

Übersetzung durch Ute Reusch

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Introductory Act to the Insolvency Code (Einführungsgesetz zur Insolvenzordnung – EGIInsO) – Excerpts –

Introductory Act to the Insolvency Code of 5 October 1994 (Federal Law Gazette I, p. 2911),
as last amended by Article 36 of the Act of 10 August 2021 (Federal Law Gazette I, p. 3436)

Part 3

International insolvency law. Transitional and concluding provisions

Article 102

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

Section 1

Local jurisdiction

(1) If, in insolvency proceedings, the German courts have international jurisdiction pursuant to Article 3 (1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1) without a domestic venue existing under section 3 of the Insolvency Code (*Insolvenzordnung*), then the insolvency court in whose district the centre of a debtor's main interests is situated has exclusive jurisdiction.

(2) If the German courts have jurisdiction pursuant to Article 3 (2) of Regulation (EC) No 1346/2000, then the insolvency court in whose district the debtor's registered office is situated has exclusive jurisdiction. Section 3 (2) of the Insolvency Code applies accordingly.

(3) Irrespective of jurisdiction as set out in subsections (1) and (2), each domestic insolvency court has jurisdiction for judgments or other measures pursuant to Regulation (EC) No 1346/2000 in whose district assets belonging to the debtor are located. The governments of the *Länder* are empowered, for the purposes of expedient furtherance or expedited conduct of proceedings, to allocate the judgments or measures pursuant to Regulation (EC) No 1346/2000 for the districts of several insolvency courts to one of these by statutory instrument. The governments of the *Länder* may delegate such power to the judicial administrations of the *Länder*.

Section 2

Reasoning for order opening insolvency proceedings

If it is to be presumed that assets belonging to the debtor are located in another Member State of the European Union, the order opening the insolvency proceedings is, as a rule, to describe in brief the actual findings and legal considerations on the basis of which jurisdiction pursuant to Article 3 of Regulation (EC) No 1346/2000 is established for the German courts.

Section 3

Avoidance of conflicts of jurisdiction

(1) If the court of another Member State of the European Union has opened main insolvency proceedings, then as long as these insolvency proceedings are pending a request to open such proceedings before a domestic insolvency court regarding the assets belonging to the insolvency estate is inadmissible. Proceedings opened contrary to sentence 1 may not be continued. The administrator in the foreign main insolvency proceedings is also entitled to bring a complaint against the opening of the domestic proceedings.

(2) If the court of another Member State of the European Union has refused to open insolvency proceedings because it claims that the German courts have jurisdiction pursuant to Article 3 (1) of Regulation (EC) No 1346/2000, then a German insolvency court may not refuse to open the insolvency proceedings because the courts of another Member State are alleged to have jurisdiction.

Section 4

Discontinuation of insolvency proceedings in favour of courts of another Member State

(1) If, in accordance with section 3 (1), the insolvency court may not continue insolvency proceedings which have already been opened, it discontinues the proceedings ex officio in favour of the courts of the other Member State of the European Union. Prior to discontinuation, the insolvency court is, as a rule, to hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor. If the insolvency proceedings are discontinued, each creditor in the insolvency proceedings is entitled to complain.

(2) Effects of the insolvency proceedings which already arose prior to discontinuation of the proceedings and are not restricted to the duration of these proceedings also continue if they contradict effects of insolvency proceedings opened in another Member State of the European Union which relate to domestic territory pursuant to Regulation (EC) No 1346/2000. This also applies to transactions which have been effected during the discontinued proceedings by the insolvency administrator or towards the insolvency administrator in the exercise of his or her office.

(3) Prior to discontinuation in accordance with subsection (1), the insolvency court is required to inform the court of the other Member State of the European Union at which the proceedings are pending of the imminent discontinuation; in doing so, it is, as a rule, to be stated how the opening of the proceedings which are to be discontinued was announced, in what public books and registers the opening was entered and the name of the insolvency administrator. Reference is to be made in the discontinuation order to the court of the other Member State in whose favour the proceedings are discontinued. This court is to be provided with a copy of the discontinuation order. Section 215 (2) of the Insolvency Code does not apply.

Section 5

Publication

(1) The request for publication of the essential content of the judgments referred to in Article 21 (1) of Regulation (EC) No 1346/2000 is to be addressed to the court with jurisdiction under section 1. The court may require a translation, which is to be certified by a person authorised to do so in one of the Member States of the European Union. Section 9 (1) and (2) and section 30 (1) of the Insolvency Code apply accordingly.

(2) If the debtor has a registered office on domestic territory, publication is effected ex officio in accordance with subsection (1). If the opening of the insolvency proceedings has been published, then termination is to be published in the same manner.

Section 6

Entry in public books and registers

(1) The request for entry in accordance with Article 22 of Regulation (EC) No 1346/2000 is to be addressed to the court with jurisdiction under section 1. The latter requests the agency keeping the register to make an entry if the opening of the proceedings is also entered in accordance with the law of the state in which the main insolvency proceedings were opened. Section 32 (2) sentence 2 of the Insolvency Code does not apply.

