

99066002058002, 99066002058002

# Conducting standard insolvency proceedings against a company

Heruntergeladen am 28.06.2025

<https://fimportal.de/xzufi-services/438728332/L100040>

Modul	Sachverhalt
Leistungsschlüssel	99066002058002, 99066002058002
Leistungsbezeichnung I	Conducting standard insolvency proceedings against a company
Leistungsbezeichnung II	
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Niedersachsen
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
Lagen Portalverbund	Sanierung und Insolvenz (2160300)

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Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	29.09.2021
Fachlich freigegeben durch	
Handlungsgrundlage	<a href="http://bundesrecht.juris.de/bgb/index.html">http://bundesrecht.juris.de/bgb/index.html</a> <a href="http://www.gesetze-im-internet.de/inso/">http://www.gesetze-im-internet.de/inso/</a> <a href="https://www.gesetze-im-internet.de/inso/">https://www.gesetze-im-internet.de/inso/</a> <a href="https://www.gesetze-im-internet.de/insvv/">https://www.gesetze-im-internet.de/insvv/</a> <a href="http://bundesrecht.juris.de/bgb/index.html">http://bundesrecht.juris.de/bgb/index.html</a> <a href="http://www.gesetze-im-internet.de/inso/">http://www.gesetze-im-internet.de/inso/</a> <a href="https://www.gesetze-im-internet.de/inso/">https://www.gesetze-im-internet.de/inso/</a> <a href="https://www.gesetze-im-internet.de/insvv/">https://www.gesetze-im-internet.de/insvv/</a>
Teaser	<p>If a company no longer has enough money available, (corporate) insolvency proceedings can or must be conducted against the assets of the company in some cases.</p>
Volltext	<p>If a company no longer has enough money available or will soon run out of money, (corporate) insolvency proceedings can or must be conducted against the assets of the company in some cases.</p> <p>Business insolvency proceedings can be considered both for legal entities (AG, GmbH, etc.) and for natural persons (e.g. sole trader).</p> <p>In the case of natural persons, it is important to check whether this person is to be classified as a consumer under insolvency law – for example, in cases where the business has ceased and all the prerequisites for consumer insolvency proceedings may be met (see also "Conducting consumer insolvency proceedings").</p> <p>Consumer insolvency proceedings apply to all natural persons:</p> <ul style="list-style-type: none"> <li>• who do not (currently) exercise or have not (in the past) carried out any self-employed economic activity</li> <li>• who have carried out a self-employed economic activity in the past, but whose financial circumstances are manageable and against whom there are no claims</li> </ul>

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arising from employment relationships.

- The financial circumstances are only considered manageable if the debtor has fewer than 20 creditors at the time when the application for the opening of insolvency proceedings is filed.
- Receivables from employment relationships are in particular claims of the tax authorities from wage tax as well as claims from social security institutions for contributions from former employees of the debtor.

In order to check the correct type of proceedings, you should prove to the insolvency court (if your business has already ceased) that you are not a consumer. For this purpose, you can make the aforementioned claims credible by means of suitable documents (for example, current plain text account statement of the tax office, certificate of the social security institution about the type of arrears).

Legal entities (AG, GmbH, etc.) should make sure that a person authorised to represent the company has signed the written application for the opening of insolvency proceedings.

With regard to permissions:

At

- legal persons (e.g. corporations or registered associations) any legal representation (managing director, board member), in the event of lack of leadership, also of each shareholder,
- in the case of a stock corporation or a cooperative, also each member of the supervisory board,
- in the case of companies without legal personality (e.g. OHG or KG), each personally liable partner individually

entitled to submit the own application on behalf of the legal entity, even if he or she is otherwise only authorised to represent the company jointly with other persons.

Hint: If a shareholder of a legal entity or members of

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the supervisory board submits the application, they must also credibly demonstrate the lack of leadership. In the case of a self-application due to imminent insolvency, special features apply.

If there is an admissible application to conduct business insolvency proceedings, the insolvency court will usually appoint an expert and, in some cases, a provisional insolvency administrator.

The insolvency court must also set up a provisional creditors' committee if your company has fulfilled at least two of the following three criteria in the previous financial year:

- at least EUR 6,000,000 balance sheet total after deduction of a deficit reported on the assets side within the meaning of Section 268 (3) HGB;
- at least EUR 12,000,000 in sales in the twelve months prior to the reporting date;
- at least fifty employees on an annual average.

Furthermore, the insolvency court examines whether insolvency proceedings can be opened (read more about this under "Opening insolvency proceedings").

In particular, the court examines whether there is a reason to open proceedings and whether the financing of the insolvency proceedings is secured. As a debtor or legal representative of the debtor company, you are obliged to cooperate fully.

Reasons for opening the procedure may be given both in the case of own and third-party applications

- insolvency (§ 17 InsO) and
- (only for legal entities) Over-indebtedness (§ 18 InsO)

be.

In the case of a self-application, the reason for opening the

- imminent insolvency (§ 19 InsO)

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to be considered.

The financing of the insolvency proceedings is secured if the future insolvency estate is expected to be able to cover the costs of the insolvency proceedings.

If a natural person files a personal application and does not have sufficient assets to finance the insolvency proceedings, he or she may, under certain circumstances, file an application for deferral of the costs of the proceedings (see "Deferral of procedural costs in insolvency proceedings").

