



Optimizing the Distressed Workout Process for Struggling or Failing Companies in Germany

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Dissertation submitted in partial fulfilment of requirements for the MSc in
Management, at the Universidade Católica Portuguesa, June 2025

Abstract

Corporate distress and insolvencies are rising in Germany, exposing limitations in the existing restructuring framework. Instruments like the Insolvenzordnung (InsO) and StaRUG exist, but their effectiveness is undermined by stigma, rigid procedures, and weak investor incentives.

This thesis examines how Germany's restructuring process can be improved to foster early intervention and attract financial investors, particularly in private equity and distressed debt. Based on expert interviews, legal comparison, and literature review, key barriers are identified: high advisory costs, limited StaRUG tools, an underdeveloped DIP market, and fragmented court expertise. Additionally, the strong influence of insolvency administrators, often driven by procedural incentives, discourages early out-of-court solutions. Using U.S. Chapter 11 as a benchmark, the study recommends reforms such as judicial specialization, improved operational tools, incentivized DIP financing, a cultural shift in restructuring perception, and revised governance roles for administrators.

A correlation analysis supports the link between legal fragmentation, administrator dominance, and investor hesitancy. The thesis offers actionable recommendations to build a more agile, transparent, and investor-friendly restructuring system, vital for resolving zombie firms, the rising numbers of insolvencies and ensuring long-term economic stability.

Keywords: Corporate Distress, StaRUG, Insolvency law, Chapter 11, Restructuring, Distressed investing

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Sumário

A deterioração financeira empresarial e as insolvências estão a aumentar na Alemanha, revelando limitações no atual quadro de reestruturação. Existem instrumentos como a Insolvenzordnung (InsO) e o StaRUG, mas a sua eficácia é comprometida pelo estigma, por procedimentos rígidos e por incentivos fracos aos investidores.

Esta dissertação analisa como o processo de reestruturação na Alemanha pode ser melhorado para promover intervenções precoces e atrair investidores financeiros, especialmente no capital de risco e dívida distressed. Com base em entrevistas com especialistas, comparação jurídica e revisão de literatura, são identificados os principais obstáculos: elevados custos de consultoria, ferramentas limitadas do StaRUG, um mercado DIP pouco desenvolvido e fragmentação da especialização judicial.

Adicionalmente, a forte influência dos administradores de insolvência, frequentemente motivada por incentivos processuais, desincentiva soluções extrajudiciais precoces. Utilizando o Capítulo 11 dos EUA como referência, o estudo recomenda reformas como especialização judicial, reforço de ferramentas operacionais, incentivo ao financiamento DIP, uma mudança cultural na perceção da reestruturação e revisão do papel dos administradores.

Uma análise de correlação confirma a ligação entre a fragmentação legal, o domínio dos administradores e a hesitação dos investidores. A dissertação propõe recomendações concretas para construir um sistema de reestruturação mais ágil, transparente e atrativo para os investidores – essencial para resolver empresas “zombie”, lidar com o aumento das insolvências e garantir a estabilidade económica a longo prazo.

Palavras-chave: Dificuldade corporativa, StaRUG, Lei de insolvência, Capítulo 11, Reestruturação, Investimento em dificuldades

Título: Otimização do processo de reestruturação de empresas em dificuldades ou falidas na Alemanha

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AI Usage Acknowledgment

In this master's thesis, AI tools were used to support selected stages of the research process. ChatGPT, Perplexity, and Connected Papers were partially used during the literature exploration phase to identify additional keywords and potential sources. All literature included in the thesis was independently retrieved, reviewed, and cited by the author.

ChatGPT and Perplexity were also used during the writing and revision process to enhance clarity, structure, and language quality. It helped streamline formulations, improve transitions, and ensure overall coherence. However, the actual analysis, statistical interpretation, and reporting were conducted by the author. No artificial intelligence technologies were employed for data collection, conceptual formulation, or critical analysis of results. All AI-generated recommendations were validated and modified by the author to guarantee precision, coherence, and scholarly integrity. The author bears exclusive responsibility for all content. This application conforms to Católica-Lisbon's criteria for transparency and ethical academic behavior.

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List of Abbreviations

DIHK	Deutsche Industrie- und Handelskammer (German Chamber of Commerce and Industry)
DIP	Debtor-in-Possession
ESG	Environmental, Social and Governance
ESUG	Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen (Act to further facilitate the restructuring of companies)
IHK	Industrie- und Handelskammer (Chamber of Commerce and Industry)
IfM	Institut für Mittelstandsforschung (Institute for SME-Research)
InsO	Insolvenzordnung (Insolvency Code)
NPL	Non-Performing Loans
PE	Private Equity
SME	Small and medium-sized companies
StaRUG	Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Law on the stabilization and restructuring framework for companies)
U.S.	United States
VC	Venture Capital
YoY	Year on Year

1. Introduction

Long considered the economic engine of Europe, Germany is facing growing challenges in its corporate sector. Insolvencies rose by 22.9% year-on-year in October 2024 (Reuters, 2024), driven by global uncertainty, high energy costs, and post-pandemic effects. Key sectors such as automotive, retail, and manufacturing have been hit hardest, exposing structural weaknesses in Germany's economy (Halle Institute for Economic Research (IWH), 2025). Inefficiencies in the country's legal restructuring framework, namely the Insolvenzordnung (InsO) and StaRUG, contribute to ongoing financial crises among struggling businesses (Hogg, 2025; Pogoda & Thole, 2021).

The situation is further aggravated by the rise of "zombie" companies—firms that continue operating despite being financially unsustainable (Altman et al., 2024). These entities distort competition, misuse resources, and erode public and investor confidence (Banerjee & Hofmann, 2018). Without a functioning restructuring process, they stay in the market, slowing innovation and economic recovery.

An effective distressed workout system is therefore crucial to enable viable firms to restructure or exit the market in an orderly manner. In contrast, unclear procedures and rigid mechanisms reduce early intervention and deter financial investors, particularly in private equity and distressed debt.

This thesis explores how Germany can improve its distressed workout process to support earlier restructuring and attract capital. The research is relevant for investors, legal practitioners, and policymakers seeking to modernize the system.

We addressed the following Research Question:

RQ: What are key drivers and levers for optimizing the distressed workout process for companies in Germany?

The study combines a literature review, expert interviews, and legal comparison, using U.S. Chapter 11 as a benchmark, to identify barriers in the current system. Based on these findings, actionable recommendations are proposed to build a more flexible, transparent, and investor-friendly restructuring environment.

2. Literature Review

2.1 Understanding Corporate Distress and Workout Mechanisms

2.1.1 Definition of Corporate Distress

Corporate distress is when companies experience significant financial, operational, or strategic difficulties that threaten their long-term viability (Moyer, 2005; Damodaran, 2009). It typically arises when a firm struggles to meet financial obligations, faces declining profitability, or encounters external market pressures that disrupt its business model (Moyer, 2005; Government Commercial Function, 2023). Absent effective management, corporate distress can escalate to insolvency, restructuring, or even liquidation (Damodaran, 2009; Stanghellini et al., 2018). Early identification is crucial for timely corrective measures, with key warning signs including increasing creditor pressure, liquidity challenges, declining trading performance, the departure of key personnel, legal disputes, burdensome fixed costs, and broader macroeconomic pressures such as economic downturns or supply chain disruptions (Moyer, 2005; Damodaran, 2009).

Corporate distress extends beyond financial problems to encompass broader operational inefficiencies, governance failures, and industry-wide disruptions (Damodaran, 2009). These require tailored strategies for recovery (Stanghellini et al., 2018). Financial distress, for instance, directly impacts a company's ability to meet its obligations (Moyer, 2005), while operational distress stems from internal inefficiencies and impacts profitability (Schweizer & Nienhaus, 2017). Strategic distress arises from weakened market positions and failed initiatives (Schweizer & Nienhaus, 2017; Moyer, 2005). Governance and leadership distress from weak corporate management, unethical practices and industry-specific distress from broader external events (Moyer, 2005; Alwoqayan & Kisswani, 2025).

2.1.2 Distressed Workout vs. Insolvency vs. Liquidation

The three fundamental approaches to dealing with financially struggling companies: distressed workouts, insolvency proceedings, and liquidation.

Distressed Workouts

Distressed workouts help financially troubled companies recover without resorting to court-supervised insolvency. They typically occur out of court, with negotiations happening directly between the company and creditors (Nesvold et al., 2011). The firm and its lenders engage in debt restructuring to modify existing obligations to better match the firm's financial capacities

(Moyer, 2005). This might involve renegotiating and modifying debt contracts, extending maturities, or securing partial debt write-offs (Altman et al., 2019; Financial Stability Board (FSB), 2022). More advanced strategies include amend-and-extend agreements with lenders, asset-based loans, factoring receivables, terming out payables, debt exchange offers, debt-for-equity swaps, rights offerings, and private investment in public equity (PIPE) (Nesvold et al. 2011). Businesses can thus stabilize operations and avoid default. A notable example is Lufthansa's response to the COVID-19 crisis in 2020. A government-backed bailout and debt restructuring plan allowed it to avoid bankruptcy and continue operations (Lufthansa, 2021).

Beyond financial adjustments, distressed workouts often include operational restructuring, such as cost-cutting, selling non-core assets, or leadership changes, to restore efficiency and profitability (Menezes et al., 2022). This helps avoid the stigma of insolvency, which can harm a firm's relationships with suppliers, customers, and investors, maintaining stakeholder confidence (Nesvold et al., 2011). Additionally, workouts provide greater control over the restructuring process, allowing companies and creditors to negotiate terms privately and adapt agreements quickly, which also results in lower administrative costs (Menezes et al., 2022). Distressed workouts hinge on creditor cooperation and the company's ability to generate future cash flows (Nesvold et al., 2011). If negotiations fail, companies may be forced into formal insolvency.

Insolvency

Insolvency happens when a company is unable to meet its debt obligations (default) (Altman et al., 2019; Udofia, 2019). Default refers to a borrower violating a contractual agreement with a creditor (Altman et al., 2019; Udofia, 2019), e.g., a firm misses a required interest or principal payment. If not resolved within a grace period, the creditor can exercise available remedies, such as demanding immediate repayment (Altman et al., 2019; Udofia, 2019). While the concept of default is universal, its legal implications vary across jurisdictions.

Two predominant insolvency types are: cash flow and balance sheet insolvency. The former is when a company cannot pay debts as they come due, even if its assets exceed liabilities (Altman et al., 2019; Udofia, 2019). Casey & Bartczak's (1985) posit operating cash flow data as a predictor of financial distress. Balance sheet insolvency is when a company's liabilities exceed its assets (Altman et al., 2019; Udofia, 2019).

Chapter 11 of the United States Code (11 U.S.C.) 101(32), defines corporate insolvency as a financial condition such that the sum of (the) entity's debts is greater than all of such entity's property, at a fair valuation. In Germany, insolvency follows a stricter legal framework (InsO) defined by three key conditions. Illiquidity, outlined in Section 17 of the InsO, is when a debtor is unable to meet payment obligations. Over-indebtedness, defined in Section 19, is when liabilities exceed assets in a winding-up scenario, with no ability to continue as a going concern (§§ 17 & 19, InsO, Federal Ministry of Justice, 1994). Lastly, imminent illiquidity, covered in Section 18, means a debtor is unable to meet financial obligations within the next 24 months, serving as an early warning sign (§ 18 InsO, Federal Ministry of Justice, 1994).

Occasional late payments may not immediately raise concerns, particularly for companies with strong financial histories. However, persistent missed or late payments can trigger creditor action (Nesvold et al., 2011). In the case of bank loans, a loan officer typically initiates contact to address the breach of the loan agreement (Nesvold et al., 2011). Nesvold et al. (2011) further explain that when commercial invoices remain unpaid, the vendor's accounts receivable team usually follows up with a phone call, followed by a formal letter regarding the overdue payments.

Davydenko (2012) states that creditor actions in response to payment defaults play a crucial role in the timing of insolvency filings. Additionally, loss of creditor confidence can lead to a "run" on a firm's credit lines, exacerbating financial distress (Ivashina & Scharfstein, 2010).