(2) The form and content of the entry are governed by German law. If the law of the state in which proceedings were opened provides for entries which are unknown to German law, the insolvency court is required to select an entry which comes closest to that of the state in which proceedings were opened.

(3) If the request referred to in subsection (1) or in section 5 (1) is received by a court which lacks jurisdiction, the latter forwards the application without delay to the court which has jurisdiction and informs the person filing the request thereof.

Section 7

Appeal

An immediate appeal is admissible against the judgment of the insolvency court as referred to in section 5 or section 6. Sections 574 to 577 of the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly.

Section 8

Enforcement of decision to open proceedings

(1) If the administrator of main insolvency proceedings is empowered, in accordance with the law of the state in which proceedings were opened, on the basis of the decision to open proceedings to implement by means of enforcement surrender of the assets in the keeping of the debtor, then Article 25 (1) first subparagraph of Regulation (EC) No 1346/2000 applies to the declaration of enforceability on domestic territory. Sentence 1 applies accordingly to the disposal of objects from the insolvency estate by means of coercive enforcement.

(2) Section 6 (3) applies accordingly.

Section 9

Insolvency plan

If an insolvency plan provides for the suspension, waiver or other restrictions of the creditors' rights, it may only be confirmed by the insolvency court if all the creditors concerned have agreed to the plan.

Section 10

Suspension of disposal

If, upon the request of the administrator in the main insolvency proceedings under Article 33 of Regulation (EC) No 1346/2000 in secondary domestic insolvency proceedings, the liquidation of an article is stayed in which there is a special right, then the creditor is to continue to be paid the interest owed from the insolvency estate.

Section 11

Notification of creditors

In addition to the order opening the insolvency proceedings, those creditors who have their habitual residence, domicile or registered office in another Member State of the European Union are to be informed of the consequences of the subsequent filing of claims in accordance with section 177 of the Insolvency Code. Section 8 of the Insolvency Code applies accordingly.

Article 102a

Insolvency administrators from other Member States of European Union

Nationals of another Member State of the European Union or of Contracting Parties to the Agreement on the European Economic Area and persons who have their registered business establishment in one of these states may complete the procedure for inclusion in a preselection list for insolvency administrators kept by the insolvency court via a single office

under the provisions of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*). In such cases a decision regarding requests for inclusion in a preselection list must be taken within three months. Section 42a (2) sentences 2 to 4 of the Administrative Procedure Act applies accordingly.

Article 102b
Implementation of Regulation (EU) No 648/2012

Section 1
Provisions on default procedures of central counterparties

- (1) The opening of insolvency proceedings poses no obstacle to
1. implementation of measures required under Article 48 (2), (4) and (5) sentence 3, and (6) sentence 3 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1) concerning the administration, closing out and other clearing of client positions and proprietary trading positions of the clearing member;
 2. implementation of measures required under Article 48 (4) to (6) of Regulation (EU) No 648/2012 concerning the transfer of client positions;
 3. the use and return of collateral under Article 48 (7) of Regulation (EU) No 648/2012.
- (2) Subsection (1) applies accordingly to the ordering of preservation measures under section 21 of the Insolvency Code.

Section 2
Non-contestability

The measures permissible in accordance with section 1 are not subject to voidability in insolvency proceedings.

Article 102c
Implementation of Regulation (EU) 2015/848 on insolvency proceedings

Part 1
General provisions

Section 1
Local jurisdiction; authorisation to issue statutory instruments

- (1) If the German courts have international jurisdiction in insolvency proceedings pursuant to Article 3 (1) of Regulation (EU) 2015/848 of the European 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), as last amended by Regulation (EU) 2017/353 (OJ L 57, 3.3.2017, p. 19), without jurisdiction having been established pursuant to section 3 of the Insolvency Code, then the insolvency court in whose district the debtor's centre of main interests is located has exclusive local jurisdiction.
- (2) If the German courts have jurisdiction pursuant to Article 3 (2) of Regulation (EU) 2015/848, then the insolvency court in whose district the debtor's establishment is located has exclusive local jurisdiction. Section 3 (2) of the Insolvency Code applies accordingly.
- (3) Notwithstanding the jurisdictions established under this Article, any insolvency court in whose district the debtor's assets are located has local jurisdiction in respect of decisions or other measures taken under Regulation (EU) 2015/848. The governments of the *Länder* are empowered, for the purposes of expedient furtherance or expedited conduct of proceedings under Regulation (EU) 2015/848, to designate by statutory instrument one court to conduct such proceedings for the districts of several insolvency courts. The governments of the *Länder* may delegate such power to the judicial administrations of the *Länder*.

Section 2

Avoidance of conflicts of jurisdiction

(1) Where the court of another Member State of the European Union has opened main insolvency proceedings, a request filed with a German insolvency court to open such proceedings against assets which form part of the insolvency estate is not permissible while these insolvency proceedings are still pending. Proceedings opened in contravention of sentence 1 are to be continued as secondary insolvency proceedings pursuant to Articles 34 to 52 of Regulation (EU) 2015/848 if German courts have jurisdiction pursuant to Article 3 (2) of Regulation (EU) 2015/848; where the conditions for continuation are not met, the proceedings are to be terminated.