In addition, in these cases you should consider filing an application for discharge of residual debt (more on this under "Procedure of the residual debt discharge procedure")

If the insolvency court has completed its examinations and determines that an admissible and reasoned application has been made, and if the financing of the insolvency proceedings by the insolvency estate is probable or secured by a deferral of procedural costs, the opening of insolvency proceedings shall be effected by order.

What happens to your company (if the operation has not yet ceased) after the opening of insolvency proceedings always depends on the circumstances of the individual case. Among other things, it is conceivable:

- Cessation of business operations and realisation of assets
- Restructuring of the company through an insolvency plan (read more about this under "Insolvency plan as a restructuring instrument")
- In the case of natural persons: Release of business operations from the insolvency estate with the consequence that you have to place the insolvency creditors in a certain period of time by making payments to the trustee as if you had entered into an appropriate employment relationship (as an employee).

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Erforderliche Unterlagen	Application for the opening of insolvency proceedings and, if necessary, further documents
Voraussetzungen	<ul style="list-style-type: none"> <li>• Applicant (in the case of self-application) or debtor (in the case of a third-party application) is not to be classified as a consumer (under insolvency law).</li> <li>• Existence of a ground for initiating the procedure Insolvency (§ 17 InsO) imminent insolvency (§ 18 InsO) if applicable, over-indebtedness (§ 19 InsO)</li> <li>• Future insolvency estate is expected to be able to finance costs of insolvency proceedings (or [in the case of natural persons] deferral of procedural costs will be granted upon request)</li> </ul>
Kosten	A 0.5 fee pursuant to No. 2310 KV GKG is payable for the proceedings on the debtor's application for the opening of insolvency proceedings. The value of the insolvency estate at the time of the closure of the insolvency proceedings is decisive for the calculation of the actual amount incurred.
Verfahrensablauf	<p>If there is an admissible application to conduct business insolvency proceedings, the insolvency court will usually appoint an expert and, in some cases, a provisional insolvency administrator.</p> <p>The insolvency court must also set up a provisional creditors' committee if your company has fulfilled at least two of the following three criteria in the previous financial year:</p> <p>at least EUR 6,000,000 balance sheet total after deduction of a deficit reported on the assets side within the meaning of Section 268 (3) HGB;</p> <p>at least EUR 12,000,000 in sales in the twelve months prior to the reporting date;</p> <p>at least fifty employees on an annual average.</p> <p>Furthermore, the insolvency court examines whether insolvency proceedings can be opened (read more about this in the opening order of insolvency proceedings).</p>

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In particular, the court examines whether there is a reason to open proceedings and whether the financing of the insolvency proceedings is secured. As a debtor or legal representative of the debtor company, you are obliged to cooperate fully.

Reasons for opening the procedure may be given both in the case of own and third-party applications

insolvency (§ 17 InsO) and

(only for legal entities) Over-indebtedness (§ 18 InsO)

be.

In the case of a self-application, the threat of insolvency (§ 19 InsO) may also be considered as a reason for opening the proceedings.

If the insolvency court has completed its examinations and determines that an admissible and reasoned application has been made, and if the financing of the insolvency proceedings by the insolvency estate is probable or secured by a deferral of procedural costs, the opening of insolvency proceedings shall be effected by order.

### Bearbeitungsdauer

Depending on the type and scope individually. There is no legal deadline for processing the application to open proceedings.

### Frist

In the event of insolvency or over-indebtedness, members of the representative body of a legal person are obliged pursuant to § 15a sec. 1 sentence 1 InsO to file an application to open proceedings without culpable hesitation. The application must be filed no later than three weeks after the occurrence of insolvency and six weeks after the occurrence of over-indebtedness. A person who intentionally or negligently does not file the application to open the proceedings, does not file it in time or does not do so correctly is liable to prosecution.

## weiterführende

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**Sachverhalt**
**Informationen**
**Hinweise**

[https://justizportal.niedersachsen.de/startseite/buerger-service/formulare\\_und\\_hilfen/amtliche-vordrucke---insolvenzrecht-126262.html](https://justizportal.niedersachsen.de/startseite/buerger-service/formulare_und_hilfen/amtliche-vordrucke---insolvenzrecht-126262.html)  
[https://justizportal.niedersachsen.de/startseite/buerger-service/formulare\\_und\\_hilfen/amtliche-vordrucke---insolvenzrecht-126262.html](https://justizportal.niedersachsen.de/startseite/buerger-service/formulare_und_hilfen/amtliche-vordrucke---insolvenzrecht-126262.html)

**Rechtsbehelf**

If the opening of insolvency proceedings is refused, the applicant and, if the application is rejected pursuant to § 26 InsO, the debtor are entitled to an immediate appeal pursuant to § 34(1) InsO. If insolvency proceedings are opened, the debtor is entitled to an immediate appeal pursuant to Section 34(2) InsO.

**Kurztext**
**Ansprechpunkt**

The locally competent insolvency court.

The insolvency court in whose district the debtor has his general place of jurisdiction has exclusive territorial jurisdiction.

If the centre of an independent economic activity of the debtor is located elsewhere, the insolvency court in whose district that place is situated shall have exclusive jurisdiction.

The competent court can be found here.

**Zuständige Stelle**
**Formulare**
**Ursprungsportal**

Durchführung eines Regelinsolvenzverfahrens über ein Unternehmen, Conducting standard insolvency proceedings against a company