

Übersetzung durch Ute Reusch

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Insolvency Code (Insolvenzordnung – InsO)

Insolvency Code of 5 October 1994 (Federal Law Gazette I, p. 2866), as last amended by Article 2 of the Act of 7 May 2021 (Federal Law Gazette I p. 850)

Part 1

General provisions

Section 1

Objectives of insolvency proceedings

Insolvency proceedings serve the collective satisfaction of a debtor's creditors by means of liquidation of the debtor's assets and distribution of the proceeds or by reaching an arrangement in an insolvency plan, in particular in order to maintain the enterprise. Honest debtors are given the opportunity to achieve discharge of residual debt.

Section 2

Jurisdiction of local court as insolvency court

(1) The local court in whose district a regional court is located has exclusive jurisdiction for insolvency proceedings, as the insolvency court, for the district of such regional court.

(2) The governments of the *Länder* are empowered to designate other or additional local courts as insolvency courts by way of a statutory instrument for the purposes of expedient furtherance or expedited conduct of proceedings, and to determine different districts of insolvency courts. The governments of the *Länder* may delegate such power to the *Land* departments of justice.

(3) The statutory instruments referred to in subsection (2) are, as a rule, to determine one insolvency court for each district of a higher regional court at which group jurisdiction pursuant to section 3a may be established. The jurisdiction of the insolvency court thus determined may also encompass the district of one higher regional court in a *Land*.

Section 3

Local jurisdiction

(1) The insolvency court in whose district the debtor's place of general jurisdiction is located has exclusive local jurisdiction. If the centre of the debtor's self-employed business activity is located elsewhere, the insolvency court in whose district such place is located has exclusive jurisdiction.

(2) If, in the last six months prior to filing the request, the debtor has made use of any of the instruments referred to in section 29 of the Company Stabilisation and Restructuring Act (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*), then that court also has local jurisdiction which was competent, as the restructuring court, in respect of those measures.

(3) If several courts have jurisdiction, the court first requested to open insolvency proceedings rules out any other jurisdiction.

Section 3a **Group jurisdiction**

(1) At the request of a debtor which is a member of a group of companies within the meaning of section 3e (debtor company in a group of companies), the insolvency court seized of the matter declares its jurisdiction over the other debtor companies in that group of companies (group ancillary proceedings) if an admissible request to open insolvency proceedings has been made in relation to the debtor and the debtor is not manifestly of subordinate importance for the group of companies as a whole. Subordinate importance is generally not to be presumed where, in the previous closed business year, the debtor's total number of employees on an annual average exceeded 15 per cent of the group of companies' total number of employees on an annual average and

1. the debtor's balance sheet total amounted to more than 15 per cent of the group of companies' combined balance sheet total or
2. the debtor's sales revenues amounted to more than 15 per cent of the group of companies' combined sales revenues.

Where several debtor companies in a group of companies have simultaneously filed a request in accordance with sentence 1 or where several requests have been filed and it is not clear which was filed first, the request filed by that debtor which had the most employees in the previous closed business year is decisive; the other requests are not admissible. If none of the debtor companies in the group of companies meets the requirements set out in sentence 2, group jurisdiction can at any rate be established at that court which is competent to open proceedings for that debtor company in the group of companies which had the most employees, on an annual average, in the previous closed business year.

(2) Where there are doubts as to whether concentrating the proceedings with the insolvency court seized of the matter is in the creditors' common interest, the court may refuse the request referred to in subsection (1) sentence 1.

(3) The debtor's right of request transfers to the insolvency administrator upon the opening of the insolvency proceedings and, upon the appointment of a provisional insolvency administrator to whom the power of administration and of disposal concerning the debtor's assets has been transferred, to that provisional insolvency administrator.

(4) At the debtor's request and under the conditions set out in subsection (1), the court which is competent as regards group ancillary proceedings declares that it is also competent, as the restructuring court, as regards group ancillary proceedings in insolvency matters in accordance with subsection (1), that is insofar as it is competent under section 34 of the Company Stabilisation and Restructuring Act.

Section 3b **Continuance of group jurisdiction**

Group jurisdiction established under section 3a remains unaffected where insolvency proceedings against the debtor filing the request are not opened, are terminated or discontinued for as long as proceedings against another debtor company in the group of companies are pending before that court.

Section 3c **Jurisdiction for group ancillary proceedings**

(1) The division at the court with group jurisdiction which is responsible for the proceedings in which group jurisdiction has been established is responsible for group ancillary proceedings.

(2) The request to open group ancillary proceedings may also be submitted to the court with jurisdiction under section 3 (1).

Section 3d

Referral to court with group jurisdiction

(1) Where a request to open insolvency proceedings against the assets of a debtor company in a group of companies is filed with an insolvency court which is not the court with group jurisdiction, the court seized of the matter may refer the proceedings to the court with group jurisdiction. Referral must be made upon request if the debtor files an admissible request to open proceedings with the court with group jurisdiction without delay after learning of a creditor having filed a request to open insolvency proceedings.

(2) The debtor is authorised to file such request. Section 3a (3) applies accordingly.

(3) The court with group jurisdiction may dismiss the provisional insolvency administrator appointed by the first court if this is necessary in order to be able to appoint one person in accordance with section 56b as insolvency administrator for several or all proceedings concerning the debtor companies in a group of companies.

Section 3e

Group of companies

(1) For the purposes of this Code, a group of companies comprises legally independent companies whose centre of main interest is in Germany and which are directly or indirectly affiliated on account of

1. the possibility of exercising dominant influence or
2. their being under common management.

(2) A company and its personally liable partners is also regarded as a group of companies within the meaning of subsection (1) if these include neither a natural person nor a company which has a natural person as a personally liable partner, or the group of companies continues in this manner.

Section 4

Applicability of Code of Civil Procedure

Unless provided otherwise under this Code, the provisions contained in the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly to the insolvency proceedings. Section 128a of the Code of Civil Procedure applies, with the proviso that reference is to be made, in summons to creditors' assemblies and other assemblies and meetings of the parties to the proceedings, to the obligation to not knowingly make audio and video recordings and to ensure, by taking appropriate measures, that third parties are not able to hear or see the audio and video transmission.

Section 4a

Deferment of costs of insolvency proceedings

(1) If the debtor is a natural person and has made a request for discharge of residual debt, the costs of the insolvency proceedings are deferred on request until such time as discharge of residual debt is granted, insofar as the debtor's assets are likely not to be sufficient to cover these costs. Deferment in accordance with sentence 1 also covers the costs of the proceedings regarding the plan for the settlement of debts and the proceedings for discharge of residual debt. The debtor must enclose with the request a declaration as to whether a ground for refusal under section 290 (1) no. 1 pertains. Deferment is ruled out if such a reason pertains.

(2) If the costs of the proceedings are deferred to the debtor, then upon request, a lawyer (*Rechtsanwalt*) of the debtor's choice is appointed who is willing to represent the debtor if representation by counsel appears to be necessary despite the duty of assistance incumbent on the court. Section 121 (3) to (5) of the Code of Civil Procedure applies accordingly.

(3) The effect of deferment is as follows:

1. the Federal or *Land* Treasury may claim

- a) court costs in arrears and those arising,
- b) the claims of the appointed lawyer which transfer to the Treasury

against the debtor only in accordance with the provisions made by the court;

- 2. the appointed lawyer is unable to assert claims for fees against the debtor.

Deferment is effected separately in respect of each stage of the proceedings. Until such time as a decision is made regarding deferment, the effects specified in sentence 1 apply on an interim basis. Section 4b (2) applies accordingly.

Section 4b

Repayment and adjustment of deferred amounts

(1) If the debtor is unable, once discharge of residual debt has been granted, to pay the deferred amount from his or her income and assets, the court may extend deferment and set the monthly instalments to be paid. Section 115 (1) to (3) and section 120 (2) of the Code of Civil Procedure apply accordingly.

(2) The court may alter the ruling regarding the deferment and the monthly instalments at any time insofar as any personal or economic circumstances relevant to the deferment have undergone major changes. The debtor is obliged to report to the court a major change in these circumstances without delay. Section 120a (1) sentences 2 and 3 of the Code of Civil Procedure applies accordingly. A change placing the debtor at a disadvantage is ruled out if four years have passed since termination of the proceedings.

Section 4c

Rescission of deferment

The court may rescind deferment if

- 1. the debtor intentionally or with gross negligence has provided incorrect information regarding circumstances relevant to the opening of insolvency proceedings or to the deferment, or has not submitted a declaration required by the court regarding his or her circumstances;
- 2. the personal or economic conditions for deferment did not apply; in such a case, rescission is ruled out if four years have passed since termination of the proceedings;
- 3. the debtor is more than three months in arrears in respect of payment of a monthly instalment or of the payment of another amount and such arrears are the debtor's fault;
- 4. the debtor is not in appropriate gainful employment and, if unemployed, is not seeking such employment or refuses reasonable activity and thereby impairs the satisfaction of the insolvency creditors; this does not apply in the absence of fault on the part of the debtor; section 296 (2) sentences 2 and 3 applies accordingly;
- 5. discharge of residual debt is refused or revoked.

Section 4d

Legal recourse

(1) Immediate appeal (sofortige Beschwerde) is available to the debtor against refusal to defer or rescission of deferment, as well as against refusal to appoint a lawyer.

(2) If deferment is approved, the Treasury is entitled to file an immediate appeal. The latter may only be based on the fact that deferment should have been rejected given the debtor's personal or economic circumstances.

Section 5

Principles of insolvency proceedings

(1) The insolvency court is required to investigate ex officio all circumstances relevant to insolvency proceedings. In particular, the court may hear witnesses and experts for this purpose.

(2) If the debtor's financial circumstances are comprehensible and if the number of creditors or the amount of the obligations is low, the proceedings are conducted as written proceedings. The insolvency court may order that the proceedings or individual stages in the proceedings be conducted as oral proceedings if this is expedient to further the course of the proceedings. It may rescind or change such order at any time. Such order, its rescission or amendment is to be published.

(3) The court may render its decisions without an oral hearing. If an oral hearing is held, section 227 (3) sentence 1 of the Code of Civil Procedure does not apply.

(4) Tables and records may be prepared and processed automatically. The governments of the *Länder* are empowered to establish more detailed provisions by way of a statutory instrument regarding the keeping of such tables and records, their electronic submission, as well as the electronic submission of accompanying documents and their storage. They may also establish requirements regarding the data formats required for electronic submission. The governments of the *Länder* may delegate such power to the *Land* departments of justice.

(5) Insolvency administrators are, as a rule, to hold available an electronic creditor information system which can be used to make available to each insolvency creditor to have filed a claim, in a standard file format, all the decisions given by the insolvency court, all the reports sent to the insolvency court which do not exclusively concern the claims of other creditors and all the documents concerning their own claims. If the debtor satisfies at least two out of the three criteria referred to in section 22a (1) in the previous business year, then the insolvency administrator must hold available an electronic creditor information system and make the documents referred to in sentence 1 available without delay for electronic retrieval. The administrator without delay provides those entitled to inspect the files access to the necessary data.

Section 6

Immediate appeal

(1) Decisions of the insolvency court are subject to an appellate remedy only in those cases where this Code provides for an immediate appeal. The immediate appeal is to be filed with the insolvency court.

(2) The period within which an immediate appeal has to be brought begins on the day when the court announces its decision or when a decision is served on the parties if it is not announced.

(3) The decision on the appeal does not take effect until it is final. However, the court hearing the appeal may order immediate effectiveness of the decision.

Section 7

(repealed)

Section 8

Service

(1) Documents are served ex officio without the document to be served requiring certification. Service may be effected by posting the documents to the addressee under his or her address; section 184 (2) sentence 1, 2 and 4 of the Code of Civil Procedure applies accordingly. Where the service is to be made on domestic territory, the document is deemed to have been served three days after being dispatched.

(2) Service is not made to persons with unknown residence. If such persons have a representative empowered to receive any documents to be served, the documents are to be served on such representative.

(3) The insolvency court may charge the insolvency administrator with serving the documents referred to in subsection (1). The insolvency administrator may use a third party,

in particular own members of staff, to serve the documents and to file them. The insolvency administrator is required to add the notices given in accordance with section 184 (2) sentence 4 of the Code of Civil Procedure to the court files without delay.

Section 9 Publication

(1) Publication is made by notification in a central and national publication on the Internet,* and such publication may be restricted to excerpts. Documents to be published must refer to the debtor's particulars, with special reference being made to the debtor's address and branch of business. Such publication is deemed to have been effected when two additional days following the day of publication have elapsed.

(2) The insolvency court may occasion additional publications where this is laid down in *Land* legislation. The Federal Ministry of Justice and Consumer Protection is empowered to regulate the details of the central and national publication on the Internet by way of a statutory instrument which requires the approval of the Bundesrat. In doing so, in particular deletion periods are to be provided for, as are regulations ensuring that the publications

1. remain intact, complete and up to date,
2. can be traced to their source at any time.

(3) Publication suffices as evidence of service on all parties to the proceedings even if any provision additionally orders individual service.

Footnote *: www.insolvenzbekanntmachungen.de

Section 10 Hearing of debtor

(1) If any provision requires a hearing of the debtor, such hearing may be waived if the debtor is resident in a foreign country and such hearing would unreasonably delay the proceedings, or if the debtor's residence is unknown. In such a case a representative or relation of the debtor is, as a rule, to be heard.

(2) If the debtor is not a natural person, subsection (1) applies accordingly to the hearing of persons entitled to represent the debtor or holding the debtor's shares. If the debtor is a legal entity and such legal entity has no representative bodies (no management), those with a participating interest in it may be heard; subsection (1) sentence 1 applies accordingly.

Section 10a Preliminary meeting

(1) Debtors who satisfy at least two out of the three criteria referred to in section 22a (1) are entitled to a preliminary meeting at the insolvency court competent for them to discuss objects which are relevant to the proceedings, in particular the conditions for debtor-in-possessor management, debtor-in-possession management planning, the composition of the provisional creditors' committee, the individual who is to be made provisional insolvency administrator or insolvency monitor, any other preservation orders and the authorisation to establish debts incumbent on the estate. If the debtor referred to in sentence 1 is not entitled to a preliminary meeting, it is at the discretion of the court whether to offer to hold such a preliminary meeting.

(2) With the debtor's consent, the court may hear creditors, in particular in order to discuss their willingness to belong to a provisional creditors' committee.

(3) The division for which the court conducts the preliminary meeting in accordance with subsection (1) sentence 1 is responsible for the insolvency proceedings relating to the debtor's assets for the six months following the preliminary meeting.

Part 2

Opening of insolvency proceedings. Recognised assets and parties to proceedings

Division 1
Conditions and procedure for opening of proceedings

Section 11
Admissibility of insolvency proceedings

- (1) Insolvency proceedings may be opened for the assets of any natural person or legal entity. An unincorporated association is, in this respect, deemed equivalent to a legal entity.
- (2) Insolvency proceedings may also be opened for the following:
1. the assets of a company without legal personality (general partnership (*offene Handelsgesellschaft*), partly limited partnership (*Kommanditgesellschaft*), professional partnership (*Partnerschaftsgesellschaft*), company under the Civil Code (*Gesellschaft des Bürgerlichen Rechts*), shipping company, European Economic Interest Grouping (EIG));
 2. under sections 315 to 334, the estate of a deceased person, the joint marital property of a continued community of property or the marital property of a community jointly administered by both spouses or life partners.
- (3) After liquidation of a legal entity or a company without legal personality, insolvency proceedings may be opened as long as the assets have not been distributed.

Section 12
Legal entities under public law

- (1) Insolvency proceedings may not be opened for the assets owned by
1. the Federation or a *Land*;
 2. a legal entity under public law under the supervision of a *Land* if the law of the *Land* exempts such legal entity from insolvency proceedings.
- (2) If the law of a *Land* exempts the assets of a legal entity from insolvency proceedings under subsection (1) no. 2, the employees of such legal entity in the case of its insolvency or overindebtedness, may apply to the *Land* for benefits which they could claim from the institution providing insolvency insurance in the case of insolvency proceedings being opened under the provisions of the Third Book of the Social Code (*Sozialgesetzbuch III*) governing insolvency substitute benefits from the Employment Agency and under the provisions of the Act to Improve Occupational Pensions (*Gesetz zur Verbesserung der betrieblichen Altersversorgung*).

Section 13
Request to open insolvency proceedings

- (1) Insolvency proceedings are opened on written request only. Such request may be filed by the creditors and by the debtor. The debtor must enclose with the request a list of creditors and their claims. If the debtor has a business which has not been discontinued, the list must specifically indicate
1. the largest claims,
 2. the largest secured claims,
 3. claims of the revenue administration,
 4. claims of the social insurance agencies and
 5. claims resulting from employee pension schemes.
- In such cases the debtor must also state the balance sheet total, sales revenues and the average number of employees in the previous business year. The debtor is obliged to provide the information referred to in sentence 4 if
1. the debtor files a request for debtor-in-possession management,

2. the debtor fulfils the criteria set out in section 22a (1) or
3. the appointment of a provisional creditors' committee has been requested.

The list referred to in sentence 3 and the information referred to in sentences 4 and 5 must be accompanied by a declaration that the information is correct and complete.

(2) Such request may be withdrawn until the insolvency court opens the insolvency proceedings or the request has been refused with final effect.

(3) If the request to open proceedings is inadmissible, then the insolvency court without delay calls on the requesting party to remedy the deficiency and set an appropriate deadline therefor.

(4) The Federal Ministry of Justice and Consumer Protection is empowered, by way of a statutory instrument requiring the approval of the Bundesrat, to introduce a form to be used by the debtor to file a request. Where such a form has been introduced in accordance with sentence 1, the debtor must use that form. Separate forms may be used for proceedings which courts process automatically and for those they do not process automatically.

Section 13a

Request to establish group jurisdiction

(1) A request pursuant to section 3a (1) must include the following information:

1. the name, registered office, business purpose, balance sheet total, sales revenues and the average number of employees in the last business year of the other members of the group of companies which are not merely of subordinate importance for the group of companies; the same information is, as a rule, to be provided in respect of the other members of the group of companies;
2. the reasons why concentrating the proceedings before the insolvency court seized of the matter is in the creditors' common interest;
3. whether continuing or restructuring the group of companies or a part thereof is envisaged;
4. which members of the group of companies are institutions within the meaning of section 1 (1b) of the Banking Act (*Kreditwesengesetz*), financial holding companies within the meaning of section 1 (3a) of the Banking Act, capital management companies within the meaning of section 17 (1) of the Investment Code (*Kapitalanlagegesetzbuch*), payment services providers within the meaning of section 1 (1) of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*) or insurance companies within the meaning of section 7 no. 33 of the Insurance Supervisory Act (*Versicherungsaufsichtsgesetz*) and
5. the debtor companies in a group of companies regarding which a request has been made to open insolvency proceedings or regarding which such proceedings have been opened, including the competent insolvency court and the file reference.

(2) The group of companies' last consolidated financial statements must be included with a request pursuant to section 3a (1). Where no such statements are available, the last annual financial statements of those members of the group of companies which are not merely of subordinate importance for the group of companies must be included. The annual financial statements of the other members of the group of companies should be included.

Section 14

Request by creditor

(1) Creditors' requests are admissible if they have a legal interest in the opening of insolvency proceedings and they show claim and the reason why insolvency proceedings should be opened to the satisfaction of the court. The request does not become inadmissible solely on account of the claim being satisfied.

(2) If a request is admissible, the insolvency court is to hear the debtor.

(3) If the creditor's claim is satisfied after filing of the request, the debtor is required to carry the costs of the proceedings in the event of the request being rejected as unfounded. The debtor also carries the costs where a request filed by a creditor on account of the rejection of a non-public stabilisation order made under the Company Stabilisation and Restructuring Act which is effective at the point in time at which the request was filed and the creditor was unable to be aware of the stabilisation order.

Section 15

Right of request in case of legal entities and associations without legal personality

(1) As well as the creditors, any member of the representative entity or, in the case of a company without legal personality or of a partnership limited by shares, any general partner, and any liquidator are entitled to request the opening of insolvency proceedings for the assets owned by such legal entity or company without legal personality. In the absence of management of a legal entity, each shareholder, in the case of a public limited company or a cooperative also each member of the supervisory board, is entitled to file a request.

(2) If such request is not filed by all members of the board of directors, all the general partners, all the partners of a legal entity, all the members of the supervisory board, or all liquidators, it is admissible if the reason why insolvency proceedings should be opened is shown to the satisfaction of the court. In addition, if a request is filed by the partners of a legal entity or by the members of the supervisory board, the lack of management must also be shown to the satisfaction of the court. The insolvency court is required to hear the other members of the board of directors, general partners, partners of the legal entity, members of the supervisory board or liquidators.

(3) If, in the case of a company without legal personality, none of the general partners is a natural person, subsections (1) and (2) apply accordingly to the members of the board of directors, to the general partners and to the liquidators of the partners empowered to represent the company. The same applies if the grouping of companies continues in this way.

Section 15a

Obligation to request in case of legal entities and associations without legal personality

(1) Where a legal entity becomes illiquid or overindebted, the members of the representative body or the liquidators are required without delay to file a request for the opening of proceedings. The request is to be filed at the latest three weeks after the commencement of insolvency and six weeks after the commencement of overindebtedness. The same applies to the representative bodies of the partners authorised to represent the company or the liquidators in the case of a company without legal personality where none of the general partners is a natural person; this does not apply if one of the general partners is another company in which a general partner is a natural person.

(2) In the case of a company within the meaning of subsection (1) sentence 3, subsection (1) applies analogously if the representative bodies of the partners authorised to represent the company are, in turn, companies in which none of the general partners is a natural person, or the grouping of companies continues in this way.

(3) Where a private limited company lacks a management, each partner, in the case of lack of management of a public limited company or a cooperative each member of the supervisory board, is also obliged to file a request, unless that person is not aware of the insolvency or overindebtedness or the lack of management.

(4) Whoever, contrary to subsection (1) sentence 1 and 2, also in conjunction with sentence 3 or subsection (2) or subsection (3),

1. does not file a request for the opening of proceedings or does not do so in good time or

2. does not correctly file a request
is punished with imprisonment for no more than three years or a fine.
(5) If the offender in the cases referred to in subsection (4) acts negligently, the punishment is imprisonment for no more than one year or a fine.
(6) In the case referred to in subsection (4) no. 2, also in conjunction with subsection (5), the act is punishable only if the request to open proceedings has been finally rejected as inadmissible.
(7) Subsections (1) to (6) do not apply to associations and foundations to which section 42 (2) of the Civil Code (*Bürgerliches Gesetzbuch*) applies.

Section 15b

Payments in event of insolvency and overindebtedness; period of limitation

- (1) The members of the representative entity and the liquidators of a legal entity who, under section 15a (1) sentence 1, are obliged to file a request may, following the commencement of insolvency or of overindebtedness of the legal entity, no longer make any payments on its behalf. This does not apply to payments which are consistent with the due care of a prudent and conscientious manager.
(2) Payments made in the ordinary course of business, in particular those payments which serve to maintain business operations, are, subject to subsection (3), deemed consistent with the due care of a prudent and conscientious manager. During the period laid down in section 15a (1) sentence 1 and 2 within which a request is deemed to have been filed in good time, this applies only for as long as those obliged to file the request implement measures to permanently eliminate the insolvency or to prepare a request for insolvency with the due care of a prudent and conscientious manager. Payments made in the period between the filing of a request and the opening of proceedings are also deemed to be consistent with the due care of a prudent and conscientious manager if they were made with the consent of the provisional insolvency administrator.
(3) If the period laid down in section 15a (1) sentence 1 within which a request is deemed to have been filed in good time has elapsed and those obliged to file the request have filed no request, payments are generally not consistent with the due care of a prudent and conscientious manager.
(4) Where payments are made contrary to subsection (1), those in the legal entity obliged to file a request are obliged to refund the payments made. If the legal entity's creditors have incurred little damage, then the obligation to refund payments made is limited to compensating for that damage. Where the refund or the compensation is necessary to satisfy the legal entity's creditors, the obligation is not ruled out on account of the fact that payment was made on the basis of a decision taken by one of the legal entity's bodies. Any waiver on the part of the legal entity to claims to a refund or to compensation or a settlement with the legal entity concerning these claims is ineffective. This does not apply where the entity obliged to pay the refund or compensation is insolvent and settles with its creditors in order to avert insolvency proceedings being opened if the obligation to refund a payment or pay compensation is regulated in an insolvency plan or if an insolvency administrator acts on behalf of the legal entity.
(5) Subsection (1) sentence 1 and subsection (4) also apply to payments made to those holding a participating interest in the legal entity insofar as these had to lead to the insolvency of the legal entity, unless this was not recognisable even though the due care described in subsection (1) sentence 2 was applied. Sentence 1 does not apply to cooperatives.
(6) Subsections (1) to (5) also apply to the representative bodies of the partners authorised to represent the company which are obliged to file a request under section 15a (1) sentence 3 and (2).
(7) The period of limitation on claims arising from the aforementioned provisions is five years. If the company is listed at the point in time at which the breach of an obligation occurs, the period of limitation on claims is 10 years.

(8) There has been no breach of obligations to pay tax liabilities where claims resulting from those tax liabilities are not met or not met in good time between the commencement of insolvency as per section 17 or of overindebtedness as per section 19 and the insolvency court's decision on the request to open insolvency proceedings, insofar as those obliged to file a request meet their obligations under section 15a. If, contrary to the obligation under section 15a, a request to open insolvency proceedings is filed too late, this only applies to claims resulting from the obligation which become due after the appointment of a provisional insolvency administration or the ordering of provisional debtor-in-possession management. Where insolvency proceedings are not opened owing to a breach of obligation on the part of those obliged to make the request, sentences 1 and 2 do not apply.

Section 16

Reason to open insolvency proceedings

The opening of insolvency proceedings requires the existence of a reason to open such proceedings.

Section 17

Insolvency

- (1) Insolvency is the general reason to open insolvency proceedings.
- (2) Debtors are deemed illiquid if they are unable to meet their mature obligations to pay. Insolvency is generally assumed where a debtor has stopped payments.

Section 18

Imminent insolvency

- (1) If a debtor requests the opening of insolvency proceedings, imminent insolvency is also a reason to open.
- (2) A debtor is deemed to be faced with imminent insolvency if it is likely that the debtor will be unable to meet existing obligations to pay on the date of their maturity. The forecasting period is generally to be 24 months.
- (3) If, in the case of a legal entity or of a company without legal personality, the request is not filed by all the members of the representative body, all the general partners or all the liquidators, subsection (1) applies only if the person or persons filing the request are empowered to represent the legal entity or the company.

Section 19

Overindebtedness

- (1) Overindebtedness is also a reason to open insolvency proceedings for a legal entity.
- (2) Overindebtedness exists if the debtor's assets no longer cover existing obligations to pay, unless it is highly likely, considering the circumstances, that the enterprise will continue to exist for the next 12 months. As regards claims in respect of the restitution of shareholder loans or claims deriving from legal transactions corresponding in economic terms to such a loan for which the creditors and the debtor have agreed, in accordance with section 39 (2), that they rank lower behind the claims set out in section 39 (1), nos. 1 to 5 in the insolvency proceedings, consideration is not to be given to the obligations under sentence 1.
- (3) If none of the general partners of a company without legal personality is a natural person, subsections (1) and (2) apply accordingly. This does not apply if the general partners include another company with a natural person as general partner.

Section 20

Disclosure and cooperation requirements during opening proceedings. Reference to discharge of residual debt

- (1) If the request to open insolvency proceedings is admissible, the debtor is required to disclose to the insolvency court such information as is necessary for a decision on the request and otherwise to support the court in the fulfilment duties. Sections 97, 98 and 101 (1) sentences 1 and 2 and (2) apply accordingly.

(2) If the debtor is a natural person, he or she is, as a rule, to be informed that discharge of residual debt may be obtained in accordance with sections 286 to 303a.

Section 21

Decisions ordering provisional measures

(1) The insolvency court is to take all the measures which appear necessary in order to avoid any change to the debtor's financial situation which is detrimental to the creditors until the insolvency court decides on the request. The debtor is entitled to file an immediate appeal against the ordering of the measure.

(2) In particular, the court may

1. designate a provisional insolvency administrator to whom section 8 (3), as well as sections 56 to 56b, sections 58 to 66 and section 269a apply accordingly;
- 1a. appoint a provisional creditors' committee to which section 67 (2) and (3) and sections 69 to 73 apply accordingly; persons who become creditors only upon the opening of insolvency proceedings may also be appointed as members of the creditors' committee;
2. impose a general prohibition of disposal on the debtor or order that the debtor's disposals require the consent of the provisional insolvency administrator in order to become effective;
3. order a prohibition or provisional restriction on measures of execution against the debtor unless immovables are involved;
4. order provisional interception of the debtor's mail, in respect of which sections 99 and 101 (1) sentence 1 apply accordingly.
5. order that objects which would be covered by section 166 or their separate satisfaction could be requested if proceedings were to be opened may not be used or collected by the creditors and that such objects may be used to continue the enterprise insofar as they are of considerable significance therefor; section 169 sentences 2 and 3 applies accordingly; the creditor is to be recompensed by current payments for any loss in value on account of such use. Such obligation to make recompensing payments only exists to the extent to which the loss in value accruing from such use impairs the security of the creditor with a right to separate satisfaction. Where the provisional insolvency administrator includes a claim transferred to secure a claim rather than the creditor, sections 170 and 171 apply accordingly.

The ordering of preservation measures does not affect the legal validity of disposal over financial securities pursuant to section 1 (17) of the Banking Act and the legal validity of setting off claims and benefits from payment orders, orders between payment services providers or intermediary bodies or orders for the transfer of securities which have been incorporated into systems pursuant to section 1 (16) of the Banking Act. This also applies where a legal transaction by the debtor is effected and set off on the day on which the order is effected or a financial security is ordered and the other party provides proof that they neither knew of the order nor should have known about it; if the other party is a system operator or participant in a system, the day on which the order is effected is deemed to be that business day within the meaning of section 1 (16b) of the Banking Act.

(3) If other measures prove to be insufficient, the court may subpoena the debtor and have the debtor detained after the hearing. If the debtor is not a natural person, the same applies accordingly to the debtor's directors or general partners. Section 98 (3) applies accordingly to the ordering of detention.

Section 22

Legal status of provisional insolvency administrator

(1) If the insolvency court designates a provisional insolvency administrator and imposes a general prohibition of disposal on the debtor, the right to manage and transfer the debtor's property is vested in the provisional insolvency administrator. In such cases the provisional insolvency administrator is required to

1. see to the arrestment and preservation of the debtor's property;
2. continue an enterprise operated by the debtor until the insolvency court decides on the opening of the insolvency proceedings, unless the insolvency court consents to a close-down of such enterprise in order to avoid a considerable loss of the debtor's property;
3. verify whether the debtor's property will cover the costs of the insolvency proceedings; in addition, the insolvency court may charge the insolvency administrator with verifying, as an expert, whether a reason to open insolvency proceedings exists and which prospects exist for the continuation of the debtor's enterprise.

(2) If the insolvency court designates a provisional insolvency administrator without imposing a general prohibition of disposal on the debtor, the court determines the duties of such provisional insolvency administrator. Such duties may not exceed the duties under subsection (1) sentence 2.

