

Consumer insolvency proceedings

Are you in debt and see no possibility of repaying your debts in the next few years? Consumer insolvency proceedings may help you to find a way out of the situation.

How does consumer insolvency work?

The proceedings include four stages:

1. Attempt to reach an out of court settlement with all creditors (Stage 1)
2. A debt adjustment plan set up with the help of the court (Stage 2 can be omitted)
3. Court insolvency proceedings (Stage 3)
4. Discharge of residual debt (Stage 4)

The third and fourth stage together last 6 years. When the fourth stage has been successfully completed, you will be discharged of your residual debts. This means that you no longer have to pay the debts that you have not been able to pay off until then.

Attempt to reach an out of court settlement (Stage 1)

Prerequisite 1 : You must make a list of all your debts!

Prerequisite 2 : You must live within your budget in future - no new debts!

Now you have to try to reach an out of court settlement with all your creditors. You should seek the help of a debt advice bureau or a lawyer (obtain a counseling services certificate if possible - Beratungshilfeschein).

It is important that you tell the debt advice bureau or lawyer the names of all the persons/companies who are demanding money from you (even if you do not agree with the demands). You should also say whether you possess anything of value (e.g. a car, life assurance, property).

If you manage to reach a settlement with all your creditors (e.g. because third parties have provided money to pay off your creditors), insolvency proceedings will not be necessary.

If the settlement proposal is refused, your debt advice bureau or lawyer will send you confirmation of this. You will need this in order to open insolvency proceedings. You should ask your debt advice office or lawyer to help you to fill in the application form.

Debt adjustment plan with help of court (Stage 2)

This stage can be omitted

Once you have submitted your application for insolvency to the insolvency court, the court can decide whether you should make another attempt to reach a settlement with all the creditors. This happens if the out of court settlement attempt only just failed. If the majority of the creditors, in terms of heads and debt totals, agree to the plan, the insolvency court can force the other creditors to accept the plan.

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Court insolvency proceedings (Stage 3)

If Stage 2 seems to have no prospects of success (or if it has failed), the court will open insolvency proceedings and announce this on the Internet. A trustee (lawyer) will be appointed.

The trustee basically has two tasks:

- He makes a list of all the debts that creditors have registered.

Remember: If claims are registered as "originating from premeditated unlawful acts", these debts will not be included in the discharge from residual debts later. You should therefore check whether the debts are really based on a premeditated criminal act; if not, you should lodge an objection with the insolvency court.

- The court will seize any attachable assets and attachable earnings.

Remember: The court will check what you have entered in the insolvency application. If they find income or assets that you deliberately omitted, either culpably or through gross negligence, your insolvency proceedings may fail.

Discharge of residual debt (Stage 4)

When the trustee has completed his tasks, the insolvency proceedings are closed by a court ruling and the final stage: "Discharge of residual debt" begins.

The trustee continues to seize the attachable part of your income. If you inherit anything, you must give half to the trustee. You may, however, choose to refuse the inheritance. Payments to individual creditors must be effected through the trustee. It is also extremely important that you inform the trustee and the insolvency court of any changes in your family or financial circumstances, or if you move or change job.

You can apply for insolvency proceedings even if you are unemployed. However, it is important that you actively seek work, write applications yourself and accept any reasonable job offer. You must show proof that you have done this.

If you have fulfilled your obligations, the insolvency court will then grant you discharge from residual debts, which means that you will be let off all outstanding debts.

You will not be discharged from any fines and debts arising from wilfully committed criminal acts (e.g. compensation for pain and suffering).

Is there a charge for the proceedings?

Generally public debt advice bureaus offer their support free of charge. There is a charge for the court proceedings, however. If you are unable to pay the court costs, you should apply for an extension of the payment term. The insolvency court will then defer all costs until the discharge of debts. If the trustee seizes attachable assets, the deferred costs will be paid out of these first.

If costs are still outstanding after you have been discharged from residual debts, the court will check whether you can pay reasonable instalments (for a maximum 4 years).

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Englisch:
Verbraucherinsolvenzverfahren

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