

# Early Warning Tools in German Law

## White & Case

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Alba, November 14, 2019

# Appearances

- Company Law
- Insolvency Law
  
- Generally: German thinking, however, is still dominated by ahorrence of insolvency (cf. Best Practices, 2019)

# Company law

## □ Sec. 91 par. 2 Stock Corporation Act:

- *The management board is to take suitable measures, and in particular is to institute a monitoring system, in order to allow developments jeopardising the company's continued existence to be identified at an early point in time.*

## □ Sec. 92 par. 1 Stock Corporation Act:

- *Should it become apparent in the course of drawing up the annual balance sheet or an interim balance sheet, or if it is to be assumed in duly assessing the circumstances, that a loss amounting to half of the share capital has been incurred, the management board is to convene the general meeting without undue delay and is to notify it of this fact.*

# Insolvency law

- Sec. 19 par. 2, 1st sent. Insolvency Ordinance:
  - *Overindebtedness shall exist if the debtor's assets no longer cover his existing obligations to pay, unless it is highly likely, considering the circumstances, that the enterprise will continue to exist.....*
  
- Sec. 15a par. 1, 1st sent. Insolvency Ordinance:
  - *Where a legal person becomes illiquid or overindebted, the members of the board of directors or the liquidators shall file a request for the opening of proceedings without culpable delay, at the latest, however, three weeks after the commencement of insolvency or overindebtedness....*

# Official support

- Ministry of Economy and Energy website → for start-ups:  
early warning scale:

			ja	nein	
Ideenvorrat	9	Haben Sie neue Geschäftsideen?	<input type="checkbox"/>	<input type="checkbox"/>	Früherkennung
Innovation	8	Haben Sie neue Produkte und/oder Dienstleistungen?	<input type="checkbox"/>	<input type="checkbox"/>	
Kunden	7	Haben Sie genug neue Kunden gewonnen?	<input type="checkbox"/>	<input type="checkbox"/>	
Betriebsergebnis	6	Ist Ihr Betriebsergebnis wirklich gut?	<input type="checkbox"/>	<input type="checkbox"/>	Späterkennung
Umsatz	5	Steigt Ihr Umsatz?	<input type="checkbox"/>	<input type="checkbox"/>	
Kosten	4	Haben Sie Ihre Kosten im Griff?	<input type="checkbox"/>	<input type="checkbox"/>	
Liquidität	3	Reicht Ihr flüssiges Geld aus?	<input type="checkbox"/>	<input type="checkbox"/>	Sehr-Späterkennung
Kreditfähigkeit	2	Gibt Ihnen die Bank noch Geld?	<input type="checkbox"/>	<input type="checkbox"/>	
Insolvenz	1	Vermeiden Sie erfolgreich die Pleite?	<input type="checkbox"/>	<input type="checkbox"/>	

# Possibility?

- CRR (EU 575/2013) – Art. 178 → Guidelines of the EBA, nrs. 58 – 60: determination of an overdue claim.

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Grazie tante