(3) The provisional insolvency administrator is entitled to enter the debtor's business premises and to investigate there. The debtor is to grant the provisional insolvency administrator inspection of the debtor's books and business documents. The debtor is required to disclose to the provisional insolvency administrator any necessary information and support the provisional insolvency administrator in the fulfilment of his or her duties; sections 97, 98 and 101 (1) sentences 1 and 2 and (2) apply accordingly.

Section 22a

Appointment of provisional creditors' committee

(1) The insolvency court is to appoint a provisional creditors' committee in accordance with section 21 (2) no. 1a if the debtor satisfied at least two out of the three following criteria in the previous business year:

1. A minimum balance sheet total of 6,000,000 euros after deduction of an amount entered erroneously on the asset side within the meaning of section 268 (3) of the Commercial Code (*Handelsgesetzbuch*);
2. A minimum of 12,000,000 euros sales revenues in the 12 months prior to the balance sheet date;
3. At least 50 employees on an annual average.

(2) At the request of the debtor, of the provisional insolvency administrator or of a creditor, the court is, as a rule, to appoint a provisional creditors' committee in accordance with section 21 (2) no. 1a where the names are put forward of persons who may be considered for membership of the provisional creditors' committee and the declarations of consent of the persons named are enclosed with the request.

(3) A provisional creditors' committee is not to be established if the debtor's business has been discontinued, if the appointment of a provisional creditors' committee is disproportionate in view of the expected insolvency estate or if the delay arising on account of its appointment leads to a detrimental change in the debtor's financial status.

(4) Upon being requested to do so by the court, the debtor or the provisional insolvency administrator is to put forward the names of persons who may be considered for membership of the provisional creditors' committee.

Section 23

Publication of restriction on property transfers

(1) The decision ordering any of the restrictions on property transfers referred to in section 21 (2) no. 2 and designating a provisional insolvency administrator is to be published. It is to be individually served on the debtor, on any person with an obligation to the debtor, and on the provisional insolvency administrator. At the same time, the debtor's obligors are required to meet their obligations to the debtor exclusively in compliance with the order.

(2) If the debtor is registered in a Commercial Register, in a Register of Cooperatives, in a Register of Partnerships or in a Register of Associations, the registry of the insolvency court is to send a copy of such order to the register court.

(3) Sections 32 and 33 apply accordingly to the registration of restrictions on property transfers in the land register, the register of ships and the register of ships under construction, as well as in the register of liens on aircraft.

Section 24

Effects of restrictions on property transfers

(1) Sections 81 and 82 apply accordingly to any contravention of the restrictions on property transfers referred to in section 21 (2) no. 2.

(2) If the right to transfer the debtor's property has been vested in a provisional insolvency administrator, section 85 (1) sentence 1 and section 86 apply accordingly to pending actions.

Section 25

Repeal of preservation measures

(1) Where the preservation measures are repealed, section 23 applies accordingly to the publication of the repeal of a restriction on property transfer.

(2) If the right to transfer the debtor's property has been vested in a provisional insolvency administrator, then any costs incurred must be settled by the provisional insolvency administrator using the property administered and any obligation entered into by the provisional insolvency administrator must be performed before the appointment is repealed. The same applies to obligations under continuing obligations if the provisional insolvency administrator has received the consideration under such contract for the property administered by him or her.

Section 26

Refusal for insufficiency of assets

(1) The insolvency court refuses a request to open insolvency proceedings if the debtor's assets will probably be insufficient to cover the costs of the proceedings. Such refusal is not made if a sufficient amount of money is advanced or the costs have been deferred in accordance with section 4a. The order is to be published without delay.

(2) The court orders that a debtor with respect to whom a request to open insolvency proceedings has been refused for insufficiency of assets is to be entered in the record of debtors in accordance with section 882b of the Code of Civil Procedure and transmits the order electronically without delay to the central enforcement court referred to in section 882h (1) of the Code of Civil Procedure. Section 882c (3) of the Code of Civil Procedure applies accordingly.

(3) Anyone advancing an amount of money in accordance with subsection (1) sentence 2 may claim reimbursement of the advanced amount by any person who, in contravention of the provisions of insolvency or company law, as well as in contravention of that person's duties and culpably, has not requested the opening of insolvency proceedings. Failing agreement as to whether such person has acted in contravention of their duties and culpably in refraining from such request, the burden of proof shifts to that person.

(4) Any person who, contrary to the provisions of insolvency or company law, has in breach of their duties and culpably not filed a request for the opening of insolvency proceedings is obliged to pay the advance referred to in subsection (1) sentence 2. The provisional insolvency administrator or any person who has a well-founded claim against the debtor may demand payment of the advance.

Section 26a

Provisional insolvency administrator's remuneration

- (1) If insolvency proceedings are not opened, the insolvency court makes an order determining the remuneration to be paid and the expenses to be reimbursed to the provisional insolvency administrator.
- (2) The determination is made against the debtor, unless the request to open proceedings is inadmissible or ill-founded and the creditor filing the request acted with gross negligence. In such cases, the remuneration and the expenses to be reimbursed to the provisional insolvency administrator are to be imposed in full or in part on the creditor and are to be issued against the debtor. Gross negligence is, in particular, assumed if the request lacked the prospect of success from the outset and the creditor had to recognise this fact. The order is to be served on the provisional insolvency administrator and on the person who is to bear the provisional insolvency administrator's costs. The provisions of the Code of Civil Procedure on execution from orders assessing costs apply accordingly.
- (3) The provisional insolvency administrator and the person who is to bear the provisional insolvency administrator's costs may file an immediate appeal against the court order.
- Section 567 (2) of the Code of Civil Procedure applies accordingly.

Section 27

Order opening insolvency proceedings

- (1) If insolvency proceedings are opened, the insolvency court appoints an insolvency administrator. Section 270 remains unaffected.
- (2) The order opening the insolvency proceedings specifies the following:
1. the business name or name and first name, date of birth, register court and registration number under which the debtor has been entered in the Commercial Register, branch of business or occupation, commercial establishment or place of abode of the debtor;
 2. the name and address of the insolvency administrator;
 3. the hour when the insolvency proceedings were opened;
 4. the reasons why the court did not choose to appoint the insolvency administrator proposed unanimously by the provisional creditors' committee; the name of the person proposed as insolvency administrator is not to be mentioned;
 5. an abstract presentation of the deletion periods applicable to personal data under section 3 of the Ordinance on Publication on the Internet in Insolvency Proceedings (*Verordnung zu öffentlichen Bekanntmachungen in Insolvenzverfahren im Internet*) of 12 February 2002 (Federal Law Gazette I, p. 677), as last amended by Article 2 of the Act of 13 April 2007 (Federal Law Gazette I, p. 509).
- (3) If the order does not specify the hour when the insolvency proceedings were opened, the moment of opening is deemed to be noon on the day the order was issued.

Section 28

Requirements incumbent on creditors and debtors

- (1) In the order opening the insolvency proceedings, the creditors are to be asked to file their claims in compliance with section 174 with the insolvency administrator within a definite period of time. Such period is to be set at no less than two weeks and no more than three months.
- (2) In the order opening the insolvency proceedings, the creditors are to be asked without delay to inform the insolvency administrator of which security interests they claim to have in personal property or rights of the debtor. Details are to be provided of the object of the claimed security interest, the nature and causal origin of the security interest, as well as the

secured claim. Any person who culpably fails to provide this information or provides it late is liable for the resulting damage.

(3) In the order opening the insolvency proceedings, those persons having obligations to the debtor are to be asked no longer to fulfil these obligations vis-à-vis the debtor, but vis-à-vis the administrator.

Section 29 **Docketing of meetings**

(1) In the order opening the insolvency proceedings the insolvency court sets a date for

1. a creditors' assembly at which a decision is taken on the continuation of the insolvency proceedings based on the insolvency administrator's report (report meeting); such assembly is, as a rule, to be docketed within six weeks and must not be docketed more than three months later;
2. a creditors' assembly in which filed claims are verified (verification meeting); the period between expiry of the period for filing claims and the verification meeting is, as a rule, to be no less than one week and no more than two months.

(2) The meetings may coincide. The court is to dispense with the report meeting if the debtor's financial circumstances are comprehensible and the number of creditors or the amount of the obligations is low.

Section 30 **Publication of order opening insolvency proceedings**

(1) The registry of the insolvency court is required to publish the order opening the insolvency proceedings without delay.

(2) The order is to be served individually on the debtor's creditors and obligors and on the debtor.

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

If the debtor is registered in a Commercial Register, in a Register of Cooperatives, in a Register of Partnerships or in a Register of Associations, the registry of the insolvency court is required to send the following to the register court:

1. a copy of the order opening the insolvency proceedings if insolvency proceedings have been opened;
2. a copy of the order refusing the opening of insolvency proceedings if the opening of insolvency proceedings has been refused for insufficiency of assets, and if the debtor is a legal entity or a company without legal personality liquidated by such order of refusal.

Section 32 **Land register**

(1) The opening of insolvency proceedings is to be entered in the land register

1. for any parcel of real estate with the debtor registered as owner;
2. for the debtor's registered rights to real estate or to registered rights if the type of such rights and the circumstances give rise to the suspicion that the insolvency creditors would be placed at a disadvantage without such entry.

(2) If the insolvency court is aware of such parcels of real estate or such rights, it is required to request the land register to make an entry ex officio. Such entry may also be requested from the Land Registry by the insolvency administrator.

(3) If the administrator releases or sells a parcel of real estate or a right for which the opening of insolvency proceedings has been registered, the insolvency court is to request the land register to delete such entry. Such deletion may also be requested from the Land Registry by the administrator.

Section 33 **Ship/aircraft register**

Section 32 applies accordingly to the registration of the opening of insolvency proceedings in the register of ships and the register of ships under construction, as well as in the register of liens on aircraft. In such a case the parcels of real estate are to be replaced by the ships, ships under construction and aircraft entered in such registers, and the land register by the register court, respectively.

Section 34 **Appeal**

(1) If the opening of insolvency proceedings is refused, the requesting party, and the debtor if the request was refused under section 26, may bring an immediate appeal.
(2) If the insolvency proceedings are opened, the debtor may bring an immediate appeal.
(3) As soon as a decision repealing the order opening insolvency proceedings has become effective such termination of the insolvency proceedings is to be published. Section 200 (2) sentence 2 applies accordingly. The legal effects of transactions executed by or against the insolvency administrator remain unaffected by such termination.

Division 2 **Insolvency estate. Classification of creditors**

Section 35 **Definition of insolvency estate**

(1) Insolvency proceedings cover all the assets owned by the debtor on the date when the proceedings were opened and those acquired by the debtor during the proceedings (insolvency estate).
(2) If the debtor is self-employed or intends to become self-employed in the near future, the insolvency administrator is required to declare to the debtor whether the assets from such non-dependent employment are part of the insolvency estate and whether claims resulting from this business activity may be asserted in the insolvency proceedings. Section 295a applies accordingly. Upon request by the creditors' committee or, if none has been appointed, the creditors' assembly, the insolvency court declares such declaration legally invalid.
(3) Debtors are required to inform the administrator without delay that they have taken up or are continuing in self-employment. If debtors request the administrator to approve such self-employment, the administrator is required to respond to such request without delay, at the latest after one month.
(4) The insolvency administrator is to give notice to the court of such declaration. The court is to publish the declaration and the order concerning its legal invalidity.

Section 36 **Objects not subject to attachment**

(1) Objects not subject to execution do not form part of the insolvency estate. Sections 850, 850a, 850c, 850e, 850f (1), sections 850g to 850l, 851c, 851d, 899 to 904, 905 sentence 1 and 3, and section 906 (2) to (4) of the Code of Civil Procedure apply accordingly. Disposals by debtors of credit on an account which, under the provisions of the Code of Civil Procedure concerning the effects of an account exempt from attachment, is not covered by the attachment, do not necessitate the credit being released by the insolvency administrator in order to be effective.
(2) However, the insolvency estate encompasses

1. the debtor's business records; any legal obligation governing storage of such documents remains unaffected;
 2. in the event of the debtor being self-employed, the objects referred to in section 811 (1) no. 1 (b) and the animals referred to in section 811 (1) no. 8 (b) of the Code of Civil Procedure; objects which are needed in order to continue such self-employment which exists to provide personal services are exempt therefrom.
- (3) Objects forming part of the debtor's usual household and used in the debtor's household do not form part of the insolvency estate if their disposal would obviously yield no more than proceeds largely disproportionate to their value.
- (4) The insolvency court has jurisdiction in respect of rulings as to whether an object is subject to compulsory enforcement in accordance with the provisions specified in subsection (1) sentence 2. Instead of a creditor, the insolvency administrator is entitled to make a request. Sentences 1 and 2 apply accordingly in respect of the opening proceedings.

Section 37

Joint marital property of community of property

- (1) If the joint marital property of a community of property is administered by one spouse only and insolvency proceedings are opened for the assets of that spouse, the insolvency estate encompasses the joint marital property. The joint marital property is not distributed among the spouses. Insolvency proceedings opened for the assets of the other spouse leave the joint marital property unaffected.
- (2) If the joint marital property is administered by both spouses, insolvency proceedings opened for the assets of either spouse leave the joint marital property unaffected.
- (3) Subsection (1) applies to a continued community, with the proviso that the spouse administering the joint marital property alone is replaced by the surviving spouse, and the late spouse by his or her descendants, respectively.
- (4) Subsections (1) to (3) apply accordingly to life partners.

Section 38

Definition of insolvency creditors

The insolvency estate serves to satisfy the well-founded claims held by the personal creditors against the debtor on the date when the insolvency proceedings were opened (insolvency creditors).

Section 39

Lower-ranking insolvency creditors

- (1) The following claims are satisfied ranking below the other claims of insolvency creditors in the order given below and according to the proportion of their amounts if ranking with equal status:
1. the interest and penalties for late payment accruing on the claims of the insolvency creditors from the opening of the insolvency proceedings;
 2. the costs incurred by individual insolvency creditors due to their participation in the proceedings;
 3. fines, regulatory fines, coercive fines and coercive penalty payments, as well as such incidental legal consequences of a criminal or regulatory offence binding the debtor to pay money;
 4. claims to the debtor's gratuitous performance of a consideration;
 5. in accordance with subsections (4) and (5), claims for restitution of a loan replacing equity capital or claims resulting from legal transactions corresponding in economic terms to such a loan.

Sentence 1 no. 5 does not apply where a state development bank or one of its subsidiaries grants a loan to an enterprise in which that state development bank or one of its subsidiaries has a participating interest or has effected another legal act which corresponds, in economic terms, to the granting of a loan.

(2) Claims which the creditor and the debtor agreed to be non-privileged in insolvency proceedings are satisfied after the claims referred to in subsection (1) if the agreement does not provide otherwise.

(3) Interest accruing on the claims of non-privileged insolvency creditors and the costs incurred by such creditors on account of their participation in the proceedings rank with equal status as the claims of such creditors.

(4) Subsection (1) no. 5 applies to companies which neither have a natural person nor a company as general partner in which a general partner is a natural person. If, in the case of the company's impending or existing insolvency or its overindebtedness, a creditor acquires shares for the purpose of the company's rehabilitation, then until the company has been rehabilitated to become sustainable this does not lead to the application of subsection (1) no. 5 to the creditor's claims from existing or newly granted loans or to claims from legal transactions which correspond in economic terms to such a loan.

(5) Subsection (1) no. 5 does not apply to the non-managing partner of a company within the meaning of subsection (4) sentence 1 who holds 10 per cent or less of the liable equity capital.

Section 40

Claims to maintenance

Claims to maintenance under family law against the debtor may be filed in insolvency proceedings for the period after the opening of such proceedings only to the extent to which the debtor would be held liable as the obliged person's heir. Section 100 remains unaffected.

Section 41

Immature claims

(1) Immature claims are deemed to be mature.

(2) If such claims do not bear interest, they are to be discounted at the statutory rate of interest. They are thus reduced to the amount corresponding to the full amount of such claim if the statutory rate of interest for the period from the opening of the insolvency proceedings to its maturity is added.

Section 42

Claims subject to resolutive condition

Account is taken of claims subject to a resolutive condition in the insolvency proceedings as claims which are not subject to a resolutive condition as long as such condition is not accomplished.

Section 43

Liability incumbent on several persons

A creditor holding claims against several persons for the whole of one single payment may file the full amount in insolvency proceedings against any debtor until that creditor is fully satisfied if said creditor had a claim to such full amount on the date when the insolvency proceedings were opened.

Section 44

Rights of joint and several debtors and of guarantors

Joint and several debtors and guarantors may file a claim to be acquired by them in the future against the debtor by satisfaction of the creditor only if the creditor does not file a claim.

Section 44a

Secured loans

In insolvency proceedings concerning the assets of a company, a creditor may, in accordance with section 39 (1) no. 5, only request proportionate satisfaction from the insolvency estate for a claim for restitution of a loan or for a claim of equal rank for which a partner has provided security or for which that partner is liable as guarantor insofar as that partner is no longer able to claim the security or to be liable as guarantor.

Section 45

Conversion of claims

Non-liquidated claims or contingent claims are to be filed at the value estimated for the date when the insolvency proceedings were opened. Claims expressed in foreign currency or in a mathematical unit are to be converted into German currency according to the exchange value applicable at the time of the opening of the proceedings at the place of payment.

Section 46

Recurring payments

Claims to recurring payments with a definite amount and for a definite period are to be filed with the amount resulting from the addition of all open payments reduced by the discount referred to in section 41. If the period of such payments is indefinite, section 45 sentence 1 applies accordingly.

Section 47

Right to separation

Anyone entitled to claim the separation of an object from the insolvency estate under a right in rem or in personam is not an insolvency creditor. That person's entitlement to separation of such object is governed by the legal provisions applicable outside the insolvency proceedings.

Section 48

Right to separation extending to consideration received as substitute for object of separation

If, prior to the opening of insolvency proceedings by the debtor or subsequent to the opening, an object for which separation could have been claimed has been sold by the insolvency administrator without entitlement, then anyone with a right to separation may claim assignment of the right to its consideration as long as such consideration has not been paid. That person may claim such consideration from the insolvency estate to the extent to which such consideration continues to exist in a distinct form among the insolvency estate.

Section 49

Separate satisfaction from immovables

Creditors with a right to satisfaction from objects subject to execution into immovables (immovable objects) are entitled to separate satisfaction under the provisions of the Act Governing Auctions and Sequestrations of Immovables (*Gesetz über die Zwangsversteigerung und die Zwangsverwaltung*).

Section 50

Separate satisfaction of pledgees

(1) Creditors holding a contractual pledge, a pledge acquired by attachment or a legal lien in an object forming part of the insolvency estate are entitled to separate satisfaction in respect of the main claim, interest and costs from the pledged object under sections 166 to 173.
(2) A landlord's or lessor's legal lien may not be claimed in insolvency proceedings for rent or lease payments covering an earlier period than the last 12 months before the opening of insolvency proceedings and for any damages to be paid owing to the termination of such lease by the insolvency administrator. Liens held by lessors of agricultural land are not subject to such restriction with respect to the lease payment.

Section 51

Other creditors with claim to separate satisfaction

The following creditors are deemed equal to those specified under section 50:

1. creditors to whom the debtor has assigned a movable item or a right in order to secure a claim;
2. creditors with a right to withhold an object in consideration of their improvement of the object as far as their claim from such improvement does not exceed the still existing improvement;
3. creditors with a right to withhold an object under the provisions of the Commercial Code;
4. the Federation, the *Länder*, municipalities and municipal associations with regard to objects subject to custom duties and tax under legal provisions to secure the payment of public dues.

Section 52

Elimination of creditors with right to separate satisfaction

Creditors with a right to separate satisfaction are deemed to be insolvency creditors if they also have a personal claim against the debtor. However, they are entitled to proportionate satisfaction of their claim from the insolvency estate only to the extent that they waive their right to separate satisfaction or that such separate satisfaction has failed.

Section 53

Preferential creditors

The insolvency estate is to be used to settle in advance the costs of the insolvency proceedings and the other debts incumbent on the estate.

Section 54

Costs of insolvency proceedings

The following are deemed to be costs of the insolvency proceedings:

1. the court fees in respect of the insolvency proceedings;
2. the remuneration earned and the expenses incurred by the provisional insolvency administrator, the insolvency administrator and the members of the creditors' committee.

Section 55

Other debts incumbent on estate

(1) The following debts are deemed to be further debts incumbent on the estate:

1. debts created by activities by the insolvency administrator or in another way by the administration, disposal and distribution of the insolvency estate without belonging to the costs of the insolvency proceedings;
2. obligations under mutual contracts claimed to be performed to the credit of the insolvency estate or to be settled after the opening of the insolvency proceedings;
3. obligations owing to restitution for unjust enrichment of the insolvency estate.

(2) Obligations created by a provisional insolvency administrator in whom the right to transfer the debtor's property was vested after the opening of the insolvency proceedings are deemed to be debts incumbent on the estate. The same applies to obligations under a continuing obligation if the provisional insolvency administrator has received the consideration to the credit of the assets administered by him or her.

(3) If, in accordance with subsection (2), reasoned wage claims pursuant to section 169 of the Third Book of the Social Code transfer to the Federal Employment Agency, the Agency may only claim these as an insolvency creditor. Sentence 1 applies accordingly in respect of

the claims specified in section 175 (1) of the Third Book of the Social Code to the extent that these are upheld against the debtor.

(4) The insolvency debtor's turnover tax liabilities which were created by a provisional insolvency administrator or by the debtor with the consent of the provisional insolvency administrator or by the debtor after the appointment of a provisional administrator are deemed to be debts incumbent on the estate after the opening of the insolvency proceedings. The following are equal to turnover tax liabilities:

1. other import and export taxes,
2. consumer taxes regulated by federal law,
3. air transport and motor vehicle tax, and
4. income tax.

Division 3

Insolvency administrator. Bodies representing creditors

Section 56

Appointment of insolvency administrator

(1) From among all those persons prepared to take on insolvency administration work the insolvency court is to select and appoint as insolvency administrator an independent natural person who is suited to the case at hand, who is particularly experienced in business affairs and independent of the creditors and of the debtor. Anyone who was involved in a debtor's restructuring matters in the capacity as restructuring officer or restructuring moderator may, if the debtor satisfies at least two out of the three criteria referred to in section 22a (1), only be appointed as insolvency administrator if the provisional creditors' committee consents thereto. The willingness to take on insolvency administration work may be restricted to certain proceedings. The requisite independence is not already ruled out on account of the fact that

1. the person's name was put forward by the debtor or by a creditor or
2. the person in question had given the debtor advice of a general nature on the course and consequences of the insolvency proceedings prior to the request for the opening of insolvency proceedings being filed.

(2) The insolvency administrator receives a letter documenting his or her appointment. Upon termination of office, the insolvency administrator is required to return the letter to the insolvency court.

Section 56a

Creditor's involvement in appointment of administrator

(1) Before the administrator is appointed, the provisional creditors' committee must be given the opportunity to comment on the professional and personal requirements to be met by the administrator, insofar as this does not manifestly lead, within two working days, to any changes which are detrimental to the debtor's financial situation.

(2) The court may choose not to appoint the administrator proposed unanimously by the provisional creditors' committee only if the person proposed is not suited to taking on the office. The court must base its choice of administrator on the requirements to be met by the administrator as agreed by the provisional creditors' committee.

(3) If the court dispenses with the hearing in accordance with subsection (1) out of concern for a detrimental change in the debtor's financial situation, it must provide reasons for its decision in writing. The provisional creditors' committee may in its first meeting unanimously elect a person other than the person appointed as insolvency administrator.

Section 56b

Appointment of administrator for debtors in same group of companies

(1) Where a request is made to open insolvency proceedings against the assets of debtor companies in a group of companies, the insolvency courts applied to must reach agreement as to whether it is in the creditors' interests to appoint only one person as insolvency administrator. When reaching such agreement they are, in particular, to discuss whether this person is able to maintain the necessary independence regarding all the proceedings against debtor companies in the group of companies and whether possible conflicts of interest can be avoided by appointing special insolvency administrators.

(2) The court may deviate from the proposal or the requirements made by a provisional creditors' committee pursuant to section 56a if a provisional creditors' committee appointed for another debtor company in a group of companies unanimously proposes another person who is suited to taking on the role referred to in subsection (1) sentence 1. The provisional creditors' committee is to be heard before appointing this person. Where a special insolvency administrator is to be appointed to resolve conflicts of interest, section 56a applies accordingly.

Section 57

Election of different insolvency administrator

During the first meeting of creditors subsequent to the appointment of the insolvency administrator the creditors may elect a different person as insolvency administrator. The different person is elected if, in addition to the majority specified in section 76 (2), the majority of the voting creditors has also voted for him or her. The court may refuse the appointment only of a person who is unqualified to assume such an office. Any insolvency creditor may bring an immediate appeal against a refusal of appointment.

Section 58

Supervision by insolvency court

(1) The insolvency administrator is subject to supervision by the insolvency court. The court may require the insolvency administrator at any time to give specific information or to report on the progress of the proceedings and on the management.

(2) If the insolvency administrator does not fulfil his or her duties, subsequent to a warning the court may impose an administrative fine on him or her. A coercive penalty payment may not exceed the sum of 25,000 euros. The administrator may bring an immediate appeal against the decision.

(3) Subsection (2) applies accordingly to the implementation of the obligation to return assets in respect of an administrator who has been dismissed.

Section 59

Dismissal of insolvency administrator

(1) The insolvency court may dismiss the insolvency administrator for an important reason. Such dismissal may be ordered ex officio or at the request of the administrator, of the debtor, of the creditors' committee, the creditors' assembly or one of the insolvency creditors. At the request of the debtor or of an insolvency creditor, the insolvency administrator is only dismissed if a request therefor is made within six months of the insolvency administrator's appointment and the administrator is not independent; the person filing the request must show this to the satisfaction of the court. The court is to hear the administrator before giving its decision.

(2) The administrator may bring an immediate appeal against dismissal. The requesting party may bring an immediate appeal. If the creditors' assembly requested the administrator's dismissal, it may also bring an immediate appeal against an order refusing the dismissal of the administrator.

Section 60

Liability of insolvency administrator

(1) Insolvency administrators are liable to all the parties to the proceedings for damages if they violate the duties incumbent on them under this Code. They are required to ensure the due care of a prudent and conscientious insolvency administrator.

(2) If, as regards the fulfilment of the duties incumbent on them as administrator, insolvency administrators have to employ any of the debtor's employees who are not obviously unqualified within the scope of their former activities, then pursuant to section 278 of the Civil Code the administrator is not responsible for errors made by these persons, but is responsible for supervising them, as well as for decisions of particular importance.

Section 61

Non-performance of debts incumbent on estate

If a debt incumbent on the estate created by a legal transaction of the insolvency administrator cannot be fully satisfied from the insolvency estate, the administrator is liable to the preferential creditor for damages. This does not apply if the administrator, in creating such debt, could not be aware of the probable insufficiency of the insolvency estate for performance.

Section 62

Period of limitation

The right to claim damages arising from a breach of duty on the part of the insolvency administrator is governed by the regulations concerning the regular period of limitation under the Civil Code. Such claim is subject to limitation at the latest after three years beginning on the date of termination of the insolvency proceedings or the date when the order discontinuing such proceedings became final. Sentence 2 applies to any violation of duties committed under delayed distribution (section 203) or monitoring of implementation of the plan (section 260), with the proviso that termination of the insolvency proceedings is replaced by the execution of delayed distribution or the termination of monitoring, respectively.

Section 63

Remuneration of insolvency administrator

(1) The insolvency administrator is entitled to remuneration in consideration of execution of office and to reimbursement of adequate expenses. The ordinary rate of such remuneration is calculated based on the value of the insolvency estate when the proceedings are terminated. The scope and complexity of the administrator's execution of office are taken into account by derogating from the ordinary rate.

(2) If the costs of the proceedings have been deferred in accordance with section 4a, the insolvency administrator has a claim against the Treasury in respect of his or payment and expenses insofar as the insolvency assets are insufficient therefor.

(3) A provisional insolvency administrator is remunerated separately for services rendered. A provisional insolvency administrator generally receives 25 per cent of the remuneration paid to the insolvency administrator based on the assets to which the services rendered referred during the opening proceedings. When determining the value of the assets, the point in time at which the provisional administration ended is decisive, alternatively the point in time from which the object is no longer subject to provisional administration. Where the difference between the actual value of the basis for calculating the remuneration and the value on which the remuneration is based is more than 20 per cent, the court may amend the decision concerning the provisional insolvency administrator's remuneration until the decision concerning the insolvency administrator's remuneration has become binding.

Section 64

Determination by insolvency court

(1) The insolvency court determines, by way of an order, the insolvency administrator's remuneration and the expenses to be reimbursed to him or her.

(2) Such order is to be published and individually served on the administrator, the debtor and the members of the creditors committee, if one has been appointed. The amounts determined are not to be published; it is to be indicated in the public notification that the full order may be consulted in the registry.

(3) The administrator, the debtor and any creditor in the insolvency proceedings may bring an immediate appeal against the order. Section 567 (2) of the Code of Civil Procedure applies accordingly.

Section 65

Authorisation to issue statutory instrument

The Federal Ministry of Justice and Consumer Protection is authorised to issue a statutory instrument to regulate the remuneration and reimbursement of the expenses of the provisional insolvency administrator and of the insolvency administrator, as well as the relevant procedures therefor.

Section 66

Rendering of accounts

(1) Upon expiry of his or her office, the insolvency administrator is required to render account to an assembly of creditors.

(2) Prior to such assembly of creditors, the insolvency court verifies the administrator's rendering of accounts. The court lays out the administrator's final account with supporting documents, with a remark indicating verification of the account and with any comments by the creditors' committee, if one has been appointed, for the parties' inspection; it may set a deadline for the creditors' committee to make a statement. The period between the laying out of such documents and the date of the creditors' assembly is, as a rule, to be at least one week.

(3) The creditors' assembly may charge the administrator with intermediate accounts to be rendered on certain dates during the proceedings. Subsections (1) and (2) apply accordingly.

(4) The insolvency plan may derogate from the above.

Section 67

Establishment of creditors' committee

(1) Prior to the first creditors' assembly the insolvency court may establish a creditors' committee.

(2) Such creditors' committee is, as a rule, to represent those creditors with a right to separate satisfaction, the insolvency creditors holding the maximum claims and small sum creditors. The committee is, as a rule, to include a representative of the debtor's employees.

(3) Persons not holding the status of creditors may also be appointed as members of the creditors' committee.

Section 68

Election of different members

(1) The creditors' assembly decides whether to establish a creditors' committee. If the insolvency court has already established a creditors' committee, the creditors' assembly decides whether it is to be maintained in office.

(2) It may vote to dismiss members appointed by the insolvency court or the appointment of additional members to the creditors' committee.

Section 69

Duties incumbent on creditors' committee

The members of the creditors' committee are required to support and monitor the insolvency administrator's execution of office. They are to request information on the progress of business affairs, have the books and business documents inspected and the monetary transactions and the available cash verified.

Section 70

Dismissal

The insolvency court may dismiss a member of the creditors' committee for an important reason. Such dismissal may be ordered ex officio or at the request of such member of the creditors' committee or of the creditors' assembly. The court is to hear such member of the creditors' committee prior to issuing such order; the member is entitled to file an immediate appeal against the decision.

Section 71

Liability of members of creditors' committee

The members of the creditors' committee are liable for damages to the creditors with a right to separate satisfaction and the insolvency creditors if they culpably violate the duties incumbent on them under this Code. Section 62 applies accordingly.

Section 72

Decisions of creditors' committee

A decision taken by the creditors' committee is valid if the majority of members attended the meeting voting on such decision and backed such decision by a majority of the voting members.

