Consumer insolvency proceedings (VIV)

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

Remember:
We can only give you a rough guide to insolvency proceedings here.
Sometimes insolvency proceedings may seem like a quick solution.
But there are some reasons not to file for insolvency. So you should really weigh up whether this is your best option.
It is essential that you obtain professional advice.

Note: Self-employed people have to apply for general insolvency proceedings (Regelinsolvenzverfahren (RIV). The main difference between these proceedings and VIV is that Phases 1 and 2 are missed out.
RIV also applies to people who were previously self-employed if they have at least 19 contractual obligations or if at least one of the claims is for failure to deduct social security contributions or pay employees' wages.

How does consumer insolvency work?
The proceedings include four stages:

1. Attempt to reach an agreement with all creditors (Stage 1)
2. Debt adjustment plan with help of court (Stage 2, may be missed out)
3. Court insolvency proceedings (Stage 3)
4. Discharge of residual debt (Stage 4)

When the fourth stage has been successfully completed, you will be discharged of your residual debts. You are then released from the debts that existed at the beginning of the insolvency proceedings.

Out of court attempt to reach a 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!

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 specialised lawyer (obtain a counselling 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). Current payments must also be included! 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 apply for 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.

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. An administrator (lawyer) will be appointed.
The administrator basically has two tasks:

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

Remember: If claims are registered as "ensuing from wilful illegal acts", you may not be discharged from this residual debt. This may also apply to any unpaid maintenance. You should therefore check whether the debt is really based on a premeditated criminal act; if not you can lodge an objection with the insolvency court.

- The court will seize your attachable assets and attachable income and may even demand payments back from the previous months. The costs of the proceedings will first of all be deducted from the money seized (= court and administrator's costs are settled).

Remember: The administrator will check what you have entered in the insolvency application. If he finds 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 administrator has completed his tasks, the insolvency proceedings will be repealed by a court ruling and the last stage "Discharge of residual debt" begins.
The attachable part of your income will still be collected. If you inherit anything, you must give half to the administrator. You may, however, choose to refuse the inheritance. Payments to individual creditors must be effected through the administrator. It is also extremely important that you inform the administrator and the insolvency court of any changes in your family or financial circumstances, or if you move or change job.

You can apply for consumer 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. Part-time work is only accepted if you still have to look after your children (e.g. if you have not got a childcare place).
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 or from debts arising from wilfully committed criminal acts (e.g. compensation for pain and suffering). Any new debts you make during the insolvency proceedings remain and must be paid.

You may be denied discharge from residual debts if, for example

- in the three years before filing for insolvency you have given false information when applying for loans or public services in a grossly negligent manner,
- made any false statements in the application,
- in the three years before filing for insolvency you wasted assets or got into unreasonable debt.

How long do insolvency proceedings last (Stages 3 and 4)?
The length varies and depends on whether and to what extent assets could be attached. The proceedings take

- six years if the costs of the proceedings could not be settled,
- five years if the costs of the proceedings were settled and
- three years if costs of the proceedings were settled and in addition the creditors have received 35% of their claims.

Is there a charge for the proceedings?
Generally public debt advice bureaus offer their support free of charge. You have to pay a lawyer if you are not eligible for legal aid and advice.

Costs are incurred for the court proceedings. If you are unable to pay the court costs, then you should apply for a deferment. The insolvency court will then defer all costs until the discharge of debts. If the administrator seizes any amounts, the deferred costs will be paid out of this first.

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