (Section 212 InsO):** Upon the application of the debtor, if the debtor demonstrates that the insolvency or over-indebtedness has been sustainably resolved. The court may make the dismissal contingent upon the provision of adequate security for the costs of the proceedings.
2. **Dismissal with the consent of the creditors (Section 213 InsO):** Upon the application of the debtor, with declarations of consent from all creditors who have filed claims — for example, following an out-of-court settlement or a restructuring agreement.

Upon effective withdrawal of the insolvency filing, the legal basis for the insolvency proceedings ceases to exist. The court dismisses the proceedings unless another petition has been filed by a different eligible party. Any protective measures already ordered—such as provisional insolvency administration or restrictions on the right to dispose of the debtor's assets—are lifted.

But caution: Where multiple insolvency filings have been submitted—for example, a filing by the debtor itself, together with additional filings submitted by creditors—the withdrawal of a single petition does not result in discontinuation of the proceedings. The proceedings continue on the basis of the remaining insolvency filings.

III. RECOMMENDATIONS

In the event of an insolvency filing, as well as after the opening of insolvency proceedings, the following recommendations for action are suggested:

- **Act within the window of opportunity:** Immediately after the insolvency filing, assess whether the conditions for withdrawal may be satisfied. The sooner the withdrawal occurs, the less adverse the impact on the company — particularly regarding its reputation and business relationships.
- **Permanently resolve the grounds for insolvency:** Ensure that insolvency grounds have been effectively and permanently resolved before withdrawing a self-filed petition, and document this thoroughly. Withdrawing an insolvency filing in breach of statutory duties or failing to submit an insolvency filing when required may result in personal liability for the managing directors, as well as civil and criminal consequences.
- **Communicate with the court promptly:** Notify the insolvency court immediately of the intended withdrawal. Early engagement with the competent judge or judicial officer can expedite the proceeding, prevent misunderstandings, and, where applicable, ensure that protective measures already ordered are lifted promptly.
- **Coordinate with creditors:** Particularly where the insolvency filing was submitted by a creditor, contact such creditor without delay and clarify the conditions for withdrawal.
- **Account for other petitions:** Verify whether additional insolvency filings exist beyond the one to be withdrawn. If so, all petitioners must be persuaded to withdraw their respective filings in order to achieve a dismissal of the proceedings.
- **Obtain specialized legal support:** Engage specialized attorneys to handle the withdrawal of an insolvency filing. The legal, economic, and tactical implications are complex and require careful assessment on a case-by-case basis.