Section 73

Remuneration of members of creditors' committee

- (1) The members of the creditors' committee are entitled to remuneration in consideration of execution of their offices and to reimbursement of their adequate expenses. The time and scope of execution of office on the part of the members are to be taken into account.
- (2) Section 63 (2) and sections 64 and 65 apply accordingly.

Section 74

Convening creditors' assembly

- (1) The creditors' assembly is convened by the insolvency court. All the creditors with a right to separate satisfaction, all the insolvency creditors, the insolvency administrator, the members of the creditors' committee and the debtor are entitled to attend such assembly.
- (2) The time, place and agenda of the creditors' assembly are to be published. Such publication may be waived if a creditors' assembly adjourns its transactions.

Section 75

Request to convene creditors' assembly

- (1) A creditors' assembly is to be convened if requested by the following:
1. the insolvency administrator;
 2. the creditors' committee;
 3. at least five creditors with a right to separate satisfaction or non-lower-ranking insolvency creditors whose rights to separate satisfaction and claims together are assessed by the insolvency court to represent one fifth of the sum resulting from the value of all rights to separate satisfaction and of the claims of all non-lower-ranking insolvency creditors;
 4. one or more creditors with a right to separate satisfaction or non-lower-ranking insolvency creditors whose rights to separate satisfaction and claims together are assessed by the insolvency court to represent two fifths of the sum referred to in no. 3.
- (2) The period between receipt of such request and the date of the creditors' assembly is, as a rule, to be no longer than three weeks.
- (3) If the insolvency court refuses an order convening a creditors' assembly, the requesting party may bring an immediate appeal.

Section 76

Decisions by creditors' assembly

- (1) The creditors' assembly is presided over by the insolvency court.
- (2) A decision taken by the creditors' assembly is valid if the sum of the claims held by backing creditors exceeds one half of the sum of claims held by the creditors with voting rights; as regards creditors with a right to separate satisfaction to whom the debtor is not personally liable, the claim is replaced by the value of such right.

Section 77

Determination of voting right

- (1) A voting right is vested in claims which are filed by the creditor and not disputed by the insolvency administrator or by a creditor with a voting right. Lower-ranking creditors have no voting right.
- (2) Creditors with disputed claims have a voting right if the administrator and the attending creditors with a right to vote have agreed such vote during the creditors' assembly. If the parties cannot reach an agreement, the decision taken by the insolvency court prevails. The insolvency court may modify its decision at the request of the administrator or of a creditor attending the creditors' assembly.
- (3) Subsection (2) applies accordingly to
 1. creditors holding claims subject to a condition precedent;
 2. creditors with a right to separate satisfaction.

Section 78

Repeal of decision taken by creditors' assembly

- (1) If a decision taken by the creditors' assembly is against the insolvency creditors' common interest, the insolvency court is to repeal such decision at the request of a creditor with a right to separate satisfaction, of a non-lower-ranking creditor in the insolvency proceedings or of the insolvency administrator if such request is brought during the creditors' assembly.
- (2) Such repeal of a decision is to be published. Any creditor with a right to separate satisfaction and any non-lower-ranking creditor may bring an immediate appeal against a repeal. The requesting party may bring an immediate appeal against an order refusing such repeal.

Section 79

Provision of information to creditors' assembly

The creditors' assembly may require the insolvency administrator to give specific information and a report on the progress of the proceedings and on the management. If a creditors' committee has not been appointed, the creditors' assembly may have the administrator's monetary transactions and the available cash verified.

Part 3

Effects of opening insolvency proceedings

Division 1

General effects

Section 80

Right to manage and transfer insolvency estate vested in insolvency administrator

- (1) Upon insolvency proceedings being opened, the debtor's right to manage and transfer the insolvency estate is vested in the insolvency administrator.
- (2) An existing prohibition of transfers imposed on the debtor and purporting to protect only certain persons (sections 135 and 136 of the Civil Code) does not have binding effect on the proceedings. The provisions governing the effects of an attachment or seizure by way of execution remain unaffected.

Section 81

Disposals by debtor

- (1) If the debtor, after insolvency proceedings have been opened, transfers an object forming part of the insolvency estate, such transfer is invalid. Sections 892 and 893 of the Civil Code, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction (*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*) and sections 16 and 17 of the Act Governing Rights in Aircraft (*Gesetz über Rechte an Luftfahrzeugen*) remain unaffected. The consideration is to be restituted to the other party to the transfer from the insolvency estate if such assets received enrichment by it.
- (2) With respect to an assignment of future claims to emoluments due to the debtor under an employment relationship or to recurring emoluments replacing them, subsection (1) also applies to the extent to which such assignment covers any emoluments to be received by the debtor subsequent to termination of the insolvency proceedings. The debtor's right to assign such emoluments to a trustee for the purpose of collective satisfaction of the insolvency creditors remains unaffected.
- (3) If the debtor transferred an object forming part of the insolvency estate on the day on which the insolvency proceedings were opened, such transfer is presumed to have been effected after the opening of the insolvency proceedings. Any transfer by the debtor in respect of financial securities within the meaning of section 1 (17) of the Banking Act following the opening of insolvency proceedings is, notwithstanding sections 129 to 147, valid if it occurred on the day of the opening and the other party provides proof of neither being aware of nor having had to be aware that proceedings had been opened.

Section 82

Performance in favour of debtor

If the debtor received performance to settle an obligation after the insolvency proceedings were opened although such obligation had to be performed to the credit of the insolvency estate, the performing party is discharged of the obligation if that party was unaware at the time of performance that proceedings had been opened. If such party performed this obligation prior to publication of the order opening the proceedings, said party is presumed to have been unaware that proceedings had been opened.

Section 83

Deceased's estate. Continued community

- (1) If the debtor prior to the opening of the insolvency proceedings succeeded or during the insolvency proceedings succeeds to a deceased's estate or to a legacy, only the debtor is entitled to accept or disclaim such estate or legacy. The same applies to the disclaimer of a continued community.
- (2) If the debtor is a limited heir, the insolvency administrator may not transfer any object forming part of the deceased's estate if such transfer would be invalid under section 2115 of the Civil Code with respect to the reversionary heir if the reversionary heir succeeds to the deceased's estate.

Section 84

Liquidation of company or community

- (1) If a community, another ownership in common or a company without legal personality exists between the debtor and third parties, any distribution or other liquidation is effected outside the insolvency proceedings. The third parties may claim separate satisfaction from the debtor's share determined under such distribution or liquidation to settle any claims arising from the community, ownership in common or company without legal personality.
- (2) An agreement excluding the right to liquidate a community for ever, for a limited period or for a period of notice to be given has no binding effect on the insolvency proceedings. The same applies to a clause in the deceased's will with a similar content and binding on the community of heirs and to a similar agreement among the members of a community of heirs.

Section 85

Joinder of pending actions as plaintiff

- (1) Actions affecting the property forming part of the insolvency estate and pending for the debtor as plaintiff on the date when the insolvency proceedings are opened may be joined by the insolvency administrator with their existing status. If such joinder is delayed, section 239 (2) to (4) of the Code of Civil Procedure applies accordingly.
- (2) If the administrator refuses such joinder, the debtor and the defendant may continue the action.

Section 86

Joinder of certain pending actions as defendant

- (1) Actions pending against the debtor as defendant on the date when the insolvency proceedings are opened may be joined by the insolvency administrator or continued by the plaintiff if they cover:

1. the separation of an object from the insolvency estate;
2. separate satisfaction; or
3. a debt incumbent on the estate.

- (2) If the administrator acknowledges such claim immediately, the plaintiff may claim reimbursement of the costs incurred for such action only as an insolvency creditor.

Section 87

Claims held by insolvency creditors

Insolvency creditors can only enforce their claims under the provisions which govern the insolvency proceedings.

Section 88

Execution prior to opening of insolvency proceedings

- (1) If an insolvency creditor during the last month preceding the request to open insolvency proceedings or after such request acquired, by virtue of execution, a security attaching the debtor's property forming part of the insolvency estate, such security becomes invalid when the insolvency proceedings are opened.
- (2) The period referred to in subsection (1) is three months if consumer insolvency proceedings are opened in accordance with section 304.

Section 89

Prohibition of execution

- (1) Individual insolvency creditors may not execute into the insolvency estate or into the debtor's other property during the insolvency proceedings.
- (2) Even creditors without the status of insolvency creditors may not execute during the proceedings into future claims to emoluments due to the debtor under an employment relationship or into recurring emoluments replacing them. This does not apply to execution under a claim for maintenance or under a claim arising from wilful tort into the amount of emoluments not subject to attachment by other creditors.
- (3) The insolvency court decides on any relief to be granted against execution under subsections (1) or (2). Prior to its decision the court may issue a restraining order; in particular, it may order provisional suspension of such execution with or without provision of a security and its continuation subject to a security.

Section 90

Prohibition of execution under debts incumbent on estate

- (1) Execution in respect of debts incumbent on the estate which was not caused by a transaction by the administrator is inadmissible for a period of six months from the opening of the insolvency proceedings.
- (2) The following are not considered to be such debts incumbent on the estate:

1. obligations under a mutual contract for whose performance the administrator opted;
2. obligations under a continuing obligation for the period after the first date when the administrator might have terminated such contract;
3. obligations under a continuing obligation insofar as the administrator receives its consideration for the insolvency estate.

Section 91

Exclusion of other acquisition of rights

(1) After the insolvency proceedings are opened, rights in objects forming part of the insolvency estate cannot be acquired with legal effect even if such acquisition of rights is not based on the debtor's transfer or effected by way of execution.

(2) Sections 878, 892 and 893 of the Civil Code, sections 3 (3), 16 and 17 of the Act Governing Rights in Registered Ships and Ships Under Construction, sections 5 (3), 16 and 17 of the Act Governing Rights in Aircraft and section 20 (3) of the Maritime Distribution Code (*Schiffahrtsrechtliche Verteilungsordnung*) remain unaffected.

Section 92

General damage

Rights held by the insolvency creditors for reimbursement of damage suffered jointly by such creditors owing to a reduction of the property forming part of the insolvency estate before or after insolvency proceedings are opened (general damage) may be claimed only by the insolvency administrator during the insolvency proceedings. If such rights are sought against the administrator, they may be claimed only by another, newly appointed insolvency administrator.

Section 93

Personal liability of partners

If insolvency proceedings have been opened for the assets owned by a company without legal personality or by a partnership limited by shares, only the insolvency administrator may claim a partner's personal liability for the company's debts during the insolvency proceedings.

Section 94

Preservation of right to set off claim

If, by force of law or on the basis of an agreement, an insolvency creditor had a right to set off a claim on the date when the insolvency proceedings were opened, such right remains unaffected by the proceedings.

Section 95

Acquisition of right to set off claim during proceedings

(1) If, on the date when the insolvency proceedings were opened, one or more of the claims to be set off against each other were conditioned, were immature or did not cover similar types of performance, such set-off may not be effected before its conditions are met. Sections 41 and 45 do not apply. Set-off is ruled out if the claim against which a set-off is to be effected will be unconditioned and mature before it can be set off.

(2) Set-off is not ruled out by the claims being expressed in different currencies or mathematical units if these currencies or mathematical units are freely exchangeable at the place of payment of the claim against which a set-off is to be effected. They are converted according to the exchange value applicable to this place at the time of receipt of the declaration of set-off.

Section 96

Prohibition of set-off

(1) Set-off is inadmissible if

1. an insolvency creditor has become an obligor to the credit of the insolvency estate only after the opening of the insolvency proceedings;
2. an insolvency creditor acquired his or her claim from another creditor only after the opening of the insolvency proceedings;
3. an insolvency creditor acquired the opportunity to set off his or her claim by a transaction subject to contest;
4. a creditor with a claim to be satisfied from the debtor's free property is an obligor to the credit of the insolvency estate.

(2) Subsection (1) and section 95 (1) sentence 3 are not a hindrance to disposal over financial securities within the meaning of section 1 (17) of the Banking Act or the set-off of claims and benefits from payment orders, orders between payment services providers or intermediary bodies or orders for the transfer of securities which were introduced into systems within the meaning of section 1 (16) of the Banking Act which serve to implement such agreements, insofar as the set-off is effected at the latest on the day of when insolvency proceedings are opened; if the other party is a system operator or participant in a system, the day when insolvency proceedings are opened is deemed to be that business day within the meaning of section 1 (16b) of the Banking Act.

Section 97

Debtor's disclosure and cooperation requirements

- (1) Debtors are required to disclose any circumstances relating to the insolvency proceedings to the insolvency court, the insolvency administrator, the creditors' committee and, if so ordered by the insolvency court, to the creditors' assembly. They are also required to disclose any facts which are able to bring about criminal prosecution for commission of a criminal or regulatory offence. However, any fact disclosed by the debtor under the requirement in accordance with sentence 1 may not be used against the debtor without the debtor's consent to trial or proceedings under the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*) brought against the debtor or a relation referred to in section 52 (1) of the Code of Criminal Procedure (*Strafprozeßordnung*).
- (2) Debtors are required to support the administrator in the latter's execution of his or her duties.
- (3) Under an order issued by the court, debtors are obliged to be available at any time to meet their disclosure and cooperation requirements. They are to forbear any activity which is contrary to execution of such duties.

Section 98

Imposition of duties of debtor

- (1) If necessary to provide truthful statements, the insolvency court orders that the debtor make a declaration in lieu of an oath for the records to the effect that the debtor disclosed any demanded facts truly, correctly and completely. Sections 478 to 480 and 483 of the Code of Civil Procedure apply accordingly.
- (2) The court may subpoena debtors and detain them after hearing them
 1. if they refuse to give information or to provide a declaration in lieu of an oath or to support the performance of the duties of the insolvency administrator,
 2. if they attempt to evade the execution of their disclosure and cooperation requirements, in particular by preparing their flight, or
 3. if such subpoena and detainment are necessary to avoid their activities contradicting the execution of their disclosure and cooperation requirements, in particular to secure the insolvency estate.

(3) Section 802g (2), section 802h and section 802j (1) of the Code of Civil Procedure apply accordingly in respect of the ordering of detention. The order imposing detention is to be rescinded ex officio as soon as the conditions for the ordering of detention no longer exist. Immediate appeal is available against the ordering of detention, as well as against refusal of an application for rescission of the order imposing detention if its conditions no longer exist.

Section 99

Interception of debtor's mail

(1) If such measure seems necessary in order to investigate or prevent the debtor's legal transactions disadvantaging the creditors, then the insolvency court at the insolvency administrator's request or ex officio, by order and giving grounds, orders that the companies referred to in the order are to redirect to the administrator certain or all mail consignments addressed to the debtor. The order is issued after hearing the debtor, unless this would endanger the purpose of the order owing to the particular circumstances of the case. If the debtor is not previously heard, grounds for this must be given in the order and the hearing carried out without delay afterwards.

(2) The administrator is entitled to open any mail consignment redirected to him or her. Mail consignments with content which is unrelated to the insolvency estate is to be forwarded to the debtor without delay. Any other mail consignments may be inspected by the debtor.

(3) Debtors may bring an immediate appeal against the ordering of interception of their mail. After hearing the administrator, the insolvency court is required to repeal such order if its conditions have ceased to exist.

Section 100

Maintenance payments using insolvency estate

(1) The creditors' assembly determines whether and to what extent the debtor and the debtor's family are to be granted maintenance using the insolvency estate.

(2) Until the creditors' assembly reaches a decision, the insolvency administrator, with the agreement of the creditors' committee, if one has been appointed, may grant necessary maintenance to the debtor. In the same way it is possible to grant maintenance to the debtor's minor unmarried children, spouse, former spouse, life partner, former life partner and the other parent of the debtor's child regarding a claim under sections 1615l and 1615n of the Civil Code.

Section 101

Members of body representing debtor. Employees

(1) If the debtor is not a natural person, sections 97 to 99 apply accordingly to the members of the body representing or supervising the debtor, as well as to any general partners authorised to represent the debtor. In addition, sections 97 (1) and 98 apply accordingly to persons who left a position referred to in sentence 1 no earlier than two years before the opening of insolvency proceedings was requested; if the debtor has no representative, this also applies to those persons holding a participating interest. Section 100 applies accordingly to the debtors general partners who are authorised to represent the debtor.

(2) Section 97 (1) sentence 1 applies accordingly to the debtor's employees and previous employees, insofar as these did not leave earlier than two years prior to the opening of insolvency proceedings being requested.

(3) If those referred to under subsections (1) and (2) do not meet their disclosure and cooperation requirements, they may, if the request to open insolvency proceedings is rejected, be required to carry the costs of the proceedings.

Section 102

Restriction of basic right

Section 21 (2) no. 4 and sections 99 and 101 (1) sentence 1 restrict the basic right to privacy of correspondence, posts and telecommunications (Article 10 of the Basic Law (*Grundgesetz*)).

Division 2

Performance of transactions. Cooperation of works council

Section 103

Option to be exercised by insolvency administrator

(1) If a mutual contract was not or not performed in full by the debtor and the other party on the date when the insolvency proceedings were opened, the insolvency administrator may perform such contract instead of the debtor and claim the other party's consideration.

(2) If the administrator refuses to perform such contract, the other party is entitled to its claims for non-performance only as an insolvency creditor. If the other party requires the administrator to opt for performance or non-performance, the administrator is to state his or her intention to claim performance without negligent delay. If the administrator does not give this statement, it is no longer possible to insist on performance.

Section 104

Fixed-date transactions, financial services, contractual liquidation netting

(1) If the delivery of goods with a market or stock exchange price was agreed to take place exactly on a fixed date or within a fixed period, and if such date or expiry of the period occurs after the insolvency proceedings were opened, performance may not be claimed, but only claims for non-performance. This also applies to financial services transactions with a market or stock exchange price for which performance was agreed to take place on a fixed date or within a fixed period and such date or expiry of the period occurs after the insolvency proceedings were opened. 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 company is being planned,
3. performances in specie
 - a) which have to be effected in foreign currency or in a mathematical unit or
 - b) the amount of which is indirectly or directly determined by the exchange rate of a foreign currency or mathematical unit, by the interest rate prevailing for claims or by the price of other goods or services,
4. services and performances in specie deriving from derivative financial instruments which are not ruled out by no. 2,
5. options and other rights to deliveries pursuant to sentence 1 or to deliveries, performances in specie, options and rights within the meaning of nos. 1 to 5,
6. financial securities within the meaning of section 1 (17) of the Banking Act.

Financial instruments within the meaning of sentence 3 no. 2 and no. 4 are the instruments referred to in Annex 1 Section C of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349; L 74, 18.3.2015, p. 38; L 188, 13.7.2016, p. 28; L 273, 8.10.2016, p. 35), as last amended by Directive (EU) 2016/1034 (OJ L 175, 30.6.2016, p. 8).

(2) Such claim for non-performance is based on the market or stock exchange price of the transaction. The market or stock exchange price is considered to be

1. the market or stock exchange price of a substitute transaction which is concluded without delay, at the latest, however, on the fifth working day after the opening of insolvency proceedings or

2. the market or stock exchange price of a substitute transaction which could have been concluded on the second working day after the opening of insolvency proceedings if no substitute transaction as referred to in no. 1 is concluded.

Where the market does not permit the conclusion of a substitute transaction in accordance with sentence 2 no. 1 or no. 2, the market and stock exchange price is to be determined on the basis of those methods and procedures which guarantee fair valuation of the transaction.

(3) Where transactions as referred to in subsection (1) are grouped together under a single contract based on a framework contract or the policy of a central counterparty within the meaning of section 1 (31) of the Banking Act and such contract or policy provides that the incorporated transactions may, on certain grounds, only be terminated together, then the incorporated transactions as a whole are considered to be one transaction within the meaning of subsection (1). This also applies if other transactions are incorporated at the same time; general provisions apply to the latter.

(4) The contracting parties may agree deviating provisions as long as these comply with the essential basic principles of the relevant statutory provision from which they deviate. They may, in particular, agree

1. that the effects referred to in subsection (1) also arise before the opening of insolvency proceedings, in particular if one of the contracting parties requests the opening of insolvency proceedings against its own assets or in the event of a reason to open proceedings (contractual termination),
2. that those transactions referred to in subsection (1) are also subject to contractual termination for which the claims to delivery of the goods or the provision of the financial service become due before insolvency proceedings are opened but after the point in time determined for contractual termination,
3. that, for the purposes of determining the market or stock exchange price of the transactions,
 - a) the date of the contractual termination takes the place of the date of the opening of insolvency proceedings,
 - b) the substitute transaction can be effected in accordance with subsection (2) sentence 2 no. 1 before the end of the twentieth working day after contractual termination insofar as this is necessary for the purposes of preserving value,
 - c) a point in time or period of time between the contractual termination and the end of the fifth working day following either of these is decisive rather than the point in time referred to in subsection (2) sentence 2 no. 2.

(5) The other party may bring the claim for non-performance only as an insolvency creditor.

Section 105 **Severable contracts**

If the contractual performances due to the parties are severable and if the other party had already performed part of the services incumbent on it on the date when the insolvency proceedings were opened, such other party is deemed to be an insolvency creditor for the amount of its claim to consideration corresponding to the part of the services already performed by it, even if the insolvency administrator claims performance of the services not yet performed. The other party is not entitled to claim restitution for non-performance of its claim to the consideration of the part of services transferred to the debtor's assets before the insolvency proceedings were opened.

Section 106 **Priority notice**

(1) If a priority notice was entered into the land register in order to secure a claim to grant or terminate a right in the debtor's real estate or in a right registered for the debtor, or in order to secure a claim to modify the contents or priority of such right, the creditor may claim satisfaction of his or her claim from the insolvency estate. The same applies if the debtor undertook additional obligations with respect to the creditor and such obligations have not been met or have not been completely met.

(2) Subsection (1) applies accordingly to a priority notice entered in the register of ships, the register of ships under construction or into the register of liens on aircraft.

Section 107 **Retention of title**

(1) If, before the insolvency proceedings were opened, the debtor sold a movable article while retaining title and transferring its possession to the buyer, the buyer may claim performance of the sales contract. The same applies if the debtor has undertaken additional obligations with respect to the purchase and such obligations have not been met or have not been fully met.

(2) If, before the insolvency proceedings were opened, the debtor purchased a movable article in which the seller has retained title and whose possession was transferred to the debtor by the seller, the insolvency administrator, if required by the seller to opt for performance or non-performance, need not submit his or her declaration pursuant to section 103 (2) sentence 2 until immediately after the report meeting. This does not apply if in the period preceding the report meeting a considerable reduction is to be expected in the value of the movable article and the creditor has notified the administrator of this circumstance.

Section 108 **Continuity of certain continuous obligations**

(1) Contracts concluded by a debtor for the lease and tenancy of immovables or premises and the debtor's employment relationships continue to exist, but to the credit of the insolvency estate. This also applies in respect of rental and lease contracts concluded by the debtor as landlord or lessor relating to other effects assigned as a security to a third party which had financed their acquisition or production.

(2) A loan relationship entered into by the debtor as the lender continues with effect for the assets insofar as the object owed is made available to the borrower.

(3) Claims arising before the insolvency proceedings were opened may be brought by the other party only as an insolvency creditor.

Section 109 **Debtor's status as tenant or lessee**

(1) A contract for the tenancy or lease of immovables or premises concluded by the debtor as tenant or lessee may be terminated by the insolvency administrator without regard to the agreed term of the contract or an agreed exclusion of a right to the legal period of notice; the period of notice is three months to the end of the month unless another shorter period is applicable. Where the subject-matter of the lease agreement is the debtor's dwelling, termination is to be replaced by the right of the insolvency administrator to declare that claims becoming due on expiry of the period specified in sentence 1 may not be asserted in the insolvency proceedings. If the administrator terminates under sentence 1 or submits the declaration in accordance with sentence 2, the other party may claim damages as an insolvency creditor for premature termination of such contract.

(2) If the debtor had not yet entered into possession of the immovables or premises when the insolvency proceedings were opened, the administrator and the other party may withdraw from such contract. If the administrator withdraws from the contract, the other party may claim damages as an insolvency creditor for premature termination of the contract. At the other party's request, each party may state within two weeks whether it intends to withdraw from the contract; if any of the parties do not give their statement, they lose the right to withdraw.

Section 110

Debtor's status as landlord or lessor

(1) If the debtor, as landlord or lessor of immovables or premises, assigned a future claim to tenancy or lease fees to a third party before the insolvency proceedings were opened, the validity of such assignment is limited to tenancy or lease fees to be received for the current month following the opening of insolvency proceedings. If the insolvency proceedings were opened after the fifteenth day of the month, the validity of such assignment is also valid in respect of the following month.

(2) In particular, collection of the tenancy or lease fees is deemed to be an assignment for the purpose of subsection (1). An assignment under contract is deemed to be equivalent to a transfer effected by way of execution.

(3) Tenants or lessees may set off any claim entitling them against the debtor against the claim to tenancy or lease fees covering the period referred to in subsection (1). Sections 95 and 96 nos. 2 to 4 remain unaffected.

Section 111

Sale of property let by debtor

If the insolvency administrator sells immovables or premises let by the debtor and if the buyer replaces the debtor as a party of the tenancy or lease, the buyer may terminate the tenancy or lease with the legal period of notice. Such notice may be given only for the first date of the legal period of notice.

Section 112

Prohibition of termination of tenancy or lease contracts

Tenancy or lease contracts concluded by the debtor as tenant or lessee may not be terminated by the other party after the opening of insolvency proceedings has been requested:

1. because of default in the payment of tenancy or lease fees arising before the opening of the insolvency proceedings was requested,
2. because of deterioration in the debtor's financial situation.

Section 113

Termination of employment

An employment relationship may be terminated by the insolvency administrator and by the other party irrespective of any agreed duration of such contract or agreed exclusion of the right to ordinary termination. If no shorter period has been agreed, the period of notice is three months to month's end. If the administrator terminates such contract, the other party may claim damages as an insolvency creditor for premature termination of the employment.

Section 114

(repealed)

Section 115

Expiry of mandates

(1) Any mandate ordered by the debtor referring to the property forming part of the insolvency estate expires upon the insolvency proceedings being opened.

(2) If there is a danger in such suspension of a mandate, the mandatory continues to perform the mandated transaction until the insolvency administrator is able to otherwise take care of such transaction himself or herself. The mandate is thus deemed to continue. Mandatories may claim reimbursement of their expenses incurred for such continuation as a preferential creditor.

(3) As long as a mandatory is not at fault in being unaware of the opening of insolvency proceedings he or she benefits from the presumption that the mandate continues. Mandatories rank among the insolvency creditors as regards their reimbursement claims arising from such continuation.

Section 116

Expiry of management contracts

If anyone is obliged under a service or work contract with the debtor to manage a business transaction for the latter, section 115 applies accordingly. The provisions governing reimbursement claims arising from a continuation of such management contract also apply to claims to remuneration. Sentence 1 does not apply to payment orders or to orders between payment services providers or intermediary bodies and orders for the transfer of securities; these continue to exist with effect for the assets.

Section 117

Expiry of proxies

- (1) A proxy granted by the debtor with respect to the property forming part of the insolvency estate expires upon the insolvency proceedings being opened.
- (2) As far as a mandate or a management contract is deemed to continue under section 115 (2), the related authority is also deemed to continue.
- (3) As long as the authorised person is not at fault in being unaware of the opening of insolvency proceedings, he or she is not held liable under section 179 of the Civil Code.

Section 118

Liquidation of companies

If a company without legal personality or a partnership limited by shares is liquidated by the opening of insolvency proceedings for the property owned by one partner, the managing partner ranks among the preferential creditors as regards his or her claims arising from the provisional continuation of urgent business transactions. As long as the managing partner is not at fault in being unaware of the opening of insolvency proceedings, that managing partner ranks among the insolvency creditors with claims arising from the continuation of business transactions; section 84 (1) remains unaffected.

Section 119

Invalidity of deviating agreements

Agreements which rule out or limit the application of sections 103 to 118 in advance are invalid.

Section 120

Termination of works agreements

- (1) If a works agreement provides for benefits incumbent on the insolvency estate, the insolvency administrator is, as a rule, to consult the works council about reaching agreement on a reduction of such benefits. Such works agreement may be terminated by giving three months' notice even if a longer period of notice has been agreed.
- (2) The right to terminate a works agreement for an important reason without a period of notice remains unaffected.

Section 121

Operational changes and conciliatory proceedings

In insolvency proceedings opened for the entrepreneur's property, section 112 (2) sentence 1 of the Works Constitution Act (*Betriebsverfassungsgesetz*) applies, with the proviso that the conciliatory proceedings are only preceded by an attempt to settle the matter if both the insolvency administrator and the works council request such an attempt.

Section 122

Judicial approval of operational changes

- (1) Where operational changes are envisaged and if the insolvency administrator and the works council cannot reach an agreement pursuant to section 112 of the Works Constitution Act on the reconciliation of interests within three weeks from the beginning of negotiations or written request to begin negotiations although the administrator has provided comprehensive information in good time to the works council, then the administrator may request a decision

from the labour court approving such operational changes without prior proceedings under section 112 (2) of the Works Constitution Act. Section 113 (3) of the Works Constitution Act does not apply in this respect. The administrator's right to bring about a reconciliation of interests pursuant to section 125 or to file a request for a court decision pursuant to section 126 remains unaffected.

(2) The court approves such operational changes if the enterprise's economic situation, also taking into account the employees' social concerns, warrants the execution of such operational changes without previous proceedings in accordance with section 112 (2) of the Works Constitution Act. The provisions of the Labour Courts Act (*Arbeitsgerichtsgesetz*) concerning decisions by order apply accordingly; the parties to the proceedings are the insolvency administrator and the works council. In accordance with section 61a (3) to (6) of the Labour Courts Act, the request is to be dealt with as a matter of priority.

(3) No appeal against the court order is available with the regional labour court. An appeal may be filed with the Federal Labour Court if this is permitted in the order issued by the labour court; section 72 (2) and (3) of the Labour Courts Act applies accordingly. The appeal is to be filed with the Federal Labour Court with grounds within one month following receipt of the labour court's decision in its final form.

Section 123

Scope of social plan

(1) A social plan established subsequent to the opening of insolvency proceedings may provide for a total amount of up to two and a half month's earnings (section 10 (3) of the Act on Protection against Dismissal (*Kündigungsschutzgesetz*)) of the dismissed employees to compensate for or mitigate their economic disadvantages under the envisaged operational changes.

(2) The obligations under such social plan are obligations incumbent on the insolvency estate. However, if no insolvency plan comes into being, no more than one third of the insolvency estate available for distribution among the insolvency creditors without such social plan may be used for the settlement of social plan claims. If the total amount of all social plan claims exceeds such limit, each claim is to be reduced pro rata.

(3) Whenever adequate cash funds are available in the insolvency estate, the insolvency administrator is, as a rule, to make advance payments on social plan claims with the consent of the insolvency court. No execution into the insolvency estate for social plan claims is permitted.

Section 124

Social plan established prior to opening of insolvency proceedings

(1) A social plan established prior to the opening of insolvency proceedings, but no earlier than three months before the opening of insolvency proceedings was requested, may be revoked by both the insolvency administrator and the works council.

(2) If such social plan is revoked, the employees entitled to claims under the social plan may be taken into account when a social plan is established during the insolvency proceedings.

(3) Benefits received by an employee on his or her claim under a revoked social plan before the opening of insolvency proceedings may not be claimed to be restituted owing to the revocation. Upon the establishment of a new social plan, such benefits received by a dismissed employee may be set off against the calculation of the total number of social plan claims under section 123 (1), up to two and a half months' earnings.

