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Die vorinsolvenzliche Sanierung von Unternehmen

Ein Vorschlag für ein neues Restrukturierungsverfahren
unter Berücksichtigung der englischen Arrangements



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Vorinsolvenzliche Sanierung Unternehmen Restrukturierungsverfahren Bei Cksichtigung

Jan-Philip Kraut



Vorinsolvenzliche Sanierung Unternehmen Restrukturierungsverfahren Ber Cksichtigung:

Die vorinsolvenzliche Sanierung von Unternehmen, 2015 *Restrukturierungsverfahren und Schutzschirmverfahren als Möglichkeiten der Sanierung im Krisenstadium. Funktionen, Wirkungsweise und Erkenntnisse aus der Praxis* Regina Schneider, 2022-09-01 Bachelorarbeit aus dem Jahr 2022 im Fachbereich BWL Recht Note 1 7 Fachhochschule S dwestfalen Abteilung Hagen Sprache Deutsch Abstract Mit der Einf hrung des StaRUG wurde erstmalig im deutschen Recht ein vorinsolvenzliches Sanierungsverfahren eingef hrt Doch welche Vor oder Nachteile bietet das enthaltene Restrukturierungsverfahren Und worin unterscheidet es sich zum Schutzschirmverfahren nach ESUG welches ebenfalls im fr hen Krisenstadium eingesetzt werden kann Diese Arbeit stellt aus beiden Verfahren die wesentlichen Grundz ge dar um am Ende eine konkrete Empfehlung zur Anwendung auf die jeweilige Krisenphase eines Unternehmens zu geben

Restrukturierung in der Krise. Vergleich von Sanierung und Insolvenzverfahren unter Berücksichtigung des StaRUG Duygu Beydogan, 2023-04-25 Masterarbeit aus dem Jahr 2022 im Fachbereich Jura Zivilrecht Handelsrecht Gesellschaftsrecht Kartellrecht Wirtschaftsrecht Note 1 5 Hochschule f r Wirtschaft und Recht Berlin Sprache Deutsch Abstract Unternehmen in einem fr hen Stadium der Krise haben demnach seit Jahresbeginn 2021 die Wahl zwischen zwei Verfahren der rechtsf rmligen Restrukturierung einer vorwiegend finanzwirtschaftlichen Restrukturierung durch das StaRUG oder der weiterreichenden Sanierung in einem Insolvenzverfahren Die vorliegende Masterarbeit beleuchtet die Herausforderungen und Folgen im Restrukturierungsverfahren Ziel dieser Arbeit ist es daher die Sanierung auf der Grundlage des Restrukturierungsverfahren dem Insolvenzverfahren gegen berzustellen Zun chst werden wichtige Grundlagen des Restrukturierungsplans dargelegt Dabei wird auf eine Krisensituation eingegangen Der Fall zeigt den ersten rechtskr ftigen best tigten Restrukturierungsplan in Deutschland und wie dieser pr ventive Restrukturierungsrahmen in geeigneten F llen die L cke zwischen freier Sanierung und dem Insolvenzverfahren sicher schlie en kann Wichtig f r die vorliegende Arbeit sind die Sanierungsinstrumente und das Verfahren der Planabstimmung Anders als im Insolvenzverfahren liegt das Schicksal der Sanierung in der Hand des restrukturierungsbed rftigen Schuldners was durch die vorliegende Arbeit verdeutlicht werden soll Daf r stellt das StaRUG dem Schuldner Instrumente zur Verf gung Dabei bestimmt der Schuldner selbst welche Gl ubiger in den Restrukturierungsplan einbezogen werden sollen und inwieweit das Verfahren ausschlie lich privatautonom umgesetzt oder das Restrukturierungsgericht involviert werden soll Abschlie end wird der Verfahrensablauf aus der Krisensituation dargestellt und in Bezug auf das Insolvenzverfahren bewertet *Vorinsolvenzliches Sanierungsverfahren. Sinnvolle Ergnzung der bisherigen Sanierungsmglichkeiten?* Jan-Philip Kraut, 2017-11-07 Studienarbeit aus dem Jahr 2016 im Fachbereich BWL Recht Note 1 0 FOM Hochschule f r Oekonomie Management gemeinn tztige GmbH Stuttgart Sprache Deutsch Abstract Ein vorinsolvenzliches Sanierungsverfahren ist keinesfalls ein neues Thema in Deutschland denn schon bei der Einf hrung des Gesetzes zur weiteren Erleichterung der Sanierung von Unternehmen kurz

ESUG im Jahr 2012 wurde über die Einführung eines gesetzlich geregelten außergerichtlichen Sanierungsverfahrens diskutiert. Damals hat man sich allerdings gegen ein solches Verfahren entschieden. Somit fehlt in Deutschland die gesetzliche Regelung für die Sanierung von Unternehmen außerhalb des gerichtlichen Insolvenzverfahrens, was aber durch die Verpflichtung der EU ein Ende hat. Durch den geplanten harmonisierten Insolvenzrahmen in allen Mitgliedstaaten möchte die EU vor allem ein gutes Geschäftsumfeld schaffen und damit eine Steigerung des Handels und auch von Investitionen bezwecken. In den letzten Jahren können starke Tendenzen von Unternehmenssanierungen in einem frühen Stadium festgestellt werden, in welchem eine materielle Insolvenz, also eine Zahlungsunfähigkeit nach 17 InsO, eine drohende Zahlungsunfähigkeit nach 18 InsO oder eine Überschuldung nach 19 InsO noch nicht vorliegt. Fürstende Restrukturierungsexperten nutzen diese Situation und wagen erneute Diskussionen über vorinsolvenzliche Sanierungsverfahren außerhalb einer Insolvenz. Anders als bei den derzeitigen Sanierungsverfahren, wo eine gesetzliche Antragspflicht mit einer verbundenen Veröffentlichung besteht, soll bei einem vorinsolvenzlichen Verfahren davon abgesehen werden, um vor allem das Unternehmen vor wirtschaftlichen Benachteiligungen und der Stigmatisierung einer Insolvenz zu schützen. Dass ein solches Verfahren funktionieren kann, beweisen ähnliche Modelle wie das englische Scheme of Arrangement, mit welchem Firmen wie Tele Columbus, Rodenstock oder Apcoa durch teilweise Herauslösen einzelner Geschäftsbereiche restrukturiert werden konnten. Die Krisen wurden beispielsweise durch Verringerungen von Finanzverbindlichkeiten und gleichzeitiger Zuführung frischer Liquidität, aber auch durch Rangrücktritte erreicht. Die Unternehmen wurden deswegen nicht in Deutschland saniert, da hierzulande solche Maßnahmen nicht gegen den Willen eines betroffenen Kreditgebers umgesetzt werden können. Grund hierfür ist die fehlende Pflicht von Gläubigern zur Mitwirkung einer Sanierung, was von diesen oftmals als strategisches Vetorecht missbräuchlich ausgenutzt werden

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