

The Restructuring Practitioner

The restructuring practitioner (RP) sect. 73 – 79 StaRUG

Appointment by the restructuring court sect. 34 et seq.

Required/ex officio, sect. 73 to 76

- **Monitors** and **manages** the restructuring process to protect creditors

Optional/on application, sect. 77 to 79

- **Mediates** in and facilitates negotiations between the parties (liaison)

Attributes of the person, sect. 74 (1) (in conj. with sect. 78 (1))

- **natural** person
- **independent** of the creditors and the debtor
- **suitable** in respect of the individual case
- experienced tax advisor, certified public accountant, lawyer or other comparably qualified person
- chosen from among all those persons willing to undertake the office

Requirements, sect. 73

- Plan modifies or suspends enforcement of rights of **creditors meriting protection** (subs. (1) No. 1)
- Stabilisation order pursuant to sect. 49 applied for (subsection. (1) No. 2)
- Fulfilment of creditors' claims is to be monitored (subsection. (1) No. 3)
- Parties oppose the restructuring objective (subsection. (2))
- Appointment as an **expert** (subsection. (3))

Debtor, creditors and persons holding an interest in the debtor have a right of proposal, proposal is binding in some cases (sect. 74 (2))

Requirements, sect. 77

- Application by the **debtor**
 - Application by a **group of creditors** holding 25% of the voting rights in a group pursuant to sect. 9 + declaration of assumption of costs
- Debtor or a creditor representing all creditor groups have a right of proposal, proposal is binding in some cases (sect. 78 (2))

Duties, sect. 76

- **Duty to notify the court** of circumstances under sect. 33 (termination of restructuring case)
- **Managerial function** if appointed for creditor protection (subsection. (2)) regarding voting on the restructuring plan; verification of claims and working towards clarification regarding voting rights (No. 1)
- May be assigned specific powers to **review** the debtor's economic position and **monitor** its management (No. 2a); receive + make payments (No. 2b)
- Duty to assist in **drafting and negotiating** the restructuring concept and the plan based on it (no. 4)
- If stabilisation order issued, ongoing **obligation to review** requirements for continuation of order and grounds for terminating (subsection. (3) No. 1) + assert grounds for termination (subs. (3) No. 2)
- Comment on declaration pursuant to sect. 14 (1) for plan confirmation purposes (subsection. (4))
- effecting the service of documents

Duty of optional RP pursuant to sect. 79

- **Assist** in drafting and negotiating the restructuring concept and the plan based on it

If requested, the court **can** also assign the optional RP duties under sect. 76 in conj. with sect. 77 (2).

- **Supervision** by the court sect. 75 (1)
- **Remuneration** sect. 80 to 83
- Removal sect. 75 (2) for good cause; **remedy**: immediate appeal
- **Liability** sect. 75 (4) in case of breach of duties pursuant to sect. 76; perform duties with required care and diligence of an RP

- **Supervised** by the court sect. 78 (3) in conj. with sect. 75 (1)
- **Remuneration** sect. 80 to 83, NB: appointed only after advance payment against expenses sect. 81 (5)
- **Dismissal** sect. 78 (3) in conj with sect. 75 (2); **remedy**: immediate appeal
- **Liability** sect. 75 (4), if duties pursuant to sect. 76 assumed