DEVELOPMENTS

German Insolvency Act: Special Provisions of Consumer Insolvency Proceedings and the Discharge of Residual Debts

By Susanne Braun[*]

A. Introduction

Information about the insolvency of big enterprises such as Enron and Worldcom in the United States; Bremer Vulkan, Philip Holzmann, Babcock Borsig, CargoLifter, Walter Bau and "Ihr Platz GmbH & Co KG" in Germany; and discussion about the insolvency of States[1] (e.g. Argentina) has awakened public interest in insolvency law and proceedings. Both the high number of insolvent enterprises and the increasing rate of consumer insolvency are shocking.

The German Insolvency Act of 1999[2] created a uniform insolvency statute for all of Germany. In most cases, upon the instituting of insolvency proceedings, only small or no-insolvency estates were available. As a result, creditors only received average distributions of between three and five percent. Approximately three quarters of all insolvency procedures could not be instituted because of an insufficient insolvency estate. A large number of the insolvency proceedings carried out by the courts had to be terminated prematurely due to lack of assets. This deficiency in the law, referred to as the "bankruptcy of bankruptcy," is to be remedied by the new Insolvency Act, as a failure in instituting insolvency proceedings is damaging confidence in the German economy.

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[1] Paulus, *Rechtlich Geordnetes Insolvenzverfahren für Staaten*, 35 ZEITSCHRIFT FÜR RECHTSPOLITIK 383 (2002).

[2] German Insolvency Act, 1994 BGBl I at 2866, entered into force on, Jan. 1, 1999, replacing the previous Bankruptcy and Settlement Codes (*Konkurs- und VergleichsO*) as well as the Act on Collective Enforcement (*GesamtvollstreckungsO*) in the new *Länder*, last amendment on Dec. 15, 2004.

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As correctly stated in the literature, "legislation on insolvency is a crossroads where all the elements of the legal system in question meet."[3] Insolvency laws usually provide for some limitation on the rights of the debtor and his creditors in order to efficiently pursue their basic principles. Furthermore, these laws may even limit the rights of third parties. In the most general terms, one of the basic purposes of insolvency laws is to provide a framework for dealing with the competing interests and claims within a given ranking system. The manner in which the competing interests are balanced is not necessarily identical in all insolvency laws. It can be said that an insolvency statute is drafted in a manner which is, in a particular legal system, regarded as the most suitable to effectively pursue the underlying policy and the prevailing purpose of the insolvency law, be it the protection of the debtor, his creditors, or the preservation of employment.

In this sense, the German Insolvency Act must provide a legal framework for the collection and distribution of the debtor's property comprising the estate for the economically efficient management of insolvency and a statutory scheme for compositions and arrangements with creditors or for a reorganization of the debtor in financial difficulties. It restricts raids on the insolvency estate prior to the institution of proceedings; the insolvency estate is to be enlarged so that a greater number of creditor claims may be satisfied. The new provisions on consumer insolvency proceedings and discharge of residual debts shall satisfy the specific needs of consumers and other small debtors regarding the increasing number of insolvent consumers and private households. Whereas in 2004 the number of insolvent companies was lightly reduced in Germany, with 39,600 company insolvencies representing only 0.3 % more than in 2003, there were 76,100 individuals, 25% more than in 2003, who submitted the request to open insolvency proceedings in order to get a discharge of residual debt. In over 80% of those requests the debtors had no assets.[4] With the consumer insolvency proceedings and the discharge of residual debts, the legislature intended to give debtors a second chance and an opportunity of being reintegrated into economic life.

In the following, the basics of consumer insolvency proceedings and discharge of residual debts will be presented.

3 Didier, *La Problématique du Droit de la Faillite Internationale*, 3 Révue de droit des affaires internationales 201, 203 (1989).

4 *See* http://www.creditreform.de/angebot/analysen/0047/01.php.