Companies often prefer workouts when creditor cooperation is feasible, as this preserves business relationships and avoids reputational damage (Menezes et al., 2022). Banks play a constructive role in rescuing distressed companies through informal workouts. However, the choice between workouts and formal insolvency depends on factors such as the company's financial condition, creditor composition, and legal frameworks.

Liquidation

Liquidation is winding down a company by selling assets, paying off creditors, and distributing any remaining funds to shareholders (Brook, 2024; Deepthi & Sangeetha Tomer, 2019). This typically marks the end of a company's existence and is often overseen by a court-appointed liquidator or trustee. In many jurisdictions, such as under Chapter 7 or the InsO, the process is governed by specific insolvency laws, distinguishing it from distressed workouts or insolvency proceedings aimed at restructuring (Balcaen et al., 2011).

Voluntary liquidation occurs when shareholders decide to wind up the company, while compulsory liquidation is initiated by creditors through a court order (Brook, 2024; Deepthi & Sangeetha Tomer, 2019). The liquidation process involves several key steps (Brook, 2024; Deepthi & Sangeetha Tomer, 2019): appointment of a liquidator, cessation of business operations, asset realization, debt settlement, distribution of remaining funds to shareholders (if any), and dissolution of the company. Liquidation usually means lower recovery rates for creditors compared to reorganizations (Bris et al., 2006). Despite previous restructuring attempts, the prominent fashion retailer “Esprit” liquidated European operations due to ongoing financial losses and failed rescue efforts (WiWo, 2024).

The choice between a workout, insolvency, or liquidation hinges on the severity of financial distress, the willingness of creditors to cooperate, and the prevailing regulatory framework. Distressed workouts offer the best opportunity for business recovery, while insolvency proceedings provide a structured path to either restructuring or liquidation. Countries with more efficient bankruptcy procedures tend to see more reorganizations and fewer liquidations (Cirmizi et al., 2010). Liquidation, as a last resort, is the dissolution of the company, prioritizing creditor repayment over business continuity.

	Distressed Workout	Insolvency	Liquidation
Goal	Business recovery	Business restructuring or debt settlement	Business closure
Court Involvement	No	Yes	Yes
Management Control	Retained	Often transferred	Transferred to liquidator
Creditor Action	Negotiated settlement	Structured claims process	Asset distribution
Survival Possibility	High	Medium	None

Table 1: Comparison: Distressed Workout vs. Insolvency vs. Liquidation (inferred from Nesvold et al., 2011)

2.1.3 Importance of an Efficient Workout Process

Workouts offer a flexible, out-of-court path to recovery (Nesvold et al., 2011). A swift workout stabilizes finances and avoids the value-destructive stigma of insolvency. Moreover, efficient workouts empower companies and creditors to collaborate on tailored solutions while minimizing administrative costs (Nesvold et al., 2011; Menezes et al., 2022).

2.2 The State of Corporate Distress in Germany

2.2.1 Trends in Insolvencies Over the Past Years

Germany is experiencing a surge in corporate distress, marked by rising insolvency filings. Corporate insolvencies hit approximately 22,000 cases in 2024, shown by the orange bar chart in figure 1, the highest since 2016 (21,500 cases), representing a 23% increase from 2023 and a 52% increase from 2021 (Institut für Mittelstandsforschung (IfM Bonn), 2025; Statistisches Bundesamt (Destatis), 2025).

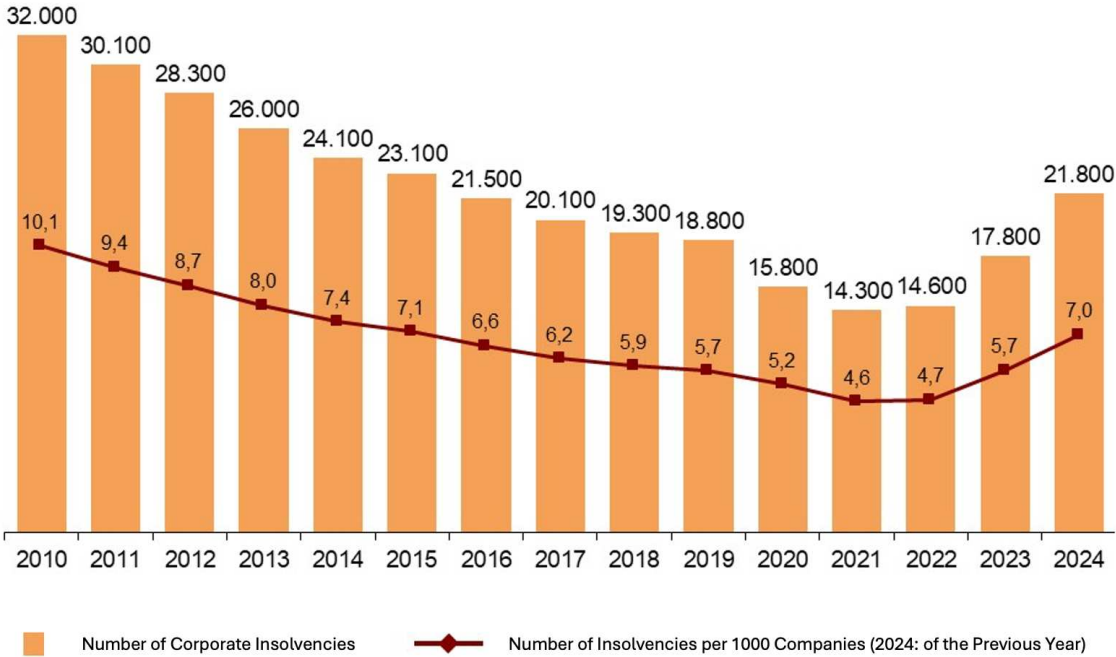


Figure 1: Corporate insolvencies and the proportion of insolvent companies in the portfolio (2010 to 2024) (Institut für Mittelstandsforschung (IfM Bonn), 2025)

This evokes comparisons to the 2009 financial crisis, when Germany had over 32,000 companies enter insolvency (see Appendix A). While not yet at those peak levels, increases are anticipated in 2025 (Allianz Research, 2024). There are no signs of an improvement in the

economic situation at the start of 2025. Looking at figure 2, only 26% of businesses in Germany currently describe their business situation as "good" (unchanged compared to autumn 2024), while 25% describe their situation as "poor" (unchanged compared to autumn 2024) (DIHK, 2025). Further supporting this trend, Figure 3 shows the continuing decline in companies' future expectations, with a clear downward trend observed since 2018, reflecting the ongoing pessimism in the corporate landscape.

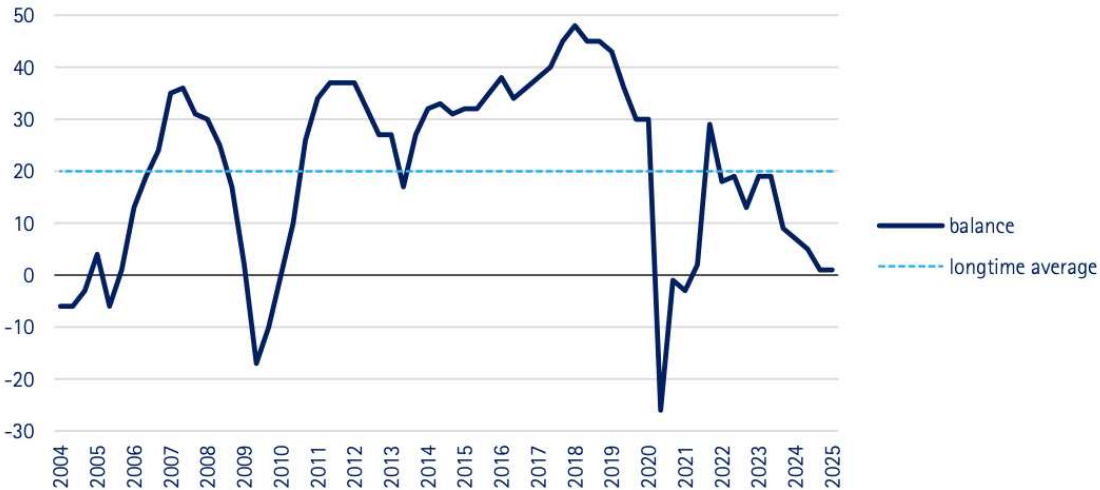


Figure 2: Business situation of companies; balance of good minus bad responses, long-term average since 2003 (DIHK, 2025)

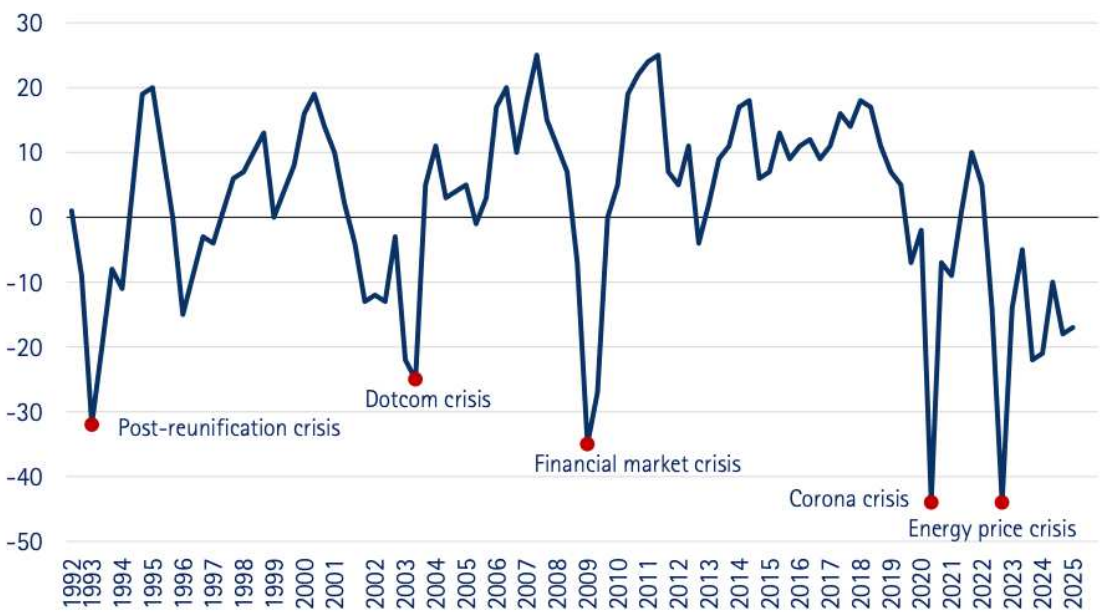


Figure 3: Business expectations of companies; balance in points, long-term average since 2003 (DIHK, 2025)

A key driver was the phasing out of pandemic-era support measures, including the suspension of insolvency filing obligations and short-time work benefits (Bundesbank, 2021). Initially preventing a wave of insolvencies during the peak of the pandemic, these measures created a backlog of "latent" insolvencies that are now materializing (Dörr et al., 2022).

Corporate insolvency trends in Germany reveal significant differences by company size, as shown in Figure 4. According to data from the Institute for SME Research (2025), a total of 21,812 corporate insolvencies were recorded in 2024. A closer look reveals that 64.0% of all insolvency filings in 2024 involved businesses with no employees, while another 7.2% had only one employee. This means that over 71% of all insolvencies affected firms with fewer than two employees, underscoring the particular vulnerability of self-employed individuals and micro-enterprises. Including companies with up to five employees, the metric rises to approximately 82.4%. This highlights how small businesses (those with fewer than 100 employees), which accounted for 99.9% of total insolvencies, are most exposed to financial distress. However, the increased insolvencies across nearly all sizes of firms reflects the broader and systemic nature of current pressures.