(2) Where the court of a Member State of the European Union has refused to open insolvency proceedings because it believes that the German courts have jurisdiction pursuant to Article 3 (1) of Regulation (EU) 2015/848, a German insolvency court may not refuse to open the insolvency proceedings citing that the courts of the other Member State have jurisdiction.

Section 3

Termination of insolvency proceedings in favour of another Member State

(1) Before terminating previously opened insolvency proceedings in accordance with section 2 (1) sentence 2, the insolvency court is, as a rule, to hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor. If the insolvency proceedings are terminated, each insolvency creditor is entitled to appeal.

(2) Any effects of the insolvency proceedings which already arose before their termination and which are not limited to the duration of the proceedings continue even if they contradict the effects of insolvency proceedings which have been opened in another Member State of the European Union and which extend to the Federal Republic of Germany pursuant to Regulation (EU) 2015/848. This also applies to acts performed by the insolvency administrator in the course of the terminated proceedings or to acts which were performed vis-à-vis that insolvency administrator in the exercise of his or her office.

(3) Before terminating the proceedings in accordance with section 2 (1) sentence 2, the insolvency court is required to notify the court in the other Member State of the European Union before which the proceedings are pending and the insolvency administrator who has been appointed in the other Member State about the impending termination. Such notification must include a reference to the manner in which the opening of the proceedings to be terminated was made known, in which public books and registers the opening was entered, as well as the name of the insolvency administrator. The order to terminate the proceedings must designate the court in the other Member State in whose favour the proceedings are to be terminated. That court is to be sent a copy of the order to terminate the proceedings. Section 215 (2) of the Insolvency Code does not apply.

Section 4

Appeal under Article 5 of Regulation (EU) 2015/848

Notwithstanding section 21 (1) sentence 2 and section 34 of the Insolvency Code, the debtor and each creditor may make an immediate appeal against the order to open the main insolvency proceedings in accordance with Article 3 (1) of Regulation (EU) 2015/848 if the lack of international jurisdiction to open the main insolvency proceedings is to be challenged under Article 5 (1) of Regulation (EU) 2015/848. Sections 574 to 577 of the Code of Civil Procedure apply accordingly, whereby, in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal does not take effect until it is final.

Section 5

Additional information in debtor's request to open proceedings

Where there are indications that another Member State of the European Union might also have international jurisdiction in respect of opening main insolvency proceedings pursuant to

Article 3 (1) of Regulation (EU) 2015/848, the debtor's request to open proceedings must contain the following additional information:

1. since when the debtor's registered office, principle place of business or habitual residence has been at the place referred to in the request,
2. facts substantiating that the debtor conducts the administration of interests in the Federal Republic of Germany on a regular basis,
3. in which other Member States the debtor's creditors or substantial parts of the debtor's assets are located or substantial parts of the debtor's activities are exercised and
4. whether a request to open insolvency proceedings has already been made or main insolvency proceedings have already been opened in another Member State.

Sentence 1 does not apply to motions to be filed in consumer insolvency proceedings under section 305 (1) of the Insolvency Code.

Section 6

Local jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them

(1) Where, in consequence of the opening of insolvency proceedings, the German courts have jurisdiction for actions referred to in Article 6 (1) of Regulation (EU) 2015/848 without local jurisdiction having been established in accordance with other provisions, jurisdiction is determined on the basis of the seat of the insolvency court.

(2) As regards actions referred to in Article 6 (1) of Regulation (EU) 2015/848 which are linked to other actions under civil or commercial law against the same accused pursuant to Article 6 (2) of the Regulation, that court also has local jurisdiction which has jurisdiction for the other actions under civil or commercial law.

Section 7

Publication

(1) The request for publication as referred to in Article 28 (1) of Regulation (EU) 2015/848 is to be made to the court which is competent in accordance with section 1 (2).

(2) The request for publication as referred to in Article 28 (2) of Regulation (EU) 2015/848 is to be made to the insolvency court in whose district the substantial part of the debtor's assets are located. If the debtor has no assets in the Federal Republic of Germany, the request may be made to any insolvency court.

(3) The court may require submission of a translation of the request, which must be certified by a person authorised to do so in one of the Member States of the European Union. Section 9 (1) and (2) and section 30 (1) of the Insolvency Code apply accordingly. If the order to open insolvency proceedings has been published, the order to terminate them must be published ex officio in the same manner.

(4) If a court which is not competent in the matter receives a request as referred to in subsection (1), it without delay forwards said request to the competent court and notifies the requesting party thereof.

Section 8

Registration in public books and registers

(1) The request for registration as referred to in Article 29 (1) of Regulation (EU) 2015/848 is to be made to the court which is competent in accordance with section 1 (2). It is, as a rule, to be linked to the request made in accordance with Article 28 (1) of Regulation (EU) 2015/848. The court requests that the agency keeping the register make the entries. Section 32 (2) sentence 2 of the Insolvency Code does not apply.

