



**How will the new German preventive  
restructuring scheme (StaRUG)  
impact the NPL-market?**

2 March 2021

## How will the new German restructuring scheme StaRUG impact the NPL-market?

---

- What can we expect from the new German preventive restructuring scheme?
- How will the role of banks in restructuring processes change?
- What impact will StaRUG have on the creditors' structure?
- Can we expect a higher activity in NPL-trading?

## 1) Introducing the new German preventive restructuring scheme.

---

- a. StaRUG has become effective on 1 January 2021.
- b. StaRUG aims at restructuring businesses before and outside of insolvency proceedings.
- c. StaRUG is accessible to non-insolvent debtors threatened by illiquidity (*drohende Zahlungsunfähigkeit*).
- d. StaRUG allows the debtor to select the debt it wants to restructure, exempting specific creditor-groups from restructuring (employees!).

## 1) Introducing the new German preventive restructuring scheme.

---

- e. StaRUG's new restructuring tool is the restructuring plan:
  - i. debtor prepares restructuring plan, which can include the following measures:
    - claim deferrals
    - claim reductions/hair-cuts
    - re-allocation of collateral
    - debt-equity swaps
    - hair-cuts on claims against the debtor's affiliates under inter-group collateral
    - new money financings
    - however, plan cannot terminate executory contracts, e.g. rental agreements
  - ii. creditors vote on restructuring plan in classes (75% approval required in each class)
  - iii. debtor may impose restructuring plan upon dissenting creditors, provided the plan is approved by majority-vote in at least one creditors' class and confirmed by the court
- f. debtor can require court to stay creditors' actions for enforcement and collateral realization.

## 2) **StaRUG will change the role of banks in restructurings.**

---

- a. Current German pre-insolvency restructuring practice is dominated by a traditional German tool: The consensual restructuring process, initiated and led by the debtor's bank(s), entirely relying on the consensus found among all stakeholders.
  
- b. StarRUG will compete with this traditional and proven German restructuring tool.

## 2) StaRUG will change the role of banks in restructurings.

---

### i. Key factors of traditional consensual out-of-court restructuring:

#### ■ Balance sheet restructuring.

- Banks are key players as traditional providers of financing to German Mittelstand (SMEs),
- Banks therefore often initiate and lead the debtor's restructuring process, by setting time-lines and providing guidance, by requesting/suggesting experts helping debtor prepare restructuring concept.

#### ■ Operating restructuring.

Restructuring the debtor's operating business requires finding consensus with employees, suppliers and land-lords.

#### ■ Organization of process.

- Process entirely based on market practice and the initiative of banks,
- No involvement of courts, (few) advisors.
- Banks are under no duty/obligation to participate in consensual restructuring.

## 2) StaRUG will change the role of banks in restructurings.

---

### ii. Key elements of StaRUG restructuring process:

#### ■ Balance sheet restructuring.

- StaRUG allows debtor to select creditor-classes he wants to restructure within StaRUG proceeding, i.e. by majority-decision
- StaRUG facilitates the process, if only financial creditors (including bondholders) and no SME creditors are involved.

=> Expected focus of StaRUG proceedings will be on financial creditors, similar to traditional consensual restructuring.

#### ■ Operating restructuring.

- Employees and land-lords cannot be included in StaRUG process.
- Restructuring the debtor's operating business still requires finding consensus with employees, suppliers and land-lords.
- Banks (and other creditors concerned by StaRUG process) are well advised to require the debtor to subject the plan's effectiveness to agreements with employees, suppliers and land-lords on their respective contributions.



## 2) StaRUG will change the role of banks in restructurings.

---

### ■ Organization of process.

- Debtor steers process (banks/creditors take back-seat),
  - Debtor selects creditors/claims it wants to restructure – can include banks in restructuring plan against their will,
  - Debtor can obtain stay of actions for enforcement or collateral realization from court (for up to four months),
  - Debtor organizes creditors' and shareholders' vote, decides whether creditors should vote in physical meeting or in writing,
  - Court approval (after hearing creditors) renders plan enforceable against dissenting creditors and possibly even against dissenting creditor-classes (by way of cross-class cram-down).
- => Process is complex.
- => High costs expected, court approval process may trigger instructions for numerous advisors and experts.



## 2) StaRUG will change the role of banks in restructurings.

---

### iii. Practical consequence of availability of StaRUG proceedings:

- Many restructurings will still start as consensual restructuring attempts.
- StaRUG proceedings will now be debtors' plan B:  
=> StaRUG is credible threat to force creditors into restructuring concept.
- However, only large and medium-large debtors will likely be able to afford costs of StaRUG proceedings.

