

99066002058002

Apply for the opening of insolvency proceedings (standard insolvency proceedings)

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Modul	Sachverhalt
Leistungsschlüssel	99066002058002
Leistungsbezeichnung I	Apply for the opening of insolvency proceedings (standard insolvency proceedings)
Leistungsbezeichnung II	Apply for the opening of insolvency proceedings (standard insolvency proceedings)
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Sachsen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	
Leistungsgruppierung	
Verrichtungskennung	

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SDG-Informationsbereich	
Lagen Portalverbund	
Einheitlicher Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> • § 1 bis 34 Insolvenzordnung (InsO) – Eröffnungsvoraussetzungen und Eröffnungsverfahren • § 23 Gerichtskostengesetz (GKG), 54, 63, 64, 26, 26a InsO – Kosten des Insolvenzverfahrens
Teaser	<p>As a creditor or debtor, you can apply to the court for insolvency proceedings to be opened. The general reason for this is insolvency, in the case of legal entities (such as a GmbH or AG) and partnerships without personal liability (e.g. GmbH & Co. KG) also over-indebtedness.</p>
Volltext	<p>Application for the opening of insolvency proceedings and resolution in accordance with § 11 ff. Insolvency Code (InsO)</p> <p>As a creditor or debtor, you can apply to the court for insolvency proceedings to be opened. The general reason for this is insolvency, in the case of legal entities (such as a GmbH or AG) and partnerships without personal liability (e.g. GmbH & Co. KG) also over-indebtedness.</p> <p>Who is obliged to apply?</p> <p>If insolvency or over-indebtedness occurs, you are obliged to apply for the opening of proceedings:</p> <ul style="list-style-type: none"> • for legal entities: the members of the management board / managing directors of Associations Public limited companies (AG) Companies with limited liability (GmbH, also GmbH & Co. KG) Co-operatives <p>Note: If the GmbH, AG or cooperative has no management, the shareholders or supervisory board</p>

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members are obliged to submit the application.

- for partnerships without a personally liable natural person: the shareholders and liquidators authorised to represent the company General partnerships (OHG) Limited partnerships (KG) Partnerships limited by shares (KGaA)
- for registered associations (e. V.) and foundations: the members of the Executive Board

Who else is authorised to apply?

Natural persons can submit an application to open insolvency proceedings, but are not obliged to do so as debtors. This group of persons also includes

- Sole proprietors, sole traders
- Freelancers
- personally liable entrepreneurs of partnerships such as Company under civil law (GbR) General partnership (OHG) Limited partnership (KG) Partner company (PartG)

For private individuals Debt settlement before insolvency

If consumers are facing insolvency, they must first have attempted an out-of-court debt settlement before filing for insolvency. Consumers may also include entrepreneurs after the end of their business activity.

If the out-of-court debt settlement fails, those affected can apply for insolvency proceedings to be opened.

Erforderliche Unterlagen

- written application to open insolvency proceedings (unless the application is sent by electronic mail with a qualified electronic signature in accordance with the German Digital Signature Act)
- Creditor: Evidence and supporting documents to substantiate the reason for insolvency such as Proof of unsuccessful enforcement attempts Proof of unpaid social security contributions over a longer period of time affidavit of the debtor enforceable copy of an existing debt title Copy of the application to open insolvency proceedings (for service on the debtor)

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	<ul style="list-style-type: none"> • if applicable: power(s) of representation • Debtor: list of creditors and their claims, if applicable, further information on total assets, turnover and number of employees, declaration that the information is complete and correct
Voraussetzungen	<p>There is a reason for opening insolvency proceedings. Reasons for opening insolvency proceedings are</p> <ul style="list-style-type: none"> • Insolvency (in general) • if applied for by the debtor, also imminent insolvency, • Over-indebtedness (in the case of legal entities such as GmbH, AG, e. V.), • for consumers also: out-of-court debt settlement proceedings that have been completed <p>Eligible applicants</p> <ul style="list-style-type: none"> • any natural person with legal capacity • legal persons: Members of representative bodies personally liable shareholders if the company is without management: shareholders / supervisory board members
Kosten	<ul style="list-style-type: none"> • Procedural fee (calculated according to the value of the creditor's claim or the insolvency estate) • Expenses • Costs of the preliminary insolvency administration <p>The fees shall be borne by the applicant. This also applies to the expenses if the application is withdrawn or rejected. In this case, the debtor generally bears the fees of the provisional insolvency administrator.</p>
Verfahrensablauf	<p>Application</p> <p>In addition to the written application, it is also possible to submit the application by electronic mail, provided that it has been provided with a qualified electronic signature in accordance with the Signature Act. Please use the appropriate forms.</p> <p>Minimum information:</p> <ul style="list-style-type: none"> • Details of the parties involved and their legal or