(2) The request for registration as referred to in Article 29 (2) of Regulation (EU) 2015/848 is to be made to the court which is competent in accordance with section 7 (2). It is, as a rule,

to be linked to the request made in accordance with Article 28 (2) of Regulation (EU) 2015/848.

(3) The form and content of the entry are governed by German law. If the law of the Member State of the European Union in which the insolvency proceedings have been opened does not require those entries which are to be made under German law, the insolvency court is required to select an entry which is closest to that of the Member State in which the proceedings have been opened.

(4) Section 7 (4) applies accordingly.

Section 9

Appeal against decisions under section 7 or section 8

Decisions of the insolvency court taken in accordance with section 7 or section 8 are subject to immediate appeal. Sections 574 to 577 of the Code of Civil Procedure apply accordingly, whereby, in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal does not take effect until it is final.

Section 10

Execution of orders to open insolvency proceedings

If the administrator in main insolvency proceedings is entitled under the law of the Member State of the European Union in which the insolvency proceedings have been opened to surrender items which are in the debtor's possession by way of execution of the order to open insolvency proceedings, then Article 32 (1) first subparagraph of Regulation (EU) 2015/848 applies to execution in the Federal Republic of Germany. Sentence 1 applies accordingly to the realisation of assets by way of execution.

Part 2

Secondary insolvency proceedings

Division 1

Main insolvency proceedings in Federal Republic of Germany

Section 11

Conditions for giving of undertaking

(1) Where an undertaking is to be given in insolvency proceedings pending in the Federal Republic of Germany pursuant to Article 36 of Regulation (EU) 2015/848, the insolvency administrator must first obtain the agreement of the creditors' committee or, if one has been appointed, of the provisional creditors' committee as referred to in section 21 (2) sentence 1 no. 1a of the Insolvency Code.

(2) Where the insolvency court has ordered debtor-in-possession management, subsection (1) applies accordingly.

Section 12

Publication of undertaking

The insolvency administrator is to occasion publication of the undertaking as well as of the date of and the procedure for its approval. The insolvency administrator is specifically to serve the undertaking on any known local creditors; section 8 (3) sentences 2 and 3 of the Insolvency Code applies accordingly.

Section 13

Notification of intended distributions

Section 12 sentence 2 applies accordingly to notifications to be made in accordance with Article 36 (7) sentence 1 of Regulation (EU) 2015/848.

Section 14

Insolvency administrator's liability in respect of undertaking

Section 92 of the Insolvency Code applies accordingly to the insolvency administrator's liability under Article 36 (10) of Regulation (EU) 2015/848 in insolvency proceedings pending in the Federal Republic of Germany.

Division 2

Main insolvency proceedings in another Member State of European Union

Section 15

Insolvency plan

Where an insolvency plan in secondary insolvency proceedings which have been opened in the Federal Republic of Germany provide for a stay of payment, a write-off or other restrictions on creditors' rights, the insolvency plan may only be confirmed by the insolvency court if all the creditors concerned have agreed to it. Sentence 1 does not apply to provisions in the plan which serve to infringe any rights of separate settlement.

Section 16

Stay of process of realisation of assets

Where, upon the request of the administrator in the main insolvency proceedings, the process of realisation of assets is stayed pursuant to Article 46 of Regulation (EU) 2015/848 in secondary insolvency proceedings which have been opened in the Federal Republic of Germany and a right of separate settlement exists in those assets, the creditors are to be paid, on a continuous basis, the interest due on the insolvency estate.

Section 17

Vote to approve undertaking

- (1) The administrator in the main insolvency proceedings conducts the vote to approve the undertaking referred to in Article 36 of Regulation (EU) 2015/848. Sections 222, 243, 244 (1) and (2) and sections 245 and 246 of the Insolvency Code apply accordingly.
- (2) When giving notification as required under Article 36 (5) sentence 4 of Regulation (EU) 2015/848, the administrator in the main insolvency proceedings informs the local creditors of which distance means of communication are permissible during voting and which groups may be formed for the purpose of the vote. Further, the administrator must indicate that these creditors are to attach those documents when registering their claim which prove that they are local creditors within the meaning of Article 2 no. 11 of Regulation (EU) 2015/848.

Section 18

Voting rights when approving undertaking

- (1) Subject to sentence 2, the owner of a claim registered to participate in the vote to approve the undertaking continues to hold voting rights even if the administrator in the main insolvency proceedings or another local creditor contests that the claim exists or that it represents the claim of a local creditor. If the result of the vote depends on votes which are attributable to contested claims, the administrator or the contesting local creditor may obtain a decision from the court which is competent as per section 1 (2) in respect of the voting rights conferred by the contested claim or a part thereof; section 77 (2) sentence 2 of the Insolvency Code applies accordingly. Sentences 1 and 2 also apply to claims which are subject to a condition. Section 237 (1) sentence 2 of the Insolvency Code applies accordingly.
- (2) The Federal Employment Agency is considered to be a local creditor within the meaning of Article 36 (11) of Regulation (EU) 2015/848 in the procedure concerning an undertaking.