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I. Consumer insolvency proceedings

1. General remarks

There are two insolvency proceedings in the German Insolvency Act: on the one side, the regular insolvency proceedings, sections 11-216, and on the other hand, the consumer insolvency proceedings, sections 304-314. In the case of regular insolvency proceedings, the debtor is an individual with independent economic activity or a legal entity. The proceedings may lead either to liquidation (by realizing the debtor's assets and distributing the money on sale of the assets) or to reorganization. In consumer insolvency proceedings, the debtor, an individual, aims to be free of debts by distributing his insolvency estate to the creditors. Both insolvency proceedings encompass all of the debtor's assets at the time the proceedings are initiated and any additional assets acquired during the course of the proceedings. Subsequent to the termination of these insolvency proceedings, the insolvency creditors may assert their remaining claims against the debtor without restriction. To avoid lifelong liability, individuals, including not only consumers but also small entrepreneurs or freelancers such as lawyers or physicians, could request a discharge of residual debts; section 286 *et seq.* aims at economic reintegration of the debtor.

Generally, any insolvency proceedings are only opened if the party requesting the opening of insolvency proceedings is able to pay the proceeding costs. In case of discharge, the party that must be able to pay proceeding costs is the one requesting a refusal or disclaim of discharge. If the debtor requests the initiation of consumer insolvency proceedings, the proceedings costs must be covered by his assets. The initiation request must be dismissed by the court if the debtor's property will be insufficient to cover the costs of the proceedings per section 26 (1). According to section 209, the costs of the insolvency proceedings must be paid prior to any debts of the insolvency estate arising after the lack of assets has been established.

In the first two years of enforcement of the Insolvency Act, debtors very rarely requested the initiation of consumer insolvency proceedings and discharge for residual debts. Because of their individual insolvency, the consumer insolvency proceedings were not initiated. This development lies in contrast to the initial intention of the legislature. In 2001, a new provision was introduced into the Insolvency Act. The legislature gave the courts the opportunity to exclude the dismissal if sufficient funds are advanced or the costs are deferred.[5] Pursuant to section 4a, the costs will be deferred if the debtor is a natural person and has filed a

[5] Since Dec. 1, 2001.

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petition for discharge of residual debts. This means the debtor himself has requested the initiation of insolvency proceedings and a discharge for residual debts. If a refusal of discharge is not obvious at the beginning, the costs will be deferred.[6] Following the introduction of this provision, the number of requested consumer insolvency proceedings increased.[7]

2. Specific remarks

a) Prerequisites for Consumer Insolvency Proceedings

Consumer insolvency proceedings belong to so-called "minor proceedings," which are more flexible, faster, and cheaper than regular insolvency proceedings. According to section 304, consumer insolvency proceedings can only be initiated at the request of the debtor[8] if the debtor is an individual who pursues or has pursued no independent economic activity. If a debtor has pursued an independent business activity, consumer insolvency proceedings can be initiated if circumstances surrounding his property are clear. The circumstances are clear if the debtor's assets are comprehensible and no claims exist against him from employment. The assets are comprehensible if the debtor has fewer than 20 creditors at the time the request is made to begin the insolvency proceedings. There exist intensive discussions on whether regular proceedings and consumer insolvency proceedings should be initiated if the debts result from earlier commercial activities and the debtor has already given up these activities months or years prior to the request for beginning the insolvency proceedings.[9]

The reason for the initiation of insolvency proceedings, per section 16, is the permanent not temporary[10] insolvency of the debtor. Over-indebtedness is only relevant for legal entities and initiates regular insolvency proceedings.

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[6] FOERSTE, INSOLVENZRECHT 576 (2004).

[7] *See* Henning, *Aktuelles zu Überschuldung und Insolvenzen natürlicher Personen*, 7 ZEITSCHRIFT FÜR DAS GESAMTE INSOLVENZRECHT 585 (2004); Sternal, *Die Rechtsprechung zum Verbraucherinsolvenzverfahren*, 8 NEUE ZEITSCHRIFT FÜR DAS RECHT DER INSOLVENZ UND SANIERUNG 129, 130 (2005).

[8] Now, there is a legal duty to use the official form for consumer insolvency procedure and discharge, introduced by regulation of Feb. 17, 2002, BGBl I at 703 *et seq*.

[9] *See* Pape, *Aktuelle Entwicklungen im Verbraucherinsolvenzverfahren und Erfahrungen mit den Neuerungen des Inso-Änderungsgesetzes 2001*, 1 ZEITSCHRIFT FÜR VERBRAUCHER-INSOLVENZRECHT 225, 228 (2002); OLG Schleswig, ZEITSCHRIFT FÜR DAS GESAMTE INSOLVENZRECHT, 3 (2000), 155; OLG Celle, NEUE ZEITSCHRIFT FÜR INSOLVENZRECHT, 3 (2000), 229.