Year	Total	Corporate Insolvencies Categorized by Number of Employees						
		None	1	2 - 5	6 - 10	11 - 100	101 and more	Unknown
2014	24.085	11.592	3.618	3.773	1.569	2.119	164	1.250
2015	23.101	13.999	2.415	3.226	1.393	1.909	159	
2016	21.518	13.676	1.837	2.821	1.321	1.702	161	
2017	20.093	12.690	1.822	2.534	1.137	1.736	174	
2018	19.302	11.907	1.847	2.575	1.138	1.696	139	
2019	18.749	11.410	1.620	2.512	1.138	1.857	212	
2020	15.841	9.688	1.427	1.979	928	1.526	293	
2021	13.993	9.499	1.104	1.613	683	977	117	
2022	14.590	9.513	1.248	1.744	717	1.232	136	
2023	17.814	10.814	1.496	2.286	1.081	1.906	231	
2024	21.812	13.960	1.572	2.484	1.304	2.233	259	

Figure 4: Insolvencies from 2019 to 2024 categorized by employee number (Institut für Mittelstandsforschung (IfM Bonn), 2025)

The war in Ukraine and its associated energy crisis added to the economic headwinds facing German businesses. Sharp increases in energy prices have particularly impacted energy-intensive industries, raising operating costs and reducing competitiveness (Wick & Ayrinhac, 2022).

Lastly, economic policy decisions from the last government created uncertainty. Professor Dr. Steffen Müller of the IWH (2025) notes that the coalition government, in the last four years, failed to give the economy a clear direction and a consistent economic policy line. This unsettles

companies and inhibits investment decisions that, in the end, also lead to a factor that supported the insolvency wave (Halle Institute for Economic Research (IWH), 2025).

2.2.2 Key Industries Affected by Corporate Distress

German automotives, a cornerstone of the national economy, face significant pressure (Halle Institute for Economic Research (IWH), 2025). Automotive insolvencies increased by 66% YoY in 2024, with forecasts suggesting a further rise in 2025 (Automobilwoche, 2025). The transition to EVs, coupled with supply chain disruptions and increasing regulatory burdens, have created challenges for both established manufacturers and smaller suppliers (DIHK, 2025).

The manufacturing sector closely follows. This sector is strongly driven by challenges in the auto sector (DIHK, 2025). Others include healthcare where, according to the latest summer survey of the DKI Hospital Index, 63% of hospitals currently describe their economic situations as poor or very poor (Halle Institute for Economic Research (IWH), 2025; Blum & Löffert, 2024). Many are engaged in drastic cost-cutting, such as reducing staff where one in four hospitals have cut back on services (Blum & Löffert, 2024). Risk of insolvency has also increased in the construction industry with real estate developers facing headwinds (Institut für Mittelstandsforschung (IfM Bonn), 2025).

Furthermore, the retail sector has also faced sustained distress, with few firms surviving despite repeated restructuring and government support. High-profile insolvencies such as Galeria Karstadt Kaufhof, KaDeWe-Gruppe, Esprit, Wormland, and Gerry Weber reflect this trend (Kortum, 2024). Key failure factors include high rents, rising energy costs, and the rapid shift to online shopping, pressures that many traditional retailers have struggled to adapt to (Kortum, 2024).

2.2.3 Economic Impact of Zombie Companies

Zombie companies significantly weaken economic performance through multiple channels (Banerjee & Hofmann, 2018). They are generally less productive, with their productivity distribution clearly shifted towards the lower end, which weighs on aggregate productivity (Banerjee & Hofmann, 2018). These firms crowd out investment in and employment at healthy firms by locking up resources (Banerjee & Hofmann, 2018). Roughly, each one percentage

point rise of zombie firms in a sector lowers capital expenditure of non-zombie firms by around 1 percentage point, while employment growth is 0.26 percentage points lower (Banerjee & Hofmann, 2018).

Zombie firms compete for resources, often depressing other firms' margins while raising labor and funding costs for healthier companies (Banerjee & Hofmann, 2018). This "zombie congestion" reduces potential output growth by distorting productivity-enhancing capital reallocation and discouraging market entry, particularly constraining the growth of more productive young firms (McGowan et al., 2017). Estimates suggest that zombie companies could be a significant obstacle to economic recovery in certain countries, as they impair both capital deepening and multi-factor productivity. (FTI-Andersch, 2023; McGowan et al., 2017).

2.3 Germany's Current Insolvency Framework and Workout Mechanisms

Before examining Germany's legal restructuring instruments, it's important to understand when these tools become relevant in the corporate distress cycle. Corporate crises rarely occur suddenly, but have identifiable categories (Damerius, 2022) These are: stakeholder crises, strategic crises, product and sales crises, performance crises, liquidity crises and ultimately insolvencies. Germany's dual-track restructuring framework addresses this progression of categories. Formal insolvency proceedings under the InsO address acute financial failure whereas StaRUG targets companies still in the pre-insolvency phase, particularly firms facing imminent illiquidity but which are not yet formally insolvent (§§ 17, 18, 19 InsO, Federal Ministry of Justice, 1994). This stage-based distinction is crucial for how and when legal interventions occur and why certain tools remain underused.

2.3.1 Overview of the German Insolvency Code (InsO)

The German Insolvency Code (Insolvenzordnung, InsO), enacted on October 19, 1994, and most recently amended in July 2024, is the primary legislation governing insolvency proceedings (Federal Ministry of Justice, 1994). The InsO, along with the European Regulation on Insolvency Proceedings (2015/848), forms the backbone of Germany's insolvency framework (European Parliament & Council of the European Union, 2015). Insolvency under the InsO focuses on satisfying creditors through claims on the debtor's assets and distribution of proceeds (Mayer Brown, 2023). This aligns with Germany's pro-creditor system, which

prioritizes swift fulfillment of creditors' claims over the rehabilitation of the debtor (Mayer Brown, 2023).

As stated above, the InsO recognizes three grounds for initiating insolvency proceedings: illiquidity, over-indebtedness, and imminent illiquidity (§§ 17, 18, 19 InsO, Federal Ministry of Justice, 1994). While debtors can file based on any of these reasons, creditors can only petition based on illiquidity or over-indebtedness (Mayer Brown, 2023). The InsO imposes a strict obligation on company management to file for insolvency without undue delay, but no later than three weeks after the company becomes illiquid and/or after six weeks when over-indebted (§ 15a InsO, Federal Ministry of Justice, 1994). Failure to comply with this filing obligation can result in severe consequences for management, including personal civil liability and potential criminal penalties (§ 15a InsO, Federal Ministry of Justice, 1994). The InsO grants substantial autonomy to creditors during the insolvency process, enabling them to have greater influence over the proceedings (Mayer Brown, 2023). For example, they can determine whether the debtor's enterprise should continue or be liquidated. (§ 157 InsO, Federal Ministry of Justice, 1994).

To promote business continuity, the InsO provides for an insolvency plan (Insolvenzplan) as an alternative to liquidation (§§ 217–269 InsO, Federal Ministry of Justice, 1994). The Insolvency plan (Insolvenzplan) allows for comprehensive restructuring, including debt-equity swaps and other measures affecting creditor and shareholder rights, provided the plan is approved by the requisite majorities and confirmed by the court (Mayer Brown, 2023; § 225a InsO, Federal Ministry of Justice, 1994). This mechanism enables tailored solutions to preserve viable businesses and can bind dissenting creditor groups through a court-sanctioned “cram-down” if certain conditions are met (§ 245 InsO, Federal Ministry of Justice, 1994; Mayer Brown, 2023).

Additionally, under certain conditions, the InsO allows for self-administration (Eigenverwaltung) and, protective shield proceedings (Schutzschirmverfahren) (§ 270b InsO, Federal Ministry of Justice, 1994). The protective shield proceeding is available to debtors facing imminent illiquidity or over-indebtedness (but not yet illiquid), provided that restructuring is not obviously futile and an expert certifies the prospects of success (Mayer Brown, 2023; § 270b InsO, Federal Ministry of Justice, 1994). During this period, the court appoints a preliminary custodian (Sachverwalter), suspends enforcement actions, and grants the debtor up to three months to submit an insolvency plan (§ 270b-d InsO, Federal Ministry of

Justice, 1994). This tool is designed to facilitate early and effective restructuring, giving debtors more control while still protecting creditor interests (Mayer Brown, 2023).

While the InsO offers these reorganization options, its pro-creditor orientation often results in liquidation as the more common outcome (Rauch, 2022). Nonetheless, recent reforms have focused on enhancing restructuring options, such as the Insolvency plan and the protective shield proceedings, to better balance creditor satisfaction with business preservation (Mayer Brown, 2023).

2.3.2 The Role of StaRUG (Corporate Stabilization and Restructuring Act)

The InsO primarily addresses situations where a company is already insolvent or on the edge of insolvency. This leaves a gap with respect to pre-insolvency scenarios, where companies face financial difficulties but are not yet insolvent. Recognizing this limitation, and in response to the EU Directive on Restructuring and Insolvency of 20 June 2019 ((EU) 2019/1023), Germany introduced the Act on the Stabilization and Restructuring Framework for Businesses (StaRUG) on January 1, 2021 (European Parliament & Council of the European Union, 2019). The StaRUG complements the InsO by providing a statutory framework for pre-insolvency and preventive restructuring proceedings, aimed at strengthening out-of-court reorganization and restructuring companies to avoid formal insolvency proceedings (Pogoda & Thole, 2021; Damerius, 2022).

StaRUG's debtor-driven pre-insolvency regime allows companies to restructure, outside of formal insolvency proceedings, even against the wishes of some creditors (Damerius, 2022). The framework is founded on four key pillars: early crisis detection and management, the stabilization and restructuring framework, regulations to facilitate restructuring, and early warning systems designed for the timely identification of crises (Pogoda & Thole, 2021; Damerius, 2022). The core element of the StaRUG is the restructuring plan (§§ 2-28 StaRUG, Federal Ministry of Justice, 2020), which can modify secured and unsecured liabilities, contractual provisions, and shareholder rights (Damerius, 2022). This plan can be implemented with reduced court involvement compared to formal insolvency proceedings (§ 23 StaRUG, Federal Ministry of Justice, 2020).

One of the most significant aspects of the StaRUG is a cross-class cram-down mechanism, allowing the restructuring plan to be imposed on dissenting creditors under certain conditions

(§§ 25-27 StaRUG, Federal Ministry of Justice, 2020). The StaRUG also provides for a moratorium of 3 to 8 months, giving companies a protected period to prepare a restructuring plan and negotiate with creditors and stakeholders (§ 53 StaRUG, Federal Ministry of Justice, 2020). Additionally, the law offers safeguards for new financing granted under the StaRUG, reducing potential lenders' liability and claw-back risks (§§ 87-88 StaRUG, Federal Ministry of Justice, 2020). This protection encourages lenders to provide necessary funding during the restructuring process.

Another important aspect is managers' duty to recognize and manage crises at an early stage, regardless of the company's legal form (§ 1(1) StaRUG, Federal Ministry of Justice, 2020). This includes the obligation to set up an early crisis detection system, which should involve continuous monitoring of the company's solvency and absence of over-indebtedness (§ 101 StaRUG, Federal Ministry of Justice, 2020).

2.3.3 Criticism and Limitations of the Current German System

One major concern about the StaRUG is its limited scope for operational restructuring, as it does not allow termination of ongoing contracts or modification of employee and pension claims (Pogoda & Thole, 2021; § 4 StaRUG, Federal Ministry of Justice, 2020). This restricts effectiveness for comprehensive operational restructuring (Pogoda & Thole, 2021).

A second issue is the potential overlap with insolvency filing obligations due to over-indebtedness, creating uncertainty for management (Pogoda & Thole, 2021; §§ 18-19 StaRUG, Federal Ministry of Justice, 2020). The removal of a provision prioritizing creditor interests in the first draft has sparked debates about management responsibilities and creditor protection during financial crises (Pogoda & Thole, 2021). The act's protection against *ipso facto* clauses has also been questioned, as creditors might still terminate contracts based on other grounds (Pogoda & Thole, 2021; § 44 StaRUG, Federal Ministry of Justice, 2020). The voting system for secured creditors is complex, and the court review for new financing creates uncertainties. Additionally, new financing lacks comprehensive priority in subsequent insolvency proceedings, potentially deterring lenders (Pogoda & Thole, 2021).

