

Übersetzung durch Ute Reusch

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Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 9 des Gesetzes vom 13. Februar 2013 (BGBl. I S. 174)

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## **Introductory Act to the Insolvency Statute (Excerpts)**

Introductory Act to the Insolvency Statute of 5 October 1994 (Federal Law Gazette I page 2911), as last amended by Article 9 of the Act of 13 February 2013 (Federal Law Gazette I page 174)

### **Part Three International Insolvency Law. Transitional and Concluding Provisions**

#### **Article 102**

#### **Implementation of Council Regulation (EC) No 1346/2000 on insolvency proceedings**

##### **Section 1**

##### **Local Jurisdiction**

(1) If in insolvency proceedings the German courts have international jurisdiction in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ EC L 160 p. 1) without a domestic venue existing in accordance with section 3 of the Insolvency Statute (Insolvenzordnung), the insolvency court in whose district the centre of a debtor's main interests is situated shall have exclusive jurisdiction.

(2) If the German courts have jurisdiction in accordance with Article 3(2) of Regulation (EC) No 1346/2000, the insolvency court in whose district the registered office of the debtor is situated shall have exclusive jurisdiction. Section 3 subsection (2) of the Insolvency Statute shall apply mutatis mutandis.

(3) Irrespective of jurisdiction in accordance with subsections (1) and (2), each domestic insolvency court shall have jurisdiction for judgments or other measures in accordance with Regulation (EC) No 1346/2000 in whose district assets of the debtor are situated. The governments of the Länder shall be empowered for the purposes of expedient furtherance or expedited conduct of proceedings to allocate the judgments or measures in accordance with Regulation (EC) No 1346/2000 for the districts of several insolvency courts to one of these by means of a statutory instrument. The governments of the Länder may delegate such power to the judicial administrations of the Länder.

##### **Section 2**

##### **Reasoning for the Order Opening the Insolvency Proceedings**

If it is to be presumed that assets of the debtor are located in another Member State of the European Union, the order opening the insolvency proceedings shall briefly describe the actual findings and legal considerations on the basis of which jurisdiction in accordance with Article 3 of Regulation (EC) No 1346/2000 emerges for the German courts.

### **Section 3**

#### **Avoidance of Conflicts of Jurisdiction**

(1) If the court of another Member State of the European Union opened main insolvency proceedings, as long as these insolvency proceedings are pending a request to open such proceedings before a domestic insolvency court regarding the assets belonging to the insolvency estate shall be inadmissible. Proceedings opened contrary to the first sentence may not be continued. The administrator of the foreign main insolvency proceedings shall also be entitled to bring a complaint against the opening of the domestic proceedings.

(2) If the court of another Member State of the European Union has refused to open insolvency proceedings because the German courts are stated to have jurisdiction in accordance with Article 3(1) of Regulation (EC) No 1346/2000, a German insolvency court may not refuse to open the insolvency proceedings because the courts of another Member State are alleged to have jurisdiction.

### **Section 4**

#### **Discontinuation of Insolvency Proceedings in Favour of the Courts of another Member State**

(1) If in accordance with section 3 subsection (1) the insolvency court may not continue insolvency proceedings which have already been opened, it shall discontinue the proceedings ex officio in favour of the courts of the other Member State of the European Union. Prior to discontinuation, the insolvency court should hear the insolvency administrator, the creditors' committee, if one has been appointed, and the debtor. If the insolvency proceedings are discontinued, each creditor of the insolvency proceedings shall be empowered to complain.

(2) Effects of the insolvency proceedings which already took place prior to discontinuation of the proceedings and not restricted to the duration of these proceedings shall also be maintained if they contradict effects of insolvency proceedings opened in another Member State of the European Union which relate to domestic territory in accordance with Regulation (EC) No 1346/2000. This shall also apply to transactions which have been carried out during the discontinued proceedings by the insolvency administrator or towards him in exercise of his office.