[10] SMID, GRUNDZÜGE DES INSOLVENZRECHTS 71 (2002).

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b) Phases of Consumer Insolvency Proceedings

The proceedings consist of three phases. Initially, the debtor must seek an out-of-court settlement with the creditors. A petition for the opening of insolvency proceedings is not necessary for this phase. The legislature renounced the necessary participation of the court in case of "minor proceedings." The debtor is supported during this phase by a debtors' advice center, a solicitor, a notary, tax advisor, or a comparable suitable individual. A debt adjustment plan must be elaborated, proving the efforts of debtor and involved creditors, and focusing on an amicable settlement. This plan may contain all regulations leading to an adequate adjustment of debts, per section 305 (1) no 4. The plan itself can be modified if necessary. Even a so called "zero-plan," where the creditors get nothing, can be the result of the settlement.[11] An attempt to reach an out-of-court agreement with the creditors concerning a settlement of debts shall be considered to have failed if creditors request coercive execution after negotiations regarding out-of-court settlement of debts have been initiated, according to section 305a.

If this attempt to reach an agreement is unsuccessful, court insolvency proceedings follow. As a first step, the court attempts once more to arrive at an agreement between the creditors and the debtors on the basis of a debt adjustment plan submitted by the debtor. With this request to initiate insolvency proceedings, or immediately subsequent to it, the debtor shall submit the following:

> a certificate, issued by a suitable person or agency, from which it emerges that within the six months prior to the request to initiate insolvency proceedings an unsuccessful attempt has been made to settle out of court with the creditors on the basis of a plan; the plan shall be enclosed and the primary reasons for its failure shall be explained; the lender may determine which persons or agencies are to be regarded as suitable;
>
> the request for grant of discharge of residual debt, per section 287, or the declaration that discharge of residual debt is not to be applied for;
>
> a record of available assets and income (record of assets), a summary of the main content of this record (overview of the

[11] *See* OLG Stuttgart, NEUE ZEITSCHRIFT FÜR INSOLVENZRECHT, 5 (2002), 563; *see also* Arnold, Das Insolvenzverfahren für Verbraucher und Kleingewerbetreibende nach der Insolvenzordnung 1994, 111 DEUTSCHE GERICHTSVOLLZIEHER-ZEITUNG 129, 133 (1996).

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> assets), a record of the creditors, and a record of the claims against the debtor; the records and the overview of the assets shall also include a declaration that their contents are correct and complete;
>
> a plan for settlement of debts; this may contain all provisions which are suitable to lead to an appropriate settlement of debts when the interests of the creditors are taken into account, as well as the debtor's assets, income and family circumstances; the plan shall include whether and to what extent sureties, pledges, and other securities pertaining to the creditors are to be affected by the plan.

If the debtor has not submitted all of the declarations and documents specified above, the insolvency court shall require him to supply the missing portions immediately[12] or his request to initiate insolvency proceedings shall be regarded as having been recalled. The debtor must use form sheets for the attestations, applications lists, and plans required to be provided.[13] In this phase, a "zero-plan" must also be accepted.

Until a decision is made on the plan for the settlement of debts, the proceedings relating to the request to begin insolvency proceedings shall be suspended, but not exceeding three months according to section 306. If a creditor requests initiation of proceedings, the insolvency court shall give the debtor the opportunity prior to the decision on this initiation to also file a request.

The debt adjustment plan is accepted if no creditor has objected to the plan. The insolvency court shall determine this by means of an order as stated in section 308 (1). If a creditor has objected to the plan, the court may substitute the approval of individual creditors under certain circumstances if the content of the plan is suitable. This means, if more than one half of the registered creditors have approved the debt adjustment plan and if the sum of the claims of the approving creditors should amount to more than one half of the sum of the claims of the registered creditors, the insolvency court can replace the approval per section 309. Section 308 (2) requires that requests to initiate insolvency proceedings and to grant discharge of residual debt shall then be regarded as recalled; and section 313

[12] Bundesgerichtshof [BGH], ZEITSCHRIFT FÜR VERBRAUCHER-INSOLVENZRECHT, 3 (2004), 281.

[13] Introduced by Ordinance of Feb. 17, 2002, BGBl I at 703.

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provides that a trustee instead of an insolvency administrator then has the task to realise the insolvency estate.

