

INVITATION TO LODGE A CLAIM. TIME LIMITS TO BE OBSERVED!*¹

As can be seen from the accompanying ruling by the insolvency court, insolvency proceedings have been opened for the assets of the debtor named therein which allow the equal treatment of creditors' claims.

Any creditor, including the tax authorities and the social security authorities of Member States, has the right to **lodge claims in the insolvency proceedings in writing**. This also applies to creditors whose habitual residence, domicile, or registered office is in another Member State than the state in which the insolvency proceedings are opened (Article 39 of Council Regulation on Insolvency Proceedings). These creditors may lodge their claims in the official language or one of the official languages of such other States. In this event, the lodgement of claim must at least bear the heading "**Anmeldung einer Forderung**" (**Lodgement of Claim**) **in German**. Creditors may be required to provide a translation in German of the opening of proceedings (Article 42, paragraph 2 Council Regulation on Insolvency Proceedings).

The claim must be lodged **within the time limits laid down in the accompanying order opening insolvency proceedings** (§28 paragraph 1 Insolvency Regulation).

Claims lodged **after expiry of these time limits** may necessitate an **additional verification procedure**. **Costs incurred by such are borne by the creditor who lodged the belated claim** (§177 paragraph 1 Insolvency Regulation).

A claim is to be lodged not with the insolvency courts but with the **liquidator laid down in the accompanying order opening the insolvency proceedings** (§174 Insolvency Regulation). If an administrator or trustee has been appointed (§§ 270, 313 Insolvency Regulation) the claim should be lodged there.

Creditors should provide information in the lodgement on the **nature of the claim, the date on which it arose and its amount**, and should include, if applicable, **copies of documentation and evidence to prove their claim** (Article 41 Council Regulation on Insolvency Proceedings, §174 paragraph 1 Insolvency Regulation).

The **reason for the claim** and, if applicable, the **facts** leading to the **creditor's opinion that the debtor has committed an intentional unauthorised act** (§174 paragraph 2 Insolvency Regulation) should also be given. Intentional unauthorised acts committed by the debtor remain only unaffected by the granting of discharge from residual debt when the creditor has lodged a corresponding claim stating the legal basis (§302 No. 1 Insolvency Regulation).

All claims are to be asserted as fixed amounts in **domestic currencies** and summarised thereafter in a total amount. Claims in **foreign currencies are to be converted to domestic currencies**, according to the exchange rate at the time the proceedings were opened. Claims that are not based on money or whose value is uncertain are to be lodged with their estimated value (§45 Insolvency Regulation).

Interest may, in principle, only be claimed for the **period up to the opening of the insolvency proceedings** (date of accompanying opening order). Interest should be stated as a fixed amount together with the interest rate and time period).

Subordinate claims (for instance, interest accrued after the proceedings have been opened or claims based on services provided free of charge by the debtor) are **only to be lodged insofar as the insolvency courts have expressly invited the lodgement of such claims**. When lodging such claims, the lower rank should be indicated and the lower rank to which the creditor is entitled should be described (§174 paragraph 3 Insolvency Regulation).

Insofar as creditors claim **security rights in movable assets** or **rights of the debtor**, they should inform **the liquidator without delay**, and the object in which the security right is claimed and the form and basis upon which the security right and the secured claim arise should be described. **Whoever culpably refrains from or delays such notification is liable for damages resulting herefrom** (§28 paragraph 2 Insolvency Regulation).

Creditors, who have the right to demand **separate satisfaction**, particularly a right guaranteed by a lien or other security right, **are insolvency creditors insofar as the debtor is also personally liable to them**, such as through a loan or purchase agreement. **They may lodge this personal claim**. They will, however, only be considered when distributing the insolvency insofar as they waive their right to separate satisfaction or are omitted from such (§52 Insolvency Regulation).

Whoever on the basis of a real property right or a personal property right (such as proprietor) can prove that an object does not belong to the insolvency assets is not considered an insolvency creditor. Entitlement to separation of such objects should not be lodged in the insolvency proceedings, but rather according to the statutes that apply outside of the insolvency proceedings (§ 47 Insolvency Regulation).