Critics emphasize that SMEs often lack the resources to manage the procedural complexities of StaRUG, as well as the legal and technical counsel typically required in a restructuring context (Burigo et al., 2023). Furthermore, the level of documentation and legal advice required under

StaRUG is expected to limit its use primarily to larger corporations, making it disproportionately burdensome for smaller firms (Grauke & Eiden, 2021).

While § 55 StaRUG grants super-priority for interim financing, this priority lapses if the restructuring fails and insolvency proceedings are initiated, an effect that can significantly deter potential lenders (Grauke & Eiden, 2021).

Despite StaRUG's 3-month timeline for plan confirmation, backlogs in German insolvency courts often prolong restructuring attempts beyond viable windows (Mayer Brown, 2021). A notable example is the case of Mynaric AG, where court delays pushed the process beyond the intended three-month timeline (Mynaric, 2025).

Another critique concerns the voidable transactions (Insolvenzanfechtung) provision which allows administrators to reverse transactions made up to ten years before insolvency if they disadvantage other creditors (§§ 129-147 InsO, Federal Ministry of Justice, 2020; Baker McKenzie, 2023). It can be argued that this long look-back period creates legal uncertainty and may discourage business transactions with financially unstable partners (Baker McKenzie, 2023).

An additional structural concern is the disproportionate influence of insolvency administrators, widely seen as a powerful lobby group in Germany (Eidenmüller, 2023). Administrator appointments are often limited to a small circle of court-familiar professionals, reducing competition and transparency. Critics argue this concentration of influence hampers reform and reinforces a system that prioritizes procedural tradition over modern, debtor-led restructuring (Eidenmüller, 2023).

2.4 Comparison with the U.S. Chapter 11 Bankruptcy System

2.4.1 The U.S. Approach to Corporate Restructuring

Chapter 11 of the U.S. Bankruptcy Code is considered one of the most comprehensive and flexible corporate restructuring frameworks globally. A cornerstone is the automatic stay, halting most collection actions upon filing and providing time to formulate a reorganization plan (United States Courts, 1978). The debtor typically has an exclusive period to propose this plan, classifying claims and specifying treatment for each creditor class (11 U.S. Code § 1126(c), United States Code, 1978).

Creditors with impaired claims have the right to vote on the plan. Approval requires acceptance by more than half of the creditors and at least two-thirds in the amount of allowed claims in a class. If there is dissent, the "cramdown" provision (11 U.S. Code § 1129(b), United States Code, 1978) permits the court to confirm the plan if it is considered "fair and equitable," ensuring compliance with the Absolute Priority Rule (United States Courts, 1978).

Chapter 11 also enables operational restructuring. Under 11 U.S. Code §365, debtors can assume or reject burdensome contracts and leases, while 11 U.S. Code §364 facilitates access to post-petition financing (DIP financing), often secured by a superpriority lien (United States Courts, 1978). Additionally, creditor committees are commonly formed to represent unsecured creditors, enhancing the transparency and fairness of the process (Ayotte & Morrison, 2009; United States Courts, 1978). Companies with higher debt concentration often file prearranged plans and navigate the process more swiftly so higher ownership concentration within creditor classes correlates with higher recovery rates (Ivashina et al., 2015).

Nevertheless, Chapter 11 is often criticized for its complexity and high costs, particularly for smaller businesses (Lubben & Moore, 2010). This has led to increased use of pre-packaged plans to streamline proceedings, as seen in Subchapter V, where small businesses with liabilities under \$7.5 million can utilize 'prepacks' to preserve ownership for entrepreneurs while maintaining creditor recoveries (Hotchkiss et al., 2024). Globally, Chapter 11's influence is evident, inspiring legislative frameworks like Germany's StaRUG and many others across the world (Baird et al., 2024).

2.4.2 Key Differences Between Chapter 11 and the German System

Debtor-in-Possession Management

Chapter 11 strongly favors Debtor-in-Possession (DIP) management, which tends to allow existing leadership to retain control with DIP financing to allow the firm to continue operations (United States Courts, 1978; Eidenmüller, 2023). In contrast, the German system has traditionally prioritized administrator-led insolvency proceedings, with debtor-in-possession (DIP) management (Eigenverwaltung) remaining the exception rather than the rule (Pogoda & Thole, 2021). As illustrated in Figure 5, the use of DIP proceedings is relatively rare when viewed in proportion to the total number of insolvency filings. Even in 2024, despite 21,812 insolvency filings, only 470 DIP proceedings were initiated, underscoring that self-administration remains a niche mechanism within the broader German insolvency framework.

Year	Corporate Insolvencies			Total	
	Applications for insolvency	Regular proceedings opened	Opening quota	Order to open proceedings	per 1000 proceedings opened
	Number	Number	Number	Number	Number
1	2	3	4=3/2*100	5	6=5/3*1000
1999	26.476	9.564	36,1	204	21,3
2000	28.235	11.673	41,3	132	11,3
2001	32.278	14.646	45,4	240	16,4
2002	37.579	21.513	57,2	253	11,8
2003	39.320	23.060	58,6	184	8,0
2004	39.213	23.897	60,9	173	7,2
2005	36.843	23.247	63,1	147	6,3
2006	34.137	23.293	68,2	159	6,8
2007	29.160	20.491	70,3	147	7,2
2008	29.291	21.359	72,9	160	7,5
2009	32.687	24.315	74,4	157	6,5
2010	31.998	23.531	73,5	214	9,1
2011	30.099	22.393	74,4	192	8,6
2012 ²⁾	28.297	21.311	75,3	346	16,2
2013	25.995	19.488	75,0	420	21,6
2014	24.085	17.877	74,2	277	15,5
2015	23.101	16.961	73,4	261	15,4
2016	21.518	15.814	73,5	244	15,4
2017	20.093	14.397	71,7	248	17,2
2018	19.302	13.907	72,0	235	16,9
2019	18.749	13.609	72,6	302	22,2
2020 ³⁾	15.841	11.063	69,8	382	34,5
2021 ^{3/4)}	13.993	9.922	70,9	210	21,2
2022	14.590	10.432	71,5	198	19,0
2023	17.814	13.074	73,4	345	26,4
2024	21.812	15.649	71,7	470	30,0

Figure 5: Insolvency filings, proceedings opened and self-administrations from 1999 to 2024 in Germany (Institut für Mittelstandsforschung (IfM Bonn), 2025)

The German Institute of Applied Insolvency Law (Deutsches Institut für angewantes Insolvenzrecht e.V., 2022) found that DIP proceedings are particularly beneficial for mid-sized and large companies, while small businesses rarely deploy them due to cost and complexity. Recent reforms, especially the introduction of StaRUG, have expanded DIP options, which is reflected in Figure 5: in 2024, the highest number of DIP proceedings to date was recorded. Nonetheless, the absolute number remains low relative to total insolvency filings, highlighting the continued limited application of this mechanism.

Financing Protections

Chapter 11 offers strong protections for DIP financing, including superpriority status (11 U.S. Code § 364, United States Code, 1978). The German system has traditionally been more conservative; however the StaRUG has introduced new protections for restructuring loans, but not as comprehensive as those in Chapter 11 (§ 90 StaRUG). Furthermore, DIP financing in Chapter 11 also typically grants lenders strong control rights, influencing the restructuring

process significantly, a factor largely absent under the German StaRUG framework (Eidenmüller, 2023).

Automatic Stay

Chapter 11 provides an immediate and comprehensive automatic stay upon filing (11 U.S. Code § 362, United States Code, 1978). In contrast the German system offers more limited protection, with the StaRUG introducing a "stabilization order" that can halt enforcement actions for up to 8 months, but this requires court approval (§§ 49-55 StaRUG, Federal Ministry of Justice, 2020).

Flexibility in Plan Proposal

Chapter 11 accords debtors significant flexibility in proposing and modifying reorganization plans (e.g. 11 U.S. Code § 1121(b), United States Code, 1978), while German procedures remain more rigid despite recent progress (CMS Legal, 2025).

Cramdown Mechanisms

Both systems allow for forced cramdown of dissenting creditors, but implementation differs (§§ 26 and 27 StaRUG, Federal Ministry of Justice, 2020; 11 U.S. Code § 1129(b) United States Code, 1978). Chapter 11's absolute priority rule is more flexible in practice, while the German system adheres to a stricter interpretation of creditor priorities (Eidenmüller, 2023). Moreover, German law lacks a "new value" exception, where the U.S. allows existing shareholders to retain equity if they contribute new capital (Eidenmüller, 2023).

Treatment of Executory Contracts

Chapter 11 provides broad powers to assume or reject executory contracts (11 U.S. Code § 365 United States Code, 1978). The German system, particularly under the InsO, offers more limited options for contract modification, with the StaRUG explicitly excluding the termination of ongoing contracts from its scope (§ 2 StaRUG, Federal Ministry of Justice, 2020; §§ 103 et seq. InsO, Federal Ministry of Justice, 1994).

Speed and Efficiency

Chapter 11 proceedings, especially pre-packaged bankruptcies, can be completed faster (Harvey & Topper, 2021). German proceedings have historically been slower, though recent reforms aim to streamline the process, particularly for smaller businesses (Eidenmüller, 2023).

While the German approach has traditionally emphasized creditor protection and collective proceedings, recent reforms indicate a shift towards more debtor-friendly options, partially inspired by the U.S. model (Eidenmüller, 2023). When comparing insolvency filings between the U.S. and Germany, a striking difference becomes apparent (see Figures 5 and 6). As Figure 6 shows, the U.S. recorded only 8,884 Chapter 11 filings in 2024, whereas Germany reported approximately 21,812 insolvency filings in the same year (Figure 5). This gap is particularly notable when considering the relative population sizes and number of companies in each country, making the German insolvency rate significantly higher by comparison.

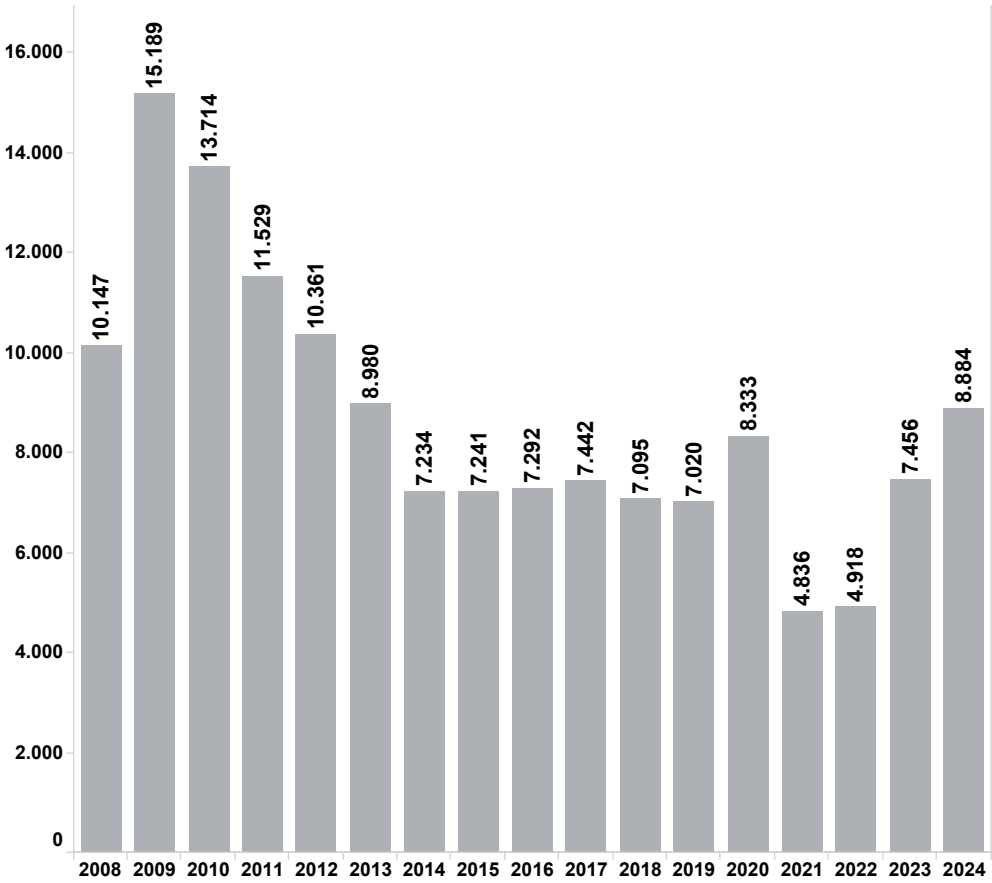


Figure 6: Amount of US Chapter 11 cases filed (United States Courts, 2025)

2.5 The Role of Investors in Corporate Restructuring

2.5.1 The Role of Private Equity in Distressed M&A

Private equity (PE) plays a pivotal role in distressed M&A, particularly as strategic investors in financially troubled companies. Their involvement is characterized by providing capital,

operational expertise, and restructuring capabilities, enabling distressed firms to stabilize, restructure, or re-enter the market profitably (Jain, 2011; Gompers et al., 2016).

