

Protective Shield Procedure

- This proceeding is a reorganization-oriented modification of the preliminary insolvency proceedings and is aimed at drawing up an insolvency plan in self-administration.

Applications for

- Commencement of an insolvency proceeding (sec. 13 InsO)
- Self-Administration (sec. 270 InsO)
- Implementation of a protective shield proceeding instead of a regular preliminary insolvency proceeding (sec. 270d (1) sent. 1 InsO)

An order is issued if

- **imminent illiquidity** (sec. 18 InsO) or over-indebtedness (sec. 19 InsO) exists,
- but not actual illiquidity (sec. 17 InsO), and
- the **planned restructuring does not clearly** lack any prospect of success (sec. 270d (1) sent. 1 InsO)

Further requirement, submission of a substantiated statement

- issued by a person experienced in insolvency matters (tax consultant, auditor, lawyer, or a person with similar qualifications),
- the statement must confirm that imminent illiquidity and/ or over-indebtedness has occurred but not actual illiquidity (sec. 270d (1) sent. 1, InsO)

If the prerequisites are fulfilled, the insolvency court issues a decision with an order for the protective shield proceedings, and

sets a deadline

For submission of insolvency plan (max. 3 months), sec. 270d (1) sent. 1 2nd clause, sent.2 InsO.

appoints a preliminary supervisor, sec. 270d (2) InsO

- cannot be the person who issued the substantiated statement,
- the debtor is entitled to make a proposal (sec. 270d (2) sent. 2 InsO).

orders preliminary measures

according to sec. 21 I, II no. 1a, 3 - 5 InsO, sec. 270c (3) InsO.

Upon application of the debtor, the court must order the following

- Measures according to sec. 21 (2) sent. 1 no.3 InsO (sec. 270c (3) InsO)
- The possibility to create preferential liabilities (sec. 270c (4) InsO)

If requirements are not, or no longer, fulfilled,

- A normal preliminary insolvency proceeding will be initiated (ss 11 – 25, 270 (1) sent. 2 InsO).
- If the debtor's application for self-administration does not clearly lack any prospect of success, a preliminary supervisor shall be appointed (sec. 270b (1) sent.1 InsO). If necessary, the court may order further protective measures (sec. 21 InsO).
- In the case of imminent illiquidity, the court will give the debtor the opportunity to withdraw the application before a decision for commencement of insolvency proceedings, if requirements for self-administration are not met (sec. 270c (5) InsO).
- Court issues commencement order with decision on request for self-administration proceeding, (ss. 27, 270 (1) sent. 1 InsO).

Preparation of the insolvency plan for the implementation of the restructuring concept according to the application (sec. 270d (1) sent. 1 InsO)

After expiry of the time allowed: court shall decide on the commencement of proceedings (sec. 270d (4) sent. 2 InsO)

Commencement order with a decision on self-administration (sec. 27, 270 (1) sent. 1 InsO)

Implementation of restructuring concept by insolvency plan in the commenced proceedings with/without self-administration (sec. 217 InsO et seq.)