### 3. StaRUG meets existing regulatory environment and will accelerate changes towards more creditor diversity.

---

- a. Regulatory framework (CRR and EBA guidelines) requires financial institutions to reduce their NPEs, including by sale, and to make risk provisions even for secured loans.
    - i. NPE (non-performing exposure) =
      - claims overdue for at least 90 days, or
      - claims “unlikely to pay” in full amount without bank realizing collateral (UTP)
    - ii. Banks need to make risk provisions for NPEs in compliance with fixed time-schedules:
      - Secured NPE = 25% risk provisions after year three, 55% after year five etc.,
      - Unsecured NPE = 35% risk provisions after year two, and 100% after year three
- => Banks are under time pressure to resolve NPEs

### 3. StaRUG meets existing regulatory environment and will accelerate changes towards more creditor diversity.

---

- b. In light of this regulatory time-pressure on NPEs, any restructuring measure a bank wants to make or is required to make on a loan, e.g. forbearance measures or maturity extensions, is a challenge for the bank.
  - c. Effects of regulatory framework over the past decade:
    - i. Refinancing has increasingly involved *Schuldscheine* and bonds = tradeable instruments from non-bank creditors
    - ii. Creditors' constituency has become more divers
    - iii. More tradeable instruments = more anonymized and faster changing creditors' constituency
- => environment less favorable for consensus-based restructurings
- => StaRUG helps resolve minority creditor hold-outs

#### 4) StaRUG increases pressure on banks to deal with NPE earlier.

---

- a. Restructurings may commence earlier.
- b. StaRUG proceeding may cause loan to qualify as “unlikely to pay” = NPE.
  - i. Commencement of StaRUG proceeding => indication that debtor is unlikely to fully pay its debt (UTP)?
  - ii. Moratorium / stay of enforcement actions and collateral realization
    - => may cause claims to become overdue for at least 90 days = NPE
    - => temporarily deprives creditors of access to collateral = threatens value of collateral = increases NPE?

#### 4) StaRUG increases pressure on banks to deal with NPE earlier.

---

- c. Restructuring plan may be imposed upon a bank against its will.
  - i. Debtor initiates and steers through the process (banks take back-seat).
  - ii. Debtor can obtain stay/moratorium of creditors' actions for enforcement or collateral realization.
  - iii. Individual bank may be minority and outvoted by majority of its peers in its voting-class.
  - iv. Even if the bank's voting-class rejects restructuring plan, plan may be imposed upon the bank by way of cross-class cram-down.

#### 4) StaRUG increases pressure on banks to deal with NPE earlier.

---

##### b. Outlook

- i. StaRUG will increase pressure on banks to make decision on risk provisions or sale of loans earlier.
- ii. StaRUG will impact the banks' dealing with NPLs to larger or medium-large debtors. Smaller debtors may shy away from the expected complexity and costs of the StaRUG proceeding.
- iii. We will likely see more transfers of NPLs.

## Dr. Arnold Büsse maker

---



**Dr. Arnold Büsse maker**  
**Licencié en Droit**  
Equity Partner

Prinzregentenstraße 48  
80538 München  
Tel.: 0049 (0) 89 / 540 31 250  
Fax: 0049 (0) 89 / 540 31 550  
E-Mail: a.buessemaker@heuking.de

Arnold is a Partner of the Munich and Frankfurt offices of the German law-firm Heuking Kühn Lüer Wojtek and focuses on corporate finance and restructuring matters. He regularly advises financial institutions and investors on NPL and distressed debt transactions. He has been consistently advising on NPL transactions since the first large portfolio sales in 2003, primarily representing debt purchasers in the commercial real estate, corporate and shipping sectors. Since joining Heuking's financial assets team in 2014, he has also been advising financial institutions on the sale of consumer loan and factoring portfolios. He is a member of Heuking's restructuring and corporate finance practice groups and also focuses on corporate restructuring and financing.

Prior to joining Heuking Kühn Lüer Wojtek, Arnold was a Partner with Weil, Gotshal & Manges in Frankfurt and Munich and headed the corporate restructuring team in Weil's Munich office from 2008 to 2013. In 2005, he was seconded to the Distressed Products Group of Deutsche Bank (London).

Arnold holds a doctorate degree in law.



Many thanks  
for your attention

[www.heuking.de](http://www.heuking.de)

**Berlin**

Kurfürstendamm 32  
10719 Berlin  
T +49 30 88 00 97-0  
F +49 30 88 00 97-99

**Düsseldorf**

Georg-Glock-Straße 4  
40474 Düsseldorf  
T +49 211 600 55-00  
F +49 211 600 55-050

**Hamburg**

Neuer Wall 63  
20354 Hamburg  
T +49 40 35 52 80-0  
F +49 40 35 52 80-80

**München**

Prinzregentenstraße 48  
80538 München  
T +49 89 540 31-0  
F +49 89 540 31-540

**Chemnitz**

Weststraße 16  
09112 Chemnitz  
T +49 371 38 203-0  
F +49 371 38 203-100

**Frankfurt**

Goetheplatz 5-7  
60313 Frankfurt am Main  
T +49 69 975 61- 0  
F +49 69 975 61-200

**Köln**

Magnusstraße 13  
50672 Köln  
T +49 221 20 52-0  
F +49 221 20 52-1

**Stuttgart**

Augustenstraße 1  
70178 Stuttgart  
T +49 711 22 04 579-0  
F +49 711 22 04 579-44

**Zürich**

Bahnhofstrasse 69  
8001 Zürich/Schweiz  
T +41 44 200 71-00  
F +41 44 200 71-01