If no debt adjustment plan is prepared or creditors have objected to the plan without the option to replace approval, the insolvency proceedings are reopened *ex officio* and a simplified insolvency procedure is carried out following section 311. Simplified insolvency procedure means that there are several procedural simplifications compared to regular insolvency proceedings for a faster and easier handling. Therefore public announcements shall be effected only exceptionally, as opposed to regular insolvency proceedings in section 9. In a simplified proceeding there is only the determination of the verification meeting, whereas in the regular insolvency proceedings section 29 dictates several meetings, a report meeting and a verification meeting must be determined. In the verification meeting, creditors' assembly verifies the filed claims; in the report meeting a creditors' assembly decides on the continuation of the insolvency proceedings based on the insolvency administrator's report.

Another simplification is the invalidity of judicial execution prior (three months) to the institution of insolvency proceedings. In the regular insolvency proceedings, a security acquired by virtue of execution by a creditor of the insolvency proceedings during the last month preceding the request to begin the insolvency proceedings, or after such request, shall become legally invalid when this security attaches the debtor's property making up part of the assets involved in the insolvency proceedings. Furthermore, the proceedings, or parts of them, could be carried out in writing. This provides for faster procedure if the debtor's assets can be clearly seen and the number of creditors or the extent of the obligations is low. The provisions concerning the insolvency plan or the self administration are completely excluded in a simplified insolvency procedure, because they have been established for the regular insolvency proceedings and not for "minor proceedings." Finally in the simplified insolvency procedure the duties of an insolvency administrator shall be assumed by a trustee according to section 313. This simplified insolvency procedure, as a part of the consumer insolvency proceedings, can be followed by the procedure of discharge of residual debts if requested by the debtor.

II. Discharge of Residual Debts

1. General Remarks

If the debtor is a natural person, he or she may be discharged from his or her remaining obligations on the basis of a special consumer insolvency procedure; this kind of discharge from residual debt was previously unknown under German law. In principle, the debtor is responsible for his activities and his estate because of his

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self-determined decisions. The instrument of discharge "disturbs" this mechanism of private autonomy, introducing the principle of "debts without liability." For many years there was intensive discussion in Germany on whether economic overcharge may lead to the nullity of a credit contract, according to section 138 of the Civil Law. The German Federal Court decided that a severe imbalance between debt and individual solvency could cause the nullity of contracts.[14] The Act's rules of discharge were a reaction to this development pursuing two aims: on the one hand, the protection of the individual and on the other hand, his economical reintegration. According to section 286, natural persons shall be discharged of such obligations which were not performed during the insolvency proceedings.

The legal discharge starts with the petition of the debtor, per section 287 (1) sent. 1, 305 (1) and ends with the decision of the court, announcing or refusing a discharge. The discharge remains valid if the debtor conducts himself properly vis-à-vis the creditors and contributes to the best of his ability to discharge his debts. The insolvency proceedings must be carried out to final distribution. During the insolvency proceedings, the debtor must make his garnishable income available for the satisfaction of the creditors' claims for six years. The final decision, granting or revoking the discharge, is taken after the period of assignment according to section 300.

If the insolvency proceedings are initiated at the request of a creditor, the debtor shall be notified by the court that he may be granted discharge of residual debt as stated in section 20 (2). Then, the debtor must personally request the institution of insolvency proceedings and the discharge of residual debt within four weeks.[15] The debtor, if renouncing both petitions, will be precluded from his request for discharge of residual debt during the proceedings opened at the request of a creditor.

2. Procedure in Detail

A prerequisite for the discharge of residual debt shall be the petition of the debtor, which can be combined with his application for the institution of insolvency

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[14] Bundesgerichtshof [BGH], NEUE JURISTISCHE WOCHENSCHRIFT, 50 (1997), 3372, 3373.

[15] Bundesgerichtshof [BGH], NEUE JURISTISCHE WOCHENSCHRIFT, 58 (2005), 1433. The period of two weeks according to section 287 (1) sent. 2 is only applicable if the debtor himself has requested for the opening of insolvency proceedings. Bundesgerichtshof [BGH], NEUE ZEITSCHRIFT FÜR DAS RECHT DER INSOLVENZ UND SANIERUNG, 7 (2004), 1433.