Section 125

Reconciliation of interests and dismissals protection

(1) Where operational changes are being planned (section 111 of the Works Constitution Act) and the insolvency administrator and the works council reach an agreement on the reconciliation of interests in which the employees who are to receive notice are listed by name, then section 1 of the Act on Protection against Dismissal applies, subject to the following provisos:

1. it is presumed that termination of the employment of those employees who are listed by name is conditioned by urgent operational requirements which stand in the way of further employment at this site or of further employment under unchanged working conditions;

2. the social selection of employees may only be conducted on the basis of duration of service, age and maintenance obligations, and in this respect only for gross errors; it is not to be deemed to be grossly in error if a balanced personnel structure is maintained or created.

Sentence 1 does not apply if the circumstances have changed considerably since the reconciliation of interests was brought about.

(2) Reconciliation of interests pursuant to subsection (1) stands in lieu of the statement by the works council pursuant to section 17 (3) sentence 2 of the Act on Protection against Dismissal.

Section 126

Judicial orders deciding on dismissal protection

(1) Where an establishment has no works council or if for other reasons reconciliation of interests pursuant to section 125 (1) is not achieved within three weeks of opening the negotiations or a written request to open negotiations, despite the fact that the administrator provided comprehensive information in good time to the works council, then the insolvency administrator may request a decision from the labour court to the effect that termination of contracts covering certain employees designated in his or her request is conditioned by urgent operational requirements and justified taken social aspects into account. The social selection by the employees may only be examined on the basis of duration of service, age and maintenance obligations.

(2) The provisions of the Labour Courts Act governing decisions by order apply accordingly; the parties to the proceedings are the insolvency administrator, the works council and those designated employees not recognising the termination of their contracts or the change in their working conditions as being justified. Section 122 (2) sentence 3 and (3) applies accordingly.

(3) Section 12a (1) sentences 1 and 2 of the Labour Courts Act applies accordingly to the costs incurred by the parties to the proceedings at first instance. During proceedings before the Federal Labour Court the provisions of the Code of Civil Procedure governing the reimbursement of costs apply accordingly.

Section 127

Action brought by employee

(1) If the insolvency administrator gives notice to an employee listed in the request referred to in section 126 (1) and if the employee files an action to determine that employment has not been terminated by dismissal or that the change in the working conditions is socially unjustified, the legally binding decision in proceedings pursuant to section 126 is binding on the parties. This does not apply if the circumstances have changed considerably since the last hearing in court.

(2) If the employee has already filed an action prior to the decision taken in proceedings pursuant to section 126 becoming legally binding, then at the request of the administrator the proceedings on the action are to be suspended until this time.

Section 128

Sale of enterprise

(1) Application of sections 125 to 127 is not ruled out by the modification of the enterprise on which the reconciliation of interests or application for determination is based not being carried out until after the establishment has been sold. The establishment's buyer is party to the proceedings pursuant to section 126.

(2) In the case of a transfer of an enterprise, the presumption in accordance with section 125 (1) sentence 1 no. 1 or the court decision pursuant to section 126 (1) sentence 1 also implies that termination of employment does not occur because of the transfer of an enterprise.

Division 3 **Contest of debtor's transactions in insolvency proceedings**

Section 129 **Principle**

- (1) Transactions made prior to the opening of insolvency proceedings and disadvantaging the insolvency creditors may be contested by the insolvency administrator under sections 130 to 146.
- (2) An omission is deemed to be equivalent to an active transaction.

Section 130 **Congruent coverage**

- (1) A transaction granting or facilitating an insolvency creditor a security or satisfaction may be contested
1. if it was made during the last three months prior to the request to open insolvency proceedings, if the debtor was illiquid on the date of the transaction, and if the creditor was aware of the insolvency on this date, or
 2. if it was made after the request to open insolvency proceedings, and if the creditor was aware of the debtor's insolvency on the date of the transaction, or of the request to open insolvency proceedings.

This does not apply if the transaction is based on a security agreement which includes the obligation to create a financial security, another or an additional financial security within the meaning of section 1 (17) of the Banking Act in order to reinstate the relationship between the value of the secured obligation and the value of the performed securities set out in the security agreement (margin security).

- (2) Awareness of circumstances necessarily indicating insolvency or a request to open insolvency proceedings is considered equivalent to awareness of insolvency or of the request to open insolvency proceedings.
- (3) A person with a close relationship to the debtor which existed on the date of such transaction (section 138) is presumed to have been aware of the debtor's insolvency or of the request to open insolvency proceedings.

Section 131 **Incongruent coverage**

- (1) A transaction granting or facilitating an insolvency creditor a security or satisfaction without that creditor's entitlement to such security or satisfaction, or to the kind or date of such security or satisfaction, may be contested if such transaction was made
1. during the last month prior to the request to open insolvency proceedings or after such request;
 2. within the second or third month prior to the request to open insolvency proceedings, and the debtor was illiquid on the date of the transaction;
 3. within the second or third month prior to the request to open insolvency proceedings, and the creditor was aware of the disadvantage to the insolvency creditors arising from such transaction on its date.
- (2) For subsection (1) no. 3 to apply, awareness of circumstances necessarily indicating to the disadvantage is considered equivalent to awareness of the disadvantage to the insolvency creditors. A person with a close relationship to the debtor on the date of such

transaction (section 138) is presumed to have been aware of the disadvantage to the insolvency creditors.

Section 132

Transactions directly disadvantaging insolvency creditors

(1) Legal transactions on the part of the debtor constituting a direct disadvantage to insolvency creditors may be contested if they were made

1. during the last three months prior to the request to open insolvency proceedings, if the debtor was illiquid on the date of such transaction and if the other party was aware of such insolvency on this date, or
2. subsequent to the request to open insolvency proceedings and, if at the time when the legal transaction was made, the other party was aware of such insolvency or of the request to open insolvency proceedings.

(2) Legal transactions constituting a direct disadvantage to insolvency creditors are deemed equivalent to any other transaction by the debtor divesting the debtor of a right or barring the debtor's claim to such right for the future or maintaining a property claim against the debtor or rendering such claim enforceable against the debtor.

(3) Section 130 (2) and (3) applies accordingly.

Section 133

Wilful disadvantage

(1) A transaction made by the debtor during the last 10 years prior to the request to open insolvency proceedings, or subsequent to such request, with the intention of disadvantaging the creditors may be contested if the other party was aware of the debtor's intention on the date of such transaction. Such awareness is presumed if the other party knew of the debtor's imminent insolvency and that the transaction constituted a disadvantage for the creditors.

(2) If the transaction has granted or facilitated the other party a security or satisfaction, then the period referred to in subsection (1) sentence 1 is four years.

(3) If the transaction has granted or facilitated the other party a security or satisfaction which that party was able to claim by dint of its nature and at that time, then the debtor's imminent insolvency as referred to in subsection (1) sentence 2 is to be replaced by the actual insolvency. If the other party reached agreement with the debtor regarding payment or granted the debtor payment facilities in another manner, then it is presumed that it was not aware of the debtor's insolvency at the time of the transaction.

(4) An onerous contract entered into by the debtor with a person with a close relationship to him or her (section 138) which directly constitutes a disadvantage for the insolvency creditors may be contested. Such contest is ruled out if the contract was entered into more than two years prior to the request to open insolvency proceedings or if the other party was not aware on the date of such contract of the debtor's intention to disadvantage the creditors.

Section 134

Gratuitous benefit

(1) A gratuitous benefit granted by a debtor may be contested unless it was made more than four years prior to the request to open insolvency proceedings.

(2) If such benefit comprises an ordinary casual gift of minor value, the gift may not be contested.

Section 135

Loans replacing equity capital

(1) A transaction may be contested which, in consideration of a partner's claim to restitution of a loan replacing equity capital within the meaning of section 39 (1) no. 5 or in consideration of an equivalent claim,

1. provided a security if such transaction was made during the last ten years prior to the request to open insolvency proceedings or subsequent to such request; or
 2. provided satisfaction if such transaction was made during the last year prior to the request to open insolvency proceedings or subsequent to such request.
- (2) A transaction may be contested by means of which a company has provided satisfaction to a third party for a claim to restitution of a loan within the period referred to in subsection (1) no. 2 if a partner has provided security for the claim or was liable as guarantor; this applies analogously to benefits which correspond in economic terms to a loan.
- (3) If a partner entrusted the debtor with an object for use or exercise, the right to separate satisfaction may not be claimed for the duration of the insolvency proceedings, at most, however, for a period of one year from the date when the insolvency proceedings are opened if the object is of considerable significance for the continued existence of the debtor's enterprise. The partner is entitled to be recompensed for the use or exercise of the object; when calculating such compensation, the average paid in the last year prior to the opening of the proceedings is to be applied and if the period of surrender is shorter, the average during that period.
- (4) Section 39 (4) and (5) applies accordingly.

Section 136

Silent partnership

- (1) A transaction may be contested by means of which a part or all of a silent partner's interest was restituted to him or her, or by means of which a part or all of a silent partner's share in accrued losses was waived if the basic agreement was reached during the last year prior to the request to open insolvency proceedings for the property owned by the manager of the business or subsequent to such request. This also applies if such agreement resulted in the liquidation of the silent partnership.
- (2) Contention is ruled out if a reason to open insolvency proceedings became existent only subsequent to the agreement.

Section 137

Payments on bills of exchange and cheques

- (1) The debtor's payment on bills of exchange may not be claimed to be restituted by the recipient under section 130 if the law governing bills of exchange would have barred the recipient's claims arising from the bill against other endorsers, the drawer or drawee if the recipient had refused the debtor's payment.
- (2) However, the amount paid on a bill is to be restituted by the last endorser or, if the bill was endorsed on the account of a third party, by such party if the last endorser or the third party was aware or, due to gross negligence, unaware of the debtor's insolvency or of the request to open insolvency proceedings on endorsing the bill or having it endorsed. Section 130 (2) and (3) applies accordingly.
- (3) Subsections (1) and (2) apply accordingly to cheque payments made by the debtor.

Section 138

Persons with close relationship to debtor

- (1) If the debtor is a natural person, then persons with a close relationship to the debtor are the following:
1. the debtor's spouse, even if the marriage was contracted only after the transaction or was dissolved during the last year prior to the transaction;
 - 1a the debtor's life partner, even if the life partnership was contracted only after the transaction or was dissolved during the last year prior to the transaction;
 2. the ascendants or descendants of the debtor or of the spouse designated in no. 1, or the life partner designated in no. 1a, the debtor's full and half-blood siblings, or the

spouse designated in no. 1, or the life partner designated in no. 1a, and the spouses of such persons;

3. persons living in the debtor's household or having lived in the debtor's household during the last year prior to the transaction, as well as persons who can provide information on the debtor's financial circumstances on the grounds of a relationship based on a contract of employment or service with the debtor.

4. a legal entity or a company without legal personality if the debtor or one of the persons referred to in nos. 1 to 3 is a member of the body representing or supervising the debtor, a general partner or persons holding more than one quarter of the debtor's capital, or is able, on the basis of a comparable relationship under company law or a contract of employment or service, to provide information regarding the debtor's financial circumstances.

(2) If the debtor is a legal entity or a company without legal personality, then the persons with a close relationship to the debtor are the following:

1. the members of the body representing or supervising the debtor, as well as general partners and persons holding more than one quarter of the debtor's capital;

2. a person or a company having, on the basis of a comparable association with the debtor under company law or under a service contract, the opportunity to become aware of the debtor's financial circumstances;

3. a person having a personal relationship detailed in subsection (1) with a person referred to in no. 1 or no. 2; this does not apply if the persons referred to in no. 1 or no. 2 are legally bound to secrecy regarding the debtor's affairs.

Section 139

Calculation of time periods prior to request to open insolvency proceedings

(1) The periods given in sections 88 and 130 to 136 begin to run at the beginning of the day corresponding by its number to the day when the request to open insolvency proceedings was received by the insolvency court. In a month lacking such a day, the period begins to run at the beginning of the following day.

(2) If several requests to open insolvency proceedings have been received, the first admissible request containing grounds to open insolvency proceedings is relevant even if the proceedings were opened owing to a subsequent request. A request refused with final effect is taken into account only if such request was refused for insufficiency of assets.

Section 140

Date of performance of transaction

(1) A transaction is deemed to be performed on the date when its legal effects arise.

(2) If legal effectiveness of a transaction requires registration in the land register, in the ship or shipbuilding register or in the register of liens on aircraft, such transaction is deemed to be performed as soon as the other conditions of its legal effectiveness are met, the debtor's declaration of intent has become binding and the other party has requested registration of such transaction. If the registration of a priority notice was requested in order to secure the claim on the transaction, sentence 1 applies, with the proviso that such request for priority notice stands in lieu of the request to register the transaction.

Section 141

Executable deed

Contestation is not ruled out merely because an executable deed was acquired for the transaction or if the transaction was performed by way of execution.

Section 142

Cash transactions

(1) Payments on the part of the debtor in return for which that debtor's property benefited directly from an equitable consideration may only be contested if the conditions under section 133 (1) to (3) are met and the other party has recognised that the debtor operated unfairly.

(2) The relationship between an equitable consideration and payments made is direct if, depending on the nature of the payments made and taking account of customary business practices, there was a close temporal link between the payment and receipt of the consideration. Where the debtor pays an employee a wage or salary, there is such a close temporal link if the period between performance of the work and payment of the wage or salary does not exceed three months. Payment of the wage or salary by the debtor is equal to payment of the wage or salary by a third party pursuant to section 267 of the Civil Code if it was not apparent to the employee that a third party made the payment.

Section 143

Legal consequences

(1) Any property of the debtor sold, transferred or relinquished under the transaction subject to contest must be restituted to the insolvency estate. The provisions governing the legal consequences of unjust enrichment with the recipient being aware of a lack of legal justification apply accordingly. Interest is payable on a monetary debt only if the conditions for the debtor's delay or the conditions set forth in section 291 of the Civil Code are met; a claim to emoluments received over and above the money obtained is ruled out.

(2) The recipient of a gratuitous benefit is required to restitute such benefit only to the extent of his or her enrichment. This does not apply as soon as the recipient is aware or must be aware, under the circumstances, that the gratuitous benefit places the creditors at a disadvantage.

(3) In the case of a contestation pursuant to section 135 (2), the partner who provided the security or was liable as guarantor is required to return the benefit granted the third party to the insolvency estate. The obligation only exists up to that amount to which the partner was liable as guarantor or which corresponds to the value of the security which the partner provided at the point of the restitution of the loan or the performance on the claim of the same rank. The partner is released of the obligation by making the object which served the creditor as security available to the insolvency estate.

Section 144

Claims of party to contested transaction

(1) If the recipient of a benefit under a transaction subject to contest restitutes the property received, the recipient's claim revives.

(2) Considerations are to be refunded from the insolvency estate to the extent to which such consideration continues to exist in a distinct form in the insolvency estate, or to which such assets were augmented by its value. Further claims of the recipients of a benefit under a transaction which is subject to contest in respect of restitution of their consideration may be brought by such recipients only as insolvency creditors.

Section 145

Transactions contested and enforced against legal successors

(1) A transaction may be contested against the heir or other comprehensive legal successor of the other party to such transaction.

(2) A transaction may be contested against another legal successor if such legal successor

1. was aware of the circumstances giving rise to the enrichment of the predecessor being subject to contention on the date of his or her enrichment;
2. belonged to the persons with a close relationship to the debtor (section 138) on the date of his or her enrichment unless the legal successor was unaware of the circumstances giving rise to the enrichment of the predecessor being subject to contest on such date;

3. received the enrichment by way of a gratuitous transfer.

Section 146

Limitation of right to contest

- (1) The right to contest a transaction is governed by the regulations on regular limitation under the Civil Code.
- (2) Even if the right to contest has become subject to limitation, the insolvency administrator may refuse performance of an obligation in consideration of a benefit under a transaction subject to contest.

Section 147

Transactions carried out subsequent to opening of insolvency proceedings

Transactions which are carried out after the opening of insolvency proceedings and have legal effect pursuant to section 81 (3) sentence 2, sections 892 and 893 of the Civil Code, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships Under Construction and sections 16 and 17 of the Act Governing Rights in Aircraft may be contested in accordance with the provisions governing the contest of transactions carried out before the insolvency proceedings were opened. Sentence 1 applies to transactions underlying the claims and performances referred to in section 96 (2), with the proviso that the set-off, including the settlement of balance, is not cancelled on account of the contestation or the affected payment orders, orders between payment services providers or intermediary bodies or orders for the transfer of securities becoming legally invalid.

Part 4

Management and disposal of insolvency estate

Division 1

Preservation of insolvency estate

Section 148

Transfer of insolvency estate

- (1) Subsequent to the opening of insolvency proceedings the insolvency administrator is required to assume possession and management of the whole of the property forming part of the insolvency estate without delay.
- (2) Using an executable certified copy of the order opening the insolvency proceedings the administrator is entitled to enforce, by way of execution, surrender of the objects held in the debtor's safekeeping. Section 766 of the Code of Civil Procedure applies, with the proviso that the insolvency court stands in lieu of the enforcement court.

Section 149

Objects of value

- (1) The creditors' committee may determine the agency where and conditions under which deposit or investment of currency, securities and objects of value is to be made. If a creditors' committee has not been appointed or has not yet taken a decision to this effect, the insolvency court may make such orders.
- (2) The creditors' assembly may decide otherwise.

Section 150

Sealing

In order to secure property forming part of the insolvency estate, the insolvency administrator may have seals applied by the court bailiff or any other legally authorised person. The administrator is to deposit the document evidencing such sealing or the removal of seals with the registry of the court for the parties' inspection.

Section 151

Record of insolvency estate

- (1) The insolvency administrator is required to establish a record of each object forming part of the insolvency estate. The debtor is to attend the establishment of such record if such attendance does not detrimentally delay the proceedings.
- (2) The value of each object is to be indicated. If the value depends on whether the debtor's enterprise is continued or closed down, both amounts are to be indicated. An expert may be charged with assessing objects whose value is particularly difficult to assess.
- (3) At the administrator's request the insolvency court may waive the establishment of the record; grounds are to be given for the request. If a creditors' committee has been appointed, the administrator may submit such request only with the consent of the creditors' committee.

Section 152 **Record of creditors**

- (1) The insolvency administrator is required to establish a record of all the debtor's creditors of whom he or she is aware by inspection of the debtor's records and business documents, by any other indication of the debtor, by filing their claims or in any other way.
- (2) The record is to itemise the creditors with a claim to separate satisfaction and each category of lower-ranking insolvency creditors. The address of each creditor as well as the reason and the amount of claim are to be indicated. For creditors with a claim to separate satisfaction, the object subject to the claim of separate satisfaction and the amount of their probable non-satisfaction are also to be indicated; section 151 (2) sentence 2 applies accordingly.
- (3) In addition, the record is to indicate any situation enabling the set-off of claims against each other. The amount of the obligations incumbent on the insolvency estate is to be estimated if the debtor's assets are expeditiously realised.

Section 153 **Survey of property**

- (1) On the date when the insolvency proceedings are opened the insolvency administrator is required to establish an ordered survey indicating the objects forming part of the insolvency estate and the debtor's obligations and comparing them. Section 151 (2) applies accordingly to the assessment of the objects' value; section 152 (2) sentence 1 applies accordingly to the itemisation of the debtor's obligations.
- (2) After the survey of property has been drawn up, the insolvency court, at the administrator's or a creditor's request, may order that the debtor make a declaration in lieu of an oath regarding the completeness of the survey of property. Sections 98 and 101 (1) sentences 1 and 2 apply accordingly.

Section 154 **Deposit with registry of insolvency court**

The record of the insolvency estate, the record of creditors and the survey of property are to be deposited with the registry of the insolvency court for the parties' inspection at the latest one week prior to the report meeting.

Section 155 **Accounting under commercial and fiscal laws**

- (1) The debtor's obligations under commercial and fiscal law to keep and render accounts remain unaffected. The insolvency administrator is required to meet this obligations in relation to the insolvency estate.
- (2) A new business year begins when the insolvency proceedings are opened. However, the period which has elapsed prior to the report meeting is not taken into account in statutory periods provided for the drawing up or publication of financial statements.
- (3) Section 318 of the Commercial Code applies to the appointment of the balance sheet auditor in the insolvency proceedings, with the proviso that such auditor is appointed exclusively by the register court at the administrator's request. If an auditor was appointed

for the business year prior to the opening of the insolvency proceedings, the validity of such appointment remains unaffected by the opening of insolvency proceedings.

Division 2

Decision on realisation

Section 156

Report meeting

(1) At the report meeting, the insolvency administrator is to report on the debtor's economic situation and its causes. The insolvency administrator is to assess any prospects of maintaining the debtor's enterprise as a whole or in part, to indicate any possibility of drawing up an insolvency plan and describe the effects of each solution on the satisfaction of the creditors.

(2) The debtor, the creditors' committee, the works council and the representative body for executive staff are to be given the opportunity at the report meeting to submit their comments on the administrator's report. If the debtor is a trader, craftsman or farmer, the competent official professional representative body of industry, trade, the craft or of agriculture may also be given the opportunity to express their views at the report meeting.

Section 157

Decision on further proceedings

At the report meeting, the creditors' assembly decides whether the debtor's enterprise is to be closed down or temporarily continued. The assembly may commission the administrator with drawing up an insolvency plan and determining the plan's objective for him or her. The assembly may modify its decisions at subsequent meetings.

Section 158

Measures taken prior to decision

(1) If the insolvency administrator intends to close or sell the debtor's enterprise prior to the report meeting, then he or she is required to obtain the consent of the creditors' committee, if one has been appointed.

(2) Before the creditors' committee takes its decision or, if no such committee has been appointed, before closing down or selling the enterprise, the administrator is to inform the debtor thereof. At the request of the debtor and after hearing the administrator, the insolvency court refuses such close-down or sale of the enterprise if the close-down or sale can be suspended until the report meeting without considerably reducing the insolvency estate.

Section 159

Realisation of insolvency estate

After the report meeting, the administrator is to liquidate the property forming the insolvency estate without delay, unless such realisation contradicts any decisions taken by the creditors' assembly.

Section 160

Transactions of particular importance

(1) Insolvency administrators are required to obtain the consent of the creditors' committee if they intend to engage in transactions which are of particular importance to the insolvency proceedings. If no creditors' committee has been appointed, they are to obtain the consent of the creditors' assembly. If a creditors' assembly which has been convened is without a quorum, consent is deemed to have been given; the creditors are to be informed of these consequences in the invitation to the creditors' assembly.

(2) Consent under subsection (1) is, in particular, required

1. if such transaction purports to sell the enterprise, establishment, the entire stock, a part of real property to be realised by private sale, the debtor's shares in another

enterprise if such shares are intended to bring about a permanent affiliation to such other enterprise or the entitlement to receive recurring earnings;

2. if such transaction purports to enter into a loan contract with considerable burdens on the insolvency estate;
3. if such transaction purports to bring or join a court action amounting to a considerable value in dispute, to refuse the bringing of such action, or to negotiate a settlement or compromise to settle or avoid any such action.

Section 161

Provisional prohibition of transaction

In the cases referred to in section 160, the insolvency administrator is to inform the debtor before the creditors' committee or assembly take a decision if provision of such information is possible without detrimentally delaying the insolvency proceedings. If the creditors' assembly has not given its consent, then at the request of the debtor or of a majority of creditors qualifying under section 75 (1) no. 3 and after hearing the administrator, the insolvency court may provisionally prohibit the transaction and convene a creditors' assembly so that a decision may be taken on the transaction.

Section 162

Sale of enterprise to persons with specific interests

(1) The sale of the enterprise or establishment requires the approval of the creditors' assembly if the buyer or a person holding at least one fifth of the buyer's capital

1. belongs to the persons with a close relationship to the debtor (section 138);
2. is a creditor with a right to separate satisfaction or an insolvency creditor with non-lower-ranking claims whose rights to separate satisfaction and claims are assessed by the insolvency court to reach a total of one fifth of the sum of the value of all rights to separate satisfaction and of the amounts of the claims of all insolvency creditors with non-lower-ranking claims.

(2) A person is also deemed to hold shares in the buyer for the purpose of subsection (1) if an enterprise controlled by the person or a third party holds shares in the buyer on behalf of the person or of the controlled enterprise.

Section 163

Sale of enterprise below value

(1) At the request of the debtor or of a majority of creditors qualifying under section 75 (1) no. 3 and after hearing the insolvency administrator, the insolvency court may order that the envisaged sale of the enterprise or establishment require the approval of the creditors' assembly if the requesting party proves to the satisfaction of the court that a sale to another buyer would be more beneficial to the insolvency estate.

(2) If the requesting party has incurred costs for such request, that party is entitled to reimbursement of such costs by the insolvency estate as soon as the court makes its order.

Section 164

Legal validity of transaction

Any contravention of sections 160 to 163 leaves the validity of the acts of the insolvency administrator unaffected.

Division 3

Objects subject to right to separate satisfaction

Section 165

Realisation of immovables

The insolvency administrator may initiate with the competent court auctions or sequestrations of immovables forming part of the insolvency estate even if such immovables are subject to a right to separate satisfaction.

Section 166

Realisation of movables

(1) The insolvency administrator may realise a movable item to which he or she has a right to separate satisfaction without restriction if it is in his or her possession.

(2) The insolvency administrator may collect or in another way realise a claim assigned by the debtor in order to secure a claim.

(3) Subsections (1) and (2) do not apply

1. to items to which a security in favour of the operator or the participant in a system pursuant to section 1 (16) of the Banking Act exists to secure claims under the system,
2. to items to which a security in favour of the central bank of a Member State of the European Union or a Contracting Party to the Agreement on the European Economic Area or in favour of the European Central Bank exists,
3. to a financial security within the meaning of section 1 (17) of the Banking Act.

Section 167

Notification of creditor

(1) If the insolvency administrator is entitled to realise a movable item under section 166 (1), he or she is to notify the condition of the movable item to the creditor with a right to separate satisfaction at the latter's request. Instead of such notification the administrator may allow the creditor to inspect the object.

(2) If the administrator is entitled to collect a claim under section 166 (2), he or she is to notify the claim to the creditor with a right to separate satisfaction at the latter's request. Instead of such notification the administrator may allow the creditor to inspect the debtor's books and business documents.

Section 168

Notification of envisaged sale

(1) Before the insolvency administrator sells to a third party an object with regard to which he or she is entitled to realisation under section 166, the insolvency administrator is to notify how such envisaged sale is to be carried out to the creditor with a right to separate satisfaction. The insolvency administrator is to give the creditor the opportunity of pointing out within one week another means of selling the object which would be more beneficial to the creditor.

(2) If such notification is given within one week or in good time before the sale, the administrator is to take advantage of such opportunity or recompense the creditor as if he or she had taken advantage of it.

(3) Such other opportunity of realisation may also consist in the object's devolution to the creditor. An opportunity to sell is also deemed more beneficial if savings are made on expenses.

Section 169

Protection of creditor against delayed disposal

As long as an object with regard to which the insolvency administrator is entitled to realisation under section 166 is not realised by that insolvency administrator, the creditor is to be paid the current interest due from the insolvency estate beginning from the report meeting. If the insolvency court issued an order under section 21 prohibiting the creditor from realising the object before the insolvency proceedings were opened, the interest due is to be paid at the latest from the date three months after such order by the court. Sentences 1 and 2 do not apply to the extent to which, in view of the amount of the creditor's claim, the value

and any other right encumbering the object will probably not be sufficient to satisfy the creditor by means of the proceeds of the realisation.

Section 170

Distribution of proceeds

(1) Subsequent to realisation of a movable item or a claim by the insolvency administrator the costs of determining and realising the object are to be credited to the insolvency estate in advance using the proceeds. The remaining amount is to be used without delay to satisfy the creditor with a right to separate satisfaction.

(2) If the insolvency administrator transfers an object with regard to which he or she is entitled to realisation under section 166 to the creditor to be realised by the latter, the creditor is to contribute an amount covering the costs of determination and turnover tax (section 171 (2) sentence 3) in advance to the insolvency estate using the proceeds gained by him or her.

Section 171

Calculation of contribution to costs

(1) The costs of determination comprise the costs of the actual identification of the object and of the determination of any rights encumbering the object. Such costs are to be rated as a lump sum of four per cent of the proceeds.

(2) The costs of realisation are to be rated as a lump sum of five per cent of the proceeds. If the costs actually incurred which were necessary for the realisation were considerably lower or considerably higher, these costs are to be taken as a basis. If realisation entails the insolvency estate incurring turnover tax, this amount is to be charged in addition to the lump sum pursuant to sentence 1 or the costs actually incurred pursuant to sentence 2.

Section 172

Other use of movables

(1) Insolvency administrators may use a movable item with regard to which they are entitled to realisation for the insolvency estate if the loss in value accruing from such use is compensated by current payments to the creditor beginning from the opening of the insolvency proceedings. Such obligation to make compensatory payments only exists to the extent to which the loss in value accruing from such use impairs the safeguarding of objects belonging to a creditor with a right to separate satisfaction.

(2) Administrators are entitled to combine, merge and transform such object with other property as long as such change of the condition of the object does not impair the security of the creditor with a right to separate satisfaction. If the creditor's right devolves to other property, the creditor is required to transfer such new security to the administrator to the extent to which its value exceeds the previous value.

Section 173

Realisation by creditor

(1) If the insolvency administrator is not entitled to realise a movable item or a claim subject to a claim to separate satisfaction, the creditor's right to realise such object remains unaffected.

(2) At the administrator's request and after hearing the creditor, the insolvency court may determine a period of time during which the creditor is required to realise the object. Upon expiry of such period of time the administrator is entitled to its realisation.

Part 5

Satisfaction of insolvency creditors. Discontinuation of proceedings

Division 1

Determination of claims

Section 174

Filing of claims

- (1) Insolvency creditors must file their claims in writing with the insolvency administrator. Such filing is, as a rule, to be accompanied by copies of the documents evidencing the claim. Persons providing collection services (registered persons pursuant to section 10 (1) sentence 1 no. 1 of the Act on Out-Of-Court Legal Services (*Rechtsdienstleistungsgesetz*)) are also authorised to represent the creditor in the proceedings under this Division.
- (2) Upon its filing, the reason and the amount of the claim are to be indicated, as are the facts from which, in the creditor's view, it emerges that it is based on an unauthorised act committed intentionally, a breach of a statutory obligation to pay maintenance committed intentionally or a tax offence on the part of the debtor in accordance with sections 370, 373 or 374 of the Fiscal Code (*Abgabenordnung*).
- (3) Lower-ranking creditors are to file their claims only if specifically requested by the insolvency court to do so. Upon filing such claims, their lower-ranking status is to be indicated and the creditor's lower rank is to be designated.
- (4) The claims may be filed by transmitting an electronic document if the insolvency administrator has explicitly consented to such transmission of electronic documents. In such cases, an invoice transmitted electronically is also deemed to be a document within the meaning of subsection (1) sentence 2. At the request of the insolvency administrator or of the insolvency court, print-outs, copies or the originals of the documents are to be submitted.

Section 175 **Schedule**

- (1) The insolvency administrator is to enter every claim filed into a schedule together with the details referred to in section 174 (2) and (3). Such schedule is to be deposited with the registry of the insolvency court together with the requests and enclosed certificates for the parties' inspection within the first third of the period of time between the expiry of the filing period and the verification meeting.
- (2) If a creditor has filed a claim from an unauthorised act committed intentionally, from a breach of a statutory obligation to pay maintenance committed intentionally or from a tax offence under section 370, 373 or 374 of the Fiscal Code, the insolvency court is to indicate to the debtor the legal consequences of section 302 and the possibility of filing an objection.

