

Information sheet on filing claims in insolvency proceedings (section 174 InsO)

After the opening of insolvency proceedings, the insolvency creditors must file their claims with the insolvency administrator. Incorrect filings may delay the proceedings. Creditors should therefore carefully observe the following instructions and the information on the filing form in their own interest. Further details can be found in the Insolvency Code, in particular in Sections 38 - 52, 174 - 186 InsO. The court is not permitted to provide legal advice on individual questions. This is the responsibility of solicitors, notaries and authorised legal representatives.

1. Filing of claims

Claims by insolvency creditors must not be filed with the court, but with the insolvency administrator. If an administrator has been appointed (section 270 InsO), the claim must be filed there.

Insolvency creditors are persons who have a claim against the debtor's assets that was valid at the time the insolvency proceedings were opened (section 38 InsO).

2. Contents and attachments of the claim

The reason for the claim must be stated in the registration so that the insolvency administrator can verify it (e.g. delivery of goods, rent, loan, repair service, remuneration, bill of exchange, damages). If the creditors are of the opinion that a claim is based on a tortious act, on arrears of statutory maintenance which the debtor has intentionally failed to pay in breach of duty, or on a tax liability, provided that a tax offence by the debtor is based on sections 370, 373 or 374 of the German Fiscal Code (Abgabenordnung), they must state the facts on which this assessment is based for each of these claims against natural persons.

All claims must be asserted in fixed amounts in domestic currency and finally summarised as a total amount.

Interest can generally only be claimed for the period up to the opening of proceedings (date of the opening order). It must be calculated, stating the interest rate and period, and specified as a fixed amount. Claims that are not monetary or whose monetary amount is uncertain must be registered at their estimated value.

Claims in foreign currency must be converted into domestic currency at the exchange rate prevailing at the time of the opening of proceedings (section 45 InsO).

The registration must be accompanied by supporting documents and other written evidence substantiating the claim. Authorised representatives of creditors should enclose a special power of attorney for the insolvency proceedings with the registration.

Pursuant to section 174 (4) sentence 2 InsO, an electronic invoice may also be submitted as a document. At the request of the insolvency administrator or the insolvency court, printouts, copies or originals of documents must be submitted.

3. Creditors with rights to separate satisfaction

Creditors who are entitled to separate satisfaction from collateral due to a lien or other security interest are insolvency creditors insofar as the debtor is also personally liable to them. They may file these personal claims.

4. Subordinated insolvency creditors

A special rule applies to so-called subordinate insolvency creditors (section 39 InsO). Subordinated claims include interest accruing during the proceedings, the costs of participating in the proceedings, fines, penalties, administrative fines and coercive fines, claims for gratuitous performance by the debtor or for the repayment of a capital-replacing shareholder loan or equivalent claims.

Such subordinate claims can only be filed if the court has expressly requested the creditors to file such claims (section 174 (3) InsO). When filing the claim, the subordination must be indicated and the priority claimed by the creditor must be specified.

5. Subsequent filing of claims

Claims that are only filed after the expiry of the registration period set by the court may, under certain circumstances, require an additional examination procedure. The costs of the additional examination shall be borne by the defaulting creditor (section 177 (1) sentence 2 InsO).

6. Verification of claims and effect of contesting (objection)

The claims filed are examined at the verification hearing. The court may also order the examination to be carried out in writing (section 5 InsO). In this case, a so-called verification date is set. The written objection with which a party disputes a claim to be examined must be received by the court by this date at the latest.

The insolvency administrator, the debtor and any insolvency creditor are entitled to dispute a claim that has been filed. Claims may be disputed in whole or in part according to their amount or their rank. If creditors have argued that the claim arises from an intentional tortious act committed by the debtor, from arrears in statutory maintenance which the debtor has intentionally failed to pay in breach of duty, or if a tax offence by the debtor is based on Sections 370, 373 or 374 of the German Fiscal Code, the debtor must additionally state in the objection whether this submission is disputed.

At the hearing or after the expiry of the review date, the insolvency court will merely certify the statements submitted. The insolvency court is not competent to decide whether an objection is justified. The determination of a wholly or partially disputed claim must be pursued through legal channels as provided for by general law (cf. section 184 InsO).

If a claim is not disputed or is only disputed by the debtor, it shall be deemed to have been established for the purposes of the further insolvency proceedings in accordance with the filing (section 178 InsO). In the case of self-administration, even an objection by the debtor prevents the claim from being determined (section 283 (1) sentence 2 InsO). An effective objection to a filed claim has the following effects (see sections 178 - 185 InsO):

- If an enforceable debt instrument already exists for the claim (judgment, notarial acknowledgement, tax assessment notice, etc.), it is up to the disputing party to pursue the objection using the generally permissible legal means.
- If no such debt instrument exists, it is incumbent on the alleged creditor to pursue the determination of the claim through the generally prescribed legal channels. The disputing party must therefore expect that legal action will be taken against them as a result of the objection.

7. Participation in creditors' meetings, proof of representation

Each creditor may attend the examination hearing or other creditors' meetings in person or represented by their legal representatives.

