

Insights

NEW LAW TO MITIGATE INSOLVENCIES IN GERMANY

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SUMMARY

Once again, since spring 2020, the German legislator is adapting fundamental provisions of German insolvency law. Find out here what this is about and what implications the changes have for enterprises.

At the beginning of the COVID-19 pandemic, the obligation for businesses in Germany to file for insolvency was temporarily suspended by the COVID-19 Insolvency Suspension Act (COVInsAG). Accompanied by financial support measures, the German government wanted to counter the economic effects of the pandemic and enable companies to survive.

Today, a good two years later, many companies are facing continuing or even more difficult challenges. In many sectors, the entrepreneurial forecasting horizon has significantly shortened, partly due to the rapidly evolving world events.

German lawmakers are now responding to the tense situation on the energy and raw materials markets and the continuing impact of the pandemic, as well as the resulting consequences for companies, for example uncertainties in planning. The legislator is making temporary changes to insolvency law through the "Act on the Temporary Adjustment of Restructuring and Insolvency Law Provisions to Mitigate the Consequences of the Crisis" (SanInsKG).

The SanInsKG, which was promulgated today, 8 November 2022, and comes into force tomorrow, will apply for a limited period until December 31, 2023.

The most important changes under German insolvency law are:

1. In the context of the insolvency law concept of over-indebtedness, the period for the business-continuation forecast is shortened from 12 months to 4 months (Section 19 (2) Sentence 1 InsO).
2. The maximum period for filing for insolvency in the event of over-indebtedness is extended from 6 to 8 weeks (Section 15a (1) Sentence 2 InsO).

3. Companies seeking to restructure themselves under so-called self-administration now only have to submit a financial plan for 4 months (Section 270a (1) No. 1 InsO). Previously, this term was 6 months.
4. In parallel, the period for restructuring planning in the context of a non-insolvency reorganization under the “Act on the Stabilisation and Restructuring Framework for Businesses” (StaRUG) is also reduced from 6 to 4 months (Section 50 (2) No. 2 StaRUG).

But beware: Unlike in 2020, the obligation to file for insolvency is not suspended this time, only planning periods and deadlines are modified. Thus, management must continue to review the solvency of their company on an ongoing basis and should carefully document this in a reliable liquidity plan.

We will report on further legislative changes in a timely manner. Our Restructuring & Insolvency Team will of course be happy to advise you.

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