Section 176 **Procedure for verification meeting**

During the verification meeting the amount and rank of the claims filed are verified in accordance. Claims contested by the insolvency administrator, by the debtor or by an insolvency creditor are to be discussed individually.

Section 177 **Subsequent filings**

- (1) During the verification meeting verification is also to cover those claims filed after expiry of the filing period. However, if the insolvency administrator or an insolvency creditor objects to the verification of such claims, or if a claim is filed only after the verification meeting, the insolvency court is to either docket a special verification meeting or order verification in written proceedings, and to burden the defaulter with the costs. Sentences 1 and 2 apply accordingly to subsequent amendments to filed claims.
- (2) If the insolvency court requested lower-ranking creditors to file their claims in accordance with section 174 (3) and if the period of time determined for such filings expires later than one week prior to the verification meeting, the court is to either docket a special verification meeting or to order verification in written proceedings and to burden the insolvency estate with its costs.
- (3) The date of the special verification meeting is to be published. The insolvency creditors filing claims, the insolvency administrator and the debtor are to receive individual summons to such meeting. Section 74 (2) sentence 2 applies accordingly.

Section 178

Prerequisites and effects of determination of claims

- (1) A claim is deemed to have been determined if no objection is raised by the insolvency administrator or by an insolvency creditor during the verification meeting, or in the written proceedings (section 177) or if any objection raised by a party is removed. The debtor's objection poses no obstacle to determination of a claim.
- (2) For each claim filed the insolvency court enters in the schedule the extent to which the amount and rank of a claim was determined or which party objected to its determination. An objection on the part of the debtor is also to be entered in the schedule. The registrar at the insolvency court is to mark the determination on bills of exchange and any other debt instruments.
- (3) As regards claims determined with their amount and rank, entry into the schedule has the legal effect of a final judgment with respect to the insolvency administrator and all the insolvency creditors.

Section 179

Contested claims

- (1) If a claim was contested by the insolvency administrator or by an insolvency creditor, initiation of proceedings to determine such claim against the denying party is left to the creditor.
- (2) If such claim is based on an executable deed or a final judgment, following up the denial is incumbent on the denying party.
- (3) The insolvency court provides the creditor whose claim was contested with a certified extract from the schedule. In the case referred to in subsection (2), the denying party also receives such extract. The creditors whose claims have been determined are not notified; the creditors' attention is, as a rule, to be drawn to this prior to the verification meeting.

Section 180

Competence for determination of claims

- (1) An action for the determination of a claim is to be brought under the provisions governing ordinary civil proceedings. The local court where the insolvency proceedings are or were pending has exclusive jurisdiction for such action. If the subject-matter of the action does not fall under the jurisdiction of the local courts, the regional court in whose district the insolvency court is located has exclusive jurisdiction.
- (2) If an action concerning such claim was pending on the date when the insolvency proceedings were opened, determination of the claim is to be initiated by the joinder of such action.

Section 181

Scope of determination

Determination of a claim with its grounds, amount and rank may only be applied for to the extent indicated when it was filed or during the verification meeting.

Section 182

Value of action

The value of an action to determine a claim whose legal validity was contested by the insolvency administrator or by an insolvency creditor is dependent on the amount to be expected in respect of the claim as a result of distribution of the insolvency estate.

Section 183

Effect of decision

- (1) A decision with final and binding effect which determines a claim or sustains an objection has effect for the insolvency administrator and all the insolvency creditors.
- (2) The prevailing party is responsible for requesting the insolvency court to amend the schedule.

(3) If only individual creditors have pursued the action but not the insolvency administrator, these creditors may claim reimbursement of their costs from the insolvency estate to the extent to which such assets have benefited from the judicial decision.

Section 184

Action to enforce claim contested by debtor

(1) If the debtor contested a claim during the verification meeting or in written proceedings (section 177), the creditor may bring an action against the debtor in order to determine such claim. If an action concerning such claim was pending on the date when the insolvency proceedings were opened, the creditor may continue such action against the debtor.

(2) If an executable deed or a final judgment exists for such a claim, the debtor is obliged to pursue the claim within a period of one month beginning on the date of the verification meeting or, in written proceedings, when the claim is contested. After the ineffectual lapse of time, an objection is deemed not to have been raised. The insolvency court provides the debtor and the creditor whose claim was contested with a certified excerpt of the schedule and indicates to the debtor the consequences of failing to meet a deadline. The debtor is required to provide proof to the court that the claim has been pursued.

Section 185

Special jurisdiction

If an action for the determination of a claim could not be brought under the provisions governing ordinary civil proceedings, its determination is to be initiated with any other court having jurisdiction or with the competent administrative agency. Section 180 (2) and sections 181, 183 and 184 apply accordingly. If another court has jurisdiction to determine such claim, section 182 also applies accordingly.

Section 186

Restitutio in integrum

(1) If the debtor did not attend the verification meeting, the insolvency court, at the debtor's request, is to grant the debtor restitutio in integrum. Sections 51 (2), 85 (2) and 233 to 236 of the Code of Civil Procedure apply accordingly.

(2) The writs concerning a request of restitutio in integrum are to be served on the creditor whose claim is to be subsequently contested. Contestation in such writs is deemed equivalent to denial during the verification meeting if restitutio in integrum is granted.

Division 2

Distribution

Section 187

Satisfaction of insolvency creditors

(1) Satisfaction of the insolvency creditors may be initiated only subsequent to the general verification meeting.

(2) Funds may be distributed among the insolvency creditors whenever sufficient cash is available in the insolvency estate. Lower-ranking insolvency creditors are, as a rule, not to be considered for advance distributions.

(3) Distributions are carried out by the insolvency administrator. Before each distribution, the insolvency administrator is to obtain the consent of the creditors' committee, if one has been appointed.

Section 188

Distribution record

Prior to distribution the insolvency administrator is to draw up a record of the claims to be considered in respect of distribution. The record is to be deposited with the registry of the insolvency court for the parties' inspection. The administrator informs the court of the total amount of the claims and the amount available for distribution from the insolvency estate; the

court is required to publish the total amount of the claims and the amount available for distribution from the insolvency estate.

Section 189

Consideration of contested claims

- (1) Insolvency creditors whose claim has not been determined and is not based on an executable deed or a final judgment are, at the latest within a limitation period of two weeks from publication, to prove to the insolvency administrator that and for which amount they have brought an action to determine the claim or joindered the proceedings to a previously pending action.
- (2) If proof is provided in good time, the share allocated to such claim is retained from distribution as long as such action is pending.
- (3) If proof is not provided in good time, the claim is not taken into account during distribution.

Section 190

Consideration of creditors with right to separate satisfaction

- (1) Creditors with a right to separate satisfaction are required to prove to the insolvency administrator, at the latest within the limitation period under section 189 (1), that and for which amount they have waived separate satisfaction or their claim was not met by such separate satisfaction. If proof is not provided in good time, the claim is not taken into account during distribution.
- (2) Creditors are deemed to have met their obligation under subsection (1) in order to share in advance distribution if they prove to the insolvency administrator, at the latest within such limitation period, that realisation of the object subject to a right to separate satisfaction is being initiated, and which amount of their claim is likely not to be satisfied. In such a case the share covering the amount of their claim is retained during distribution. If the conditions under subsection (1) are not met at final distribution, the retained share is free to flow into the final distribution.
- (3) If only the insolvency administrator is entitled to realise an object subject to a right to separate satisfaction, subsections (1) and (2) do not apply. In the case of advance distribution, if the administrator has not yet realised the object, he or she is to estimate the extent to which the creditor's claim will not be met by separate satisfaction and retain the share covering such claim.

Section 191

Consideration of claims subject to condition precedent

- (1) The full amount of claims subject to a condition precedent is taken into account in the case of advance distribution. The share covering the claim is retained during distribution.
- (2) Claims subject to a condition precedent are not taken into account during final distribution if the possibility of accomplishment of the condition is so distant that the claim is valueless on the date of distribution. In such a case the share retained in accordance with subsection (1) sentence 2 is free to flow into final distribution.

Section 192

Subsequent consideration

Creditors not taken into account in advance distribution who subsequently meet the conditions under sections 189 and 190 are, during the next distribution, advanced an amount from the remainder of the insolvency estate placing them on an equal footing with the other creditors.

Section 193

Amendments to distribution record

The insolvency administrator must append any amendment to the record required under sections 189 to 192 within three days of the expiry of the limitation period referred to in section 189 (1).

Section 194

Objections to distribution record

- (1) In the case of advance distribution, creditors are to bring an objection to the record to the notice of the insolvency court within one week after expiry of the limitation period referred to in section 189 (1).
- (2) A judicial decision overruling objections is to be served on the creditor and the insolvency administrator. The creditor may bring an immediate appeal against such a decision.
- (3) A judicial decision ordering a correction to the record is to be served on the creditor and the administrator and deposited with the registry of the insolvency court for the parties' inspection. The administrator and the insolvency creditors may bring an immediate appeal against such a decision. The period begins to run on the day when the decision is deposited.

Section 195

Determination of fraction

- (1) Following a proposal by the insolvency administrator, the creditors' committee determines the fraction to be paid in the case of advance distribution. If no creditors' committee has been appointed, the insolvency administrator determines such fraction.
- (2) The administrator is required to notify such fraction to those creditors who have been taken into account.

Section 196

Final distribution

- (1) Final distribution takes place as soon as the insolvency estate has been realised, with the exception of any current income.
- (2) Final distribution requires the consent of the insolvency court.

Section 197

Final meeting

- (1) When consenting to final distribution, the insolvency court docket a meeting for the final creditors' assembly. During such meeting
1. the insolvency administrator's final account is to be discussed,
 2. objections to the final record are to be raised, and
 3. the creditors are to decide on any objects forming part of the insolvency estate not apt to be realised.
- (2) The period between publication of the date of the meeting and the meeting is, as a rule, to be no less than one month and no more than two months.
- (3) Section 194 (2) and (3) applies accordingly to the decision by the insolvency court on objections raised by a creditor.

Section 198

Deposit of retained funds

The insolvency administrator is to deposit funds which are to be retained during final distribution with a suitable agency on the account of the parties.

Section 199

Surplus resulting from final distribution

If the claims of all the insolvency creditors can be fully satisfied during final distribution, the insolvency administrator is to transfer any remaining surplus to the debtor. If the debtor is not a natural person, the insolvency administrator is to transfer to any person owning a share of the debtor's capital that share of such surplus devolving to such person under liquidation outside the insolvency proceedings.

Section 200

Termination of insolvency proceedings

- (1) As soon as final distribution has been carried out, the insolvency court gives a decision to terminate the insolvency proceedings.
- (2) The decision and the reason for the termination are to be published. Sections 31 to 33 apply accordingly.

Section 201

Rights of insolvency creditors subsequent to termination

- (1) Subsequent to termination of the insolvency proceedings, the creditors of the proceedings may enforce the remainder of their claims against the debtor without limitation.
- (2) Insolvency creditors who have determined claims which have not been contested by the debtor during the verification meeting may enforce such claims against the debtor by way of execution on the legal basis of their entry in the schedule as under an executable judgment. A claim with an overruled objection is equivalent to a claim not contested. The request for the issuance of an executable copy of the schedule may not be filed until the insolvency proceedings have been terminated.
- (3) Provisions on the discharge of residual debt remain unaffected.

Section 202

Jurisdiction for execution

- (1) In the case referred to in section 201, the local court where the insolvency proceedings are or were pending has exclusive jurisdiction for any action
 1. brought to obtain the clause of execution;
 2. brought to deny the accomplishment of the prerequisites to grant such clause after it was obtained;
 3. brought to enforce any objection to the claim itself.
- (2) If the subject-matter of such action does not fall within the jurisdiction of the local courts, exclusive jurisdiction is vested in the regional court in whose district the insolvency court is located.

Section 203

Order to carry out delayed distribution

- (1) At the request of the insolvency administrator or of an insolvency creditor or ex officio, the insolvency court orders delayed distribution if, after the final meeting,
 1. retained funds become available for distribution;
 2. funds paid from the insolvency estate flow back to them; or
 3. objects forming part of the insolvency estate are identified.
- (2) Termination of the insolvency proceedings does not pose an obstacle to issuance of an order to carry out delayed distribution.
- (3) The court may refrain from issuing such order and transfer the available amount or identified object to the debtor if such proceedings appear to the court to be adequate given the insignificance of the amount or the low value of the object and the costs of delayed distribution. It may condition its order on the advancement of funds covering the costs of such delayed distribution.

Section 204

Appeal

- (1) The decision refusing to carry out delayed distribution is to be served on the requesting party. Such party may bring an immediate appeal against the decision.
- (2) The decision ordering delayed distribution is to be served on the insolvency administrator, the debtor and any creditor requesting such delayed distribution. The debtor may bring an immediate appeal against the decision.

Section 205

Implementation of delayed distribution

Once delayed distribution has been ordered, the insolvency administrator is to distribute the available amount or the proceeds from realisation of the identified object on the basis of the final record. The insolvency administrator is to render account of such distribution to the insolvency court.

Section 206

Exclusion of preferential creditors

Preferential creditors of whose claims the insolvency administrator has become aware

1. only after determination of the fraction during advance distribution,
2. only after the final meeting had been closed during final distribution, or
3. if delayed distribution was ordered, only after its publication,

may claim satisfaction only from the funds remaining in the insolvency estate after distribution.

Division 3

Discontinuation of insolvency proceedings

Section 207

Discontinuation for insufficiency of assets

- (1) If, after the insolvency proceedings have been opened, it is found that the insolvency estate is insufficient to cover the costs of the proceedings, the insolvency court discontinues such proceedings. Discontinuation is not ordered if sufficient funds are advanced or if the costs are deferred in accordance with section 4a; section 26 (3) applies accordingly.
- (2) The creditors' assembly, the insolvency administrator and the preferential creditors are to be heard prior to discontinuation.
- (3) Any cash funds available in the insolvency estate are to be used by the administrator prior to discontinuation of the proceedings to settle the costs of the proceedings, and among such costs firstly expenses in proportion to their amounts. The administrator is no longer obliged to realise the insolvency estate.

Section 208

Notification of insufficiency of assets

- (1) If the costs of the insolvency proceedings are covered but the insolvency estate is insufficient to settle the other mature obligations incumbent on the estate, the insolvency administrator is required to notify the insolvency court of the insufficiency of the assets. The same applies if it is likely that the assets will be insufficient to meet the other existing obligations incumbent on the estate on the date of their maturity.
- (2) The court is required to publish the notification of insufficiency of assets. Such notification is to be served separately on the preferential creditors.
- (3) The duty incumbent on the insolvency administrator to administer and realise the insolvency estate also continues following notification of the insufficiency of the assets.

Section 209

Satisfaction of preferential creditors

- (1) The insolvency administrator is to settle the obligations incumbent on the insolvency estate in the following order, and equal-ranking obligations in proportion to the amounts:
1. the costs of the insolvency proceedings;
 2. obligations incumbent on the insolvency estate which became legally effective after notification of the insufficiency of the assets without forming part of the costs of the proceedings;

3. the other obligations incumbent on the estate, including lastly the maintenance granted pursuant to sections 100 and 101 (1), sentence 3.

(2) The following are also deemed to be obligations incumbent on the estate within the meaning of subsection (1) no. 2:

1. obligations under a mutual contract for whose performance the administrator opted subsequent to giving notification of the insufficiency of assets;
2. obligations under a continuing obligation for the period after the first date when the administrator was entitled to terminate such contract after giving notification of the insufficiency of assets;
3. obligations under a continuing obligation to the extent that the administrator has claimed its consideration for the benefit of the insolvency estate after giving notification of the insufficiency of assets.

Section 210

Prohibition of execution

As soon as the insolvency administrator has given notification of the insufficiency of the assets, execution in respect of an obligation incumbent on the estate within the meaning of section 209 (1) no. 3 is inadmissible.

Section 210a

Insolvency plan in case of insufficient assets

The provisions concerning the insolvency plan apply in the event of notification of insufficient assets, with the proviso that

1. the preferential creditors having the rank referred to in section 209 (1) no. 3 stand in lieu of the non-lower-ranking insolvency creditors, and
2. the non-lower-ranking insolvency creditors stand in lieu of the lower-ranking insolvency creditors.

Section 211

Discontinuation upon notification of insufficiency of assets

- (1) As soon as the insolvency administrator has distributed the insolvency estate as required under section 209, the insolvency court discontinues the insolvency proceedings.
- (2) The administrator is to render separate account of his or her activities after notification of the insufficiency of the assets.
- (3) If objects forming part of the insolvency estate are identified after discontinuation of such proceedings, the court, at the request of the administrator or of a preferential creditor or ex officio, orders delayed distribution. Section 203 (3) and sections 204 and 205 apply accordingly.

Section 212

Discontinuation for subsequent lack of grounds to open insolvency proceedings

At the debtor's request, the insolvency proceedings are to be discontinued if it is ensured that, after such discontinuation, the debtor will no longer be subject either to insolvency or imminent insolvency or, insofar as overindebtedness was the reason for the opening of insolvency proceedings, to overindebtedness. Admissibility of such a request requires the debtor to show to the satisfaction of the court that there is no reason to open insolvency proceedings.

Section 213

Discontinuation with creditors' consent

- (1) At the debtor's request, the insolvency proceedings are to be discontinued if, after expiry of the filing period, the debtor submits declarations of consent on the part of all the

insolvency creditors who have filed claims. For creditors whose claims are contested by the debtor or by the insolvency administrator, and in the case of creditors with a right to separate satisfaction, the insolvency court decides at its own discretion whether these creditors need to give their consent or provided with a security.

(2) The proceedings may be discontinued at the debtor's request even prior to expiry of the filing period if no other creditors are known than those whose declarations of consent were submitted by the debtor.

Section 214

Discontinuation procedure

(1) A request to discontinue insolvency proceedings pursuant to sections 212 or 213 is to be published. It is to be deposited with the registry of the court for the parties' inspection; in the case referred to in section 213 it is to be accompanied by the creditors' declarations of consent. The insolvency creditors may object to such a request in writing within one week after publication.

(2) Before deciding on the discontinuation of insolvency proceedings, the court is to hear the requesting party, the insolvency administrator and the creditors' committee, if one has been appointed. If a creditor objects to such a request, that creditor is also to be heard.

(3) Prior to discontinuation, the administrator is required to settle any claims on the insolvency estate which have not been contested and to provide a security for claims which have been contested.

Section 215

Publication and legal effects of discontinuation

(1) A decision discontinuing insolvency proceedings pursuant to sections 207, 211, 212 or 213 and the reason underlying such discontinuation are to be published. The debtor, the insolvency administrator and the members of the creditors' committee are to be informed in advance of the date when such discontinuation becomes effective (section 9 (1) sentence 3). Section 200 (2) sentence 2 applies accordingly.

(2) Upon discontinuation of the insolvency proceedings, the right to freely realise the insolvency estate transfers back to the debtor. Sections 201 and 202 apply accordingly.

Section 216

Appeal

(1) If the insolvency proceedings are discontinued pursuant to sections 207, 212 or 213, each creditor may bring an immediate appeal, and the debtor may also bring an immediate appeal if the insolvency proceedings were discontinued pursuant to section 207.

(2) If a request is rejected pursuant to sections 212 or 213, the debtor may bring an immediate appeal.

Part 6

Insolvency plan

Division 1

Establishment of plan

Section 217

Principle

(1) In derogation from the provisions of this Code, the satisfaction of creditors entitled to separate satisfaction and of the insolvency creditors, realisation of the insolvency estate and its distribution to the parties to the proceedings, as well as the insolvency procedure and the debtor's liability subsequent to termination of the insolvency proceedings may be regulated in an insolvency plan. If the debtor is not natural person, the share and membership rights of those with a participating interest in the debtor may be included in the plan.

(2) The insolvency plan may, further, define the rights of the holders of insolvency claims to which these are entitled on account of an obligation assumed by an affiliated company within

the meaning of section 15 of the Stock Corporation Act as guarantor, co-obligor, or on account of an obligation assumed in another manner, or in objects belonging to that enterprise's assets (intra-group third-party guarantee).

Section 218

Submission of insolvency plan

- (1) The insolvency administrator and the debtor are entitled to submit an insolvency plan to the insolvency court. Submission by the debtor may be connected with a request to open insolvency proceedings. No account is taken of a plan which the court receives after the final creditors' assembly.
- (2) If the creditors' assembly has charged the administrator with the establishment of an insolvency plan, the administrator is required to submit such plan to the court within a reasonable period of time.
- (3) The creditors' committee, if one has been appointed, the works council, the representative body for executive staff and the debtors assist in and advise on the establishment of the plan by the administrator.

Section 219

Breakdown of plan

The insolvency plan comprises a declaratory and a constructive part. It is to be accompanied by the attachments referred to in sections 229 and 230.

Section 220

Declaratory part

- (1) The declaratory part of the insolvency plan describes the measures taken or still to be taken after the opening of insolvency proceedings in order to create the basis for the envisaged establishment of rights held by the parties to the proceedings.
- (2) The declaratory part must contain all the other information concerning the bases for and the effects of the plan which are relevant to the decision by the parties to the proceedings to approve the plan and for its approval by the court. In particular, it includes a comparative calculation which sets out the plan's impact on the creditors' expected satisfaction. If the plan provides for the enterprise to continue, then when determining that expected satisfaction without a plan it is generally to be assumed that the enterprise will continue. This does not apply where the sale of the enterprise or its continuation in another form lacks the prospect of success.
- (3) If the insolvency plan provides for interference with the rights of insolvency creditors resulting from intra-group third-party guarantees (section 217 (2)), that presentation is also to include the situation of the affiliated enterprise providing the security and the plan's impact on that enterprise.

Section 221

Constructive part

The constructive part of the insolvency plan determines how the insolvency plan is to transform the legal position of the parties to the proceedings. The insolvency plan may stipulate that the insolvency administrator be authorised to take the measures necessary to implement it and to correct any obvious errors it contains.

Section 222

Formation of groups

- (1) While determining the rights held by the parties in the insolvency plan, groups are to be formed insofar as the parties to the proceedings have different legal status. A distinction is to be drawn between

1. the creditors entitled to separate satisfaction if their rights are interfered with by the plan;
2. the non-lower-ranking creditors;

3. each class of lower-ranking insolvency creditors, unless their claims are deemed to be waived pursuant to section 225.
 4. those persons with a participating interest in the debtor where their share or membership rights are included in the plan;
 5. the holders of rights resulting from intra-group third-party guarantees.
- (2) Parties with equal rights may form groups in which parties with equivalent economic interests are set together. Such groups must be adequately delimited from each other. The criteria for such delimitation are to be indicated in the plan.
- (3) Employees are, as a rule, to form a separate group if they are claiming major amounts as insolvency creditors. Separate groups may be formed for minor creditors and for minor shareholders whose share in the liable capital amounts to less than one per cent or to less than 1,000 euros.

Section 223

Rights of creditors entitled to separate satisfaction

- (1) Unless otherwise provided in the insolvency plan, it does not affect the right of creditors entitled to separate satisfaction to achieve satisfaction from objects subject to rights of separation. Any derogating provision is ruled out in respect of financial securities within the meaning of section 1 (17) of the Banking Act, as well as securities provided to
1. the operator or the participant in a system pursuant to section 1 (16) of the Banking Act to secure their claims under the system, or
 2. the central bank of a Member State of the European Union or the European Central Bank.
- (2) If the plan provides otherwise, the constructive part of the plan indicates, in respect of creditors entitled to separate satisfaction, the fraction by which their rights will be reduced, it details the period of respite for their claims or which other provisions are to be binding on them.

Section 223a

Intra-group third-party guarantees

Unless otherwise provided in the insolvency plan, the right of an insolvency creditor resulting from an intra-group third-party guarantee (section 217 (2)) remains unaffected by the insolvency plan. If provision is made therefor, appropriate compensation is to be provided for the interference. Section 223 (1) sentence 2 and (2) applies accordingly.

Section 224

Rights of insolvency creditors

In respect of the non-lower-ranking creditors, the constructive part of the insolvency plan is to indicate the fraction by which their claims are to be reduced, it details the period of respite for their claims, how they are to be safeguarded or which other provisions are to be binding on them.

Section 225

Rights of lower-ranking insolvency creditors

- (1) The claims of lower-ranking insolvency creditors are deemed to be waived, unless otherwise provided in the insolvency plan.
- (2) If the insolvency plan provides otherwise, the constructive part is to give the indications required under section 224 for each group of lower-ranking creditors.
- (3) The debtor's liability for fines and obligations equal to such penalties under section 39 (1) no. 3 subsequent to termination of the insolvency proceedings can neither be excluded nor limited by a plan.

Section 225a **Rights of shareholders**

- (1) The share and membership rights of those with a participating interest in the debtor remain unaffected by the insolvency plan, unless otherwise provided in the plan.
- (2) The constructive part of the plan may provide that the creditors' claims may be converted into share or membership rights in the debtor. Such conversion is ruled out if it is against the will of the creditors concerned. In particular, the plan may provide for a decrease or increase in capital, the provision of contributions in kind, the ruling out of subscription rights, or the payment of compensation to outgoing shareholders.
- (3) The plan may set out any rule permissible under company law, in particular regarding the continuation of a dissolved enterprise or the transfer of share and membership rights.
- (4) Measures under subsection (2) or (3) do not authorise the holder to rescind or terminate contracts to which the debtor is party. Nor do they lead to the contracts being otherwise rescinded. Any contrary contractual agreements are invalid. Agreements reached on the basis of the debtor's breach of duty remain unaffected by sentences 1 and 2, insofar as they do not consist solely in a measure referred to in subsection (2) and (3) being contemplated or carried out.
- (5) Where a measure under subsection (2) or (3) represents an important reason for a person with a participating interest in the debtor leaving the legal entity or company without legal personality and if use is made of this right of withdrawal, the financial status which would have arisen if the debtor had been wound up are decisive when it comes to determining the amount of any possible compensation. Payment of the compensation may be deferred over a period of no more than three years to avoid placing an inappropriate burden on the debtor's financial situation. Interest is to be added to any unpaid compensation.

Section 226 **Equal treatment of parties**

- (1) All the parties to the proceedings within each group are to be offered equal rights.
- (2) Any distinct treatment of the parties forming one group requires the consent of all of the parties. In such a case the insolvency plan is to be accompanied by each party's statement of consent.
- (3) Any agreement concluded by the insolvency administrator, the debtor or any other person and individual parties providing for an advantage not envisaged under the plan in consideration of such parties' conduct in votes or otherwise with respect to the insolvency proceedings is void.

Section 227 **Debtor's liability**

- (1) Unless otherwise provided in the insolvency plan, debtors are discharged of any residual obligations held by the insolvency creditors by the satisfaction of such creditors under the constructive part.
- (2) If the debtor is a company without legal personality or a partnership limited by shares, subsection (1) applies accordingly to the partners' personal liability.

Section 228 **Modification of conditions under property law**

If rights in objects are to be created, modified, transferred or waived, any legal declarations needed from the parties to the proceedings may be included in the constructive part of the insolvency plan. If registered rights in real estate or in registered rights are involved, such rights are to be detailed in compliance with section 28 of the Land Register Code (*Grundbuchordnung*). Sentence 2 applies accordingly to rights registered in the register of ships and the register of ships under construction, or in the register of liens on aircraft.

Section 229

Survey of assets. Earnings and finance plan

If the creditors are to be satisfied from the earnings derived from the debtor's enterprise which is continued by the debtor or by a third party, the insolvency plan is to be accompanied by a survey of assets listing the values of assets and obligations which would stand opposite each other in the event of the plan becoming effective. In addition, the plan is to indicate the expenses and earnings to be expected during the period of the creditors' satisfaction and by which succession of earnings and expenses the liquidity of the enterprise will be maintained during such period. Account must also be taken of those creditors who have not filed their claims but who are known when the plan is being drawn up.

Section 230

Further attachments

- (1) If the insolvency plan provides for the debtor to continue an enterprise and if the debtor is a natural person, the plan is to be accompanied by the debtor's statement of willingness to continue the enterprise under the plan. If the debtor is a company without legal personality or a partnership limited by shares, the plan is to be accompanied by a similar statement by those persons who are, according to the plan, general partners. The debtor's statement to be made in accordance with sentence 1 is not required from a debtor who submits the plan himself or herself.
- (2) If creditors are to acquire shares, membership rights or interests in a legal entity, an unincorporated association or in a company without legal personality, the plan is to be accompanied by the declaration of consent of each such creditor.
- (3) If a third party has agreed to enter into obligations towards the creditors if the plan is approved, the plan is to be accompanied by a statement made by such third party.
- (4) If the insolvency plan provides for interference with the rights of creditors on the basis of intra-group third-party guarantees, then the plan must include the consent of that affiliated enterprise which provided the security.

Section 231

Refusal of plan

- (1) The insolvency court refuses the insolvency plan ex officio
 1. if the provisions governing the right to submit a plan and its contents, in particular regarding the forming of groups, are not complied with, and the submitting party is unable to remedy such deficiency or does not remedy it within a reasonable period determined by the court;
 2. if a plan submitted by the debtor obviously has no chance of being accepted by the parties to the proceedings or approved by the court; or
 3. if the claims provided for the parties under the constructive part of a plan submitted by the debtor manifestly cannot be satisfied.

The court is, as a rule, to give its decision within two weeks following submission of the plan.

- (2) If, in the insolvency proceedings, the debtor has already submitted a plan which has been refused by the parties to the proceedings, not approved by the court or withdrawn by the debtor after publication of the date of the discussion meeting, the court is to refuse a new plan submitted by the debtor if such refusal is requested by the insolvency administrator with the consent of the creditors' committee, if one has been appointed.
- (3) The submitting party may bring an immediate appeal against the order refusing the plan.

Section 232

Comments on plan

- (1) If the insolvency plan is not refused, the insolvency court is required to forward it to the following for their comments, in particular for a comparative calculation:

1. the creditors' committee, if one has been appointed, the works council and the representative body for executive staff;
2. the debtor if the insolvency administrator submitted the plan; and
3. the administrator if the debtor submitted the plan.

(2) The court may also give the official representative body of industry, trade, the craft or of agriculture competent for the debtor or other expert organisations the opportunity to comment.

(3) The court sets the period for submission of the comments. The period is, as a rule, not to exceed two weeks.

(4) The court may already forward the plan as referred to in subsections (1) and (2), for comment, prior to the decision to be given in accordance with section 231. If a comment received in response thereto presents new facts on which the court wishes to base a decision to refuse the plan, then the court is required to forward the comments to the person or entity which submitted the plan and others entitled to submit comments in accordance with subsection (1) so that they may submit comments within a period of no more than one week.

Section 233

Suspension of realisation and distribution

To the extent to which continued realisation and distribution of the insolvency estate would impair implementation of an insolvency plan which has been submitted, the insolvency court, at the request of the debtor or insolvency administrator, orders suspension of realisation and distribution. The court overrules or stops such suspension if it entails the risk of considerable disadvantage to the insolvency estate or if the administrator, with the consent of the creditors' committee or assembly, requests continuation of realisation and distribution.

Section 234

Laying out of plan

The insolvency plan, together with its attachments and any comments received, is to be laid out for the parties' inspection in the registry of the court.