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proceedings.[16] If the debtor then settles with his creditors to the best of his ability for the following six years, he will be discharged from his remaining obligations. This structure should reveal to the participants of the proceedings that it will be in their favour to find consent in a first or second step and to profit from an individual and flexible solution.[17] It could be very important for creditors to know at the beginning of the consumer insolvency proceedings what happens in case of refusal of the out-of-court settlement or the debt adjustment plan. If this petition is not combined with such application it shall be submitted within two weeks after the notification pursuant to section 20 (2). The debtor can only be discharged of residual debts if the estate and the liabilities of the debtor have been determined through insolvency proceedings. The petition shall include a statement that the debtor assigns his pledgeable claims to benefits arising from a contractual service relationship, or such recurring benefits replacing such claims, to a trustee appointed by the court for six years after the institution of insolvency proceedings. The assignment is the most important element of discharge, because it is a prospect for creditors making available the satisfaction of claims not only via the debtor's assets but also via his income.

According to section 290, the discharge of residual debts shall be refused in the order if such refusal has been petitioned by an insolvency creditor and if:

> the debtor has been convicted of a criminal offense, with no opportunity for appeal;
> the debtor has issued false or incomplete written statements concerning his economic circumstances, wilfully or through gross negligence in order to receive credit, to receive subsidies from public funds, or to avoid payments to public treasuries within the three years prior to the petition to institute insolvency proceedings or subsequent to this petition;
> the debtor has been granted a discharge of residual debt or such a discharge has been refused within the last ten years prior to the petition to institute insolvency proceedings or subsequent to such a petition;
> the debtor has wilfully or through gross negligence impaired satisfaction of the creditors by entering into inappropriate

[16] Bundesgerichtshof [BGH], NEUE ZEITSCHRIFT FÜR DAS RECHT DER INSOLVENZ UND SANIERUNG, 7 (2004), 511.

[17] KOTHE, AHRENS & GROTE, RESTSCHULDBEFREIUNG UND VERBRAUCHERINSOLVENZ, Preliminaries §§ 304 et seq., no. 1 & 2 (1999).

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> obligations or has wasted assets or has delayed the institution of insolvency proceedings although there was no prospect of an improvement in his economic situation within the last year prior to the petition to institute insolvency proceedings or subsequent to such a petition;
> the debtor has wilfully or through gross negligence violated duties of notification or disclosure pursuant to this Act during insolvency proceedings,
> the debtor has made false or incomplete statements wilfully or through gross negligence within the records to be presented concerning his assets or incomes, his creditors or claims directed against him.
> This enumeration of refusal reasons is conclusive and cannot be enlarged.[18]

If the court decides that the debtor shall receive the discharge of residual debts, it shall determine a trustee to whom the pledgeable claims of the debtor shall be transferred in accordance with the declaration of assignment. During the period of assignment all creditors must be treated equally. Any agreement between the debtor, or other parties, with individual creditors creating a special advantage for the latter, is void according to section. 294 (2). During this time, section 295 requires the debtor to fulfil several obligations; for instance, he must pursue a gainful activity. If he is unemployed, he has to seek such employment and should not refuse any reasonable employment.[19] Furthermore, the debtor must make payments toward the satisfaction of insolvency creditors only through a trustee. Above all, section 292 (1) demands that the trustee shall distribute the sums received through assignment to correct the deferred costs during the period of assignment. But even if discharge is granted, the debtor will not be able to pay all the costs immediately. Therefore the court may extend the deferment and set monthly installments to be paid, as in section 4b (1).[20]

If the debtor breaches one of the above mentioned obligations during the period of assignment, the court shall refuse the discharge of residual debts upon the petition of an insolvency creditor per section 296. If the period of the assignment declaration

[18] Bundesgerichtshof [BGH], NEUE ZEITSCHRIFT FÜR DAS RECHT DER INSOLVENZ UND SANIERUNG, 7 (2004), 635.

[19] These criteria are very undetermined, especially because they are discussed politically also. FOERSTE, *supra* note 6, at 552.

[20] There are legal reasons to terminate at any time during the deferment period, per section 4c.

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has elapsed without premature termination, section 300 requires the court to decide upon granting a discharge of residual debt after granting a hearing to the insolvency creditors, the debtor, and the trustee. If the discharge of a residual debt is granted, it shall take effect against all insolvency creditors, per section 301 (1), including creditors who have not registered their claims. However, per section 302, the debtor cannot be discharged of debts resulting from torts or fines. The court can revoke the grant upon the petition of an insolvency creditor submitted within one year subsequent to the unappealable decision concerning discharge if it should be established *post facto* that the debtor has wilfully breached one of his obligations and has thereby significantly adversely affected the satisfaction of the insolvency creditors.

