

The German Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) and What It Means for Shareholders and Supervisory Board Members

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, the 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 German Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) is also of particular importance for shareholders and supervisory bodies. Although there are ways in which they can influence the initiation and course of the proceedings, these are limited. Especially in the case of cross-class majority decisions, it is possible that the rights of the shareholders with their subordinated shareholder claims will be restricted (also against their will).

The German Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) is also of significance for supervisory bodies. It implements a duty of the management to conduct early crisis detection and crisis management and the supervisory bodies are ultimately responsible for monitoring this.

We clarify which rights and obligations shareholders and supervisory bodies have within the framework of the German Act on the Stabilisation and Restructuring Framework for Businesses (StaRUG) and which stumbling blocks need to be considered here. We would be happy to explain the following topics, in particular, 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
- Effects of restructuring on shareholders, possibilities and limits of influence by shareholders
- Duties and liability risks of supervisory board members in times of crisis