(3) Prior to discontinuation in accordance with subsection (1), the insolvency court shall inform the court of the other Member State of the European Union at which the proceedings are pending of the imminent discontinuation; in doing so, it should be stated how the opening of the proceedings which are to be discontinued was announced, in what public books and registers the opening was entered and who the insolvency administrator is. In the discontinuation order, the court of the other Member State is to be referred to in whose favour the proceedings are discontinued. This court shall be provided with a copy of the discontinuation order. Section 215 subsection (2) of the Insolvency Statute shall not be applicable.

### **Section 5**

#### **Publication**

(1) The request for publication of the notice of the judgments in accordance with Article 21(1) of Regulation (EC) No 1346/2000 shall be addressed to the court having jurisdiction in accordance with section 1. The court may require a translation which shall be certified by a person empowered to do so in one of the Member States of the European Union. Section 9 subsections (1) and (2) and section 30 subsection (1) of the Insolvency Statute shall apply mutatis mutandis.

(2) If the debtor has a registered office on domestic territory, publication shall be effected ex officio in accordance with subsection (1). If the opening of the insolvency proceedings has been published, termination shall be published in the same manner.

### **Section 6**

#### **Entry in Public Books and Registers**

(1) The request for entry in accordance with Article 22 of Regulation (EC) No 1346/2000 shall be addressed to the court with jurisdiction in accordance with section 1. The latter shall request the agency keeping the register for an entry if in accordance with the law of the state in which the main insolvency proceedings were opened the opening of the proceedings is also entered. Section 32 subsection (2), second sentence, of the Insolvency Statute shall not apply.

(2) The form and content of the entry shall be in accordance with German law. If the law of the state of the opening of proceedings provides for entries unknown to German law, the insolvency court shall select an entry which comes closest to that of the state of the opening of proceedings.

(3) If the request in accordance with subsection (1) or in accordance with section 5 subsection (1) is received by a court not having jurisdiction, the latter shall forward the application without delay to the court having jurisdiction and shall inform the person filing the request thereof.

### **Section 7 Appeal**

An immediate appeal shall be admissible against the judgment of the insolvency court in accordance with section 5 or section 6. Sections 574 to 577 of the Code of Civil Procedure (Zivilprozessordnung) shall apply mutatis mutandis.

### **Section 8 Enforcement of the Judgment Opening Proceedings**

(1) If the administrator of main insolvency proceedings in accordance with the law of the state of the opening of proceedings is empowered on the basis of the judgment on the opening of proceedings to implement by means of enforcement surrender of the assets in the keeping of the debtor, Article 25(1) first subparagraph of Regulation (EC) No 1346/2000 shall apply to the declaration of enforceability on domestic territory. The first sentence shall apply mutatis mutandis to the disposition of objects from the insolvency estate by means of coercive enforcement.

(2) Section 6 subsection (3) shall apply mutatis mutandis.

### **Section 9 Insolvency Plan**

If an insolvency plan provides for suspension, waiver or other restrictions of the creditors' rights, it may only be confirmed by the insolvency court if all creditors concerned have agreed to the plan.

### **Section 10 Suspension of Disposition**

If on request by the administrator of the main insolvency proceedings in accordance with Article 33 of Regulation (EC) No 1346/2000 in secondary domestic insolvency proceedings the liquidation of an article is stayed in which there is a special right, the creditor shall continue to be paid the interest owed from the insolvency estate.

### **Section 11 Notification of Creditors**

In addition to the order opening the insolvency proceedings, an indication shall be served on the creditors who have their habitual residence, domicile or registered office in another Member State of the European Union with which they are informed of the consequences of subsequent filing of claims in accordance with section 177 of the Insolvency Statute. Section 8 of the Insolvency Statute shall apply mutatis mutandis.

### **Article 102a Insolvency Administrators from other Member States of the European Union**

Nationals of another Member State of the European Union or of Contracting Parties to the Agreement on the European Economic Area and persons who have their registered business establishment in one of these states may complete the procedure for inclusion in a preselection list for insolvency administrators kept by the insolvency court via a single office according to the provisions of the Administrative Procedure Act (Verwaltungsverfahrensgesetz). In such cases a decision regarding requests for inclusion in a preselection list must be taken within three months. Section 42a subsection (2), second to fourth sentences, of the Administrative Procedure Act shall apply mutatis mutandis.