With the court's announcement of discharge, the debtor receives the admission to the real discharge or main proceeding, characterised by the so-called trustee time for six years. It has been discussed whether the period of assignment should be shortened, to five years instead of six, for insolvency proceedings opened after Dec. 1, 2001 and if no creditor claims were registered.[21] But the Federal Court of Justice dismissed this proposal definitively,[22] leaving the final decision on discharge to be made later.

B. Result

Significant innovations concerning "consumer protection" were introduced by the new German Insolvency Act. However, several amendments since its enforcement began show that the reformation process is ongoing and has not ended.[23] Therefore, the draft law amending the insolvency Act of Sep. 16, 2004 foresaw the delimitation of consumer insolvency proceedings and other insolvency proceedings. All proceedings involving individuals should be of the same relevance. Furthermore, the "agreement procedure" should be modified. If the attempt to reach an agreement (out-of-court settlement) is unsuccessful, the court insolvency proceedings follow as do the court attempts to once more arrive at an agreement between the creditors and the debtors. In practice this second trial has rarely been

[21] *See* Pape, *Vorzeitige Erteilung der Restschuldbefreiung bei fehlenden Forderungsanmeldungen*, 7 NEUE ZEITSCHRIFT FÜR DAS RECHT DER INSOLVENZ UND SANIERUNG 1 (2004).

[22] Bundesgerichtshof [BGH], NEUE ZEITSCHRIFT FÜR DAS RECHT DER INSOLVENZ UND SANIERUNG, 7 (2004), 452.

[23] *Pape, Entwicklung des Regelinsolvenzverfahrens 2001*, 55 NEUE JURISTISCHE WOCHENSCHRIFT 1165 (2002).

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used and becomes increasingly unimportant.[24] Therefore, the court initiated agreement should be repealed.

Although the legislature wanted to create insolvency proceedings meeting the specific needs of the consumers, the consumer insolvency proceedings are in fact too complicated for consumers. Despite development of standardised form sheets, consumers are often not able to fill out those sheets without "professional" support. Additionally, long waiting lists for debtor's advice exist because of the increasing number of requests to initiate consumer insolvency proceedings.

Furthermore, the debtor must be aware that if a creditor requests the initiation of insolvency proceedings and minor proceedings would be possible, the court shall grant the debtor the opportunity to also file a petition prior to its decision. Then the debtor shall initially seek an out-of-court settlement as stated in section 306 (3). Without a request by the debtor, the proceedings would not be suspended and the simplified insolvency procedure starts immediately.

Despite those critical remarks, the extra-judicial proceedings are a sustainable alternative to court decisions. Opposed to court trial proceedings, they can give incentives to the parties involved to find a way to solve their problems in accordance with their special and individual interests in a self-determined way. But above all, a balance of power between debtor and creditor is required, typically not present in cases of insolvency. This balance must be established by law. Critics of the procedure of discharge of residual debts focus on the limited liability for individuals, limited liability similar to legal entities. Furthermore, discharge will always be granted in favour of the debtor and for the disadvantage of the creditor and the State.[25] But discharge seems to be in line with the German Constitution;[26] therefore, the legislature is free to choose this solution.[27] With regard to the number of reform proposals, there is great uncertainty concerning the consumer insolvency proceedings and the discharge of residual debts. In coming years, further dynamic development is expected.[28]

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[24] *See* Pape, *Entwicklung des Verbraucherinsolvenzverfahrens im Jahre 2004*, 58 NEUE JURISTISCHE WOCHENSCHRIFT 2755, 2756 (2005).

[25] Kirchhof, *Zwei Jahre Insolvenzordnung – Ein Rückblick*, 4 ZEITSCHRIFT FÜR DAS GESAMTE INSOLVENZRECHT 1, 13 (2001).

[26] Prütting & Stickelbrock, *Ist die Restschuldbefreiung verfassungswidrig?*, 1 ZEITSCHRIFT FÜR VERBRAUCHER-INSOLVENZRECHT 305 (2002).

[27] FOERSTE, *supra* note 6, at 529.

[28] Pape, *supra* note 23, at 1165.

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