Division 2

Acceptance and approval of plan

Section 235

Discussion and voting meeting

(1) The insolvency court docket a meeting to discuss the insolvency plan and the voting rights of the parties to the proceedings and subsequently to vote on the plan (discussion and voting meeting). Such meeting is, as a rule, not to be docketed later than one month. It may be scheduled for the same day docketed for the submission of comments in accordance with section 232.

(2) The date of the discussion and voting meeting are to be published. Publication must indicate that the plan and any comments received are available for inspection in the registry of the court. Section 74 (2) sentence 2 applies accordingly.

(3) Insolvency creditors who have filed claims, creditors entitled to separate satisfaction, the insolvency administrator, the debtor, the works council and the representative body for executive staff are to receive individual summons. A copy of the plan or a summary of its essential contents, to be provided at the request of the submitting party, is to be sent with the summons. If the share and membership rights of those with a participating interest in the debtor are included in the plan, these are also to be summoned pursuant to sentences 1 and 2; this does not apply to stockholders or limited liability shareholders in a partnership limited by shares. Section 8 (3) applies accordingly. Section 121 (4a) of the Stock Corporation Act (*Aktiengesetz*) applies accordingly to listed companies; they are to publish a summary of the essential contents of the plan on their website.

Section 236

Coincidence with verification meeting

The discussion and voting meeting may not be docketed prior to the verification meeting. Both meetings may, however, be docketed to coincide.

Section 237

Voting right of insolvency creditors

(1) Section 77 (1) sentence 1 and (2) and (3) no. 1 apply accordingly to the voting right of the insolvency creditors while voting on the insolvency plan. Creditors entitled to separate satisfaction may only vote as insolvency creditors if the debtor is personally liable to them and if they waive their right to separate satisfaction or are not satisfied under such right; as long as their non-satisfaction has not been determined, the probable value of their non-satisfaction is to be taken into account.

(2) Creditors whose claims are not impaired by the plan have no voting right.

Section 238

Voting right of creditors entitled to separate satisfaction

(1) If the legal status of creditors entitled to separate satisfaction is covered in the insolvency plan, the rights of such individual creditors are to be discussed at the meeting. A voting right is vested in rights to separate satisfaction denied by neither the insolvency administrator, the creditors entitled to separate satisfaction nor by an insolvency creditor. Sections 41 and 77 (2) and (3) no. 1 apply accordingly to the voting right of denied, suspended or immature rights.

(2) Section 237 (2) applies accordingly.

Section 238a

Voting right of shareholders

(1) The voting right of the debtor's shareholders is determined solely by their participating interest in the debtor's subscribed capital or assets. No account is taken of any limitations on voting rights, of special or multiple voting rights.

(2) Section 237 (2) applies accordingly.

Section 238b

Voting right of those entitled as result of intra-group third-party guarantees

If the plan provides for interference with rights resulting from intra-group third-party guarantees, the voting right corresponds to the contribution to satisfaction which is to presumably to be expected on account of asserting those rights resulting from intra-group third-party guarantees.

Section 239

Voting list

The registrar of the court registry records in a list the voting rights of the parties to the proceedings which result from the meeting.

Section 240

Modification of plan

The submitting party is entitled to modify the contents of individual provisions of the insolvency plan in accordance with the results of the discussion meeting. A vote may be taken at the same meeting on the modified plan.

Section 241

Separate voting meeting

(1) The insolvency court may docket a separate meeting for the vote on the insolvency plan. In this case, the period between the discussion meeting and the voting meeting is, as a rule, to be no more than one month.

(2) The parties to the proceedings with voting rights and the debtor are to be summoned to the voting meeting. This does not apply to stockholders or limited liability shareholders in a

partnership limited by shares. It is sufficient, for these, to publish the date of the meeting. Section 121 (4a) of the Stock Corporation Act applies accordingly to listed companies. If the plan has been modified, such modification is to be specifically indicated.

Section 242 **Voting in writing**

- (1) If a separate voting meeting is docketed, voting rights may be exercised in writing.
- (2) The insolvency court sends voting slips to the parties to the proceedings with voting rights after the discussion meeting while at the same time informing them of their voting right. Votes submitted in writing are not counted unless the court receives them no later than one day prior to the voting meeting; reference thereto is to be made when the voting slip is forwarded.

Section 243 **Voting by groups**

Each group of parties to the proceedings with voting rights votes separately on the insolvency plan.

Section 244 **Necessary majorities**

- (1) Acceptance of the insolvency plan by the creditors requires that, in each group,
 1. the majority of creditors with voting rights backs the plan, and
 2. the sum of claims held by creditors backing the plan exceeds half of the sum of claims held by the creditors with voting rights.
- (2) Creditors who hold a right jointly or whose rights constituted a uniform right until the reason to open insolvency proceedings came into effect are counted as one creditor in the vote. The same applies if a right is the object of a pledge or usufruct.
- (3) Subsection (1) no. 2 applies accordingly to those with a participating interest in the debtor, with the proviso that the sum of the participating interests stands in lieu of the sum of claims.

Section 245 **Prohibition of obstruction**

- (1) Even if the necessary majorities have not been achieved, a voting group is deemed to have consented if
 1. the members of such a group are likely not to be placed at a disadvantage by the insolvency plan compared with their situation without such plan,
 2. the members of such a group participate to a reasonable extent in the economic value devolving to the parties under the plan, and
 3. the majority of the voting groups have backed the plan with the necessary majorities.
- (2) For the purpose of subsection (1) no. 2, a reasonable participation of a group of creditors exists if, under the plan,
 1. no other creditor will receive economic values exceeding the full amount of their claim;
 2. neither a creditor with a lower-ranking claim than the creditors forming his or her group who would have to be satisfied without a plan, nor the debtor nor a person with a participating interest receives an economic value which is not fully compensated for by way of performance in the debtor's assets; and

3. no creditor to be satisfied on an equal footing with the creditors forming his or her group without a plan receives an advantage over such creditors.

If the debtor is a natural person whose involvement in continuing the enterprise is essential, on account of specific characteristics inherent to that debtor, in order to be able to realise the value added set out in the plan and the debtor has undertaken, in the plan, to continue the enterprise and to transfer the economic values which he or she obtains or holds upon such involvement ending, for reasons within his or her responsibility, before five years have elapsed or before the end of a shorter period provided for in respect of enforcement of the plan, then appropriate participation by the group of creditors may also exist if the debtor, in derogation from sentence 1 no. 2, obtains economic values. Sentence 2 applies accordingly to owners of share or membership rights who are part of the management.

(2a) If the majority required to form a group as per section 222 (1) sentence 2 no. 5 is not achieved, then subsections (1) and (2) apply to that group only if the compensation provided for in respect of the interference appropriately compensates the holders of the rights resulting from the intra-group third-party guarantee for the loss of rights suffered.

(3) For the purpose of subsection (1) no. 2, a reasonable participation of a group of shareholders exists if, under the plan,

1. no creditor receives economic benefits exceeding the full amount of their claim and
2. no shareholder who would be equal in rank to the shareholders in the group if no plan were drawn up is better placed than they are.

Section 245a

Natural persons placed at disadvantage

If the debtor is a natural person, then it is to be assumed, in cases of doubt, when conducting an assessment as to whether he or she will presumably be placed at a disadvantage in accordance with section 245 (1) no. 1, that the debtor's income, asset and family situation at the time of the vote on the insolvency plan remains relevant throughout the proceedings and the period in which the insolvency creditors are able to assert their remaining claims against the debtor to an unlimited degree. If the debtor has made an admissible request for residual debt discharge, then in cases of doubt it is also to be assumed that the residual debt discharge will be granted at the end of the assignment period set out in section 287 (2).

Section 246

Consent of lower-ranking creditors of insolvency proceedings

The following supplemental provisions apply to acceptance of the insolvency plan by the lower-ranking insolvency creditors:

1. The consent of the groups ranking lower than section 39 (1) no. 3 is deemed to have been given if none of the insolvency creditors receives an advantage under the plan compared with the creditors forming such groups.
2. If none of the creditors forming a group votes at all, the consent of this group is deemed to have been given.

Section 246a

Consent of shareholders

If none of the members of a group of shareholders votes at all, the consent of the group is deemed to have been given.

Section 247

Debtor's consent

(1) The debtor's consent to the plan is deemed to have been given if said debtor does not oppose the plan in writing at the latest in the voting meeting.

(2) An opposing opinion as per subsection (1) is deemed to be irrelevant if

1. the debtor is likely not to be placed at a disadvantage by the plan compared with his or her situation without a plan, and
2. no creditor receives an economic value exceeding the full amount of his or her claim.

Section 248 **Approval by court**

- (1) After acceptance of the insolvency plan by the parties to the proceedings (sections 244 to 246a) and after obtaining the debtor's consent the plan requires approval by the insolvency court.
- (2) Before the court gives its decision regarding approval of the plan, it is, as a rule, to hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor.

Section 248a **Court approval of corrections to plan**

- (1) Corrections to the insolvency plan made by the insolvency administrator in accordance with section 221 sentence 2 requires approval by the insolvency court.
- (2) Before the court gives its decision regarding approval of the plan it is, as a rule, to hear the insolvency administrator, the creditors' committee, if one has been appointed, the creditors and the shareholders, insofar as their rights are affected, as well as the debtor.
- (3) Approval is to be refused, upon request, if, due to changes to the plan resulting from the corrections, a party to the proceedings is likely to suffer a disadvantage relative to the position they would have had under the intended effects of the plan.
- (4) The creditors and shareholders referred to in subsection (2) as well as the administrator may file an immediate appeal against the order approving or refusing to approve the correction. Section 253 (4) applies accordingly.

Section 249 **Plan subject to conditions**

If the insolvency plan provides for the making of specific payments or for other measures before approval, the plan may not be approved unless such conditions are met. Approval is to be refused ex officio if such conditions are not met even after expiry of an adequate period of time fixed by the insolvency court.

Section 250 **Contravention of procedural provisions**

Approval is to be refused ex officio if

1. the provisions governing the contents and the procedural handling of the insolvency plan, as well as its acceptance by the consent of the parties to the proceedings and of the debtor were not complied with regarding an essential aspect and such deficiency cannot be remedied, or
2. acceptance of the plan has been effected by improper means, in particular by an advantage favouring one of the parties.

Section 251 **Protection of minorities**

(1) At the request of one of the creditor's or, if the debtor is not a natural person, a person with a participating interest in the debtor, approval of the insolvency plan is to be refused if

1. the person filing the request opposed the plan in writing or for the records at the latest in the voting meeting, and

2. the person filing the request is likely to be placed at a disadvantage by the plan compared with his or her situation without a plan; if the debtor is a natural person, section 245a applies accordingly.

(2) Such request is admissible only if the requesting party shows to the satisfaction of the court at the latest on the day of the voting meeting that they are likely to be placed at a disadvantage on account of the plan.

(3) The request is to be rejected if the constructive part provides for funds being made available in the event that a party to the proceedings shows to the satisfaction of the court that they will be placed at a disadvantage. Whether the party to the proceedings is to receive compensation from such funds is not a matter for the insolvency proceedings.

Section 252 Publication of decision

(1) The order approving the insolvency plan or refusing its approval is to be announced at the voting meeting or at a special meeting to be docketed as soon as possible. Section 74 (2) sentence 2 applies accordingly.

(2) If the plan is approved, a copy of the plan or a summary of its essential contents is to be sent to those insolvency creditors who have filed claims and to creditors entitled to separate satisfaction, making reference to its approval. If the share or membership rights of those with a participating interest in the debtor are included in the plan, they, too, are to be sent the documents; this does not apply to stockholders and limited liability shareholders in a partnership limited by shares. A copy of the plan or a summary of its essential contents need not be communicated as required under sentences 1 and 2 if a copy of the plan is sent together with the summons in accordance with section 235 (2) sentence 2 and the plan was adopted without any changes being made. Section 8 (3) applies accordingly. Listed companies are required to publish a summary of the essential contents of the plan on their website.

Section 253 Appeal

(1) The creditors, the debtor and, if the debtor is not a natural person, those persons with a participating interest in the debtor, may file an immediate appeal against the order approving or refusing to approve the insolvency plan.

(2) An immediate appeal against the approval is admissible only if the party filing the appeal

1. has objected to the plan in writing or for the records at the latest during the voting meeting,

2. has voted against the plan and

3. has shown to the satisfaction of the court that they are considerably worse off under the plan than without it and that this disadvantage cannot be compensated by means of payment from the funds referred to in section 251 (3); if the debtor is a natural person, section 245a applies accordingly.

(3) Subsection (2) no. 1 and 2 applies only if, when publishing the date of the meeting (section 235 (2)) and the summons to the meeting (section 235 (3)), special reference was made to the need to object and to reject the plan.

(4) At the request of the insolvency administrator, the regional court without delay dismisses the appeal if it appears to be preferential that the insolvency plan take effect as soon as possible because, to the unfettered satisfaction of the court, the disadvantages on account of a delay in enforcing the plan override the disadvantages for the party filing the appeal; there are no redress proceedings in accordance with section 572 (1) sentence 1 of the Code of Civil Procedure. This does not apply in the event of an especially serious statutory violation. If the court dismisses the appeal in accordance with sentence 1, the applicant is to be compensated from the insolvency estate for the damage arising on account of execution of

the plan; the reversal of effects arising from the insolvency plan cannot be claimed as damages. The regional court which dismissed the immediate appeal has sole jurisdiction in regard to actions concerning the payment of compensation for damages in accordance with sentence 3.

Division 3

Effects of approved plan. Monitoring implementation of plan

Section 254

General effects of plan

- (1) As soon as the order approving the insolvency plan becomes final its effects under the constructive part become binding on all the parties to the proceedings.
- (2) With the exception of the rights resulting from intra-group third-party guarantees (section 217 (2)) regulated under section 223a, the plan leaves unaffected the rights entitling the insolvency creditors against the debtor's co-obligors and guarantors as well as the rights of such creditors to objects not forming part of the insolvency estate or deriving from a priority notice covering such objects. However, debtors are discharged, by means of the plan, of their co-obligor's, guarantor's or any other redressing party's claims against them in the same way as debtors are discharged of the claims of the insolvency creditors.
- (3) Creditors who have received better satisfaction than warranted under the plan are not held liable to restitution.
- (4) If creditor's claims are converted into share or membership rights in the debtor, the debtor may, following approval by the court, assert no claims against the previous creditors on account of the overvaluation of claims in the plan.

Section 254a

Rights in objects. Other effects

- (1) Where rights in objects are to be substantiated, changed, converted or revoked or shares in a private limited company are to be assigned, the declarations of intent of the parties in the insolvency plan are deemed to have been submitted in the prescribed form.
- (2) Where the share or membership rights of those with a participating interest in the debtor are included in the plan (section 225a), the decisions of the shareholders which are included in the plan or other declarations of intent made by the parties to the proceedings are deemed to have been submitted in the prescribed form. Summons, announcements and other measures in the preparation of shareholder decisions required under company law are deemed to have been effected in the prescribed form. The insolvency administrator is authorised to make the necessary registrations with the competent register court.
- (3) The same applies accordingly to formal obligations included in the plan based on a measure under subsection (1) or (2).

Section 254b

Effects for all involved

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

Section 255

Proviso of revival

- (1) If the claims held by insolvency creditors were deferred or partly waived on the basis of the constructive part of the insolvency plan, such deferral or waiver is no longer binding on a creditor on whose claims the debtor defaults to a considerable extent in performance of the plan. Such default to a considerable extent is to be assumed only if the debtor has not paid a mature debt although reminded by the creditor in writing with a grace period of at least two weeks.
- (2) If new insolvency proceedings are opened for the debtor's assets before the plan has been fully performed, a deferral or waiver is no longer binding on any of the insolvency creditors.

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

Section 256

Contested claims. Remaining claims

- (1) If a claim has been contested at the verification meeting or if the amount of the remaining claim held by a creditor entitled to separate satisfaction has not yet been determined, default on performing the insolvency plan for the purpose of section 255 (1) is not to be assumed if, up until final determination of its amount, the debtor takes account of the claim in the amount which corresponds to the decision by the insolvency court on the voting right of such creditor upon the vote on the plan. If the court has not decided on the voting right, then at the request of the debtor or of the creditor it is to subsequently determine the extent to which the debtor has to provisionally take such claim into account.
- (2) If such final determination shows the debtor falling short in payments, that debtor is required to pay the arrears. Default to a considerable extent in performance of the plan is to be assumed only if the debtor fails to pay the arrears although reminded by the creditor in writing with a grace period of no less than two weeks.
- (3) If such final determination shows the debtor has overpaid, then the debtor may claim restitution of the overpaid amount only to the extent that it also exceeds the immature part of the creditor's claim under the insolvency plan.

Section 257

Execution under plan

- (1) Insolvency creditors with determined claims which were not contested by the debtor at the verification meeting may execute under an approved and final insolvency plan in connection with entry in the schedule against the debtor as under a judgment declared executable. A claim in respect of which an objection has been raised and overruled is deemed equivalent to a claim which has not been contested. Section 202 applies accordingly.
- (2) The same applies to execution against a third party which, by a written statement submitted to the insolvency court without reserving the beneficium excussionis, has taken on responsibility together with the debtor for performance of the plan by the latter.
- (3) Creditors who invoke their rights in the case of considerable default on the part of the debtor in respect of performance of the plan are required to show to the satisfaction of the court the reminder and the expiry of the grace period, but must prove no other facts constituting the default on the part of the debtor in order to receive an execution clause for such rights and to initiate such execution.

Section 258

Termination of insolvency proceedings

- (1) As soon as approval of the insolvency plan has become final and unless otherwise provided in the insolvency plan, the insolvency court decides on termination of the insolvency proceedings.
- (2) Prior to termination, the administrator is to settle those undisputed due claims on the insolvency estate and to provide securities for disputed or undue claims. A financial plan may also be submitted for undue claims on the insolvency estate which shows that their satisfaction is guaranteed.
- (3) Such decision includes the date of termination, which is, as a rule, to be no earlier than two days following the decision. The decision and the reason for termination are to be published. The debtor, the insolvency administrator and the members of the creditors' committee are to be informed in advance of the date of termination. Sections 31 to 33 apply accordingly. If the date of termination is not stated, termination becomes effective as soon as two further days have elapsed since the day of its publication.

Section 259

Effects of termination

- (1) The offices of the insolvency administrator and of the members of the creditors' committee expire upon termination of the insolvency proceedings. The right of unhindered realisation of the insolvency estate is transferred back to the debtor.
- (2) The provisions governing the monitoring of implementation of the plan remain unaffected.
- (3) An action brought in the insolvency proceedings to contest the debtor's transactions may be continued by the administrator even after termination of the proceedings if provided for in the constructive part of the plan. In such a case, the action will be carried on for the debtor's account unless otherwise provided in the plan.

Section 259a

Protection against unfair judicial execution

- (1) If, following termination of the proceedings, executions on individual creditors who had not filed their claims at the voting meeting jeopardise enforcement of the insolvency plan, the insolvency court may, at the request of the debtor, entirely or in part revoke an execution or deny it for a maximum of three years. The request is admissible only if the debtor can show to the satisfaction of the court the actual claims on which the jeopardy is based.
- (2) If the jeopardy has been shown to the satisfaction of the court, the court may also temporarily stay enforcement.
- (3) Upon request, the court revokes or amends its order if this is necessary in view of a change in the circumstances.

Section 259b

Special period of limitation

- (1) A creditor's claim which had not been filed by the time of the voting meeting becomes statute-barred after one year.
- (2) The period of limitation begins to run on the day on which the claim is due and the order approving the insolvency plan becomes final.
- (3) Subsections (1) and (2) apply only if, as a result, the period of limitation of a claim ends earlier than it would in application of otherwise applicable periods of limitation.
- (4) The limitation of a creditor's claim is suspended as long as enforcement is not permissible on account of the debtor's protection against unfair judicial execution as set out in section 259a. The suspension ends three months after the end of the period of protection against unfair judicial execution.

Section 260

Monitoring implementation of plan

- (1) The constructive part of the insolvency plan may provide for the monitoring of implementation of the plan.
- (2) In the case referred to in subsection (1), subsequent to termination of the insolvency proceedings performance of the creditors' claims under the constructive part against the debtor is to be monitored.
- (3) If the constructive part provides for such situation, monitoring includes performance of the creditors' claims under the constructive part against legal entities or companies without legal personality established after the opening of insolvency proceedings in order to take over or continue the debtor's enterprise or establishment (takeover company).

Section 261

Tasks and rights of insolvency administrator

- (1) The task of monitoring falls to the insolvency administrator. The offices of the administrator and of the members of the creditors' committee, as well as the supervision of the court continue for such purpose. Section 22 (3) applies accordingly.
- (2) During the period of monitoring the administrator is required to report each year to the creditors' committee, if one has been appointed, and to the court on progress made and

further expectations regarding performance of the insolvency plan. This reporting obligation leaves unaffected the right of the creditors' committee and of the court to demand specific information or an interim report at any time.

Section 262

Disclosure requirement incumbent on insolvency administrator

If the insolvency administrator finds that claims monitored for performance are not met or cannot be met, then the administrator must disclose such failure to the creditors' committee and to the insolvency court without delay. If no creditors' committee has been appointed, the administrator must instead inform all creditors entitled against the debtor or the takeover company under the constructive part of the insolvency plan.

Section 263

Transactions requiring consent

The constructive part of the insolvency plan may provide that specific transactions by the debtor or the takeover company require the consent of the insolvency administrator during the period of monitoring in order to become effective. Sections 81 (1) and 82 apply accordingly.

Section 264

Loan ceiling

(1) The constructive part of the insolvency plan may provide for the lower-ranking status of the insolvency creditors compared with creditors with entitlements deriving from loans or other credits entered into by the debtor or the takeover company during the period of monitoring or held open by a preferential creditor to extend into the period of monitoring. In such a case, the maximum amount of such loans is also to be indicated (loan ceiling). It may not exceed the value of property listed in the survey of assets contained in the plan (section 229 sentence 1).

(2) The insolvency creditors rank lower under subsection (1) only in comparison with creditors with whom agreement is reached that and to which amount the main claim, interest and costs of the loans granted by them are below the loan ceiling and who receive confirmation of such agreement in writing from the insolvency administrator.

(3) Section 39 (1) no. 5 remains unaffected.

Section 265

Lower-ranking status of new creditors

Creditors with other contractual claims created during the period of monitoring also have lower-ranking status in comparison with creditors with entitlements deriving from loans entered into or held open under section 264. Claims created by contract under a continuing obligation prior to monitoring are also deemed to constitute such claims for the time after the first date when the creditor could terminate such contract after monitoring began.

Section 266

Consideration of lower-ranking status

(1) The lower-ranking status of insolvency creditors and of creditors referred to in section 265 is to be taken into account only in insolvency proceedings opened before termination of monitoring.

(2) In any such new insolvency proceedings such creditors take priority over any other lower-ranking creditors.

Section 267

Publication of monitoring

(1) If performance of the insolvency plan is to be monitored, this is to be published together with the order terminating the insolvency proceedings.

(2) Publication also covers the following:

1. in the case referred to in section 260 (3), any extension of such monitoring to the takeover company;
 2. in the case referred to in section 263, which transactions require the consent of the insolvency administrator;
 3. in the case referred to in section 264, the amount of any loan ceiling.
- (3) Section 31 applies accordingly. If, in the case referred to in section 263, the right to transfer real estate, a registered ship, a ship under construction or an aircraft, a right in any such object or a right in such a right is subject to restriction, sections 32 and 33 apply accordingly.

Section 268

Termination of monitoring

(1) The insolvency court decides to terminate the monitoring if

1. the claims monitored for satisfaction have been met or their satisfaction is ensured, or
 2. three years have elapsed since termination of the insolvency proceedings and the opening of new insolvency proceedings has not been requested.
- (2) Such decision is to be published. Section 267 (3) applies accordingly.

Section 269

Costs of monitoring

The costs of monitoring are borne by the debtor. In the case referred to in section 260 (3), the takeover company bears any costs incurred for its monitoring.

Part 7

Coordination of proceedings concerning debtors which are members of same group of companies

Division 1

General provisions

Section 269a

Cooperation between insolvency administrators

The insolvency administrators of debtor companies in a group of companies are obliged to provide each other with information and to cooperate insofar as this does not impair the interests of the parties to the proceedings for which they have been appointed. In particular, they are, upon request, without delay to provide all that information which may be of relevance to the other proceedings.

Section 269b

Cooperation between courts

Where insolvency proceedings are being conducted against the assets of debtor companies in a group of companies before different insolvency courts, the courts are obliged to cooperate and, in particular, to exchange information which may be of relevance to the other proceedings. In particular, this applies in respect of

1. the ordering of protective measures,
2. the opening of proceedings,
3. the appointment of an insolvency administrator,
4. key procedural decisions,
5. the amount of the insolvency estate and

6. the submission of insolvency plans as well as other measures to terminate the insolvency proceedings.

Section 269c

Cooperation between creditors' committees

- (1) At the request of a creditors' committee which has been appointed in proceedings against the assets of a debtor company in a group of companies, the court with group jurisdiction may appoint a group creditors' committee after hearing the other creditors' committees. Each creditors' committee or provisional creditors' committee of a debtor company in a group of companies which is not of manifestly subordinate importance for the group of companies as a whole appoints one member to the group creditors' committee. Another member of this committee is appointed from among the employee representatives.
- (2) The group creditors' committee supports the insolvency administrator and the creditors' committees in the individual proceedings in order to facilitate the coordinated conduct of these proceedings. Sections 70 to 73 apply accordingly. As regards remuneration, the work performed as a member of the group creditors' committee is deemed to be work performed in the creditors' committee which the member represents in the group creditors' committee.
- (3) In the cases referred to in subsections (1) and (2), a creditors' committee is equal to a provisional creditors' committee.

Division 2

Coordination proceedings

Section 269d

Coordination court

- (1) Where a request is made to open insolvency proceedings against the assets of debtor companies in a group of companies or where such proceedings have been opened, the court competent to open the group ancillary proceedings (coordination court) may institute coordination proceedings upon such request being made.
- (2) Each debtor company in a group of companies is authorised to make such request. Section 3a (3) applies accordingly. Each creditors' committee or provisional creditors' committee of a debtor company in a group of companies is also authorised on the basis of a unanimous decision.

Section 269e

Coordinator

- (1) The coordination court appoints a person who is not a member of one of the debtor companies in a group of companies and their creditors as coordinator for the proceedings. The person to be appointed is, as a rule, not be one of the insolvency administrators and administrators of the debtor companies in the group of companies. The appointment of a debtor company in a group of companies is ruled out.
- (2) Before appointing the coordinator, the coordination court gives a group creditors' committee, if one has been appointed, the opportunity to comment on the person in question and the requirements to be made of him or her.

Section 269f

Coordinator's tasks and legal status

- (1) The coordinator is required to ensure that the proceedings against the debtor companies in a group of companies are coordinated insofar as this is in the creditors' interests. To that end, the coordinator may, in particular, submit a coordination plan. The coordinator may explain this coordination plan at the relevant creditors' assemblies or have it explained by a person authorised by the coordinator to do so.
- (2) The insolvency administrators and provisional insolvency administrators of the debtor companies in a group of companies are obliged to cooperate with the coordinator. Upon request, they are required, in particular, to provide the coordinator with the information required in the expedient performance of his or her work.

(3) Unless otherwise provided under this Part, section 27 (2) no. 4, sections 56 to 60 and sections 62 to 65 apply accordingly to the appointment of the coordinator, to the supervision exercised by the insolvency court, and to liability and remuneration.

Section 269g **Coordinator's remuneration**

(1) Coordinators are entitled to receive remuneration for their work and to reimbursement of their necessary expenses. The standard remuneration rate is calculated on the basis of the value of the combined insolvency estates of the debtor companies in a group of companies involved in the coordination proceedings. The extent and difficulty of the coordination work is reflected by deviating from the standard remuneration rate. Sections 64 and 65 apply accordingly.

(2) The coordinator's remuneration is to be adjusted pro rata in line with the insolvency estates of the debtor companies in the group of companies; in cases of doubt, the ratio between the value of the individual estates is decisive.

Section 269h **Coordination plan**

(1) To ensure the coordinated conduct of the insolvency proceedings against the assets of debtor companies in a group of companies, the coordinator and, if no one has yet been appointed to this role, the insolvency administrators of the debtor companies in the group of companies may jointly submit a coordination plan to the coordination court for confirmation. The coordination plan requires the consent of the group creditors' committee if one has been appointed. The court rejects the plan ex officio if provisions concerning the right to submit a coordination plan, the content of the plan or the procedural treatment of the plan have not been complied with and those submitting the plan are unable to remedy the defect or do not remedy the defect within a reasonable time determined by the court.

(2) The coordination plan may detail all those measures which are expedient in respect of the coordinated conduct of the proceedings. In particular, the plan may contain proposals for

1. the re-establishment of the economic performance of the individual debtor companies in a group of companies and of a group of companies,
2. the settlement of intra-group disputes,
3. contractual agreements between the individual insolvency administrators.

(3) Each of the parties submitting the coordination plan is entitled to file an immediate appeal against the decision to refuse to confirm the coordination plan. The other parties submitting the plan are to be consulted in these proceedings.

Section 269i **Deviations from coordination plan**

(1) The insolvency administrator of a debtor company in a group of companies is to explain the coordination plan at a report meeting if this is not done by the coordinator or a person authorised by the coordinator to do so. After explaining the coordination plan, the insolvency administrator must provide grounds why he or she intends to deviate from the measures described in the plan. If no coordination plan is available at the time of the reporting meeting, the insolvency administrator meets the obligations under sentences 1 and 2 at a creditors' assembly, for which the insolvency court is to set a date soon afterwards.

(2) Upon the resolution of the creditors' assembly, the coordination plan is to be based on an insolvency plan to be drawn up by the insolvency administrator.

Part 8 **Debtor-in-possession management**

Section 270 **Principle**

- (1) The debtor is entitled under the supervision of an insolvency monitor to manage and realise the insolvency estate if the insolvency court orders such debtor-in-possession management in the order opening the insolvency proceedings. Such proceedings are subject to general legal provisions, unless otherwise provided under this Part.
- (2) The provisions of this Part apply to consumer insolvency proceedings under section 304.

Section 270a

Request; debtor-in-possession management plan

- (1) The debtor includes a debtor-in-possession management plan with the request for the ordering of debtor-in-possession management, which comprises the following:
 1. a financial plan covering a six-month period and a well-founded account of the sources of finance on the basis of which ordinary business operations are to continue and the costs of the proceedings are to be covered during that period,
 2. a strategy for conducting the insolvency proceedings which, based on a presentation of the nature, extent and causes of the crisis, describes the objective of the debtor-in-possession management and the proposed measures to be taken to achieve that objective,
 3. an account of the status which negotiations concerning the prospective measures have reached with creditors, with those with a participating interest in the debtor and third parties,
 4. an account of precautionary measures taken by the debtor to safeguard the debtor's ability to meet the obligations under insolvency law, and
 5. a reasoned presentation of any additional or reduced costs which will presumably arise in the course of debtor-in-possession management compared to regular proceedings and in relation to the insolvency estate.
- (2) The debtor is, further, required to state
 1. whether, to what extent and with which creditors the debtor is in contact as regards the performance of obligations resulting from employment relationships, pension commitments or tax obligations, vis-à-vis social insurance agencies or suppliers,
 2. whether and in which proceedings bans on enforcement or on realisation were ordered, under this Code or under the Company Stabilisation and Restructuring Act, in the debtor's favour within the last three years, and
 3. whether the debtor has met the disclosure requirements, in particular those under sections 325 to 328 or 339 of the Commercial Code, for the last three business years.