**Article 102b**  
**Implementation of Regulation (EU) No 648/2012**

**Section 1**

**Provisions on Default Procedures of Central Counterparties**

(1) The opening of insolvency proceedings shall pose no obstacle to

1. implementation of measures required under Article 48 paragraphs 2, 4 and 5, third sentence, and paragraph 6, third sentence, of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ EC L 201 of 27 July 2012, p. 1) concerning the administration, closing out and other clearing of client positions and proprietary trading positions of the clearing member;
2. implementation of measures required under Article 48 paragraphs 4 to 6 of Regulation (EU) No 648/2012 concerning the transfer of client positions;
3. the use and return of collateral under Article 48 paragraph 7 of Regulation (EU) No 648/2012.

(2) Subsection (1) shall apply mutatis mutandis to the ordering of preservation measures under section 21 of the Insolvency Statute.

**Section 2**  
**Non-contestability**

The measures permissible in accordance with section 1 are not subject to voidability in insolvency proceedings.

**Article 103**  
**Application of Previous Law**

The previously applicable statutory provisions shall continue to apply to bankruptcy, composition and coordinated enforcement proceedings for which an application was submitted before 1 January 1999 and to their effects. The same shall apply to follow-up bankruptcy proceedings in which the preceding petition to institute composition proceedings was filed before 1 January 1999.

**Article 103a**  
**Transitional Provision**

In respect of insolvency proceedings opened before 1 December 2001, those statutory provisions which applied until that date shall continue to apply.

**Article 103b**  
**Transitional Provision Regarding the Act Implementing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements and Amending the Mortgage Bank Act (Hypothekbankgesetz) and other Acts**

In respect of insolvency proceedings opened before 9 April 2004, those statutory provisions which applied until that date shall continue to apply

#### **Article 103c**

##### **Transitional Provision Regarding the Act to Simplify Insolvency Proceedings (Gesetz zur Vereinfachung des Insolvenzverfahrens)**

(1) With the exception of sections 8 and 9 of the Insolvency Statute and the Ordinance on Publications in Insolvency Proceedings on the Internet (Verordnung zu öffentlichen Bekanntmachungen in Insolvenzverfahren im Internet), the previously applicable statutory provisions shall continue to apply to insolvency proceedings opened before the entry into force on 1 July 2007 of the Act to Simplify Insolvency Proceedings of 13 April 2007 (BGBl. I p. 509). Notwithstanding subsection (2), only section 9 of the Insolvency Statute shall apply to publications made by the court in insolvency proceedings. Section 188 subsection (3) of the Insolvency Statute shall also apply to insolvency proceedings opened before the entry into force on 18 December 2007 of the Act to Reorganize the Law on Legal Advice (Gesetz zur Neuregelung des Rechtsberatungsrecht) of 12 December 2007 (BGBl. I p. 2840).

(2) Until 31 December 2008 in addition to electronic publication pursuant to section 9 subsection (1), first sentence, of the Insolvency Statute, publication may in addition be made by notification in a periodical published at the debtor's place of residence or registered office; the publication may be restricted to excerpts. As regards the occurrence of effects resulting from the publication, only publication on the Internet pursuant to section 9 subsection (1), first sentence, of the Insolvency Statute shall be decisive.

#### **Article 103d**

##### **Transitional Provision Regarding the Act to Modernize the Law Governing Private Limited Companies and to Combat Abuses (Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen)**

The previously applicable statutory provisions shall continue to apply to insolvency proceedings opened before the entry into force on 1 November 2008 of the Act of 23 October 2008 (BGBl. I p. 2026). Within the framework of insolvency proceedings opened after 1 November 2008, transactions effected before 1 November 2008 shall be subject to the provisions of the Insolvency Statute governing the contestation of transactions applicable until such date, insofar as the transactions escaped contestation under the previous law or were subject to it to a lesser extent.

#### **Article 103e**

##### **Transitional Provision Regarding the Budget Support Act (Haushaltsbegleitgesetz) 2011**

In respect of insolvency proceedings for which a request to open proceedings was filed before 1 January 2011, those provisions which applied until that date shall continue to apply.

