

## Austria

# Rescue procedures in insolvency

<b>Phase</b>	Insolvency Act
<b>Native name</b>	Insolvenzordnung (IO)
<b>Type</b>	Rescue procedures in insolvency
<b>Added to database</b>	28 September 2016
<b>Access online</b>	<a href="#">Click here to access online</a>

## Article

167, 169, 171

## Description

The Insolvency Act distinguishes between 'insolvency/bankruptcy' (Konkursverfahren) and 'restructuring' (Sanierungsverfahren) procedures. Whereas the first leads to selling the company to satisfy creditors, the second procedure aims to restructure business operations in order to continue the operations of the insolvent company ([Business Service Portal](#)). Companies can file for restructuring procedures in cases of indebtedness, bankruptcy or imminent insolvency.

Similar to insolvency procedures, companies first have to make an insolvency filing. Restructuring procedures require a restructuring plan that needs to be submitted before the opening of the insolvency procedures ([§ 167](#)). The restructuring plan needs to be approved by the majority of the creditors (which represent at least half of all due claims) within 90 days after the opening of insolvency procedures. After its approval the case will be continued as restructuring procedure. The debtor must offer the insolvency creditors in the payment plan at least a quota corresponding to his income situation in the following 3 years (instead of the previous 5 years).

The procedure can either be with or without self-administration ([§ 169](#)).

Procedure with self-administration: The court appoints a restructuring administrator while the debtor is able to dispose over assets and keeps legal authority. The restructuring

administrator examines whether the restructuring plans are feasible and monitors the company's expenditures. Dispositions by the debtor of the insolvency estate shall be effective only if the insolvency court consents thereto. Liabilities incurred by the debtor after the opening of insolvency proceedings shall only be claims of the insolvency estate if the insolvency court agrees. The debtor does not have the right to apply for the liquidation of the insolvency estate in accordance with the law (debt collection or auction via the court). Prerequisites for this procedure are:

- The restructuring plan was submitted before the opening of insolvency procedures.
- The plan includes detailed information on current debts, assets (including annual financial statements from the last three years) and how restructuring will be financed during the following 90 days.
- The company is able to pay at least 30% of liabilities within two years.

Procedure without self-administration: Authority is handed over to a liquidator until the court approves the plans for restructuring. After that, debtors get back full access to company assets. Prerequisites for this procedure are:

- The restructuring plan was submitted before the opening of insolvency procedures.
- The company is able to pay at least 20% of liabilities within two years.

If the restructuring plan fails or is withdrawn by the debtor, insolvency procedures and a liquidation of insolvency assets will be initiated.

If new financing or interim financing is provided in the course of restructuring within the meaning of the ReO, such financing or interim financing cannot be challenged if the insolvency was not known (to the opponent of the challenge). This applies to new financing or interim financing that is included in the confirmed restructuring plan or has been approved by the court.

Transactions during a restructuring are not voidable if they were approved by the court and the insolvency was not known (to the opposing party).

## Commentary

The 2010 amendment of the insolvency regulation created a single insolvency proceeding which focused on making reorganisation easier and faster through a number of methods. An important aspect of the amendment was that it made the differentiation in terminology between 'restructuring' and 'insolvency/bankruptcy', thereby reducing the stigma surrounding insolvency procedures and especially 'forced settlement'. It also reduced the minimum required quotas of payable liabilities for entering self-administrated

restructuring procedures from 40% to 30% (see 'procedure with self-administration' in the description above). This legislation also increased the incentives to enter proceedings earlier than what was previously legislated for ([Government policy paper, XXIV. GP](#)).

In 2021 a "short skimming procedure" with a repayment plan (3 years) - in addition to the "normal skimming procedure" with a skimming plan (5 years) - was added in order to implement the Restructuring and Insolvency Directive (RIRL, Directive (EU) 2019/1023).

## Additional metadata

<b>Cost covered by</b>	None
<b>Involved actors other than national government</b>	Other Court
<b>Involvement (others)</b>	Creditors, administrator, liquidator
<b>Thresholds</b>	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

## Sources

- [Insolvenzordnung § 167](#)~~~ [Insolvenzordnung § 169](#)~~~ [Insolvenzordnung § 171](#)~~~ [Insolvenzrechtsänderungsgesetz 2009 - IRÄG 2009 \(PDF\)](#)~~~ [Bundesgesetz über das Insolvenzverfahren \(Insolvenzordnung - IO\)](#)~~~ [Information on insolvency procedures from the Federal Chamber of Commerce \(WKO\)](#)~~~ [Information on insolvency procedures from the government's Business Service Portal](#)~~~ [CMS Guide on Restructuring Possibilities in Europe \(PDF\)](#)~~~ [Government policy paper, XXIV. GP \(PDF\)](#)~~~ [Parlament Österreich: Restrukturierungs- und Insolvenz-Richtlinie-Umsetzungsgesetz - RIRUG](#)~~~ [Gesamte Rechtsvorschrift für die Insolvenzordnung](#)~~~

## Citation

Eurofound (2016), Austria: Rescue procedures in insolvency, Restructuring legislation database, Dublin