

The German Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) and What It Means for Companies

On 1 January 2021 the Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) came into force. The stabilisation and restructuring framework has led to a profound change in the German restructuring landscape. It provides a statutory framework for the restructuring of companies from the time of imminent illiquidity. With the aid of this framework, a waiver of claims can also be enforced against the will of the creditors, even without having to initiate insolvency proceedings and thereby putting the reputation of the company at risk.

The German Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) is not designed as a purely judicial procedure like insolvency proceedings. Instead, it provides a set of instruments which the company can use in the course of restructuring it is pursuing. No formal opening of proceedings is necessary for this and the instruments can be used independently of each other. This is basically a non-public procedure in which only the affected creditors and any shareholders, as appropriate, can be involved. The dependency on creditors who want to optimise their own position by adopting what are referred to as "hold-out positions" in mandatory restructuring procedures will also decrease significantly.

The stabilisation and restructuring framework is an urgently-required restructuring instrument. If it is foreseeable that companies will experience liquidity difficulties in the next 24 months, this framework opens up the opportunity for out-of-court, pre-insolvency restructuring measures. It does not only make it possible to reduce (financial) liabilities, but also offers protection from enforcement of execution while the measures are being drawn up. However, the statutory framework also brings with it modified requirements concerning the timing of restructuring measures. At the same time, the legislator has also significantly increased the requirements for self-administration.

We would be happy to discuss the following topics, in particular, with you in detail:

- Restructuring options at different stages of the crisis: restructuring settlement, stabilisation and restructuring framework, insolvency proceedings (in self-administration and with protective shield)
- Instruments of the stabilisation and restructuring framework: prerequisites, procedure, effects
- Advantages and disadvantages of the preventive restructuring compared to the other restructuring options
- Timing requirements for restructuring measures in the future
- Implementation of crisis early warning systems on the basis of the legal requirements