Section 270b

Order for provisional debtor-in-possession management

- (1) The court appoints a provisional insolvency monitor to whom sections 274 and 275 apply (provisional debtor-in-possession management) if
 1. the debtor's debtor-in-possession management planning is complete and consistent, and
 2. no circumstances are known which indicate that essential aspects of the debtor-in-possession management planning are based on incorrect facts.

If the debtor-in-possession management plan has remediable deficiencies, the court may temporarily order provisional debtor-in-possession management; in such cases it gives the debtor a period by the end of which remedial measures are to have been taken, such period being no longer than 20 days.

(2) If, according to the financial plan transmitted in accordance with section 270a (1) no. 1, the costs of the debtor-in-possession management and the continuation of ordinary business operations are not covered, if the assumed costs of the debtor-in-possession management presented on the basis of section 270a (1) no. 5 exceed the presumed costs of regular proceedings to a substantial degree or circumstances are known which indicate that

1. outstanding payments need to be made to employees or considerable outstanding payments need to be made to other creditors as referred to in section 270a (2) no. 1,
2. bans on enforcement or on realisation were ordered, under this Code or under the Company Stabilisation and Restructuring Act, in the debtor's favour in the last three years prior to the filing of the request or
3. the debtor has breached disclosure requirements, in particular those under sections 325 to 328 or 339 of the Commercial Code, in one of the last three years prior to filing the request,

then the provisional insolvency monitor is appointed only if, despite these circumstances, the debtor is expected to be willing and able to align the management of the enterprise with the creditors' interests.

(3) A provisional creditors' committee is to be given the opportunity to comment before the decision is given in accordance with subsection (2). A decision may be given without any comment on the part of the creditors' committee only if two working days have elapsed since the request was made or if it is manifestly the case that detrimental changes to the debtor's asset situation are to be expected which can only be averted by appointing a provisional insolvency administrator. The court is bound by a unanimous decision by the provisional creditors' committee to support the provisional debtor-in-possession management. If the provisional creditors' committee votes unanimously against provisional debtor-in-possession management, the order is not made.

(4) If the court appoints a provisional insolvency administrator, the reasons therefor are to be presented in writing. Section 27 (2) no. 4 applies accordingly.

Section 270c

Procedure for provisional debtor-in-possession management

(1) The court may task the provisional insolvency monitor with reporting on

1. the debtor-in-possession management plan submitted by the debtor, in particular whether it is based on recognised and recognisable facts, is consistent and appears implementable,
2. the completeness and suitability of the financial reporting and accounting to serve as the basis for debtor-in-possession management planning, in particular for financial planning,
3. the existence of obligations on the part of the debtor against current or former members of its bodies.

(2) The debtor is required to inform the court and the provisional insolvency monitor without delay of any essential changes which affect the debtor-in-possession planning.

(3) The court may order provisional measures in accordance with section 21 (1) and (2) sentence 1 no. 1a and nos. 3 to 5. If the court orders provisional debtor-in-possession management in accordance with section 270b (1) sentence 2, it may also order that disposals by the debtor require the consent of the provisional insolvency monitor.

(4) At the debtor's request, the court must order that the debtor establish debts incumbent on the estate. If the authorisation is to cover obligations of which account has not been taken in the financial planning, this requires separate establishment. Section 55 (2) applies accordingly.

(5) If the debtor has filed a request for the opening of insolvency proceedings on account of imminent insolvency and requests debtor-in-possession management but the court does not regard the conditions for debtor-in-possession management as being met, the court is to inform the debtor of its reservations and give the debtor the opportunity to withdraw the request to open insolvency proceedings before the decision on such opening is given.

Section 270d

Preparations for restructuring; “protective shield”

(1) If the debtor has submitted the request together with reasoned certification provided by a tax adviser, accountant or lawyer with experience in insolvency matters or a person with comparable qualifications which provides evidence of the imminent insolvency or overindebtedness but that the debtor is not already insolvent and that the intended restructuring does not manifestly lack the prospect of success, then the insolvency court determines, at the debtor’s request, a period within which an insolvency plan is to be submitted. The period may not exceed three months.

(2) The issuer of the certificate referred to in subsection (1) may not be appointed as provisional insolvency monitor. The debtor may propose to the court the name of a person who is to be appointed as provisional insolvency monitor. The court may decide not to appoint the provisional insolvency monitor proposed by the debtor only if the proposed person is manifestly not suited to taking on the office; the court must provide reasons in writing for its decision.

(3) The court is required to order measures under section 21 (2) sentence 1 no. 3 if the debtor submits a request therefor.

(4) The debtor or the provisional insolvency monitor must without delay notify the court of the debtor becoming insolvent. After revoking the order pursuant to subsection (1) or after expiry of the period, the court gives a decision regarding the opening of insolvency proceedings.

Section 270e

Termination of provisional debtor-in-possession management

(1) Provisional debtor-in-possession management is terminated by the appointment of a provisional insolvency administrator if

1. the debtor commits a serious breach of obligations under insolvency law or shows in another manner the unwillingness or inability to manage the business in the creditors’ interests, in particular where it is clear that
 - a) the debtor based essential aspects of the debtor-in-possession management planning on incorrect facts or is not meeting the obligations under section 270c (2),
 - b) the financial reporting and accounting are so incomplete or inadequate that they do not permit any assessment to be made in respect of the debtor-in-possession management planning, in particular the financial planning,
 - c) the debtor has obligations against current or former members of its bodies which could be more difficult to enforce in the course of debtor-in-possession management,
2. deficiencies in the debtor-in-possession management planning are not remedied within the period set under section 270b (1) sentence 2,
3. the achievement of the objective set for the debtor-in-possession management, in particular any planned restructuring, proves to lack the prospect of success,
4. the provisional insolvency monitor applies therefor with the consent of the provisional creditors’ committee, or the provisional creditors’ committee applies therefor,
5. the debtor applies therefor.

(2) Provisional debtor-in-possession management is also terminated by the appointment of a provisional insolvency administrator if a creditor or insolvency creditor entitled to separate satisfaction applies for such termination and shows to the satisfaction of the court that the conditions for the ordering of provisional debtor-in-possession management are not met and the debtor-in-possession management risks placing them at a significant disadvantage. Before giving a decision on the request, the debtor is to be heard. An immediate appeal against the decision is available to the creditor and the debtor.

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

(4) The provisional creditors' committee is to be given the opportunity to comment before a decision is given in respect of subsection (1) no. 1 or no. 3. Section 270b (3) sentence 2 applies accordingly. If the court appoints a provisional insolvency administrator, the reasons therefor are to be presented in writing. Section 27 (2) no. 4 applies accordingly.

Section 270f

Order for debtor-in-possession management

(1) Debtor-in-possession management is ordered at the debtor's request, unless provisional debtor-in-possession management would not be ordered in accordance with section 270b or would have to be terminated under section 270e.

(2) An insolvency monitor is appointed in lieu of an insolvency administrator. The insolvency creditors' claims are to be filed with the insolvency monitor. Sections 32 and 33 do not apply.

(3) Section 270b (1) sentence 1, (2) and (3) applies accordingly.

Section 270g

Debtor-in-possession management in respect of debtor companies in group of companies

Where debtor-in-possession management or provisional debtor-in-possession management is ordered in the case of a debtor company in a group of companies, the debtor is subject to the obligations in respect of coordination set out in section 269a. After insolvency proceedings have been opened, the debtor exercising debtor-in-possession management has the rights to make requests as referred to in section 3a (1), section 3d (2) and section 269d (2) sentence 2.

Section 271

Subsequent order

If the majority of the creditors' assembly referred to in section 76 (2) and the majority of the voting creditors apply for debtor-in-possession management, the court orders such debtor-in-possession management if the debtor gives. The former insolvency administrator may be appointed as insolvency monitor.

Section 272

Repeal of order

(1) The insolvency court repeals its decision ordering debtor-in-possession management if

1. the debtor commits a serious breach of obligations under insolvency law or shows in another manner the unwillingness or inability to manage the business in the creditors' interests; this also applies where it is clear that

a) the debtor based essential aspects of the debtor-in-possession management planning on incorrect facts or is not meeting the obligations under section 270c (2),

b) the financial reporting and accounting are so incomplete or inadequate that they do not permit any assessment to be made in respect of the debtor-in-possession management planning, in particular the financial planning,

- c) the debtor has obligations against current or former members of its bodies which could be more difficult to enforce in the course of debtor-in-possession management,
 - 2. the achievement of the objective set for the debtor-in-possession management, in particular any planned restructuring, proves to lack the prospect of success,
 - 3. this is requested by the creditors' assembly with the majority referred to in section 76 (2) and by the majority of the creditors' voting;
 - 4. this is requested by a creditor with a right to separate satisfaction or an insolvency creditor, the conditions for the ordering of debtor-in-possession management under section 270f (1) in conjunction with section 270b (1) sentence 1 have been eliminated and the party making the request risks being placed at a significant disadvantage on account of the debtor-in-possession management;
 - 5. this is requested by the debtor.
- (2) A creditor's request is only admissible if the creditor shows the conditions set out in subsection (1) no. 4 to the satisfaction of the court. Before deciding on the request, the insolvency court is to hear the debtor. The creditor and the debtor may bring an immediate appeal against the decision given by the court.
- (3) The former insolvency monitor may be appointed as insolvency administrator.

Section 273 Publication

The insolvency court's decision ordering debtor-in-possession management after the opening of insolvency proceedings, or repealing such order, is to be published.

Section 274 Legal status of insolvency monitor

- (1) Section 27 (2) no. 4, section 54 no. 2, as well as sections 56 to 60 and 62 to 65 apply accordingly to the insolvency monitor's appointment, supervision by the insolvency court, as well as to liability and remuneration.
- (2) The insolvency monitor is required to verify the debtor's economic situation and monitor the management of the business and expenses for the debtor's livelihood. The court may order that the insolvency monitor be permitted to support the debtor when it comes to the pre-financing of insolvency payments, accounting under insolvency law and negotiations with customers and suppliers. Section 22 (3) applies accordingly.
- (3) If the insolvency monitor finds circumstances which suggest that continuing debtor-in-possession management will place the creditors at a disadvantage, the insolvency monitor is to disclose such circumstances without delay to the creditors' committee and to the insolvency court. If no creditors' committee has been appointed, the insolvency monitor is instead to inform the insolvency creditors who have filed claims, as well as the creditors with a right to separate satisfaction.

Section 275 Consent of insolvency monitor

- (1) No obligations exceeding the range of their ordinary business may be entered into by debtors without the insolvency monitor's consent. Debtors may not even enter into obligations falling under the range of their ordinary business if the insolvency monitor objects to such obligations.
- (2) The insolvency monitor may require debtors to allow collection of all payments received only by the insolvency monitor and payments to be made only by the insolvency monitor.

Section 276 Consent of creditors' committee

The debtor is to obtain the consent of the creditors' committee for transactions of particular importance to the insolvency proceedings. Section 160 (1) sentence 2, (2), section 161 sentence 2 and section 164 apply accordingly.

Section 276a

Involvement of supervisory organs

(1) If the debtor is a legal entity or a company without legal personality, the supervisory board, the shareholders' meeting or comparable bodies have no influence on the debtor's management. The withdrawal and appointment of new members of the management are effective only if the insolvency monitor consents thereto. That consent must be given if the measure does not place the creditors at a disadvantage.

(2) If the debtor is a legal entity, then the members of its representative body are liable in accordance with the provisions of sections 60 to 62. In the case of a company without legal personality, this applies to the partners who are authorised to represent the company. Where no partner authorised to represent the company is a natural person, this applies to the bodies representing the partner authorised to represent the company. Sentence 3 applies analogously if the representative bodies are companies without legal personality in which no natural person is authorised as representative body or if the grouping of companies continue in this way.

(3) Subsections (1) and (2) apply accordingly in the period between the ordering of provisional debtor-in-possession management or the ordering of provisional measures under section 270c (3) and the opening of proceedings.

Section 277

Ordering requirement of consent

(1) At the request of the creditors' assembly, the insolvency court orders that certain transactions by the debtor require the consent of the insolvency monitor to become legally effective. Section 81 (1) sentences 2 and 3, as well as section 82 apply accordingly. If the insolvency monitor consents to a transaction giving rise to an obligation incumbent on the estate, section 61 applies accordingly.

(2) Such order may also be issued at the request of a creditor with a right to separate satisfaction or of an insolvency creditor if it is urgently necessary in order to prevent disadvantages to the creditors. The admissibility of such a request requires that the requesting party shows such condition for the order to the satisfaction of the court.

(3) Such order is to be published. Section 31 applies accordingly. If the right to transfer real property, a registered ship, a ship under construction or an aircraft, a right in such an object or a right in such a right is subjected to the requirement of consent, sections 32 and 33 apply accordingly.

Section 278

Funds for debtor's livelihood

(1) Debtors may draw, from the insolvency estate, funds for themselves and their family members as referred to in section 100 (2) sentence 2 which permit them a modest livelihood in the light of their former living conditions.

(2) If a debtor is not a natural person, subsection (1) applies accordingly to the debtor's partners with personal liability entitled to represent the debtor.

Section 279

Mutual contracts

The provisions governing the performance of transactions and the cooperation of the works council (sections 103 to 128) apply, with the proviso that the insolvency administrator is to be replaced by the debtor. Debtors are, as a rule, to exercise their rights under such provisions with the concurrence of the insolvency monitor. Exercise of the rights under sections 120, 122 and 126 requires the insolvency monitor's consent to become legally effective.

Section 280

Liability. Contest of debtor's transactions in insolvency proceedings

Only the insolvency monitor may claim any liability to the credit of the insolvency estate under sections 92 and 93 and contest the debtor's transactions under sections 129 to 147.

Section 281

Notification of creditors

(1) The debtor is required to keep a record of the insolvency estate, the record of creditors and the survey of property (sections 151 to 153). The insolvency monitor is to verify such records and survey and give a written statement regarding each as to whether the result of this verification gives rise to any objections.

(2) The debtor gives the report during the report meeting. The insolvency monitor is to comment on the report.

(3) The debtor is obliged to render accounts (sections 66 and 155). Subsection (1) sentence 2 applies accordingly to the debtor's final accounts.

Section 282

Realisation of securities

(1) The insolvency administrator's right to realise objects subject to rights to separate satisfaction is vested in the debtor. However, costs are not charged for the determination of such objects and of the rights to such objects. Only the costs actually arising and necessary for the realisation and the amount of turnover tax may be counted as costs of realisation.

(2) Debtors are, as a rule, to exercise their right to realisation in agreement with the insolvency monitor.

Section 283

Satisfaction of insolvency creditors

(1) When examining claims, the insolvency creditors, the debtor and the insolvency monitor may deny claims which have been filed. A claim contested by an insolvency creditor, by the debtor or by the insolvency monitor is deemed not to have been determined.

(2) Distributions are effected by the debtor. The insolvency monitor is to verify each distribution record and give a written statement in relation to each record as to whether the result of the verification gives rise to objections.

Section 284

Insolvency plan

(1) Any charge on the part of the creditors' assembly to establish an insolvency plan is to be sent to the insolvency monitor or debtor. The provisional creditors' committee may file a request for the establish an insolvency plan with the provisional insolvency monitor or debtor. If the charge is sent to the debtor, the provisional insolvency administrator or the insolvency monitor serves as adviser.

(2) Monitoring of implementation of the plan is incumbent on the insolvency monitor.

Section 285

Insufficiency of assets

The insolvency monitor is to inform the insolvency court of the insufficiency of the assets.

Part 9

Discharge of residual debt

Section 286

Principle

If the debtor is a natural person, that debtor is discharged in accordance with sections 287 to 303a of the obligations not performed by way of the insolvency proceedings and due to the insolvency creditors.

Section 287

Debtor's request

(1) Discharge of residual debt requires a request on the part of the debtor, which is, as a rule, to be joined with a request to open insolvency proceedings. If it is not joined with the latter, it is to be submitted within two weeks of the reference as per section 20 (2). The debtor must include with the request a declaration as to whether the case referred to in section 287a (2) sentence 1 no. 1 or no. 2 applies. The debtor must give an assurance of the accuracy and completeness of the declaration referred to in sentence 3.

(2) Such request must be accompanied by a statement by the debtor to the effect that the debtor's garnishable claims to emoluments due on account of the debtor's employment or to emoluments replacing them to a trustee to be appointed by the court for a period of three years following opening of the insolvency proceedings (assignment period). If the debtor has already been discharged of residual debt on the basis of a request made after 30 September 2020, then the assignment period in any new proceedings is five years; the debtor must include a declaration of assignment with the request.

(3) Agreements on the part of the debtor are ineffective insofar as they would obstruct or be detrimental to the statement of assignment pursuant to subsection (2).

(4) The insolvency creditors who have filed claims are to be heard in respect of the debtor's request before the final meeting.

Section 287a

Decision of insolvency court

(1) If the request for discharge of residual debt is admissible, the insolvency court determines, by way of an order, that the debtor is granted discharge of residual debt if he or she fulfils the obligations under sections 295 and 295a and the conditions for refusal under sections 290, 297 to 298 are not met. The order is to be published. Immediate appeal against the order is available to the debtor.

(2) The request for discharge of residual debt is inadmissible if

1. discharge of residual debt was granted to the debtor in the last eleven years prior to the request to open insolvency proceedings or subsequent to this request or if the debtor was refused discharge of residual debt in accordance with section 297 in the last five years prior to the request to open insolvency proceedings or subsequent to this request, or

2. the debtor was refused discharge of residual debt in accordance with section 290 (1) no. 5, 6 or 7 or in accordance with section 296 in the last three years prior to the request to open insolvency proceedings or subsequent to this request; this also applies in the case referred to in section 297a if the subsequent refusal was based on grounds specified in section 290 (1), no. 5, 6 or 7.

In such cases the court is to give the debtor the opportunity to retract the request to open insolvency proceedings before the decision is taken in respect of opening insolvency proceedings.

Section 287b

Debtor's obligation to engage in gainful employment

From the beginning of the assignment period up until the termination of the insolvency proceedings it is incumbent on the debtor to engage in appropriate gainful employment and, if unemployed, to seek such employment and not refuse any reasonable activity.

Section 288

Designation of trustee

The debtor and the creditors may propose to the insolvency court as trustee a natural person suited to the individual case. If no decision has yet been given in respect of the discharge of residual debt, the court designates the trustee when giving the decision to rescind or discontinue the insolvency proceedings for insufficiency of assets and the debtor's

garnishable emoluments are to be transferred to the trustee in accordance with the statement of assignment (section 287 (2)).

Section 289

Discontinuance of insolvency proceedings

If the insolvency proceedings are discontinued, discharge of residual debt may only be granted if, after notification of the insufficiency of the assets, the insolvency estate has been distributed pursuant to section 209 and the proceedings are discontinued pursuant to section 211.

Section 290

Refusal of discharge of residual debt

(1) The discharge of residual debt is to be refused by way of an order if such refusal has been requested by an insolvency creditor who has filed a claim and if

1. the debtor, in the last five years prior to the request to open insolvency proceedings or subsequent to such request, has been issued with a final sentence to payment of a fine of more than 90 daily rates or a term of imprisonment of more than three months for commission of a criminal offence under sections 283 to 283c of the Criminal Code (*Strafgesetzbuch*);
2. the debtor by wanton act or gross negligence has given a false or incomplete statement on his or her or its economic situation in writing in the last three years prior to the request to open insolvency proceedings or subsequent to this request in order to obtain a loan or grants from public funds or to avoid making payments to public funds;
3. (repealed);
4. the debtor by wanton act or gross negligence has impaired the satisfaction of the insolvency creditors in the last three years prior to the request to open insolvency proceedings, or subsequent to such request, by entering into inappropriate obligations, by wasting property or by delaying the opening of insolvency proceedings without any expectancy of an improved economic condition;
5. the debtor by wanton act or gross negligence has infringed the disclosure or cooperation requirements under this Code;
6. in the declaration to be presented in accordance with section 287 (1) sentence 3 and in the lists of his or her property, income, creditors and claims against him or her, which are to be submitted in accordance with section 305 (1) no. 3, the debtor has by wanton act or gross negligence made false or incomplete statements;
7. the debtor infringes his or her obligation to engage in gainful employment in accordance with section 287b and thereby impairs satisfaction of the insolvency debtors; this does not apply in the absence of fault on the part of the debtor; section 296 (2) sentences 2 and 3 applies accordingly.

(2) A creditor's request may be filed in writing up until the final meeting or up until the decision is taken in accordance with section 211 (1); it is admissible only if a reason why a discharge of residual debt should be refused is shown to the satisfaction of the court. The decision on the request for refusal is given after the relevant period as stipulated in sentence 1.

(3) Immediate appeal against the order is available to the debtor and to each insolvency creditor who has requested the refusal of residual debt discharge. The order is to be published.

Section 291

(repealed)

Section 292

Legal status of trustee

(1) The trustee must bring the assignment to the notice of the person obliged to pay the emoluments. Insofar as the costs of the proceedings which have been deferred in accordance with section 4a have been corrected by deducting the cost of appointing counsel, the trustee must keep separate the amounts received under such assignment and any other payments contributed by the debtor or third parties from his or her own property and distribute them annually to the insolvency creditors as directed in the final record.

Section 36 (1) sentence 2 and (4) applies accordingly. The trustee may suspend the distribution until the end of the assignment period at the latest if this appears expedient in view of the low value of the amounts to be distributed; the trustee is required to notify the court once a year of this fact, citing the amount of the sums received.

(2) The creditors' assembly may also charge the trustee with monitoring whether the debtor is meeting his or her obligations. In such a case, the trustee is to inform the creditors without delay upon determining an infringement of such obligations. The trustee is only obliged to carry out monitoring if the additional payment for this is either covered or advanced.

(3) The trustee is required to render account to the insolvency court upon expiry of his or her office. Sections 58 and 59 apply accordingly, while section 59 applies, with the proviso that any creditor in the insolvency proceedings may request dismissal of the trustee, including for reasons other than the lack of independence, and any creditor of the insolvency proceedings may bring an immediate appeal.

Section 293

Trustee's remuneration

(1) The trustee is entitled to remuneration in consideration of his or her activity and to reimbursement of appropriate expenses. Such remuneration is to take into account the time and scope of the trustee's activity.

(2) Section 63 (2) and sections 64 and 65 apply accordingly.

Section 294

Equal treatment of creditors

(1) Executions for individual insolvency creditors into the debtor's property are not permissible in the period between the termination of the insolvency proceedings and the end of the assignment period.

(2) Any agreement between the debtor or other persons and individual insolvency creditors providing for the latter's advantage is void.

(3) The setting off of the claim to emoluments covered by the statement of assignment is not permissible.

Section 295

Debtor's obligations

In the period between the termination of the insolvency proceedings and the end of the assignment period the debtor is obliged to

1. engage in appropriate gainful employment or, if unemployed, to seek such employment and not refuse any reasonable activity;
2. transfer to the trustee half the value of property acquired by him or her by way of succession or with respect to his or her future status as heir or as a gift, as well as transfer the full value of any assets which have been acquired by way of winning a lottery, a draw or another game with prizes; common occasional gifts and winnings of small value are exempt from this rule;
3. inform the insolvency court and the trustee immediately of any change of residence or place of employment, not conceal any emoluments covered by the statement of assignment or any property covered by no. 2. And disclose to the court and

the trustee at their request his or her gainful employment or efforts to seek such employment as well as his or her emoluments and property;

4. make payments to satisfy the insolvency creditors only to the trustee, and not provide an individual creditor with an advantage;
5. establish no inappropriate obligations within the meaning of section 290 (1) no. 4.

At the debtor's request, the insolvency court determines whether assets acquired in accordance with sentence 1 no. 2 are exempt from the obligation of surrender.

Section 295a

Debtor's obligations in case of self-employment

(1) Debtors who are self-employed are obliged to satisfy the insolvency creditors by making payments to the trustee as if they were in appropriate employment. These payments are to be made each calendar year by 31 January of the following year.

(2) At the debtor's request, the court determines the amount which corresponds to the income from that employment which is to be used as the basis in accordance with subsection (1). The debtor is required to prove to the satisfaction of the court the amount of the income which could be generated by being in appropriate employment. The trustee and the insolvency creditors are to be heard before a decision is given. An immediate appeal against the decision is available to the debtor and each insolvency creditor.

Section 296

Contravention of obligations

(1) At the request of an insolvency creditor, the insolvency court refuses discharge of residual debt if the debtor contravenes any obligations in the period between the termination of the insolvency proceedings and the end of the assignment period and thereby impairs satisfaction of the insolvency creditors; this does not apply to debtors without faulty conduct; in the case referred to in section 295 sentence 1 no. 5, no account is taken of any simple negligence. Such request may be filed only within one year of the date when the creditor became aware of the contravention of an obligation. It is admissible only if the facts referred to in sentences 1 and 2 are shown to the satisfaction of the court.

(2) Prior to its decision on the request, the court is to hear the trustee, the debtor and the insolvency creditors. Debtors are required to provide information concerning fulfilment of their obligations and, at the request of the creditor, to confirm the correctness of their disclosure by means of a declaration in lieu of an oath. If, without a reasonable excuse, a creditor does not make the disclosure or declaration in lieu of an oath within the period set, or does not appear at a meeting docketed by the court to provide the information or declaration in lieu of an oath, although properly summoned and without giving a reasonable excuse, then discharge of residual debt is to be refused.

(3) The requesting party and the debtor may bring an immediate appeal against the decision. Refusal of discharge of residual debt is to be published.

Section 297

Insolvency offences

(1) At the request of an insolvency creditor, the insolvency court refuses discharge of residual debt if in the period between the final meeting and termination of the insolvency proceedings or in the period between the termination of the insolvency proceedings and the end of the assignment period the debtor has been issued with a final sentence to payment of a fine of more than 90 daily rates or a term of imprisonment of more than three months for commission of a criminal offence under sections 283 to 283c of the Criminal Code.

(2) Section 296 (1) sentences 2 and 3 and (3) applies accordingly.

Section 297a

Reasons for refusal becoming subsequently known

- (1) At the request of an insolvency creditor, the insolvency court refuses discharge of residual debt if it transpires after the final meeting or, in the case referred to in section 211, following termination that a reason to refuse discharge of residual debt under section 290 (1) existed. The request may only be made within six months following that point in time at which the reason for refusal became known to the creditor. It is admissible only if it is shown to the satisfaction of the court that the conditions under sentences 1 and 2 are met and that the creditor had no knowledge of them up until the relevant time under sentence 1.
- (2) Section 296 (3) applies accordingly.

Section 298

Coverage of trustee's minimum remuneration

- (1) At the trustee's request, the insolvency court refuses discharge of residual debt if the amounts paid to the trustee for the preceding year of activity do not cover the minimum remuneration and if the debtor does not pay the uncovered amount although the trustee has requested such payment in writing within a period of no less than two weeks and indicating the possibility that the debtor's discharge of residual debt may be refused. This does not apply if the costs of the insolvency proceedings were deferred in accordance with section 4a.
- (2) The debtor is to be heard prior to the decision. The court does not refuse discharge of residual debt if the debtor, at the court's request, pays the uncovered amount to the trustee within two weeks or the amount is deferred in accordance with section 4a.
- (3) Section 296 (3) applies accordingly.

Section 299

Expiry before date

If discharge of residual debt is refused under sections 296, 297, 297a or 298, the assignment period, the trustee's office and any limitation of the creditors' rights end as soon as the decision of the court becomes final.

Section 300

Decision on discharge of residual debt

- (1) The insolvency court decides on the discharge of residual debt after the end of the regular assignment period. The decision is given after hearing the insolvency creditors, the insolvency administrator or trustee and the debtor. Any order of discharge of residual debt in accordance with sentence 1 is deemed to be made upon the assignment period ending.
- (2) If no claims were filed in the insolvency proceedings or the insolvency claims have been satisfied and if the debtor corrected the costs of the proceedings and the other debts incumbent on the estate, then the court, at the debtor's request, gives a decision on the discharge of residual debt before the end of the assignment period. Subsection (1) sentence 2 applies accordingly. The debtor must show the existence of the conditions under sentence 1 to the satisfaction of the court. If the residual debt is discharged in accordance with sentence 1, then sections 299 and 300a apply accordingly.
- (3) At the request of an insolvency creditor and under the conditions specified in section 290 (1), section 296 (1) or (2) sentence 3, section 297 or section 297a, or at the trustee's request, the insolvency court refuses discharge of residual debt under the conditions specified in section 298.
- (4) The order is to be published. The debtor and each creditor who at the hearing referred to in subsection (1) or (2) requested that discharge of residual debt be refused or who asserted that the conditions for the premature discharge of residual debt in accordance with subsection (1) are not met may bring an immediate appeal against such decision.

Section 300a

New acquisition during ongoing insolvency proceedings

- (1) If the debtor is granted discharge of residual debt, then the assets which the debtor acquires after the end of the assignment period or after the conditions specified in section 300 (2) sentence 1 arise no longer form part of the insolvency estate. Sentence 1 does not

apply to parts of the assets which are restored to the insolvency estate on account of contestation by the insolvency administrator or which form part of the insolvency estate on account of an action brought by the insolvency administrator or on account of realisation activities on the part of the insolvency administrator.

(2) Until the decision to grant discharge of residual debt becomes final, the administrator is required to hold the new acquisition to which the debtor is entitled in trust and to manage it. Section 89 does not apply once the decision to grant discharge of residual debt becomes final. Once the decision to grant discharge of residual debt becomes final, the insolvency administrator is to release the new acquisition to the debtor and issue an invoice in respect of the management of the new acquisition.

(3) The insolvency administrator is entitled to claim remuneration and reimbursement of appropriate expenses against the debtor for services rendered in accordance with subsection (2) if discharge of residual debt has been finally granted. Section 293 applies accordingly.

Section 301

Effect of discharge of residual debt

(1) If discharge of residual debt is granted, it becomes binding on all the insolvency creditors. Such binding effect also applies to those creditors who have not filed their claims.

(2) The rights of the insolvency creditors against the debtor's co-obligors and guarantors and their rights deriving from a registered priority notice securing them or from a right entitling them to separate satisfaction in insolvency proceedings remain unaffected by the discharge of residual debt. Debtors are, however, discharged of the claims of co-obligors, guarantors or any other redressing party against themselves in the same way as they are discharged of the claims of the insolvency creditors.

(3) Creditors without entitlement to satisfaction under discharge of residual debt who are satisfied are not held liable to restitution.

(4) A ban on commencing or engaging in a commercial or business activity, a trade or self-employment which was issued solely on account of the debtor's insolvency ceases to be effective upon the discharge of residual debt having legal effect. Sentence 1 does not apply to the refusal and the revocation of admission to any activity which is subject to licensing.

Section 302

Excepted claims

The grant of discharge of residual debt leaves the following unaffected:

1. obligations incumbent on the debtor under a tort committed by wanton act, outstanding statutory maintenance arrears which the debtor has intentionally not paid contrary to his or her obligation or tax obligations, insofar as the debtor has been issued with a final sentence in connection therewith for a tax offence under section 370, 373 or 374 of the Fiscal Code; the creditor is to file the corresponding claim in accordance with section 174 (2), stating this legal reason;
2. the debtor's fines and obligations equal to such fines under section 39 (1) no. 3;
3. obligations from interest-free loans granted to the debtor to pay the costs of the insolvency proceedings.

