

99066002058003, 99066002058003

Insolvency proceedings Implementation of consumer insolvency

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Modul	Sachverhalt
Leistungsschlüssel	99066002058003, 99066002058003
Leistungsbezeichnung I	Insolvency proceedings Implementation of consumer insolvency
Leistungsbezeichnung II	Implementation of consumer insolvency proceedings
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Nordrhein-Westfalen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt mit Verrichtung
Leistungsgruppierung	Insolvenz (066)
Verrichtungskennung	Durchführung (058)
SDG-Informationsbereich	Insolvenzverfahren und Liquidation von Unternehmen

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Lagen Portalverbund	Sanierung und Insolvenz (2160300)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	09.06.2021
Fachlich freigegeben durch	Ministry of Justice of the State of North Rhine-Westphalia
Handlungsgrundlage	§§ 304 ff InsO https://www.gesetze-im-internet.de/inso/_304.html https://www.gesetze-im-internet.de/inso/_304.html
Teaser	If you are (at risk of) becoming insolvent and are not self-employed, you can apply for consumer insolvency proceedings.
Volltext	<p>Many people have debts. Debts become a serious problem when they cannot be paid off with their own income or assets. This has serious consequences:</p> <p>Creditors receive little or no money at all. Debtors, on the other hand, are usually deprived of any income or assets that exceed their minimum subsistence level. They suffer an economic decline, live in modest circumstances and usually have no prospect of better times.</p> <p>If a household's financial situation comes to a head, it is important to approach creditors at an early stage (if necessary with the help of third parties, e.g. a consumer insolvency advice center) and work with them to find solutions, e.g. by agreeing instalment payments. This may make it possible to avert financial collapse. If this is no longer possible, consumer insolvency proceedings can help.</p> <p>These insolvency proceedings serve to realize your existing (seizure-free) assets in the event of your (impending) insolvency and to distribute the proceeds evenly to your creditors.</p> <p>By initiating consumer insolvency proceedings, you have the opportunity to apply for discharge of residual debt and (if all requirements are met) to be released</p>

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from existing debts.

Consumer insolvency proceedings apply to all natural persons

- who are not (currently) self-employed or have not (previously) been self-employed,
- who have exercised a self-employed economic activity in the past, but whose financial circumstances are manageable and against whom there are no claims from employment relationships. Your financial circumstances are only considered manageable if you have fewer than 20 creditors at the time the application to open insolvency proceedings is filed. Claims from employment relationships are, in particular, claims from the tax authorities for wage tax and claims from social insurance institutions for contributions from your former employees.

For all other natural persons, so-called corporate insolvency proceedings are the right type of proceedings (read more about this under Conducting standard insolvency proceedings for a (former) company. There is also the possibility of residual debt discharge.

The prerequisite for initiating consumer insolvency proceedings is the existence of the insolvency reason of actual or imminent insolvency. A situation must have arisen in which you are currently or in the foreseeable future no longer in a position to meet your due payment obligations punctually and in full.

Out-of-court settlement attempt

As an insolvent consumer, you can only apply for insolvency proceedings to be opened against your assets if you have previously made a serious attempt to reach an out-of-court settlement with your creditors. This is a mandatory requirement for the court proceedings and must be proven when filing the application.

The attempt to reach an agreement must be based on an orderly plan. It is not sufficient to simply make a

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general inquiry to the creditors to see if they are prepared to reach an amicable agreement with you.

You must submit a proposal to your creditors as to how you would like to settle your debts appropriately. As a rule, you can draw up a payment plan in which you specify fixed installments and precise payment dates to replace the payments originally owed and the dates applicable to them.

A serious attempt to reach an agreement also requires you to disclose your income and financial circumstances. The creditors must be able to assess on the basis of the information provided whether the proposed amendment to the payment obligations is necessary and whether it corresponds to your financial possibilities.

Application to open insolvency proceedings

If the out-of-court settlement fails despite your best efforts, you can apply to the insolvency court to open insolvency proceedings.

Important: Together with the insolvency application, you must submit a certificate from a suitable body confirming the failure of your out-of-court debt settlement attempt.

Suitable persons who may issue a certificate of the out-of-court settlement attempt include

- members of the legal advisory professions (lawyers or notaries) and
- organizations recognized by the Düsseldorf district government as "suitable bodies", such as consumer insolvency advice centres. Information and overviews of these can be found on the website of the Ministry for Children, Family, Refugees and Integration (MKFFI) of the state of North Rhine-Westphalia
<https://www.mkffi.nrw/verbraucherinsolvenz-beratung>.

Make sure at an early stage (preferably before you carry out an out-of-court debt settlement procedure) that the organization you have contacted has been

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recognized by the Düsseldorf district government. It also makes a lot of sense to clarify the processing modalities (Who should send the debt settlement plan? Is the content of the debt settlement plan sufficient?) with this organization so that you also receive the required certificate after this procedure.