Section 19

Notification of result of vote

Section 12 sentence 2 applies accordingly in respect of notification to be made under Article 36 (5) sentence 4 of Regulation (EU) 2015/848.

Section 20

Appeals against orders to open secondary insolvency proceedings

(1) An immediate appeal is available to the requesting party in the event of the opening of secondary insolvency proceedings being refused in accordance with Article 38 (2) of Regulation (EU) 2015/848 citing an undertaking. Sections 574 to 577 of the Code of Civil Procedure apply accordingly, whereby, in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal does not take effect until it is final.

(2) Where secondary insolvency proceedings are opened in the Federal Republic of Germany, the appeal as referred to in Article 39 of Regulation (EU) 2015/848 is treated as an immediate appeal. Sections 574 to 577 of the Code of Civil Procedure apply accordingly, whereby, in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal does not take effect until it is final.

Division 3

Measures to ensure compliance with undertaking

Section 21

Appeals and requests under Article 36 of Regulation (EU) 2015/848

(1) That insolvency court before which the main insolvency proceedings are pending has exclusive local jurisdiction in respect of decisions on motions as referred to in Article 36 (7) sentence 2 or (8) of Regulation (EU) 2015/848. Motions as referred to in Article 36 (7) sentence 2 of Regulation (EU) 2015/848 must be filed with the insolvency court within a statutory period of two weeks. The period begins to run upon service of notification of the intended distributions.

(2) The court referred to in section 1 (2) is competent in respect of decisions on motions as referred to in Article 36 (9) of Regulation (EU) 2015/848.

(3) Notwithstanding section 58 (2) sentence 3 of the Insolvency Code, the court gives its decision by way of a non-appealable ruling.

Part 3

Insolvency proceedings against assets of members of group of companies

Section 22

Limited application of section 56b and of sections 269a to 269i of Insolvency Code

(1) Where members of a group of companies within the meaning of section 3e of the Insolvency Code are also members of a group of companies within the meaning of Article 2 no. 13 of Regulation (EU) 2015/848,

1. section 269a of the Insolvency Code does not apply insofar as Article 56 of Regulation (EU) 2015/848 applies,

2. section 56b (1) and section 269b of the Insolvency Code do not apply insofar as Article 57 of Regulation (EU) 2015/848 applies.

(2) Where members of a group of companies within the meaning of section 3e of the Insolvency Code are also members of a group of companies within the meaning of Article 2 no. 13 of Regulation (EU) 2015/848, the institution of coordination proceedings in accordance with sections 269d to 269i of the Insolvency Code is ruled out if the conduct of the coordination proceedings would impair the effectiveness of group coordination proceedings conducted pursuant to Articles 61 to 77 of Regulation (EU) 2015/848.

Section 23

Involvement of creditors

(1) If the administrator intends to request group coordination proceedings pursuant to Article 61 (1) of Regulation (EU) 2015/848 and if the conduct of such proceedings is of particular relevance to the insolvency proceedings, then that administrator is required to obtain consent in accordance with sections 160 and 161 of the Insolvency Code. The documents referred to in Article 61 (3) of Regulation (EU) 2015/848 are to be submitted to the creditors' committee.

(2) Subsection (1) applies accordingly in respect of the

1. declaration of an objection to the inclusion of the proceedings in the group coordination proceedings under Article 64 (1) point (a) of Regulation (EU) 2015/848,
2. request for the inclusion of the proceedings in previously opened group coordination proceedings under Article 69 (1) of Regulation (EU) 2015/848 and
3. consent given to a request made by an administrator who was appointed in proceedings against the assets of another member of a group of companies (Article 69 (2) point (b) of Regulation (EU) 2015/848).

Section 24

Stay of process of realisation of assets

Section 16 applies accordingly in respect of the stay of

1. the realisation of assets upon the request of the administrator of another member of a group of companies under Article 60 (1) point (b) of Regulation (EU) 2015/848 and
2. proceedings upon the request of the coordinator under Article 72 (2) point (e) of Regulation (EU) 2015/848.

Section 25

Appeal against decisions under Article 69 (2) of Regulation (EU) 2015/848

A reminder is permissible against the coordinator's decision under Article 69 (2) of Regulation (EU) 2015/848. Section 573 of the Code of Civil Procedure applies accordingly.

Section 26

Appeal against decisions on costs under Article 77 (4) of Regulation (EU) 2015/848

An immediate appeal is permissible against decisions regarding the costs of group coordination proceedings under Article 77 (4) of Regulation (EU) 2015/848. Sections 574 to 577 of the Code of Civil Procedure apply accordingly, whereby, in accordance with section 6 (3) of the Insolvency Code, the decision on the appeal is not effective until it is final.

Article 103

Application of previous law

The previously applicable statutory provisions continue to apply to bankruptcy, composition and coordinated enforcement proceedings for which an application was submitted before 1 January 1999 and to their effects. The same applies to follow-up bankruptcy proceedings in which the preceding petition to institute composition proceedings was filed before 1 January 1999.