Section 303

Retraction of discharge of residual debt

(1) At the request of an insolvency creditor, the insolvency court retracts the grant of discharge of residual debt if

1. it is subsequently found that the debtor has infringed one of his or her obligations by wanton act and thereby impaired the satisfaction of the insolvency creditors to a considerable extent,

2. it is subsequently found that the debtor was sentenced during the assignment period in accordance with section 297 (1) or if the debtor was not sentenced until after the grant of discharge of residual debt for an offence committed before the end of the assignment period in accordance with section 297 (1) or

3. the debtor has wantonly or gross negligently contravened disclosure or cooperation requirements after the grant of discharge of residual debt which are incumbent on the debtor under this Code during the insolvency proceedings.

(2) Such request by a creditor is admissible only if it is filed within one year after the decision on granting discharge of residual debt becomes final; a retraction pursuant to subsection (1), no. 3 may be requested up to six months following final termination of the insolvency proceedings. The creditor is required to show to the satisfaction of the court that the conditions for the ground for retraction are met. In the cases referred to in subsection (1) no. 1, the creditor is, in addition, to show to the satisfaction of the court that he or she was not aware of the ground for retraction before the decision of the court became final.

(3) The debtor and, in the cases referred to in subsection (1) no. 1 and 3, the trustee or the insolvency administrator are also to be heard prior to the decision. The requesting party and the debtor may bring immediate appeal against such decision. The decision retracting discharge of residual debt is to be published.

Section 303a

Entry in list of debtors

The insolvency court orders that an entry be made in the list of debtors in accordance with section 882b of the Code of Civil Procedure. An entry is made of debtors

1. who have been refused discharge of residual debt in accordance with section 290, 296, 297 or 297a or at the request of an insolvency creditor in accordance with section 300 (3),

2. whose discharge of residual debt has been retracted.

The insolvency court sends the order without delay by electronic means to the central enforcement court in accordance with section 882h (1) of the Code of Civil Procedure. Section 882c (2) and (3) of the Code of Civil Procedure applies accordingly.

Part 10

Consumer insolvency proceedings

Section 304

Principle

(1) If the debtor is a natural person who is not self-employed, the general provisions apply to the proceedings, unless otherwise provided under this Part. If the debtor was self-employed, sentence 1 applies if his or her assets are manageable and no claims exist against him or her from the employment.

(2) Assets are manageable within the meaning of subsection (1) sentence 2 only if the debtor has fewer than 20 creditors at the time the request is made to open insolvency proceedings.

Section 305

Debtor's request to open insolvency proceedings

(1) The debtor must submit the following together with the written request to open insolvency proceedings or without delay subsequent to the request being made:

1. a certificate issued by a suitable person or agency on the basis of personal consultation and thorough examination of the debtor's income and financial circumstances and from which it emerges that within the last six months prior to the request to open insolvency proceedings an unsuccessful attempt has been made to settle

out of court with the creditors on the basis of a plan; the plan is to be included and the primary reasons for its failure are to be explained; the *Länder* may determine which persons or agencies are to be regarded as suitable;

2. the request for grant of discharge of residual debt (section 287) or the declaration that discharge of residual debt is not to be applied for;

3. a record of available assets and income (record of assets), a summary of the main content of this record (overview of the assets), a record of the creditors and a record of the claims against the debtor; the records and the overview of the assets are also to include a declaration that their contents are correct and complete;

4. a plan for the settlement of debts; this may contain all provisions which are suited to lead to an appropriate settlement of debts when account is taken of the interests of the creditors, as well as of the debtor's assets, income and family situation; the plan is to include whether and to what extent sureties, pledges and other securities pertaining to the creditors are to be affected by the plan.

(2) The record of claims pursuant to subsection (1) no. 3 may also refer to enclosed statements of claims made by the creditors. Upon their request, the creditors are obliged to provide debtors with a written statement of their claims against them, at their expense, in order to aid them in preparing the record of claims; in particular, they must state the extent of their claims and their categorisation into main claim, interest and costs. The request on the part of a debtor must include a reference to a request to open insolvency proceedings which has already been filed with a court or the filing of which is planned in the near future.

(3) If the debtor has submitted the official forms provided for in subsection (5) in an incomplete state, the insolvency court requests that the debtor supply the missing parts without delay. If the debtor does not comply with this request within one month, the request to open insolvency proceedings is deemed to have been retracted. In the cases referred to in section 306 (3) sentence 3, the period is three months.

(4) The debtor may be represented before the insolvency court by a suitable person or by a member of an agency recognised as suitable within the meaning of subsection (1) no. 1. Section 174 (1) sentence 3 applies accordingly to the creditor's representative.

(5) In order to simplify consumer insolvency proceedings, by virtue of a statutory instrument and with the approval of the Bundesrat, the Federal Ministry of Justice and Consumer Protection is entitled to introduce for the parties to the proceedings forms for the certificates, requests and lists to be submitted in accordance with subsection (1) nos. 1 to 4. Where forms are introduced in accordance with sentence 1 the debtor must use them. Different forms may be introduced for proceedings in courts which process the proceedings automatically and for proceedings in courts which do not process the proceedings automatically.

Section 305a

Failure of out-of-court debt settlement

An attempt to reach an out-of-court agreement with the creditors regarding settlement of debts is deemed to have failed if a creditor requests compulsory enforcement after negotiations regarding the out-of-court settlement of debts have been initiated.

Section 306

Suspension of proceedings

(1) Proceedings relating to the request to open insolvency proceedings are suspended until the decision is taken on the plan for the settlement of debts. This period is, as a rule, not to exceed three months. After hearing the debtor, the court orders the continuation of the proceedings regarding the request to open proceedings if, in accordance with its freely-formed conviction, the debt settlement plan is likely not to be accepted.

(2) Subsection (1) poses no obstacle to the ordering of safeguards. If the proceedings are suspended, the debtor is, within two weeks of being called on to do so by the court, to submit

the number of duplicates of the debt settlement plan and of the record of assets required for service. Section 305 (3) sentence 2 applies accordingly.

(3) If a creditor requests the opening of proceedings, then prior to giving a decision on the opening of proceedings the insolvency court is to give the debtor the opportunity to likewise file a request. If the debtor files a request, subsection (1) also applies to the creditor's request. In this case, the debtor is initially to attempt to reach an out-of-court agreement in accordance with section 305 (1) no. 1.

Section 307

Service on creditors

(1) The insolvency court serves on the creditors named by the debtor the plan for the settlement of debts, as well as the overview of assets, and at the same time requests the creditors to comment on the records specified in section 305 (1) no. 3 and the plan for the settlement of debts within a period of one month; the creditors are to be informed that the records have been deposited at the insolvency court for inspection. At the same time, with express reference to the legal consequences of section 308 (3) sentence 2 each creditor is to be given the opportunity to examine the information on his or her claims in the record of claims, which has been deposited for inspection at the insolvency court within the period set in sentence 1 and where necessary to make additions. Section 8 (1) sentences 2 and 3 and (2) and (3) does not apply to service pursuant to sentence 1.

(2) If comments by a creditor in accordance with subsection (1) sentence 1 do not arrive at the court within the period set, this is deemed to constitute approval of the plan for the settlement of debts. This must be pointed out in the request for comment.

(3) Once the period laid down in subsection (1) sentence 1 has expired, the debtor is to be given the opportunity to amend or make additions to the plan for the settlement of debts within a period to be determined by the court if this is necessary on the basis of comments made by one of the creditors or this seems sensible in the interest of a mutually agreed settlement of debts. If necessary, the amendments or additions are to be served on the creditors. Subsection (1) sentences 1 and 3 and (2) applies accordingly.

Section 308

Acceptance of plan for settlement of debts

(1) If no creditor has objected to the plan for the settlement of debts or if agreement is replaced pursuant to section 309, the plan for the settlement of debts is deemed to be approved; the insolvency court determines this by way of an order. The plan for the settlement of debts has the effect of a settlement within the meaning of section 794 (1) no. 1 of the Code of Civil Procedure. The creditors and the debtor are to be served with a copy of the plan for the settlement of debts and of the order referred to in sentence 1.

(2) The requests to open insolvency proceedings and to grant discharge of residual debt are deemed to be retracted.

(3) If claims are neither included in the debtor's record nor subsequently taken into account when the plan for the settlement of debts is prepared, the creditors may demand that the debtor comply with these claims. This does not apply to the extent that creditors have not added to the information on their claim in the record of claims deposited for inspection at the insolvency court within the period set, despite the fact that the plan for the settlement of debts was sent to them and the claim had come into existence prior to expiry of the deadline; in this respect, the claim becomes void.

Section 309

Replacement of approval

(1) If the plan for the settlement of debts has been approved by more than half of the named creditors and if the total of the claims of those creditors who have given approval amounts to more than half of the claims of the named creditors, then, at the request of a creditor or of the debtor, the insolvency court replaces the objections lodged by one of the creditors to the debt settlement plan with consent. This does not apply if

1. the creditor who has raised objections is not taken into account to an appropriate extent in relation to the other creditors or
2. this creditor is likely to be placed at an economic disadvantage under the plan for the settlement of debts when compared to implementation of the procedure for opening insolvency proceedings and discharge of residual debt; in cases of doubt, the income, assets and family situation at the time of the request pursuant to sentence 1 are taken as the basis during the entire proceedings.

(2) The creditor is to be heard prior to the decision. The debtor must show to the satisfaction of the court the reasons which, pursuant to subsection (1) sentence 2, stand in the way of his or her objections being replaced by consent. The party making the request and the creditor whose consent is being replaced may bring an immediate appeal. Section 4a (2) applies accordingly.

(3) If the creditor shows to the satisfaction of the court facts giving rise to serious doubts as to whether a claim stated by the debtor exists or comes to an amount which is higher or lower than that stated and if the outcome of the dispute is decisive in respect of whether that creditor is suitably taken into account in comparison to the other creditors (subsection (1) sentence 2 no. 1), then the consent of this creditor may not be replaced.

Section 310

Costs

The creditors have no claim on the debtor for defrayal of the costs incurred by them in connection with the plan for the settlement of debts.

Section 311

Initiation of proceedings concerning opening of insolvency proceedings

If objections are raised to the plan for the settlement of debts which are not replaced by court approval pursuant to section 309, the proceedings concerning the opening of insolvency proceedings are reopened ex officio.

Section 312

(repealed)

Section 313

(repealed)

Section 314

(repealed)

Part 11

Special types of insolvency proceedings

Division 1

Probate insolvency proceedings

Section 315

Local jurisdiction

The insolvency court in whose district a deceased person had their place of general jurisdiction at the time of their death has exclusive local jurisdiction for the insolvency proceedings to be opened for their estate. If the deceased person had their centre of self-employed business activity in a different place, the insolvency court in whose district such place is located has exclusive jurisdiction.

Section 316

Admissibility of opening of insolvency proceedings

- (1) The opening of insolvency proceedings is not ruled out by the fact that the heir has not yet accepted devolution of the estate on himself or herself or that the heir is subject to unlimited liability for the obligations incumbent on the estate.
- (2) If there are several heirs, the insolvency proceedings may also be opened subsequent to division of the estate.
- (3) There are no insolvency proceedings in respect of a portion of an estate.

Section 317

Persons entitled to request opening of proceedings

- (1) The opening of insolvency proceedings relating to a deceased's estate may be requested by any heir, by the administrator of the estate or by any other guardian, by an executor entitled to manage the estate and by any creditor of the estate.
- (2) If the request is not made by all the heirs, it is admissible if the reason to open insolvency proceedings is shown to the satisfaction of the court. The insolvency court is to hear the other heirs.
- (3) If administration of the estate is incumbent on an executor, the insolvency court is to hear the executor if the heir has made the request and the heir, if the executor has made the request, respectively.

Section 318

Entitlement to make request for joint marital property

- (1) If the estate forms part of the joint marital property of a community of property, the spouse who is the heir and the other spouse who is not the heir but who administers the joint marital property alone or together with the other spouse may request the opening of insolvency proceedings relating to such estate. The consent of the other spouse is not required. The spouses retain the right to make a request even if the community of property is terminated.
- (2) If the request is not brought by both spouses, it is admissible if a reason to open insolvency proceedings is shown to the satisfaction of the court. The insolvency court is to hear the dissenting spouse.

Section 319

Submission deadline

A request submitted by a creditor of the estate to open insolvency proceedings is not admissible if a period of two years has elapsed since the heir accepted devolution of the estate on himself or herself.

Section 320

Reasons for opening

The estate's insolvency and overindebtedness are reasons to open insolvency proceedings. If the opening of insolvency proceedings is requested by the heir, by the administrator of the estate, by a guardian or by an executor, imminent insolvency is also a reason to open insolvency proceedings.

Section 321

Execution following succession

Measures of execution against the estate which were effected following succession do not entitle a creditor to separate satisfaction.

Section 322

Contestable transactions on part of heir

If the heir has satisfied claims of descendants to a compulsory portion, legacies or bequests prior to the opening of insolvency proceedings, such transaction may be contested in the same manner as a gratuitous benefit granted by the heir.

Section 323

Heir's expenses

The heir may not withhold satisfaction of any obligations incumbent on him or her on account of the expenses which are to be reimbursed to him or her from the estate in accordance with sections 1978 and 1979 of the Civil Code.

Section 324

Debts incumbent on estate

(1) In addition to the debts referred to in sections 54 and 55 the following debts are deemed to be debts incumbent on the estate:

1. expenses to be reimbursed to the heir from the estate in accordance with sections 1978 and 1979 of the Civil Code;
2. the costs of the deceased person's funeral;
3. costs incumbent on the estate incurred for the proceedings to have the deceased's death declared;
4. costs incurred for the disclosure of the deceased's will, for the estate's judicial arrestment, for the guardianship of such estate, for the offer to the creditors of the estate to file their claims and for the establishment of an inventory;
5. obligations under transactions made by the estate's guardian or by an executor;
6. obligations incurred in the management of the estate by its guardian, by an executor or by an heir who has not accepted the devolution of the estate on himself or herself incumbent on the heir to the extent that such obligations would be incumbent on the creditors of the estate upon the designated persons' management of affairs on their behalf.

(2) In the case of insufficiency of assets, the obligations referred to in subsection (1) have the rank specified under section 209 (1) no. 3.

Section 325

Obligations incumbent on estate

In insolvency proceedings opened for an estate only the obligations incumbent on the estate may be claimed.

Section 326

Heir's claims

- (1) An heir may claim those rights entitling him or her against the deceased person.
- (2) If the heir has performed an obligation incumbent on the estate and if performance is not deemed to have been made for the account of the estate under section 1979 of the Civil Code, then the heir takes the place of the creditor, unless the heir is subject to unlimited liability to the obligations incumbent on the estate.
- (3) Heirs who have unlimited liability to an individual creditor may claim the creditor's right if the creditor does not claim it.

Section 327

Lower-ranking obligations

(1) The following are performed as obligations ranking below the obligations referred to in section 39, in the following order, and equal-ranking obligations in proportion to their amount:

1. obligations towards descendants entitled to a compulsory portion;
2. obligations under the legacies and bequests ordered in the deceased's will.

(2) A legacy excluding the legal entitlement of a descendant under section 2307 of the Civil Code ranks among the legal entitlements of descendants insofar as it does not exceed such legal entitlement. If the deceased's will ordered the satisfaction of a legacy or bequest prior to another legacy or bequest, such legacy or bequest prevails.

(3) An obligation whose creditor has been excluded under proceedings offering the creditors of the estate the opportunity to file their claims or ranks among the creditors excluded under section 1974 of the Civil Code is performed only after the obligations referred to in section 39 and, if it forms part of the obligations under subsection (1), after the obligations with which it would have been identical. In other respects, such restrictions do not affect the order of claims.

Section 328 **Restituted objects**

(1) Any object restituted to the insolvency estate owing to contest of the transaction made by or vis-à-vis the deceased may not be used for performance of the obligations referred to in section 327 (1).

(2) Any property to be reimbursed to the insolvency estate by the heir under sections 1978 to 1980 of the Civil Code may only be claimed by creditors excluded under the proceedings offering the creditors of the estate the opportunity to file their claims or ranking among the excluded creditors under section 1974 of the Civil Code to the extent to which the heir would be liable to restitution of such property under the provisions governing the restitution of an unjust enrichment.

Section 329 **Reversionary succession**

Sections 323, 324 (1) no. 1 and 326 (2) and (3) also apply to a limited heir after the reversionary heir has succeeded to the deceased's estate.

Section 330 **Purchase of deceased's estate**

(1) If the heir has sold the deceased's estate, then the heir is replaced by the buyer in the insolvency proceedings.

(2) The heir may request the opening of insolvency proceedings like a creditor of the deceased's estate with respect to an obligation incumbent on the deceased's estate which is incumbent on the buyer under his or her contractual relationship with the heir. The heir has the same right with respect to another obligation incumbent on the deceased's estate, unless the heir is subject to unlimited liability or administration of the estate was ordered. Sections 323, 324 (1) no. 1 and 326 also apply to the heir subsequent to the latter's sale of the deceased's estate.

(3) Subsections (1) and (2) apply accordingly to cases where a person has sold an estate acquired by means of a contract or has, in some other way, entered into the obligation to sell an estate acquired by him or her by law or in another way.

Section 331 **Simultaneous insolvency of heir**

(1) In insolvency proceedings concerning the property of the heir, if insolvency proceedings have also been opened in respect of the estate or if administration of the estate is ordered, then sections 52, 190, 192, 198 and 237 (1) sentence 2 apply accordingly to creditors to the estate regarding whom the heir has unlimited liability.

(2) The same applies if a spouse is the heir and the estate is part of the joint marital property which is administered solely by the other spouse, also in insolvency proceedings relating to the property of the other spouse, and, if the joint marital property is administered jointly by the spouses, also in insolvency proceedings relating to the joint marital property and in insolvency proceedings relating to other property of the spouse who is not the heir. Sentence 1 applies accordingly to life partners.

Division 2 **Insolvency proceedings relating to joint marital property of continued community of property**

Section 332

Referral to insolvency proceedings opened for estate

- (1) In the case of continued community, sections 315 to 331 apply accordingly to the insolvency proceedings relating to the joint property.
- (2) Only those creditors whose claims existed as obligations on the joint property when continued community was established are creditors to the insolvency proceedings.
- (3) Descendants with partial entitlement are not entitled to request the opening of proceedings. They are, however, to be heard by the insolvency court in the case of a request to open proceedings being made.

Division 3

Insolvency proceedings relating to jointly administered marital property of a community

Section 333

Right to file request. Grounds for opening proceedings

- (1) Any creditor who can demand performance of an obligation from the joint property is entitled to request the opening of insolvency proceedings in relation to the joint property administered jointly by the spouses.
- (2) A spouse is also entitled to file a request. If the request is not filed by both spouses, it is admissible if the insolvency of the joint property is shown to the satisfaction of the court; the insolvency court is to hear the other spouse. If the request is filed by both spouses, imminent insolvency also constitutes grounds to open proceedings.
- (3) Subsections (1) and (2) apply accordingly to life partners.

Section 334

Personal liability of spouses

- (1) During the insolvency proceedings, personal liability of the spouses or life partners for obligations the fulfilment of which can be demanded from the joint property may be claimed only by the insolvency administrator or insolvency monitor.
- (2) Where an insolvency plan is drawn up, section 227 (1) applies accordingly to the personal liability of the spouses or life partners.

Part 12

International insolvency law

Division 1

General provisions

Section 335

Principle

Unless otherwise provided, the insolvency proceedings and their effects are subject to the law of the state in which the proceedings have been opened.

Section 336

Contract on immovable

The effects of insolvency proceedings on a contract relating to a right in rem in an immovable object or a right to use an immovable object are subject to the law of the state in which the object is situated. As regards an article entered in the register of ships and the register of ships under construction, as well as in the register of liens on aircraft, the law of the state under whose supervision the register is kept is relevant.

Section 337

Employment

The effects of insolvency proceedings on employment are subject to that law which is relevant to the employment pursuant to Regulation (EC) No 593/2008 of the European

Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

Section 338

Set-off

The right of an insolvency creditor to set-off remains unaffected by the opening of insolvency proceedings if, in accordance with the law applicable to the debtor's claim, the creditor is entitled to set-off at the time of the opening of insolvency proceedings.

Section 339

Contesting transactions in insolvency proceedings

A transaction may be contested if the conditions for contesting insolvency are met under the law of the state in which proceedings were opened, unless the opponent of the contest demonstrates that the law of another state is relevant to the transaction and the transaction is by no means contestable in accordance with this law.

Section 340

Organised markets. Pension transactions

- (1) The effects of insolvency proceedings on the rights and duties of participants in an organised market under section 2 (11) of the Securities Trading Act (*Wertpapierhandelsgesetz*) are subject to the law of the state which applies to this market.
- (2) The effects of insolvency proceedings on pension transactions within the meaning of section 340b of the Commercial Code as well as on novation contracts and set-off agreements are subject to the law of the state which applies to these contracts.
- (3) Subsection (1) applies accordingly to participants in a system within the meaning of section 1 (16) of the Banking Act.

Section 341

Exercising creditor rights

- (1) Each creditor can register his or her claims in the main insolvency proceedings and in each set of secondary insolvency proceedings.
- (2) An insolvency administrator is entitled to file a claim which has been filed in the proceedings to which he or she has been appointed in other insolvency proceedings regarding the debtor's assets. The right of the creditor to reject or withdraw the registration remains unaffected thereby.
- (3) The administrator is deemed to have been empowered to exercise the voting right from a claim filed in the proceedings to which he or she has been appointed in other insolvency proceedings regarding the assets of the debtor, unless otherwise determined by the creditor.

Section 342

Return. Imputation

- (1) If an insolvency creditor, by execution, by a payment on the part of the debtor or in another manner, gains something at the expense of the insolvency estate from the assets which are not situated in the state in which proceedings were opened, then the creditor is to return what has been obtained to the insolvency administrator. The provisions on the legal consequences of unjustified enrichment apply accordingly.
- (2) The insolvency creditor may retain what was obtained in insolvency proceedings which have been opened in another state. However, the insolvency creditor is not be accommodated in the distributions until the other creditors have the same rank.
- (3) At the request of the insolvency administrator, the insolvency creditor is required to provide information on what was obtained.

Division 2

Foreign insolvency proceedings

Section 343

Recognition

- (1) The opening of foreign insolvency proceedings is recognised. This does not apply
1. if the courts in the state in which proceedings were opened lack jurisdiction under German law;
 2. where recognition leads to a result which is manifestly incompatible with major principles of German law, in particular where it is incompatible with basic rights.
- (2) Subsection (1) applies accordingly to preservation measures taken after the request to open insolvency proceedings has been made, as well as to judgments handed down to implement or terminate recognised insolvency proceedings.

Section 344

Preservation measures

- (1) If a provisional administrator has been appointed abroad prior to the opening of main insolvency proceedings, then at the provisional administrator's request the insolvency court with jurisdiction may order those measures referred to in section 21 which appear necessary to preserve the assets covered by domestic secondary insolvency proceedings.
- (2) The provisional administrator may also bring an immediate appeal against the order.

Section 345

Publication

- (1) If the conditions for recognition of the opening of proceedings apply, the insolvency court is required, at the request of the foreign insolvency administrator, to publish the notice of the judgment on the opening of the proceedings and the judgment on the appointment of the insolvency administrator on domestic territory. Section 9 (1) and (2) and section 30 (1) apply accordingly. If the opening of the insolvency proceedings has been published, termination is to be published in the same way.
- (2) If the debtor has a registered office on domestic territory, public notice is effected ex officio. The insolvency administrator or a permanent representative in accordance with section 13e (2) sentence 5 no. 3 of the Commercial Code informs the insolvency court having jurisdiction in accordance with section 348 (1).
- (3) The request is only admissible if it can be shown to the satisfaction of the court that the factual conditions for recognition of the opening of proceedings apply. The administrator is to be provided with a copy of the order for publication. The foreign administrator may bring an immediate appeal against the judgment of the insolvency court with which publication is rejected.

Section 346

Land register

- (1) If, by opening the proceedings or by ordering preservation measures in accordance with section 343 (2) or section 344 (1), the debtor's right to transfer is restricted, the insolvency court is required, at the request of the foreign insolvency administrator, to request the Land Registry to enter in the land register the opening of the insolvency proceedings and the nature of the restriction of the debtor's right to transfer:
1. for any parcel of real estate with the debtor registered as owner;
 2. for the debtor's registered rights to real estate or to registered rights if the type of such rights and the circumstances give rise to the suspicion that the insolvency creditors would be placed at a disadvantage without such entry.
- (2) The request referred to in subsection (1) is only admissible if it can be shown to the satisfaction of the court that the actual conditions for recognising the opening of proceedings apply. The foreign administrator may bring an immediate appeal against the judgment of the insolvency court. Section 32 (3) sentence 1 applies accordingly to deletion of the entry.

(3) Subsections (1) and (2) apply accordingly to the entry concerning the opening of the proceedings in the register of ships, the register of ships under construction and the register of liens on aircraft.

Section 347

Proof of appointment of administrator. Notification of court

(1) The foreign insolvency administrator proves his or her appointment by presenting a certified duplicate of the judgment by means of which he or she has been appointed or another certificate issued by the competent agency. The insolvency court may require a translation, which must be certified by a person authorised to do so in the state in which proceedings have been opened.

(2) The foreign insolvency administrator who has made a request in accordance with sections 344 to 346 informs the insolvency court of all essential changes in the foreign proceedings and of all further foreign insolvency proceedings known to him or her relating to the debtor's assets.

Section 348

Insolvency court with jurisdiction. Cooperation between insolvency courts

(1) That insolvency court has exclusive jurisdiction as regards the judgments referred to in sections 344 to 346 in whose district the registered office or, if there is no registered office, assets belonging to the debtor are situated. Section 3 (3) applies accordingly.

(2) If the conditions for recognition of foreign insolvency proceedings are met or clarification is required regarding whether those conditions are met, the insolvency court may cooperate with the foreign insolvency court, in particular when it comes to passing on information of importance in the foreign proceedings.

(3) The governments of the *Länder* are authorised, for the purposes of expedient furtherance or expedited conduct of proceedings, to allocate by way of a statutory instrument the judgments referred to in sections 344 to 346 for the districts of several insolvency courts to one of these for a ruling. The governments of the *Länder* may delegate such power to the *Land* departments of justice.

(4) The *Länder* may agree that the judgments in accordance with sections 344 to 346 are allocated for several *Länder* to the courts of one *Land*. If a request in accordance with sections 344 to 346 is received by a court which lacks jurisdiction, the latter forwards the request without delay to the court with jurisdiction and informs the person filing the request thereof.

Section 349

Realisation of immovables

(1) If the debtor has realised an object of the insolvency estate which is registered on domestic territory in the land register, register of ships, the register of ships under construction or in the register of liens on aircraft, or of a right in such an object, sections 878, 892 and 893 of the Civil Code, section 3 (3) and sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships under Construction and section 5 (3) and sections 16 and 17 of the Act Governing Rights in Aircraft apply.

(2) If, to preserve a claim on domestic territory a priority notice has been entered in the land register, register of ships, the register of ships under construction or the register of liens on aircraft, section 106 remains unaffected.

Section 350

Performance in debtor's favour

If the debtor received performance on domestic territory to settle an obligation although such obligation had to be performed to the credit of the insolvency estate of the foreign insolvency proceedings, the performing party is discharged of this obligation if that party was unaware of the opening of the proceedings at the time of performance. If such party performed the

obligation prior to publication in accordance with section 345, that part is presumed to have been unaware of the opening of the proceedings.

Section 351 **Rights in rem**

- (1) The right of a third party in an object in the insolvency estate which at the time of the opening of the foreign insolvency proceedings was situated on domestic territory and which in accordance with domestic law grants a right to separation or to separate satisfaction remains unaffected by the opening of the foreign insolvency proceedings.
- (2) The effects of the foreign insolvency proceedings on the debtor's rights in immovables situated on domestic territory are, notwithstanding section 336 sentence 2, determined in accordance with German law.

Section 352 **Interruption and joinder of action**

- (1) The opening of foreign insolvency proceedings interrupts an action which is pending at the time of the opening and which concerns the insolvency estate. The interruption continues until the action is joinded by a person who, under the law of the state in which proceedings were opened, is entitled to continue the action or until the insolvency proceedings have been terminated.
- (2) Subsection (1) applies accordingly if the right to manage and transfer the debtor's assets is assigned to a provisional insolvency administrator by virtue of the ordering of preservation measures in accordance with section 343 (2).

Section 353 **Enforceability of foreign judgments**

- (1) On the basis of a judgment handed down in foreign insolvency proceedings, execution takes place only if its admissibility is pronounced by an enforcement judgment. Section 722 (2) and section 723 (1) of the Code of Civil Procedure apply accordingly.
- (2) Subsection (1) applies accordingly to the preservation measures referred to in section 343 (2).

Division 3 **Territorial insolvency proceedings relating to domestic assets**

Section 354 **Conditions for territorial insolvency proceedings**

- (1) If a German court does not have jurisdiction to open insolvency proceedings relating to all the debtor's assets, but the debtor has a registered office or other assets on domestic territory, then at the creditor's request, separate insolvency proceedings are permissible with regard to the domestic assets of the debtor (territorial insolvency proceedings).
- (2) If the debtor has no registered office on domestic territory, a creditor's request to open territorial insolvency proceedings is only admissible if the latter has a particular interest proceedings being opened, in particular if that debtor is likely to fare much worse in foreign proceedings than in domestic proceedings. The person filing the request is to show the particular interest to the satisfaction of the court.
- (3) That insolvency court has exclusive jurisdiction as regards the proceedings in whose district the registered office or, if there is no registered office, the debtor's assets are situated. Section 3 (3) applies accordingly.

Section 355 **Discharge of residual debt. Insolvency plan**

- (1) The proceedings on discharge of residual debt do not apply in territorial insolvency proceedings.

(2) An insolvency plan in which a deferral, a waiver or other restrictions on the rights of the creditors is provided for may only be approved in these proceedings if all the creditors concerned have agreed to the plan.

Section 356

Secondary insolvency proceedings

(1) Recognition of foreign main insolvency proceedings does not rule out secondary insolvency proceedings relating to domestic assets. Sections 357 and 358 apply in addition to the secondary insolvency proceedings.

(2) The foreign insolvency administrator is also entitled to open the secondary insolvency proceedings.

(3) The proceedings are opened without the need to determine a reason for such opening.

Section 357

Cooperation between insolvency administrators

(1) The insolvency administrator is to inform the foreign administrator without delay of all circumstances which may be significant in relation to the implementation of the foreign proceedings. The insolvency administrator is to afford the foreign administrator the opportunity to submit proposals for the realisation or other use of the domestic assets.

(2) The foreign administrator is entitled to attend the creditors' assemblies.

(3) An insolvency plan is to be forwarded to the foreign administrator for comment. The foreign administrator is entitled to submit an own plan. Section 218 (1) sentences 2 and 3 applies accordingly.

Section 358

Surplus resulting from final distribution

If the full amount of all claims can be satisfied during final distribution in the secondary insolvency, the insolvency administrator is required to transfer any remaining surplus to the foreign administrator of the main insolvency proceedings.

Part 13

Entry into force

Section 359

Referral to Introductory Act

This Code enters into force on the day determined in the Introductory Act to the Insolvency Code (*Einführungsgesetz zur Insolvenzordnung*).