Erforderliche Unterlagen

- Completely and properly completed and signed official application form for consumer insolvency proceedings, including the annexes provided (e.g. list of assets, list of assets, list of creditors and list of claims),
- Certificate from an authorized body confirming the failure of the out-of-court settlement attempt,
- If applicable, application for the implementation of residual debt discharge proceedings including the necessary declaration of assignment,
- If applicable, application for approval of a deferral of procedural costs.

Voraussetzungen

- You are a consumer, i.e. either You are not currently self-employed or have not been self-employed in the past, or You have carried out a self-employed economic activity in the past, but your financial circumstances are manageable and there are no claims against you from employment relationships,
- There is a reason for opening Insolvency (§ 17 InsO) imminent insolvency (Section 18 InsO),
- Certificate from an authorized body regarding the failure of the out-of-court settlement attempt.

Kosten

Insolvency proceedings are subject to a fee. Court fees are incurred, the amount of which depends on the value of the insolvency estate in each individual case (see also Costs of insolvency proceedings). If certain conditions are met, you can apply for a deferral of the procedural costs (read more about this under Deferral of procedural costs in insolvency proceedings).

Verfahrensablauf

- Download the application forms from the NRW justice portal and print them out.
- If necessary, complete the forms together with a suitable person (e.g. lawyer) or a suitable body (debtor advice service) and enclose the necessary supporting

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documents.

- Submit the application together with the other documents to the insolvency court.

The consumer insolvency proceedings usually go through the following stages in succession:

- First, the insolvency court checks the documents you have submitted. The insolvency court will inform you of any objections in writing. You must then rectify the objection(s) within one month. If you do not do this within the deadline (the date of receipt by the insolvency court is decisive), your application is deemed to be withdrawn.
- If the insolvency court's examination shows that your application is in order, it will decide on a case-by-case basis, taking into account all the circumstances, whether it makes sense to conduct debt settlement proceedings in court.
- If the judicial debt settlement proceedings also fail or if the insolvency court decides against conducting such proceedings, the insolvency court will open insolvency proceedings against your assets, provided that the financing of the proceedings is likely to be covered by the future insolvency estate or is secured due to a deferral of the costs of the proceedings. The insolvency court also appoints an insolvency administrator.
- The insolvency administrator has the task of liquidating your (seizure-free) assets. Once the assets have been realized, the insolvency proceedings are terminated.
- If you have filed an application for discharge of residual debt: The period of good conduct begins once the insolvency proceedings have been terminated. This generally ends at the end of the 3-year (or 5-year in the case of renewed proceedings) assignment period.
- The court appoints a trustee for the duration of the good conduct period. During the period of good conduct, you must fulfill certain obligations, e.g. engage in appropriate gainful employment.

Bearbeitungsdauer

Frist

The insolvency application must be received by the insolvency court no later than six months after the

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	(certified) failure of the out-of-court debt settlement proceedings.
weiterführende Informationen	https://www.justiz.nrw/BS/lebenslagen/finanzen/schulden_insolvenz/index.php https://www.justiz.nrw.de/BS/formulare/insolvenz/verbraucherinsolvenzverfahren/index.php
Hinweise	<p>If you intend to carry out a debt settlement with the help of an insolvency plan (more on this under Insolvency plan as a restructuring instrument), you should already state this in the application, indicating the main features of the plan.</p> <p>You should start working out the details of the insolvency plan as early as possible. You should seek the advice and assistance of experts with special knowledge of insolvency law.</p>
Rechtsbehelf	
Kurztext	<ul style="list-style-type: none"> • Implementation of consumer insolvency proceedings • The purpose of insolvency proceedings is to realize your existing (seizure-free) assets in the event of your (imminent) insolvency and to distribute the proceeds equally to your creditors. • The proceedings may only be applied for if an out-of-court settlement with creditors was not possible • Such an agreement can be, for example, an agreement to repay in installments. • By initiating consumer insolvency proceedings, you have the opportunity to apply for residual debt discharge and (if all requirements are met) to be released from existing debts. • Your application for residual debt discharge must be combined with an application to open insolvency proceedings against your assets. If you do not carry out any self-employed economic activity or your financial circumstances are manageable if you were previously self-employed and your assets do not include any claims from employment relationships, you must file an application for consumer insolvency proceedings.
Ansprechpunkt	
Zuständige Stelle	

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Formulare	<p>To apply for consumer insolvency proceedings, you must use the official forms, although these also make many things easier.</p> <p>https://www.justiz.nrw/BS/formulare/insolvenz/verbraucherinsolvenzverfahren/index.php</p>
Ursprungsportal	<p>Insolvenzverfahren Durchführung Verbraucherinsolvenz, Insolvency proceedings Implementation of consumer insolvency</p>