Article 103a

Transitional provision

Those statutory provisions which applied until 1 December 2001 continue to apply to insolvency proceedings opened before that date.

Article 103b

Transitional provision regarding the Act Implementing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements and Amending the Mortgage Bank Act and other Acts (*Gesetz zur Umsetzung der Richtlinie 2002/47/EG vom 6. Juni 2002 über Finanzsicherheiten und zur Änderung des Hypothekendarlehensgesetzes und anderer Gesetze*)

Those statutory provisions which applied until 9 April 2004 continue to apply to insolvency proceedings opened before that date.

Article 103c

Transitional provision regarding the Act to Simplify Insolvency Proceedings

(1) With the exception of sections 8 and 9 of the Insolvency Code and of the provisions of the Ordinance on Publication on the Internet in Insolvency Proceedings (*Verordnung zu öffentlichen Bekanntmachungen in Insolvenzverfahren im Internet*), the previously applicable statutory provisions continue to apply to insolvency proceedings opened before the entry into force on 1 July 2007 of the Act to Simplify Insolvency Proceedings (*Gesetz zur Vereinfachung des Insolvenzverfahrens*) of 13 April 2007 (Federal Law Gazette I, p. 509). Notwithstanding subsection (2), only section 9 of the Insolvency Code applies to publications made by the court in insolvency proceedings. Section 188 (3) of the Insolvency Code also applies to insolvency proceedings opened before the entry into force on 18 December 2007 of the Act to Reorganise the Law on Legal Advice (*Gesetz zur Neuregelung des Rechtsberatungsrechts*) of 12 December 2007 (Federal Law Gazette I, p. 2840).

(2) Until 31 December 2008, in addition to electronic publication pursuant to section 9 (1) sentence 1 of the Insolvency Code, publication may in addition be made by notification in a periodical published at the debtor's place of residence or registered office; the publication may be restricted to excerpts. As regards the occurrence of effects resulting from the publication, only publication on the Internet in accordance with section 9 (1) sentence 1 of the Insolvency Code is decisive.

Article 103d

Transitional provision regarding the Act to Modernise the Limited Liability Companies Act and to Combat Abuse (*Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen*)

The previously applicable statutory provisions continue to apply to insolvency proceedings opened before the entry into force on 1 November 2008 of the Act of 23 October 2008 (Federal Law Gazette I, p. 2026). Within the framework of insolvency proceedings opened after 1 November 2008, transactions effected before 1 November 2008 are to be subject to the provisions of the Insolvency Code governing the contestation of transactions applicable until such date, insofar as the transactions escaped contestation under the previous law or were subject to it to a lesser extent.

Article 103e

Transitional provision regarding the Budget Support Act 2011 (*Haushaltsbegleitgesetz 2011*)

Those provisions which applied until 1 January 2011 continue to apply to insolvency proceedings the opening of which was requested before that date.

Article 103f

Transitional provision regarding the Act to Amend Section 522 of Code of Civil Procedure (*Gesetz zur Änderung des § 522 der Zivilprozessordnung*)

The Insolvency Code as applicable until 27 October 2011 continues to apply to decisions concerning immediate appeals in accordance with section 6 of the Insolvency Code regarding which the period set in section 575 of the Code of Civil Procedure had not yet expired on 27 October 2011. Sentence 1 applies accordingly as regards decisions concerning immediate appeals in accordance with Article 102 section 7 sentence 1 of this Introductory Act.

Article 103g

Transitional provision regarding the Act to Further Facilitate the Restructuring of Business Enterprises (*Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen*)

The provisions applicable until 1 March 2012 continue to apply to insolvency proceedings the opening of which was requested before that date. Section 18 (1) no. 2 of the Act on Senior Judicial Officers (*Rechtspflegergesetz*), as applicable since 1 January 2013, applies only to

insolvency proceedings the opening of which was requested after 1 January 2013.

Article 103h

Transitional provision regarding the Act to Shorten Discharge of Residual Debt Proceedings and to Strengthen Creditor Rights (*Gesetz zur Verkürzung des Restschuldbefreiungsverfahrens und zur Stärkung der Gläubigerrechte*)

Subject to sentences 2 and 3, the statutory provisions applicable until 1 July 2014 continue to apply to insolvency proceedings the opening of which was requested before 1 July 2014. Sections 217 to 269 of the Insolvency Code also apply to insolvency proceedings in accordance with sections 304 to 314 of the Insolvency Code as applicable before 1 July 2014 for which a request to open proceedings was filed before that date. Section 63 (3) and section 65 of the Insolvency Code as applicable from 19 July 2013 apply to insolvency proceedings for which a request to open proceedings was filed after 19 July 2013.

Article 103i

Transitional provision regarding the Accounting Directive Implementation Act

Section 22a (1) of the Insolvency Code as amended by the Accounting Directive Implementation Act (*Bilanzrichtlinie-Umsetzungsgesetz*) of 17 July 2015 (Federal Law Gazette I, p. 1245) is first to be applied to insolvency proceedings the opening of which was requested after 31 December 2015.