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organisational representatives with a summonable address

- comprehensible explanation of the reason for opening the proceedings
- in the case of an application by the creditor: substantiation of the claim against the debtor and the reason for insolvency with corresponding evidence (example: bailiff's report on unsuccessful enforcement).
- if the debtor applies: list of creditors and their claims
- further information on the balance sheet total, turnover and number of employees (if the debtor has a business operation that has not been discontinued and An application for self-administration has been filed, the debtor company exceeds a certain size category (Section 22a InsO) or the establishment of a provisional creditors' committee has been applied for)

Note: The application can be withdrawn until the opening decision takes effect.

Examination

The court first examines whether the application to open insolvency proceedings is admissible, in particular

- whether the debtor is capable of insolvency and
- a reason for opening insolvency proceedings has been clearly stated.

In the case of an application by a creditor

- the credibility of the claim against the debtor

Official investigation

If the application is admissible, the insolvency court determines ex officio all circumstances that are relevant to the insolvency proceedings, in particular

- whether one of the grounds for opening insolvency proceedings applies and
- the available assets cover the costs of the proceedings.

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In most cases, an expert is appointed for this purpose.

The court can also

- hear the debtor and the petitioning creditor,
- Hear witnesses and
- Inspect documents (in particular the debtor's business documents).

Security measures / provisional insolvency administration

Until a decision is made as to whether insolvency proceedings can be opened, there is a risk that the debtor's financial situation will continue to deteriorate. For this reason, the insolvency court often appoints a provisional insolvency administrator (usually the expert mentioned above).

The provisional insolvency administrator is intended to

- secure the assets and
- the company to continue as far as possible.

Depending on the debtor's situation, the court will appoint the insolvency administrator with or without administrative and disposal authorisation. In order to prevent unauthorised access to the assets, the court will initiate further protective measures, such as

- Prohibit enforcement measures against the debtor or
- order a provisional mail freeze.

The insolvency court can also appoint a provisional creditors' committee. This is mandatory once the debtor company reaches a certain size. This is intended to ensure that the creditors have an influence on the decisions to be made in the opening proceedings.

Court order: opening or rejection

The opening proceedings end with the decision of the insolvency court. Three decisions are possible:

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- Dismissal of the application as inadmissible or unfounded
- Dismissal of the application for lack of assets
- Opening of the proceedings

Note: Creditors can prevent the dismissal for lack of assets by advancing the costs of the proceedings. This can be useful if further debtor assets could be added to the estate during the proceedings. In addition, an advance payment can be demanded from those who have culpably failed to file for insolvency in breach of their duties.

In addition to precise details about the debtor, the opening order contains provisions that are decisive for the course of the insolvency proceedings. These include

- Appointment of the insolvency administrator
- Convening the creditors' meeting
- Determination of an examination date on which the creditors' meeting examines the registered claims
- Request to creditors to notify security interests and register claims
- Request to third parties to stop making payments to the debtor
- Determination of the filing deadline for insolvency claims (between two weeks and three months)
- Indication of a possible discharge of residual debt (only for natural persons as debtors)

Bearbeitungsdauer
Frist

In the case of an obligation to file: application within three weeks of the occurrence of the reason for insolvency

weiterführende Informationen
Hinweise

Announcement / Notification

The registry of the insolvency court shall inform of the order by

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- public announcement in the official announcement media and
- Service of the order to open insolvency proceedings on the debtor and creditors.

The insolvency administrator (including the provisional insolvency administrator, if applicable) is notified of the order without delay in order to initiate the necessary steps for further processing. In addition to the resolution, the insolvency administrator receives the certificate of appointment with which he legitimises himself.

Public registers

The insolvency court also arranges for an entry to be made in the public registers in which the insolvent company is listed, such as the

- Commercial register
- Register of associations
- Partnership register
- Register of Co-operatives

The respective register court receives a copy of the decision.

Land register, register for ships and aircraft

The debtor's registered rights of ownership and liens must be secured as quickly as possible against unlawful access to

- Land and buildings and
- Ships, ships under construction and aircraft.

The insolvency court or the insolvency administrator shall obtain a blocking notice in the registers from the land registry, the relevant registry court (local court) or the Federal Aviation Office.

Rechtsbehelf

Kurztext

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Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	