

Preventive Restructuring Framework

- Legal framework for rehabilitation cases that are intended to avoid insolvency; it allows companies to reorganise themselves based on a restructuring plan which has been adopted by the majority of the creditors.
- in force since 1 January 2021

Structure of the procedure, sect. 1 et seq. StaRUG

Early identification of crises, sect. 1 (1) sent. 1 and (2) StaRUG: Managers continuously keep track of developments that may jeopardise the continued existence of the business (tools for early identification of crises, notification and warning obligations, sect. 101 et seq. StaRUG).

If they identify such developments, then:

- they take counter-measures, sect. 1 (1) sent. 2, sub-clause 1 StaRUG,
- report without delay to the bodies appointed to supervise the management board, sect. 1 (1) sent. 2, sub-clause 2 StaRUG, and
- solicit the involvement of other bodies, sect. 1 (1) sent. 3 StaRUG.

Application for commencement of insolvency proceedings (sect. 13 and 18 InsO)

for details see scheme "Corporate insolvency proceedings"

possibly as self-administration proceedings (sect. 270 et seq. InsO)

for details see scheme "Self-administration proceedings"

or as insolvency plan procedure (sect. 217 et seq. InsO)

for details see scheme "Insolvency plan procedure"

Rehabilitation mediation (3 months + 3 additional months if necessary), sect. 94 et seq. StaRUG

Possible appointment of a rehabilitation mediator, sect. 95 StaRUG

Debtor notifies restructuring court about the restructuring project, sect. 31 in conj. with sect. 30 StaRUG
(substantive jurisdiction: sect. 34 StaRUG; local jurisdiction: sect. 35 to 37 StaRUG)
Consequence: The obligation to apply for commencement of insolvency proceedings under sect. 11 InsO is suspended.

Possible public restructuring case, sect. 84 et seq. StaRUG

Ability to make use of tools of the stabilisation and restructuring framework pursuant to sect. 29 StaRUG (see also: www.bmjv.bund.de)

Possible appointment of a restructuring practitioner
■ on application of the debtor, sect. 77 StaRUG
■ ex officio, sect. 73 et seq. StaRUG

Court-supervised plan voting (sect. 29 (2) No. 1 StaRUG)

Preliminary review (sect. 29 (2) No. 2 StaRUG)

Stabilisation (sect. 29 (2) No. 3 in conj. with sect. 49 et seq. StaRUG)

Plan confirmation (sect. 29 (2) No. 4 StaRUG)

In the event of occurrence of illiquidity or overindebtedness: Notification of the restructuring court, sect. 42 StaRUG (lodging of an application for commencement of insolvency proceedings replaces notification, sect. 42 (2) StaRUG)

Restructuring plan

- Requirements, sect. 5 to 16 StaRUG
- Legal relationships capable of being modified, sect. 2 StaRUG
- Possible employee involvement, sect. 92 StaRUG

Plan offer, sect. 17 StaRUG

Negotiation with parties affected by the plan

Out-of-court plan acceptance (sect. 17 et seq. StaRUG)

- Possible discussion meeting, sect. 21 StaRUG
- Possible voting meeting, sect. 20 StaRUG

(voting rights: sect. 24 StaRUG; required majorities: sect. 25 et seq. StaRUG; minority protection: sect. 64 StaRUG; cram-down/limited priority rule: sect. 26 et seq. StaRUG)

Plan accepted

Plan rejected

Possible application for court confirmation (sect. 60 StaRUG), possibly preceded by hearing of the parties affected by the plan (sect. 61 StaRUG)

Plan confirmed:

- Effects of the confirmed plan and plan monitoring, sect. 67 et seq. StaRUG
- Plan implementation

Court-supervised plan acceptance (sect. 45 et seq. StaRUG)

- Possible preliminary review, sect. 46 to 48 StaRUG
- Possible discussion meeting, sect. 45 StaRUG
- Possible voting meeting, sect. 45 StaRUG

(voting rights: sect. 24 StaRUG; required majorities: sect. 25 et seq. StaRUG; minority protection: sect. 64 StaRUG; cram-down: sect. 26 et seq. StaRUG)

Plan accepted

Plan rejected

Confirmation refused, sect. 63 StaRUG

Immediate appeal (sect. 66 StaRUG)