Article 103j

Transitional provision regarding the Act to Improve Legal Certainty Concerning Challenges Under the Insolvency Code and Under the Act on Contesting Transactions of a Debtor Not Included in Insolvency Proceedings (*Gesetz zur Verbesserung der Rechtssicherheit bei Anfechtungen nach der Insolvenzordnung und nach dem Anfechtungsgesetz*)

(1) Subject to subsection (2), the provisions applicable before 5 April 2017 continue to apply to insolvency proceedings which were opened before that date.

(2) Claims to interest arising or to emoluments received in the context of the contest of debtor's transactions in insolvency proceedings are subject to the provisions applicable before 5 April 2017. Section 143 (1) sentence 3 of the Insolvency Code in the version applicable from 5 April 2017 applies from that date.

Article 103k

Transitional provision regarding Article 2 of the Act to Further Shorten Residual Debt Discharge Proceedings and to Adapt Provisions under the Law of Companies, Cooperatives, Associations and Foundations as well as Rent and Tenancy Law Occasioned by the COVID-19 Pandemic (*Gesetz zur weiteren Verkürzung des Restschuldbefreiungsverfahrens und zur Anpassung pandemiebedingter Vorschriften im Gesellschafts-, Genossenschafts-, Vereins- und Stiftungsrecht sowie im Miet- und Pachtrecht*)

(1) Subject to subsection (2), the provisions applicable until 1 October 2020 continue to apply to insolvency proceedings for which a request was filed before that date.

(2) In the case of insolvency proceedings the opening of which was requested from 17 December 2019 up to and including 30 September 2020, the assignment period within the meaning of section 287 (2) of the Insolvency Code is shortened, for each full month which has elapsed between 16 July 2019 and the date on which the request to open insolvency proceedings was made, by that same period. Hence, the assignment period is as follows:

Date on which request to open insolvency proceedings was made	Assignment period
Between 17 December 2019 and 16 January 2020	Five years and seven months

Date on which request to open insolvency proceedings was made	Assignment period
Between 17 January 2020 and 16 February 2020	Five years and six months
Between 17 February 2020 and 16 March 2020	Five years and five months
Between 17 March 2020 and 16 April 2020	Five years and four months
Between 17 April 2020 and 16 May 2020	Five years and three months
Between 17 May 2020 and 16 June 2020	Five years and two months
Between 17 June 2020 and 16 July 2020	Five years and one month
Between 17 July 2020 and 16 August 2020	Five years
Between 17 August 2020 and 16 September 2020	Four years and eleven months
Between 17 September 2020 and 30 September 2020	Four years and ten months

In proceedings pursuant to sentence 1, a different assignment period quoted in the declaration of assignment is thus irrelevant.

(3) If the debtor was discharged of any residual debt for the last time in accordance with the provisions applicable up to and including 30 September 2020, then section 287a (2) sentence 1 no. 1 of the Insolvency Code continues to apply in the version applicable up to and including 30 September 2020.

(4) If a request to open consumer insolvency proceedings is made between 31 December 2020 and 30 June 2021, then the certification to be presented by the debtor continues to meet the requirements set out in section 305 (1) no. 1 of the Insolvency Code even if it indicates that an unsuccessful attempt was made within the 12 months prior to the request to open proceedings to reach an out-of-court settlement with the creditors concerning the settlement of debts on the basis of a plan.

Article 103l

Transitional provision regarding Article 6 of the Act to Further Shorten Residual Debt Discharge Proceedings and to Adapt Provisions under the Law of Companies, Cooperatives, Associations and Foundations as well as Rent and Tenancy Law Occasioned by the COVID-19 Pandemic

The provisions applicable until 31 December 2020 continue to apply to insolvency proceedings the opening of which was requested before that date.

Article 103m

Transitional provision regarding the Act to Develop Restructuring and Insolvency Law

The provisions applicable until 1 January 2021 continue to apply to insolvency proceedings the opening of which was requested before that date. Section 15b of the Insolvency Code in the version occasioned by the Act to Develop Restructuring and Insolvency Law (*Sanierungs- und Insolvenzrechtsfortentwicklungsgesetz*) of 22 December 2020 (Federal Law Gazette I, p. 3256) applies for the first time to payments made after 31 December 2020.

The statutory provisions applicable until 31 December 2020 continue to apply to payments made before 1 January 2021.

Article 104

Application of new law

In insolvency proceedings the opening of which was requested after 31 December 1998, the Insolvency Code and this Introductory Act also apply to legal relations and rights created before 1 January 1999.

Article 105

Financial futures transactions

(1) If a specific time or a specific period was agreed for financial services which have a market or stock exchange price and that time or the end of that period does not occur until after bankruptcy proceedings have been opened, then performance may not be claimed, but only claims for non-performance. The following, in particular, are considered to be financial services:

1. the supply of precious metals,
2. the supply of financial instruments or comparable rights, unless the acquisition of a participation in a company to establish a long-term association with that enterprise is being planned,
3. performances in specie which have to be made in a foreign currency or in a mathematical unit,
4. performances in specie the amount of which is directly or indirectly determined by the rate of exchange of a foreign currency or mathematical unit, by the rate of interest prevailing for claims or by the price of other goods or services,
5. options and other rights to deliveries or performances in specie pursuant to nos. 1 to 4.