#### **Article 103f**

##### **Transitional Provision Regarding the Act to Amend Section 522 of the Code of Civil Procedure**

The Insolvency Statute as applicable until 27 October 2011 shall continue to apply to decisions concerning immediate appeals in accordance with section 6 of the Insolvency Statute regarding which the deadline set out in section 575 of the Code of Civil Procedure had not yet expired on 27 October 2011. The first sentence shall apply mutatis mutandis in regard to decisions concerning immediate appeals in accordance with Article 102 section 7, first sentence, of the Introductory Act to the Insolvency Statute.

#### **Article 103g**

##### **Transitional Provision Regarding the Act to Further Facilitate the Restructuring of Business Enterprises**

The previously applicable provisions shall continue to apply to insolvency proceedings requested prior to 1 March 2012. Section 18 subsection (1) no. 2 of the Act on Senior Judicial Officers (Rechtspflegergesetz) as applicable since 1 January 2013 shall be applied only to insolvency proceedings requested as from 1 January 2013.

#### **Article 104**

##### **Application of the New Law**

In respect of insolvency proceedings for which a request to open proceedings was filed after 31 December 1998, the Insolvency Statute and this Act shall also apply to legal relations and rights created before 1 January 1999.

#### **Article 106**

##### **Contestation of Insolvency**

The provisions of the Insolvency Statute governing the contestation of transactions shall only apply to transactions effected before 1 January 1999 insofar as they do not escape contestation under the previous law or are subject to it to a lesser extent.

#### **Article 107**

##### **Discharge of Residual Debt**

If the debtor was already illiquid before 1 January 1997, the term of the assignment pursuant to section 287 subsection (2), first sentence, of the Insolvency Statute shall be reduced from seven to five years, the duration of the effectiveness of dispositions pursuant to section 114 subsection (1) of the Insolvency Statute from three to two years.

#### **Article 108**

##### **Continuity of Restrictions on Execution**

(1) As regards execution on a debtor concerning whose assets coordinated enforcement proceedings have been instituted, account shall be taken of the restrictions on execution under section 18 subsection (2), third sentence, of the Coordinated Enforcement Ordinance even after 31 December 1998.

(2) If insolvency proceedings are opened against the assets of such a debtor pursuant to the provisions set out in the Insolvency Statute, the claims subject to the restrictions on execution shall rank lower than the claims referred to in section 39 subsection (1) of the Insolvency Statute.

#### **Article 109**

##### **Bonds**

Insofar as, according to the provisions of Land law in conjunction with section 17 subsection (1) of the Introductory Act to the Bankruptcy Law (Einführungsgesetz zur Konkursordnung), the holders of bonds issued before 1 January 1963 by banks other than mortgage banks are entitled to a privilege as regards satisfaction from that bank's mortgages, land charges or bank loans, account shall also be taken of this privilege in future insolvency proceedings.

#### **Article 110**

##### **Entry into Force**

(1) Unless otherwise provided, the Insolvency Statute and this Act shall enter into force on 1 January 1999.

(2) Section 2 subsection (2) and section 7 subsection (3) of the Insolvency Statute, as well as the authorization of the Länder under section 305 subsection (1) no. 1 of the Insolvency Statute shall enter into force on the day following its promulgation. The same shall apply to section 65 of the Insolvency Statute and to section 21 subsection (2) no. 1, section 73 subsection (2), section 274 subsection (2), section 293 subsection (2) and section 313 of the Insolvency Statute, insofar as they declare section 65 of the Insolvency Statute to be applicable *mutatis mutandis*.

(3) Article 2 no. 9 of this Act, insofar as it orders the rescission of section 2 subsection (2), first sentence, of the Act on the Liquidation and Cessation of Companies and Cooperatives (Gesetz zur Auflösung und Löschung von Gesellschaften und Genossenschaften), Article 22, Article 24 no. 2, Article 32 no. 3, Article 48 no. 4, Article 54 no. 4 and Article 85 nos. 1 and 2e, Article 87 no. 8d and Article 105 of this Act shall enter into force on the day following its promulgation.