The overall gap between the U.S. and German PE markets is significant. As of 2024, the U.S. was home to around 8450 private equity firms, hedge funds and investment vehicles, compared to only about 300 in Germany, even when accounting for population and number of companies located in each country differences (BKV, 2024; IBIS Report, 2025). Additionally, U.S. funds typically manage far larger pools of capital, with Assets Under Management (AUM) serving as a key indicator of scale and market influence. The world's largest and most prominent distressed-focused PE funds are all headquartered in the United States. To name some: Apollo Global Management, Oaktree Capital Management, Bain Capital Special Situations, KKR Special Situations, and Cerberus Capital Management. By contrast, Germany has a much smaller pool of dedicated distressed investors, with key players including AURELIUS Group or Mutares SE & Co. KGaA.

2.5.2 Advantages of Private Equity in Distressed M&A

Private equity firms bring several advantages to distressed transactions. Their ability to act quickly and flexibly allows them to stabilize struggling companies faster than traditional restructuring processes (Hotchkiss & Mooradia, 1997). Furthermore, PE firms provide access to fresh capital that distressed companies often struggle to secure through traditional financing channels (Hotchkiss et al., 2021). They also use their operational expertise and long-term focus to turn around distressed businesses. When defaults occur, PE-backed firms restructure more often out of court, do so faster, and are more likely to stay independent (Hotchkiss et al., 2021).

3. Management Theory and Restructuring

3.1 Strategic Management

Porter's Five Forces (1980) highlights competitive pressures that exacerbate distress (E.g., supplier power, buyer bargaining power, competitive rivalry).



Figure 7: Porters Five Forces (1980)

3.2 Dynamic Capabilities and Resource Reconfiguration

Resource-Based Theory (RBT) emphasizes leveraging core competencies (E.g., proprietary technology, skilled labor) to regain competitiveness (Prahalad & Hamel, 1990; Barney et al., 2001). Teece et al. (1997) propose dynamic capabilities as a firm's ability to reconfigure resources to adapt to crises. Barreto (2010) further clarifies that dynamic capabilities are an aggregate, multidimensional construct encompassing a firm's capacity to purposefully create, extend, or modify its resource base promptly considering threats and opportunities. Distressed German firms, particularly zombie companies, often lack these capabilities due to entrenched

operational inefficiencies. However, the three main components of successful turnarounds, rationalizing assets, reorganizing the workforce, and optimizing processes, are areas where private equity (PE) backers excel (Hotchkiss et al., 2021).

3.3 Stakeholder Theory and Creditor Negotiations

Freeman & McVea, 2001) posit that firms must balance the interests of all stakeholders (creditors, employees, shareholders). Germany's insolvency system, however, traditionally prioritizes creditors, creating conflicts with other stakeholders (Eidenmüller, 2023). This is intended to be addressed by recent legislation such as StaRUG, which make pre-insolvency restructuring plans binding for dissenting creditors. Effective stakeholder alignment, a cornerstone of Stakeholder Theory, is critical to avoiding liquidation and preserving enterprise value (Freeman & McVea, 2001).

3.4 Contribution to Literature

This thesis contributes to the literature by addressing a largely underexplored intersection of corporate restructuring, distressed investing, and insolvency law in Germany. While formal insolvency proceedings have been widely studied, fewer works focus on optimizing distressed workouts within the German legal and cultural context.

4. Methodology

A triangulated methodology (Denzin, 2009), combined the literature review, 14 semi-structured expert interviews, and elements of comparative legal analysis. This multi-method approach enabled a deeper understanding of (1) legal and cultural differences between restructuring regimes, (2) the practical limitations of the German system, and (3) strategic behavior of financial investors during corporate distress. We achieved data adequacy and saturation with 14 interviews (Guest et al., 2006). Qualitative data collection was deemed most suitable to capture insights not accessible through publicly available data (Barriball & While, 1994).

Participants were selected through purposive sampling of relevant fields. Interviewees included:

- Professionals in restructuring and turnaround consulting
- Investors and professionals from distressed private equity funds
- Lawyers specializing in insolvency, restructuring and M&A law
- Investment Bankers in Distressed M&A Advisory
- Researchers and University Professors

An interview guide informed by the literature review was structured around key analytical dimensions including:

- Plan flexibility and process efficiency
- Stakeholder coordination and creditor orientation
- Availability and structuring of DIP and ist financing
- Cultural stigma around insolvency
- Strategic approaches to restructuring in Germany vs. the U.S.

The semi-structured format was adapted for experts' backgrounds while ensuring consistency across core themes (Turner, 2010). The interviews were analyzed and coded.

Code	Occupation	Company
Expert A	Director	Restructuring Practice at Deloitte
Expert B	Managing Partner	German mid-market PE Fund, focused on distress

Expert C	Managing Director	German mid-market M&A Boutique, focused on distress
Expert D	Senior Associate	Alvarez & Marsal
Expert E	Professor and academic researcher	German university and was involved in shaping the StaRUG framework
Expert F	Managing Partner	German mid-market PE Fund, until recently Global Head of Restructuring at Roland Berger and involved in shaping the StaRUG framework
Expert G	Managing Partner	German mid-market PE Fund, until recently Head of Restructuring at Roland Berger in Germany and involved in shaping the StaRUG framework
Expert H	Managing Director	German M&A Boutique, focused on distress
Expert I	Managing Partner for Germany	English magic circle law firm, specialized in restructuring and M&A and involved in shaping the StaRUG framework
Expert J	Managing Partner for Germany	Roland Berger
Expert K	Head of Risk for Corporate Clients	Germany's leading corporate banking institution
Expert L	Director	FTI-Andersch
Expert M	Managing Partner	Noerr, a leading German law firms, specialized in M&A and restructuring
Expert N	Senior Associate	White & Case LLP

Table 2: List of Experts

All interviewees solidly understood corporate restructuring, and presented perspectives on the current market environment, and advantages and limitations of Germany’s existing legal framework. Experts also reflected on potential improvements.

Topic	Question
Background	<ul style="list-style-type: none"> - How many years of experiences do you have in the distressed environment?
Market Trends and Economic Impact	<ul style="list-style-type: none"> - Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected? - What macroeconomic trends do you see as the most influential drivers of corporate distress in Germany today? - How significant is the role of geopolitical factors in shaping insolvency trends in Germany?
German Insolvency Framework (InsO and StaRUG)	<ul style="list-style-type: none"> - In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)? - How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
Comparative Insights (U.S. Chapter 11 vs. German System)	<ul style="list-style-type: none"> - How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework? - What key aspects of Chapter 11 could be adapted to enhance the German insolvency and restructuring framework? - What do you think about the DIP mechanism?
Practical Challenges and Recommendations	<ul style="list-style-type: none"> - What are the most significant barriers companies face when attempting to restructure under the current German legal framework?
Future Trends and System Optimizations	<ul style="list-style-type: none"> - Do you anticipate a shift in German insolvency policy in the coming years, especially regarding preventive restructuring? - In your opinion, is there a need for more proactive government interventions in preventing insolvencies, or should the market regulate itself? - What key levers do you see for optimizing the distressed workout process in Germany?

Table 3: Interview Questions

5. Analysis and Discussion

5.1 Demography of the Interviewees

All the Experts, besides two, had over 10 years of professional experience in the distressed sector.

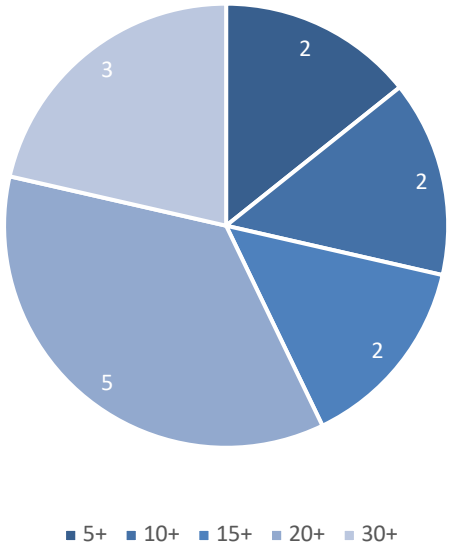


Figure 8: Experts years of experience distribution

Most experts were located in Germany (10), while two were each located in Austria and Switzerland. The interviewees had an average of approximately 21+ years of professional experience, reflecting a strong level of expertise.

5.2 Thematic Insights from Interviews

5.2.1 Market overview and assessment

Germany was widely perceived to be in an increasingly vulnerable and unstable macroeconomic position. Several interviewees explicitly referred to the situation as “fragile”, “difficult”, or “uncertain”, pointing to the convergence of inflation, geopolitical tension, and industry-specific structural pressures as primary drivers (interviewee A, C, D, F, G).

Figure 9 summarizes the most recurring keywords and thematic categories discussed by the interviewees, while Figure 8 details which experts referenced each specific factor.

Category	Trigger Keywords
Insolvencies and Zombies	Automotive Sector
	Retail Sector
	Chemical Sector
Geopolitical Factors	Ukraine War – Supply Chain
	US Tariffs / Trade Friction
	China Competition
	German Government
	Climate Change
Macroeconomic Factors	Interest Rates
	Energy Costs
	Chip Shortage
	Chemical Sector
	Retail

Table 4: Triggerword of questioned categories

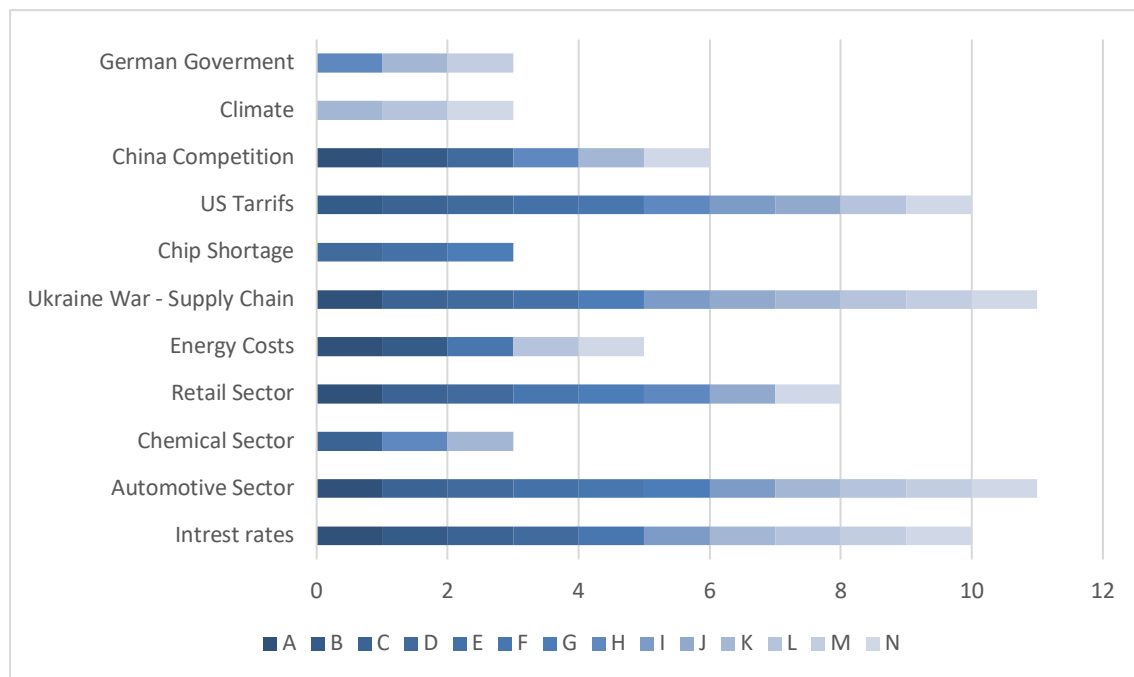


Figure 9: Word count, mentioned by the experts A-N

Among macroeconomic factors, rising interest rates emerged as the most frequently mentioned trigger. Most experts stressed how tightening monetary policy and increased refinancing costs affect small and mid-sized companies with thin capital buffers or high leverage (Interviewees A, B, C, D, F, I, K, L, M, N). As stated in Chapter 2.2.1, energy costs were a critical stressor, particularly in the context of Europe’s energy transition and the Ukraine war volatility (Interviewees A, B, F, L, N).