If financial services transactions have been subsumed under a framework contract in which agreement has been reached that, in the event of a breach of contract, that contract can only be terminated as a whole, then the totality of these transactions is deemed to be a reciprocal agreement.

(2) The claim to non-performance refers to the difference between the agreed price and the market or stock exchange price relevant on the second working day after the proceedings were opened at the place of performance for a contract with a comparable performance period. The other party can assert such a claim only in its capacity as bankruptcy creditor.

(3) In the event of bankruptcy proceedings being opened, the regulations laid down in subsections (1) and (2) apply accordingly to insolvency proceedings opened in the five new *Länder* and East Berlin.

Article 105a

Transitional provision regarding the Act to Amend the Insolvency Code and to Amend the Act Concerning the Introduction of the Code of Civil Procedure (*Gesetz zur Änderung der Insolvenzordnung und zur Änderung des Gesetzes betreffend die Einführung der Zivilprozessordnung*)

(1) Section 104 of the Insolvency Code in the version applicable until 10 June 2016 applies to insolvency proceedings the opening of which was requested before that date.

(2) Section 104 of the Insolvency Code in the version applicable until 29 December 2016 applies to insolvency proceedings the opening of which was requested before that date.

Article 106

Contestation of insolvency

The provisions of the Insolvency Code governing the contestation of transactions only apply to transactions effected before 1 January 1999 insofar as they do not escape contestation under the previous law or are subject to it to a lesser extent.

Article 107

Evaluation of the Act to Shorten Residual Debt Discharge Proceedings and to Strengthen Creditor Rights (*Gesetz zur Verkürzung des Restschuldbefreiungsverfahrens und zur Stärkung der Gläubigerrechte*)

- (1) The Federal Government will submit to the Bundestag by 30 June 2018 a report indicating the number of cases in which it was possible to grant the discharge of residual debt after three years. The report is also to contain details regarding satisfaction rates achieved in insolvency and discharge of residual debt proceedings.
- (2) Should the report reveal the need to take legislative measures, the Federal Government is to propose such measures.

Article 107a

Provision regarding the evaluation of the Act to Further Shorten Residual Debt Discharge Proceedings and to Adapt Provisions under the Law of Companies, Cooperatives, Associations and Foundations as well as Rent and Tenancy Law Occasioned by the COVID-19 Pandemic

- (1) The Federal Government will submit to the Bundestag by 30 June 2024 a report concerning the impact which shortening residual debt discharge proceedings has had in terms of consumers' applications, payments and economic behaviour. The report is also to address any possible obstacles to enterprises relaunching following the discharge of their residual debt, such obstacles being based on credit agencies' existing possibilities for storing information relating to insolvency proceedings.
- (2) Should the report reveal the need to take legislative measures, the Federal Government is to propose such measures.

Article 108

Continuity of restrictions on execution

- (1) As regards execution on a debtor concerning whose assets coordinated enforcement proceedings have been instituted, account is also to be taken of the restrictions on execution under section 18 (2) sentence 3 of the Coordinated Enforcement Code (*Gesamtvollstreckungsordnung*) even after 31 December 1998.
- (2) If insolvency proceedings are opened against the assets of such a debtor in accordance with the provisions of the Insolvency Code, the claims subject to the restrictions on execution are to rank lower than the claims referred to in section 39 (1) of the Insolvency Code.

Article 109

Bonds

Insofar as, according to the provisions of *Land* law in conjunction with section 17 (1) of the Introductory Act to the Bankruptcy Code (*Einführungsgesetzes zur Konkursordnung*), the holders of bonds issued before 1 January 1963 by banks other than mortgage banks are entitled to a privilege as regards satisfaction from that bank's mortgages, land charges or bank loans, then account is also to be taken of this privilege in future insolvency proceedings.

Article 110

Entry into force

- (1) Unless otherwise provided, the Insolvency Code and this Introductory Act enter into force on 1 January 1999.
- (2) Section 2 (2) and section 7 (3) of the Insolvency Code, as well as the authorisation of the *Länder* under section 305 (1) no. 1 of the Insolvency Code enter into force on the day following promulgation. The same applies to section 65 of the Insolvency Code and to section 21 (2) no. 1, section 73 (2), section 274 (2), section 293 (2) and section 313 of the

Insolvency Code, insofar as they declare that section 65 of the Insolvency Code is to be applied accordingly.

(3) Article 2 no. 9 of this Act, insofar as it orders the rescission of section 2 (2) sentence 1 of the Act on the Liquidation and Cessation of Companies and Cooperatives (*Gesetz über die Auflösung und Löschung von Gesellschaften und Genossenschaften*), Article 22, Article 24 no. 2, Article 32 no. 3, Article 48 no. 4, Article 54 no. 4 and Article 85 nos. 1 and 2e, Article 87 no. 8d and Article 105 of this Introductory Act enter into force on the day following promulgation.