

## Instructions

### for Filing a Claim in Insolvency Proceedings (section 174 of the German Insolvency Code [*Insolvenzordnung (InsO)*])

*Once insolvency proceedings have been opened, the creditors in the insolvency proceedings must file their claims with the insolvency administrator [*Insolvenzverwalter*]. Faulty filings may result in the processing being delayed. In their own interests, creditors should therefore take careful note of the following information and the details provided on the form used to file claims. More details can be found in the German Insolvency Code, in particular in sections 38 to 52 and 174 to 186. The court is not authorised to give legal advice on individual questions. This is the responsibility of attorneys-at-law, notaries, legal secretaries and authorised legal advisers.*

#### 1. Filing claims with the insolvency administrator

The insolvency creditors' claims must be filed with the insolvency administrator and not with the court. If an insolvency monitor [*Sachwalter*] is appointed (section 270 InsO), all claims must be filed with such person.

Insolvency creditors are all persons who have a substantiated claim against the debtor at the time insolvency proceedings are opened (section 38 InsO).

#### 2. Content of and attachments to the claim filing form

Upon its filing, the reason for the claim (e.g. delivery of goods, rent, loan, repair service, salary, bill of exchange, damages) shall be indicated in order to enable the insolvency administrator to verify the claim. Should the creditors believe that a claim originates from a tort, from arrears of mandatory maintenance, which the debtor intentionally failed to pay despite being obliged to do so, or from a tax debtor-creditor relationship if the latter is due to a tax crime committed by the debtor pursuant to sections 370, 373 or 374 of the German Fiscal Code [*Abgabenordnung (AO)*], they must state the facts on which their assessment is based for each of such claims if these are directed against natural persons.

All claims must be asserted as fixed sums in German currency and ultimately the total amount shall be summarised.

As a rule, interest may be claimed only for the period up until the opening of insolvency proceedings (date of the order opening the insolvency proceedings). They shall be stated in a fixed sum specifying the interest rate and the period for which interest is claimed.

Non-liquidated claims or contingent claims shall be filed at their estimated value.

Claims in foreign currency must be converted to German currency at the exchange rate applying at the time the proceedings are opened (section 45 InsO).

All documentary proof and any other written material supporting the claim must be enclosed with the filing form. Creditors' attorneys-in-fact must enclose special power of attorney when filing claims.

#### 3. Creditors with a right to separate satisfaction

Creditors who are entitled to separate satisfaction on the basis of a pledge or other security interests shall be deemed insolvency creditors if they also have a personal claim against the debtor. This personal claim can be filed by them.

#### **4. Lower-ranking insolvency creditors**

A special arrangement shall apply to the so-called lower-ranking insolvency creditors (section 39 InsO). Lower-ranking claims are among other things the interest accruing during the opening of the proceedings, the costs of participation in the proceedings, the fines, regulatory fines, coercive fines and administrative fines, the claims to the debtor's gratuitous performance of a consideration or the return of a partner's loan in lieu of equity capital or equivalent claims.

Such lower-ranking claims may only be filed by the creditors if they are explicitly requested to do so by the court (section 174 (3) InsO). Upon the filing of such claims, their lower rank as well as the rank claimed by the creditor must be indicated.

#### **5. Subsequent filing of claims**

Claims that are filed after the time limit specified for this by the court may, under certain circumstances, require an additional verification procedure. The costs of such additional verification must be paid by the defaulting creditor (section 177 (1) sentence 2 InsO).

#### **6. Verification of claims and effect of denial (contestation)**

The filed claims will be examined in a verification meeting. The court may order that the verification take place as part of written proceedings (section 5 InsO). In this case, a verification reference date [*Prüfungsstichtag*] will be set. A written denial, which is submitted to deny a claim subject to verification, must be received by the court no later than on such verification reference date.

The filed claims can be denied by the insolvency administrator, the debtor and each individual insolvency creditor. All claims can be denied in total or in part with regard to their amount or rank. Should some of the creditors allege that a claim originates from a tort intentionally committed by the debtor, from arrears of mandatory maintenance, which the debtor intentionally failed to pay despite being obliged to do so, or from a tax crime committed by the debtor pursuant to sections 370, 373 or 374 of the German Fiscal Code, the debtor must additionally state in his/her denial whether this allegation is denied.

In the verification meeting or after the verification reference date the insolvency court will merely record the declarations made. The insolvency court is not competent to decide whether a denial is substantiated. The determination of a claim that has been denied in whole or in part can be pursued by ordinary civil proceedings (cf. section 184 InsO).

If a claim is either not denied or is denied only by the debtor, it shall be deemed to be determined in accordance with the filing documents, for the further insolvency proceedings (section 178 InsO). If debtor-in-possession management is ordered, a claim denied by the debtor will result in such claim not being determined (section 283 (1) sentence 2 InsO).