Multiple interviewees specifically connected the war with supply chain issues, rising costs, and planning uncertainty (Interviewees A, C, D, E, G, I, J, K, L, M, N). These factors were often framed alongside US tariffs, China-related competition, and broader protectionist policies that reshaped global trade flows (Interviewees B, C, D, E, F, H, I, J, L, M).

A frequently raised structural concern was a proliferation of zombie companies, kept alive by pandemic-era subsidies or favorable lending conditions, despite weak cash flows. As discussed in Chapter 2.2.3, such companies have a highly negative impact on economies. Several interviewees emphasized how these firms persist, delaying necessary restructuring processes and tying up capital and resources that could be redirected to healthier businesses (Interviewees B, D, G). Similarly, asset-light companies with their lack of tangible collateral are unattractive to distressed investors.

From a sector perspective, the automotive sector, especially suppliers, was most frequently mentioned as under constant stress (Interviewees A, C, D, E, F, G, H, J, L, M, N). Experts highlighted its vulnerability due to electrification pressures, high production costs, global overcapacity, and its exposure to Chinese competition. This aligns with the sector-specific pressure described under Porter's Five Forces (see Figure 7). The retail sector also appeared repeatedly in the interviews, particularly in connection with online substitution, inflationary pressure, and squeezed margins (Interviewees A, C, D, F, G, H, J, N). Additionally, energy-intensive industries—including the chemical sector, were seen as particularly exposed due to their reliance on stable, low-cost energy and predictable global demand (Interviewees C, H, K).

In addition, Interviewees K, L, and N emphasized the growing relevance of climate factors, particularly the undeniable impact of climate change, as a driver of structural crises. One example cited was the chemical sector, where prolonged periods of low rainfall led to critically low water levels in the Rhine River. As a result, ships were unable to operate at full capacity, causing supply shortages and increased logistics costs, demonstrating the significant economic implications of climate-related disruptions (Interviewee K). Another factor exacerbating current challenges mentioned several times was the perceived uncertainty and lack of transparency from the German government (Interviewees H, K, and M). This has created a kind of "imaginary fog" over the economic outlook, making it harder for managers to assess risks and act decisively. In sum, German businesses face macro-financial tightening, geopolitical fragmentation, and long-standing structural weaknesses.

5.2.2 The Insolvency Code (InsO) and Corporate Stabilization and Restructuring Act (StaRUG)

Insolvency Code (InsO)

Multiple interviewees described the InsO as the most established and reliable legal route when dealing with distressed companies in Germany. Its structured, court-supervised process provides legal certainty and facilitates operational turnaround, particularly where the clean-up of legacy liabilities is necessary (Interviewees C, F, H). Some interviewees highlighted that especially in complex cases, InsO offers a more comprehensive toolbox for addressing both financial and operational distress (Interviewees C, G). Furthermore, Expert M mentioned that Germany has one of the earliest insolvency filing triggers in Europe due to its over-indebtedness rules, allowing distressed companies to take countermeasures much earlier than in other countries.

One recurring drawback was the length and complexity of insolvency proceedings, which often run counter to the need for fast execution in distressed M&A transactions (Interviewees A, D). Moreover, the negative stigma associated with insolvency, also mentioned in the literature (Chapter 2.1.2), remains high. In addition, Expert G highlighted that the response to early signs of financial distress varies significantly depending on the shareholder structure. Financial investors are generally more open and pragmatic about initiating StaRUG or insolvency proceedings. In contrast, family-owned businesses often try to avoid these formal processes, frequently opting to sell valuable assets to escape the negative stigma associated with restructuring. However, Expert G also emphasized that prior experiences with distress, can modify these general patterns, and makes individuals more willing to initiate timely and proactive measures.

Examining Appendix P, cultural factors are cited as one of the root causes of stigma surrounding insolvency. Experts H and J suggest that Germany's war history likely contributes, a hypothesis is supported by Bornhorst and Mody (2012). Their findings indicate that historical experiences have shaped a cautious attitude toward risk and innovation in Germany, reflecting a broader tendency toward risk aversion in the post-war period.

Another frequently mentioned concern was dissatisfaction with the insolvency administrator system. Noted in the literature (chapter 2.3.3), expert opinions on the German appointment process for insolvency administrators were divided, reflecting both recognized strengths and persistent challenges. Expert B criticized the current practice, stating that courts often select administrators from a narrow pool, sometimes based on personal connections, a phenomenon commonly referred to as “Vetternwirtschaft” in Germany. He further noted that administrators are primarily accountable to creditors rather than to the company’s long-term survival, and that securing refinancing during continuation proceedings is frequently neglected. Expert E added that investors often criticize insolvency administrators for charging excessive fees and extracting value from companies before liquidation, often leaving little or no assets (“Masse”) for creditors.

While some Baltic states use random selection to appoint administrators, Expert E argued that such an approach would not be appropriate in Germany, where sector-specific expertise is crucial. German courts typically select from a known pool of specialists, seen as a more practical solution than random assignment due to the complexity of the cases involved. In contrast, Expert F maintained that the system generally functions well and that insolvency

administrators in Germany tend to operate at a high professional standard. However, Expert G observed that strong lobbying efforts by the administrator profession have created resistance to any meaningful reform, potentially limiting improvements to the system.

Expert H recalled that the system in the past was marked by limited transparency and unfair practices. However, with the StaRUG competition has become fairer and professionalism among administrators has increased. While the system remains imperfect, Expert H and I noted that the overall trajectory has been positive. Finally, Expert I stated that for large cases, appointing experienced administrators is essential. However, in the case of small and medium-sized enterprises (KMU), a more neutral or randomized selection process could enhance fairness (Expert I). Striking a balance between professional expertise and impartiality in the appointment process remains a key challenge going forward (Expert I).

Debtor-in-Possession (DIP)

The Debtor-in-Possession (DIP) mechanism in insolvency proceedings elicited a range of opinions. Expert A emphasized that DIP offers greater potential for a sustainable turnaround when restructuring is managed internally by the debtor. This avoids common issues associated with insolvency administrators, such as nepotism and favoritism toward certain consultants, prevalent in administrator-led processes. However, Expert A also cautioned that DIP arrangements often involve high professional fees (e.g. when a Chief Restructuring Officer (CRO) is implicated) and can impose additional financial strains on the company. If poorly executed, DIP can exacerbate reputational and financial damage, potentially enriching a few stakeholders at the expense of the broader restructuring effort (Expert A).

Expert C raised concerns about management continuity in DIP proceedings, noting that the same managers who oversaw the company getting into distress are often in charge and negotiating with creditors during restructuring. This problem is particularly pronounced in SMEs, where there are few mechanisms for assessing the competence of management. It can therefore be problematic to leave control of the company with the previous management, who may be responsible for the company's distress. Expert J further points out that, especially in the SME sector, where limited resources are available to assess management skills, it can be counterproductive to allow former managers, who may be responsible for the predicament, to retain their authority. Stressing that the effectiveness of DIP heavily depended on the individuals involved. While some managers perform well under insolvency conditions, others lack the experience or motivation. This makes the role of the supervising administrator

(Sachverwalter) critical. Both experts agreed that DIP is fundamentally valuable because it preserves existing organizational structures initially, allowing for more strategic flexibility compared to traditional insolvency proceedings, where administrators take full control (expert J and H).

Trust and transparency emerged as recurring themes. Expert E highlighted that in mid-sized companies, the quality of management is a key determinant of DIP success, with trust between debtors and creditors being essential. Expert H supported this view by noting that DIP allows for better alignment of interests and easier implementation of restructuring strategies, as management is generally more responsive and easier to guide than an external administrator. Experts I and M added that DIP is generally a useful instrument, especially when paired with a good, (though hard to find), CRO. However, Expert I warned of potential conflicts of interest, particularly in private equity-backed firms where managers might prioritize investors over the company's long-term health. Clear governance and role separation were deemed crucial to mitigate such risks.

From a banking perspective, Expert K expressed reservations about DIP, describing it as a difficult instrument often used more for financial restructuring than operational turnaround. The example of Peek & Cloppenburg (a famous fashion retail company in Germany) was cited, where insolvency was primarily employed to shed banking obligations, resulting in a backlash from German banks and forcing the company to rely on foreign financing (Expert K).

In addition, Expert M emphasized that success heavily depends on the credibility and quality of management, and conflicts of interest remain a concern, especially when private equity is involved.

StaRUG

Several experts identified its theoretical benefits: Namely, the ability to restructure financial liabilities outside of formal insolvency, under court supervision but without full public exposure (Interviewees B, D, F). StaRUG reduces the stigma associated with insolvency, preserving enterprise value through timely action (Expert A).

Many experts highlighted the procedural complexity and high legal and advisory costs, which significantly restrict its usability, especially for small and mid-sized companies (Interviewees C, F, G, E). Several interviewees noted that StaRUG is often perceived as an insolvency-related process, which adds a layer of stigma and discourages its use (Expert E). The lack of

standardized processes and the need for extensive consulting further increase barriers, though some experts see emerging standardization as a potential enabler for future adoption (Expert E). Most experts reported that it is more often employed as a negotiation tool to pressure stakeholders, its mere existence can be effective in compelling creditors to settle, even if the process is not formally initiated (Experts B, D, N).

As discussed in the literature (Chapter 2.3.3) and echoed by numerous interviewees, StaRUG is limited to financial restructuring and does not allow for key operational measures such as terminating unfavorable contracts or adjusting labor structures (Interviewees A, F, I, G, H, L, M, N). Across all interviews, experts highlighted that long-term obligations pose a major challenge in pre-insolvency restructurings. This was frequently mentioned as a key reason why both investors and practitioners remain hesitant to rely on the framework, particularly when operational restructuring is essential to restoring viability. Notably, seven experts who viewed StaRUG as largely ineffective also pointed out that its inability to include contract terminations significantly reduces its practical value in real-world turnaround situations (Experts A, C, D, H, J, K, N; Appendix P).

StaRUG is seen as most suitable for “good businesses with bad balance sheets” companies that are fundamentally sound but face acute financial distress (Expert I). For distressed operations and finances, traditional insolvency remains more appropriate. The instrument works better for larger companies with sufficient resources to manage the process, while smaller firms are often deterred by high advisory costs and skepticism about its effectiveness (Experts H, F, N). From a banking perspective, StaRUG has been viewed with skepticism but is gradually gaining acceptance as a tool to create stability within creditor groups (Expert K). However, its complexity and the growing fragmentation of legal expertise pose additional challenges.

