

## **Guidelines for filing claims in insolvency proceedings (Sect. 174 InsO)**

*After the insolvency proceedings are opened, insolvency creditors lodge their claims with the insolvency administrator. Incomplete or incorrect applications may delay the proceedings. Therefore, creditors should closely observe in their own interest the following notes and information relating to the filing form. For more details, please consult the German Insolvency Act (Insolvenzordnung), in particular Sections 38 -52, 174 -186 InsO. The Court is not permitted to give individual legal advice. This is solely the responsibility of lawyers, notaries and admitted legal counsels.*

### **1. Filing claims**

Insolvency creditors shall not file their claims with a court but with the insolvency administrator. Insolvency creditors are persons who, on the date of the opening of the insolvency proceedings, hold a liquidated claim against the debtor (Sect. 38 InsO).

If a custodian or a trustee is appointed (Sections 270, 313 InsO), claims shall be filed with such custodian or trustee.

### **2. Content and Annexes of the filing**

When filing claims, the reason of the claim shall be indicated in order to enable the insolvency administrator to verify it (e.g. goods delivery, rent, loan, repair services, salary, bill of exchange, damages). If the creditors are of the opinion that a claim is based on a tortious act they shall state for each of these claims, which are directed against a natural person, the facts upon which this estimation is founded.

All claims shall be raised in fixed amounts in German currency and finally added together to a total amount.

As a rule, interest may only be filed for the time prior to the opening of the proceedings (date of the judgement opening the insolvency proceedings). It shall be calculated, stating the interest rate and period of time and a fixed amount.

Claims that are not for money or have an indefinite monetary value, shall be filed stating an estimated value.

Claims in foreign currency shall be converted to German currency, namely by applying the exchange rate applicable at time of the opening of the proceedings (Sect. 45 InsO).

The filing shall be accompanied by documentary evidence and other documents evidencing the claim. Authorised representatives of the creditors shall enjoin a special power of attorney for the insolvency proceedings together with the filing.

### **3. Creditors with rights of separation**

Creditors entitled to demand separate satisfaction from a secured asset under a pledge or any other lien shall be deemed insolvency creditors if the debtor is personally liable to them. They may file this personal claim.

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

A special rule applies to so-called lower ranking insolvency creditors (Sect. 39 InsO). Lower ranking claims are, e.g., the interest accrued during the opening of the proceedings, the cost of participating in the proceedings, fines, regulatory fines, coercive fines, and administrative fines, claims for debtors' gratuitous performance, or restitution of a loan replacing equity capital or claims of equivalent rank.

Such lower ranking claims can only be filed if the Court specifically requested the creditors to do so (Sect. 174 (3) InsO). The filing shall indicate the lower rank and specify the rank claimed by the creditor.

### **5. Subsequent filings**

Claims that are filed after expiry of the filing period determined by the Court, may under certain circumstances require an additional verification procedure. The defaulting creditor shall bear the cost of such additional verification (Sect. 177 (1) Sentence 2 InsO).

### **6. Claims for insolvency payments**

Employees, apprentices, and home workers are entitled to insolvency benefits in the event of their employer's insolvency. This is subject to the condition that at the date on which the insolvency proceedings are opened, or the filing for insolvency is rejected for lack of assets, they are entitled to claim a salary for the three months of the employment preceding the relevant insolvency date. Insolvency benefits are paid upon request. The amount depends on the amount of delayed net salary payment. For more details, please refer to the Employment Offices.

If insolvency benefits are paid, the claim to overdue wages passes to the Federal German Labour Office (Bundesanstalt für Arbeit).

### **7. Verification of claims and effect of objecting to claims (objection)**

Claims filed are verified in the verification meeting. In consumer insolvency proceedings, verification may take place in written proceedings by order of the Court. The insolvency administrator, the debtor, and any insolvency creditor, are entitled to object to a filed claim. The claims can be objected to in full or in part in respect of their amount or rank. If a creditor submits in his/her filing that the claim is based on an intentional tortious act of the debtor, the debtor shall in his objection also indicate whether this submission is contested.

In the hearing, the insolvency court shall merely record the statements made. The insolvency court is not responsible to make a decision as to whether an objection is well-founded.

A claim that has been contested in full or in part can only be determined by taking the legal action provided by the law (cf. Sect 184 InsO).

If a claim is not objected to or only objected to by the creditor, it shall be deemed determined as filed in the successive insolvency proceedings (Sect. 178 InsO). If the Court has ordered personal management, the debtor's objection shall not prevent determination of the claim (Sect. 283 (1) Sentence 2 InsO).

An effective objection against a filed claim has the following effect (cf. Sections 178 -185 InsO):

- If the claim is based on an executable deed (judgement, notarial acknowledgement, tax assessment notice, etc.) it is incumbent on the objecting party to follow up the objection taking the legal action provided for by law.
- If no executable deed exists, determination of the claim by taking the proper legal action is incumbent on the alleged creditor. Consequently, the objecting party will have to expect that court action might be filed against him/her on the grounds of the objection.

## **8. Attendance of creditors' meeting, proof of representation**

Every creditor may personally attend the verification meeting or any other creditor meetings. Statutory representatives or authorized persons shall present evidence of their power of representation at the meeting. Such evidence can be presented in the form of a current extract from the commercial register or a written power of attorney. In addition, the personal identification card shall be presented.

## **9. Information about the findings of the verification of the claim**

There is no obligation to attend the verification meeting or arrange for a representative. However, following the verification of the claim, the Court will only inform those creditors whose claims have been fully or partly objected to. The insolvency court will provide them with an extract of the insolvency schedule showing the results of verification.

Creditors whose filed claims were neither objected to by the insolvency administration nor by an insolvency creditor (nor by the debtor in the case of personal management) will not receive a special notice from the Court (Sect. 179 (3) InsO).

## **10. Notes on the determination of contested claims**

In the verification procedure, the insolvency court shall only record the statements made by the parties involved. If the filed claim of an insolvency creditor has not be (fully) determined in the insolvency proceedings, such determination shall be sought by

bringing legal action under the provisions governing ordinary court proceedings (Sections 180, 185 InsO). In this respect, the insolvency court is not responsible. In the case of disputes relating to the rank, amount, or legal cause of a claim, the action shall not be brought before the insolvency court. Civil law claims shall be raised in ordinary proceedings before the civil or labour courts, depending on the legal cause.

The action falls under the local jurisdiction of the civil court in whose district the insolvency court is located (Sect. 180 (1) InsO).

If at the date of opening the insolvency proceedings, a legal dispute was already pending in respect of the claim, determination shall be sought by the joinder of such action (Sect. 180 (2) InsO; Sect. 240 ZPO).

If the insolvency creditor prevails with his/her action, this person shall submit a request to the insolvency court to amend the schedule by presenting the final judgement (Sect. 183 (2) InsO).

Further procedural details for the determination of disputed claims are set out in Sections 179 -185 InsO.