Creditors may be represented at the creditors' meeting and at the examination hearing by a solicitor acting as their authorised representative. In addition, pursuant to section 79 (2) sentence 2, only the following persons are authorised to act as representatives:

1. employees of the party or of an affiliated company (section 15 of the German Stock Corporation Act); public authorities and legal entities under public law, including associations formed by them to fulfil their public tasks, may also be represented by employees of other public authorities or legal entities under public law, including associations formed by them to fulfil their public tasks;
2. adult family members (Section 15 of the German Fiscal Code, Section 11 of the German Civil Partnership Act), persons qualified to hold judicial office and co-litigants, if the representation is not related to a remunerated activity,
3. consumer centres and other consumer associations funded by public funds in the collection of claims from consumers within the scope of their remit,
4. Persons who provide debt collection services (registered persons pursuant to Section 10 (1) sentence 1 no. 1 of the Legal Services Act) in dunning proceedings up to the point of submission to the court of jurisdiction, in enforcement proceedings in the context of the enforcement of monetary claims against movable assets, including the procedure for taking an affidavit and the application for the issuance of an arrest warrant, in each case with the exception of procedural acts that initiate contentious proceedings or are to be carried out within contentious proceedings.

Authorised representatives who are not natural persons shall act through their organs and representatives appointed to represent them in court.

Legal representatives or authorised representatives must prove their authority to represent at the hearing. A current extract from the commercial register or a written power of attorney may be submitted as proof. In addition, the identity card must be brought along.

8. Information about the outcome of the claim review

There is no obligation to attend the verification hearing or to arrange for representation. However, after the claim verification, the court will only inform those creditors whose claims have been disputed in whole or in part. The insolvency court will officially provide them with an extract from the insolvency table showing the result of the verification.

Creditors whose registered claims have not been disputed by the insolvency administrator, an insolvency creditor or the debtor in the case of self-administration will not receive any special notification from the court (section 179 (3) InsO).

9. Notes on the determination of disputed claims

In the verification proceedings, the insolvency court shall only certify the statements of the parties involved. If the claim filed by an insolvency creditor has not been (fully) established in the insolvency proceedings, the determination must be pursued through legal channels as provided for by general law (Sections 180, 185 InsO). The insolvency court has no jurisdiction in this respect. In the event of disagreements about the rank, amount or legal basis of a claim, the insolvency court should therefore not be involved.

Civil law claims must be asserted in ordinary proceedings before the civil or labour courts, depending on the reason. The civil court with local jurisdiction is exclusively the court in whose district the insolvency court is located (section 180 (1) InsO).

If a legal dispute over the claim was already pending at the time of the opening of the insolvency proceedings, the determination must be pursued by taking up this legal dispute (section 180 (2) InsO; section 240 ZPO).

If the insolvency creditor prevails in the action, that person must apply to the insolvency court for correction of the insolvency table, submitting the final judgment (§ 183 (2) InsO).

If the debtor has disputed a claim for which an enforceable debt instrument or a final judgment exists, the debtor is obliged to pursue the objection to the claim outside the insolvency proceedings in accordance with general law within a period of one month beginning on the review date. In this case, the debtor must prove to the insolvency court that the claim is being pursued. If the one-month period expires without result, the objection shall be deemed not to have been raised (section 184 (2), section 201 (2), (3) InsO).

The further procedural details for the procedure for determining disputed claims are set out in sections 179 - 185 InsO.

10. Information on public announcements

Some information relating to the insolvency proceedings is also made public. Public announcements are made in accordance with section 9 (1) sentence 1 InsO in conjunction with section 2 InsOBekV by means of a central, nationwide publication on the Internet at: www.insolvenzbekanntmachungen.de. The law regulates which aspects of the insolvency proceedings are to be made public in each individual case. In particular, the following information is made public:

- the decision to open insolvency proceedings,
- from 1 July 2007, decisions to reject an insolvency application due to lack of assets,
- Decisions on the ordering and lifting of protective measures by the court,
- the decision on the revocation or discontinuation of insolvency proceedings,
- Decisions on the determination of the remuneration of the insolvency administrator, the trustee and the members of the creditors' committee,
- setting dates,
- announcement of residual debt discharge,
- granting or refusing residual debt discharge.

The public announcement has the effect of a delivery and always replaces individual delivery, even in cases where this is not required by law. According to Section 9 (3) InsO, the public announcement is sufficient as proof of delivery to all parties involved, even if the InsO prescribes a special delivery in addition to it. Further information on public announcements can be found in the information sheet on public announcements on the Internet (section 9 InsO), available on the justice portal of the state of North Rhine-Westphalia at <https://www.justiz.nrw/BS/formulare/insolvenz/index.php>.

If you do not have access to the internet, the page www.insolvenzbekanntmachungen.de can also be viewed free of charge at any insolvency court in the state of North Rhine-Westphalia.

It is also possible to obtain a printout of the notices published on this page free of charge from any competent insolvency court in the state of North Rhine-Westphalia, provided that there is a legitimate interest.