Lastly, many experts, particularly those from the legal sector (Experts I, M, N), raised concerns about the limited specialization of judges in StaRUG and insolvency cases. Interviewees reported that many judges lack restructuring expertise, leading to inconsistent or overly formalistic decisions (interviewees F, I, M). This knowledge gap is especially problematic under StaRUG, where judicial inexperience fuels uncertainty. The lack of specialized courts or training was noted as a structural weakness that undermines predictability and deters international investors.

Best practice StaRUG examples

Certain cases, in which experts E, F and G were particularly involved, have shown that StaRUG can work well for large companies, such as LEONI, VARTA, or EMAG. However, these cases also revealed downsides, most notably in VARTA's case, where minority shareholders were wiped out without compensation, sparking backlash and legal disputes (Maisch, 2025). These examples suggest that while StaRUG enables court-supervised financial restructuring in major cases, its limited operational tools and procedural complexity continue to hinder broader adoption, especially among smaller firms, which are currently the most affected by insolvencies (see Figure 5). StaRUG has proven effective when financial restructuring is the focus and sufficient resources are available, but challenges remain. Most interviewees agreed that the InsO still dominates in practice, offering more clarity and legal certainty for distressed investors (Interviewees C, D, F).

5.3 Comparative Analysis: German InsO/StaRUG vs. U.S. Chapter 11

5.3.1 Objective Focus and Cultural Priorities

Experts widely emphasized the fundamental philosophical differences between the German and U.S. restructuring frameworks. The German system (InsO and StaRUG) remains distinctly creditor-centric, with a legal and procedural focus on creditor satisfaction and liquidation-based outcomes (Interviewees A, B, N). In Chapter 2.4.1 and 2.4.2 the literature illustrated, that in contrast, the U.S. Chapter 11 process is built around business continuation and reorganization, treating insolvency not as failure, but as a strategic reset, also highlighted by the experts (interviewees B, F, N).

Expert I acknowledged that while StaRUG and InsO together roughly replicate the functional scope of Chapter 11, Germany lacks the debtor-friendly ethos that defines the U.S. approach. Repeated by Expert J, who again emphasized on Germany's historical aversion to financial risk.

5.3.2 Restructuring Flexibility and Tools

One critical distinction lies in the restructuring toolkit. Chapter 11 enables both financial and operational restructuring within a single framework, including the unilateral termination of long-term obligations such as leases and labor contracts, measures that are not available under StaRUG (Interviewees D, E, F, N). In Germany, such operational changes are only possible through full insolvency proceedings under InsO, significantly limiting StaRUG's practical

applicability (Interviewees E, I). Expert F highlighted that this lack of operational levers hinders complex restructurings in Germany, while Expert M noted that StaRUG's narrow scope, focused on individual creditor groups, further reduces its impact. Several experts also criticized StaRUG's inability to address operational inefficiencies, identifying it as a key reason for its limited adoption in practice (interviewees E, I, M).

5.3.3 Procedural Efficiency and Judicial Expertise

Unlike the integrated structure of Chapter 11 in the U.S., the German system separates StaRUG and InsO into different legal tracks. Expert I observed that this fragmentation complicates the restructuring process and limits flexibility. Additionally, Expert H emphasized that U.S. courts are far more specialized in handling complex restructurings, contributing to greater procedural clarity and consistency. In contrast, and as also mentioned in chapter 4.2.2, German courts often lack insolvency-specific training, leading to inconsistent outcomes and reduced legal certainty (Interviewee H).

5.3.4 Financing and Investor Incentives

The underdevelopment of debtor-in-possession (DIP) financing in Germany was a recurring concern across interviews. Although StaRUG formally allows for fresh funding, Experts E and A highlighted the lack of institutional infrastructure and legal incentives necessary to build a functioning DIP ecosystem. In contrast, the U.S. system offers clear priority rules and legal protections that actively encourage capital injections during restructuring (Interviewee E).

As mentioned in Chapter 2.4.2, debtor-in-possession proceedings remain largely inaccessible to small businesses, which often lack the resources and capacity to navigate the cost and complexity of the process (Deutsches Institut für angewantes Insolvenzrecht e.V., 2022). Figure 4 further illustrates that companies with fewer than ten employees are particularly vulnerable to insolvency, highlighting the structural financing gap in this segment and the limited reach of DIP instruments among SMEs. Experts A and B further attributed this gap to Germany's conservative financial culture and the limited pool of distressed investors, which stands in strong contrast to the more dynamic U.S. environment. As Expert A noted, distressed investing in the U.S. resembles venture capital (VC) in its appetite for risk, something that remains underdeveloped and culturally discouraged in Germany.

The tension between creditor protections and long-term enterprise value, particularly visible in

the limited use of DIP financing, also reflects the stakeholder conflicts described in Stakeholder Theory (Freeman & McVea, 2001), where short-term financial claims may undermine sustainable turnaround efforts that benefit broader stakeholder groups.

5.4 Distressed Private Equity: Barriers and Opportunities in the German Market

The role of private equity in distressed investing emerged as a key theme across the expert interviews. While Germany has made progress in expanding its restructuring toolkit, experts consistently noted that the distressed PE landscape remains underdeveloped, especially when compared to the U.S., where distressed funds play a prominent role in driving turnarounds and market efficiency. This disparity is also reflected in the literature: Chapter 2.5.1 highlights that the U.S. is home to thousands of private equity firms and manages significantly larger capital pools than Germany, where the number of specialized distressed investors remains limited.

A central point raised by several experts was the mismatch between the risk appetite of U.S. and German investors. Experts A, B, and D highlighted that the U.S. has a larger and more culturally embedded pool of investors who specialize in distressed assets. This investor base is willing to engage with complex, turnaround-driven opportunities, supported by flexible legal frameworks like Chapter 11. In contrast, Germany's financial market is still dominated by traditional bank lending, with limited capital available for high-risk, high-reward restructuring strategies (interviewees F, G). The literature in Chapter 2.5.2 further supports this, emphasizing that private equity firms bring speed, capital access, and restructuring expertise, advantages that are often absent in the traditional German restructuring environment.

Expert F emphasized that the German market lacks a developed secondary market for trading distressed debt, which in the U.S. serves as a critical channel for distressed investors to acquire and restructure struggling companies. Moreover, Expert G noted that German banks are generally more conservative, often reluctant to accept write-downs or support aggressive restructuring plans. This institutional conservatism, combined with regulatory complexity, creates entry barriers for new capital, especially from international funds.

Multiple experts criticized the lack of investor-friendly features in the German system. Expert A explained that in many cases, available capital is diverted to creditors rather than being reinvested in the business, which limits the upside for equity investors. Similarly, Expert D noted that legal frameworks like StaRUG do not allow for operational interventions (e.g., employee adjustments or lease terminations), which makes them unattractive for active

investors seeking to restructure a company holistically. Cultural stigma around insolvency and failure was another major obstacle highlighted by Experts C, G, and M. They described how family-owned companies often delay restructuring or asset sales due to reputational concerns, reducing the time window for PE involvement. In contrast, U.S. investors typically approach distress with a mindset of strategic reset and value creation, viewing insolvency as an opportunity rather than a failure.

International investors also face practical challenges. Experts J and L emphasized that many foreign funds underestimate the legal complexity and procedural fragmentation of the German system. Misunderstandings regarding co-determination, labor protections, or the role of insolvency administrators frequently lead to missteps during due diligence or transaction structuring. Expert L noted that local legal expertise is essential, and success in Germany requires a tailored strategy that respects the jurisdiction's unique features.

Despite these challenges, most experts agreed that a stronger presence of distressed-focused private equity investors would benefit the German market. Expert F argued that normalizing restructuring as a legitimate value-creation strategy, rather than a last resort, could help shift perceptions and increase early-stage investor engagement. Expert N concluded that while investor interest exists, it is currently highly selective and risk-sensitive, requiring clearer legal pathways and stronger deal incentives to unlock broader participation. As shown, distressed private equity in Germany is constrained not by lack of opportunity, but by a combination of regulatory, cultural, and structural barriers. In comparison to the U.S., where distressed PE is integrated into the financial ecosystem, Germany still lacks the legal certainty, investor infrastructure, and cultural openness necessary to support a thriving turnaround investment market.

5.5 Structural and Legal Levers for Optimizing Germany's Distressed Investment Environment

Despite recent legislative developments, including the introduction of StaRUG, Germany's distressed investment and restructuring environment continues to face significant legal, institutional, and cultural barriers. These structural frictions limit the system's practical effectiveness and reduce its international competitiveness, particularly in comparison to more investor-oriented jurisdictions like the United States or the United Kingdom. The expert interviews revealed a broad consensus on seven key areas for improvement.

5.5.1 Need for Greater Flexibility and Modernization

A recurring concern was the limited flexibility of Germany's pre-insolvency restructuring tools. StaRUG, while an important step forward, remains under-implemented and lacks key operational instruments. Experts A, E, I, and J criticized its inability to address long-term obligations such as leases or employment contracts, restructuring levers that are available in other systems like Chapter 11 or UK restructuring plans. As a result, early-stage restructurings often remain confined to financial engineering without addressing operational inefficiencies (interviewees A, E, I). To enhance StaRUG's effectiveness, several experts proposed the gradual introduction of mechanisms that would allow selective termination or modification of long-term contracts under clearly defined conditions. However, Expert A emphasized that such reforms must include robust legal safeguards to prevent abuse and maintain trust among creditors.

5.5.2 Persistent Creditor-Centricity and Limited Operational Focus

The German system's deep-rooted creditor orientation was viewed as another structural constraint. Expert B noted that insolvency administrators are primarily accountable to creditors, often sidelining long-term business viability. Furthermore, refinancing responsibilities during continuation are frequently neglected, limiting the success of operational turnarounds.

5.5.3 Regulatory and Bureaucratic Burdens

Heavy regulatory and compliance demands emerged as a major deterrent to both investors and restructuring professionals. Expert C cited the example of a mid-sized machinery firm required to submit a 100-page ESG report simply to secure a basic credit line, highlighting the often disproportionate burdens placed on companies. Experts D, F, and G echoed the call for regulatory streamlining, especially to reduce delays and costs in distressed transactions. In the debt markets, Expert F pointed to the legal complexity surrounding loan trading, with restrictive rules on consent, data protection, and BaFin approval making it difficult for funds to acquire non-performing loans. Yet, expert F and K viewed the upcoming EU NPL (non-performing loans) directive as a potential opportunity to simplify this framework and encourage growth in the distressed debt market.

5.5.4 Institutional and Judicial Weaknesses

A lack of specialized court expertise was repeatedly highlighted. Expert I noted that German judges often lack practical restructuring experience, which results in inconsistent rulings and procedural inefficiencies. Compared to the U.S. or UK, where courts are more familiar with complex corporate distress cases, Germany was viewed as lagging in judicial capacity (interviewees I, H). In addition, the exclusive use of German in legal processes was cited as a barrier for international investors. Experts I and N noted that translation costs and language-related misunderstandings frequently complicate cross-border transactions. Improving bilingual capacity and expanding judicial training were seen as priorities for attracting international capital.

5.5.5 Legal Certainty and Transactional Safety

Legal uncertainty in pre-insolvency M&A transactions was another significant challenge. Expert M emphasized that sellers often retain liability for clawbacks, especially in cases involving shareholder loans. Because these risks cannot be fully insured or waived, investors are often reluctant to engage until formal insolvency, where liabilities are cleared, and legal clarity is greater (Interviewees M, C). Expert B suggested that strengthening post-transaction protections and clearly defining liability boundaries could encourage earlier engagement and increase the appeal of pre-insolvency deals.

5.5.6 Adapting to International Investor Needs

Germany's restructuring regime was widely described as difficult to navigate for foreign investors, who often lack familiarity with local practices, labor laws, and procedural complexity. Experts J, K, and L recommended targeted onboarding efforts such as training seminars, investor briefings, or chamber-led education to support foreign funds and management teams. At the same time, several experts warned against importing U.S.-style "predatory" investor models into the German context. Expert G stressed that restructuring should continue to focus on preserving viable businesses, not simply extracting value. Experts J and L echoed this view, advocating for investor strategies that align with stakeholder rights and local labor protections.