An effective denial of a filed claim shall have the following impact (cf. sections 178 to 185 InsO):

- If such a claim is based on an executable title (judgment, notarized acknowledgement of debt, tax assessment or similar), pursuing the denial by taking generally available legal remedy shall be incumbent on the denying party.
- If such executable title has not yet been received, it shall be incumbent on the supposed creditor to pursue the determination of the claim by due process of law. Therefore, the denying party must expect the supposed creditor to bring an action against it in response to such party's denial.

## **7. Participation in creditors' meetings; proof of representation**

The creditors may personally attend the verification meeting or other creditors' meetings or elect to be represented by their legal representatives.

The creditors may have themselves represented by counsel as attorneys-in-fact in the creditors' meeting and the verification meeting. Above and beyond these, pursuant to section 79 (2) sentence 2, only the following are authorised to represent the parties as attorneys-in-fact:

1. Employees of the party or of a company affiliated with it (section 15 of the German Stock Corporation Act [*Aktiengesetz (AktG)*]; public authorities and legal persons under public law, including the co-operation groupings they may form by way of fulfilling their tasks as governed by public law, may also have themselves represented by employees of other public authorities or legal persons under public law, including the co-operation groupings they may form by way of fulfilling their tasks as governed by public law;
2. Family members of full legal age (section 15 of the German Fiscal Code, section 11 of the German Act on Civil Unions [*Lebenspartnerschaftsgesetz (LPartG)*], persons who are qualified to hold judicial office and joined parties, provided that the representation is not connected to any activities performed against payment;
3. Consumer centres and other publicly subsidised consumer associations, where they are collecting claims of consumers in the context of their scope of responsibilities;
4. Persons providing collection services (registered persons pursuant to section 10 (1) sentence 1 no. 1 of the German Legal Services Act [*Rechtsdienstleistungsgesetz (RDG)*] in summary proceedings for a payment order until the matter is transferred to the court hearing the dispute, in the case of petitions for a declaration of enforceability in compulsory enforcement proceedings against movable property for monetary claims, including proceedings for the administration of a statutory declaration in lieu of an oath and for an application for the issuance of an arrest warrant, in each case to the exception of procedural actions that initiate legal proceedings determining whether or not a claim is justified, or actions that are to be taken within such legal proceedings.

Attorneys-in-fact who are not individuals will act through their governing bodies and the representatives charged with representing them in the proceedings.

Legal representatives or attorneys-in-fact must furnish documentary proof of their entitlement to represent a creditor in the meeting. As documentary proof, a current excerpt from the commercial register or written power of attorney can be submitted. In addition, the personal identity document must be brought along.

## **8. Information on the outcome of the verification of claims**

The creditor is not obliged to attend the verification meeting either in person or via a representative. However, after the claims have been verified, the court will only inform those creditors whose claims have been wholly or partially denied. The insolvency court will provide these creditors with an ex-officio extract from the insolvency schedule detailing the outcome of the verification.

Creditors whose filed claims are not denied by the insolvency administrator or an insolvency creditor (or by the debtor in the case of debtor-in-possession management) will not be separately informed by the court (section 179 (3) InsO).

## 9. Notes on the determination of denied claims

In the verification procedure, the insolvency court will only record the declarations by the parties involved. If a claim filed by a creditor is not determined (in whole) in the insolvency proceedings, the determination of such claim can be pursued by ordinary civil proceedings (sections 180 and 185 InsO). This does not fall under the jurisdiction of the insolvency court.

Therefore, in the event of differences of opinion regarding the rank, amount or legal grounds of a claim, the insolvency court must not be involved.

Claims under civil law must be brought before the civil or labour courts depending on the respective cause in law. The court in whose district the insolvency court is located shall have exclusive jurisdiction (section 180 (1) InsO).

If an action concerning such claim was pending on the date when the insolvency proceedings were opened, determination of the claim shall be initiated by the joinder of such action (section 180 (2) InsO; section 240 of the German Code of Civil Procedure [*Zivilprozessordnung (ZPO)*]).

If the insolvency creditor wins such action, such creditor will have to apply to the insolvency court for amendment of the insolvency schedule by presenting the final judgment (section 183 (2) InsO).

If the debtor has denied a claim for which an executable title or a final judgment exists, the debtor shall be obliged to bring an action to deny the claim outside of the insolvency proceedings in accordance with the general laws within a period of one month from the verification reference date. In this case, the debtor must furnish documentary proof to the insolvency court that it has brought an action to deny the claim. After the end of the period of one month to no avail, the claim shall be deemed not to have been denied (sections 184 (2), 201 (2) and (3) InsO).

All other procedural details relating to the procedure for determining disputed claims are specified in sections 179 to 185 InsO.