5.5.7 Cultural Barriers and Early Engagement

Finally, the persistent stigma around insolvency, as previously mentioned, was identified as a systemic cultural obstacle. Experts H, I, L, and N stressed that failure is still viewed negatively in Germany, which discourages early restructuring and limits the use of pre-insolvency tools. As Expert M noted, Germany's early filing requirements and strict penalties for delayed filings (including criminal liability) further disincentivize proactive engagement. To shift this mindset, Expert L advocated for early crisis education for management teams, particularly via professional bodies such as the IHK. Creating a more open restructuring culture, one that treats turnaround as a strategic, not punitive, process, this was seen as essential for improving long-term outcomes.

5.7 Correlation Matrix

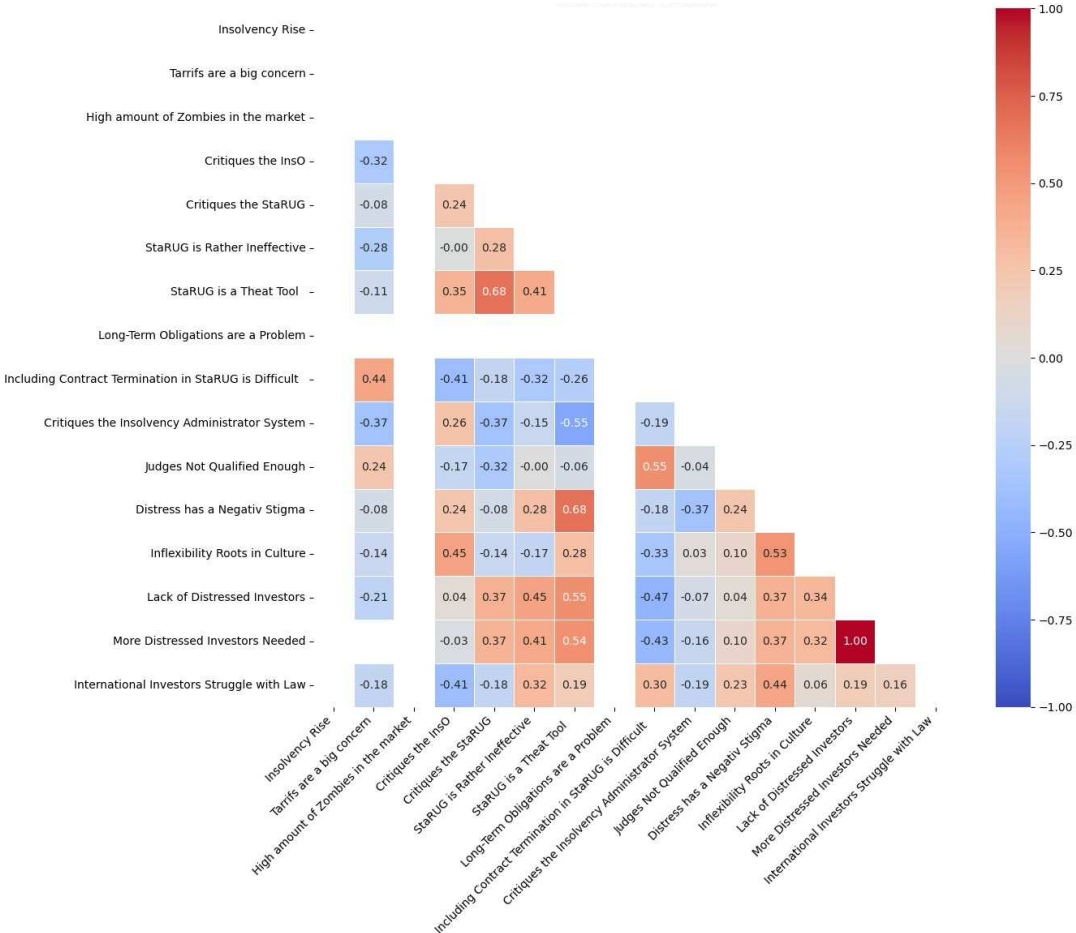


Figure 10: Correlation analysis of the mentioned factors by the experts, derived from Appendix P

Figure 10 shows a correlation matrix derived from the coded responses in Appendix P. Each variable corresponds to a recurring theme from the expert interviews. Dummy variables were used (1 = “Yes”, 0 = “No”) to quantify qualitative statements. Positive correlation values suggest that the occurrence of one factor increases the likelihood of another being mentioned, while negative values indicate an inverse relationship. Blank fields indicate negligible or non-significant correlation.

Unsurprisingly, the strongest correlation (1.00) was found between experts stating that there is a lack of distressed investors in Germany and concurrently emphasizing the need for more distressed investors to enter the market. This confirmed the thematic insight from both Chapter 2.5 and the interviews (e.g. Experts A, B, F, G), highlighting Germany’s underdeveloped distressed investment landscape in contrast to the U.S.

Another striking result was the high positive correlation (0.68) between the belief that StaRUG serves primarily as a threat tool and the perception that insolvency carries a negative stigma. This supported the claim made in Chapters 4.2.2 that cultural stigma discourages early engagement with restructuring instruments. It also aligns with expert opinions (e.g. A, D, E, I), who noted that companies often only use StaRUG to pressure creditors without intending to file.

Accordingly, the matrix showed a strong positive correlation (0.68) between perceiving StaRUG as a threat tool and the statement that StaRUG is “rather ineffective”. This reinforced the criticism raised in the interviews and the literature (see Pogoda & Thole, 2021) that StaRUG lacks practical usability and is often reduced to a negotiation lever rather than being used for genuine restructurings.

Equally noteworthy is the significant correlation (0.53) between the existence of a distress stigma and cultural inflexibility. This supports findings in Chapter 2.5.2 and 4.2.2, where experts (e.g. C, D, J) linked Germany’s hesitance toward restructuring with deep-rooted societal aversion to failure, a stark contrast to the U.S. turnaround culture under Chapter 11.

Another moderate positive correlation (0.55) can be seen between experts stating that there is a lack of distressed investors and those who believe that StaRUG is rather ineffective. This indicated a shared skepticism about StaRUG’s attractiveness for financial investors, a point reinforced in interviews and the literature where operational limitations and high complexity were seen as deal-breakers (Experts A, C, I).

The matrix also revealed a negative correlation (-0.55) between critiques of the insolvency administrator system and difficulties in including contract termination under StaRUG. This suggests that dissatisfaction with the current administrator landscape (e.g. “Vetternwirtschaft”, limited innovation) correlates with views that StaRUG’s scope is too narrow, a sentiment widely echoed in expert interviews (e.g. B, F, G, M).

Smaller but still relevant is the correlation (0.23) between international investors struggling with German law and judges not being qualified enough. This echoes criticism in Chapter 4.5.4, where several experts (e.g. I, N) pointed out the lack of judicial specialization and language barriers as entry obstacles for cross-border investors.

Lastly, it's notable that critiques of the InsO itself showed no strong correlation with any of the major structural challenges, which supports the general sentiment from the interviews that while InsO has limitations, it remains the preferred and most accepted restructuring path (e.g. Experts C, F, H).

6. Conclusion, Findings, and Limitations

As stated at the beginning of this paper, despite being Europe's economic engine, Germany is currently grappling with a surge in corporate distress and insolvencies, exposing deep-rooted inefficiencies in its distressed workout and restructuring processes. The emergence of zombie companies is indicative of a larger structural problem: the current system is generally unable to provide quick and efficient solutions to failing companies. This leads to a misallocation of resources, a reduction in creditor recoveries and increasing erosion of public confidence in the corporate sector.

This challenge is becoming more acute as insolvencies rise across key industries. Nevertheless, many companies avoid formal proceedings for too long due to the persistent stigma surrounding insolvency, or they do not have access to effective pre-insolvency tools such as the StaRUG. In the meantime, private capital, especially from distressed investors, continues to be underutilized due to legal uncertainty, rigid procedures and cultural resistance.

Against this background, this work sought to answer a significant question: What are the key drivers and levers for optimizing the distressed workout process in Germany? We identified practical, legal and cultural barriers impeding effective restructuring and explored reform strategies that could improve the institutional framework and increase financial investor engagement.

6.1 Findings

A core finding was that Germany's restructuring system, while legally robust, remains constrained by institutional rigidity and cultural stigma. In contrast to the US Chapter 11 regime, which is widely perceived as a second chance and promotes strategic realignment, insolvency in Germany is still largely seen as a failure. This cultural view hinders early involvement, deters distressed investors and often delays necessary restructuring steps. Interview evidence and our correlation analysis confirmed that stigma is both a root cause and a reinforcing factor in underutilization of early-stage instruments like StaRUG. As shown in Figure 10, there is a strong positive correlation between the negative perception of insolvency and StaRUG's ineffectiveness, as well as its use primarily as a threat rather than a real restructuring tool. These findings align with existing literature and reinforce that cultural barriers must be addressed alongside legal reforms.

Another key finding concerns the limited operational restructuring options in the context of pre-insolvency proceedings. While the StaRUG offers a certain degree of financial restructuring flexibility, its exclusion of long-term contract terminations or staff adjustments significantly limits its usefulness, especially compared to Chapter 11, where such levers are essential. Numerous experts assert, and correlation analysis corroborates, that broadening the StaRUG's reach to encompass such tools under stringent conditions will markedly improve its usefulness.

Furthermore, the research highlighted the structural and regulatory hurdles facing distressed private equity investors. Germany's system is still seen as too creditor-focused, procedurally fragmented, and legally uncertain in out-of-court deals. This has led to a situation where distressed investors often wait for formal insolvency before stepping in, favoring asset deals free of legacy liabilities. Recurring suggestions also included increased judicial specialty and legal clarity. The findings showed a strong correlation between the perceived difficulty of foreign investors and a lack of judicial experience as well as linguistic difficulties. Related to this, the role and selection process of insolvency administrators was also criticized as intransparent and often driven by informal networks. This perceived "insider system" reduces predictability and can further discourage investor participation.

While the Debtor-in-Possession (DIP) mechanism holds considerable promise for corporate restructuring in Germany, its use in practice remains limited. Experts point to high procedural costs, legal uncertainty and inconsistent court practices as major deterrents. Complex entry requirements and unclear governance rules frequently limit access, even if the mechanism enables early intervention, retains operational experience, and allows incumbent management to maintain control.

A separate but related challenge lies in the underdevelopment of DIP financing. Unlike the U.S., where superpriority status and robust legal protections support a mature DIP lending market, Germany lacks institutional lenders and confidence in its legal frameworks. Although additional funding and collateral supplied as part of a restructuring plan are protected against insolvency claw-back under § 90 StaRUG, these tools are rarely used in practice. The limited protection offered under § 55 StaRUG is further weakened by the so-called "cliff effect": if restructuring fails and insolvency proceedings follow, the new funding loses its priority status. Despite the law's three-month deadline, these shortcomings, along with judicial uncertainty and procedural hold-ups, continue to put off potential lenders and limit DIP's usefulness as a restructuring tool.

Lastly, there is strong support for increasing the role of distressed-focused investors, particularly private equity funds. The highest observed correlation in the dataset was between the recognition of a lack of distressed investors and the urgency of encouraging more market participation. Both the literature and experts have pointed out that although distressed private equity funds offer capital and restructuring experience, they need better frameworks and incentives to commit.

In sum, optimizing Germany's distressed workout process demands a multidimensional approach: legal flexibility, regulatory clarity, professional specialization, cultural change, and investor accessibility. StaRUG reforms, improved DIP structures, increased judicial proficiency, and targeted financial incentives would together make Germany a more desirable location for restructuring. A more flexible and investor-friendly framework would allow viable businesses to recover sooner and more robustly, even though insolvency may still be unavoidable in some circumstances.

6.2 Solutions and feasibility

To unlock the full potential of Germany's restructuring regime, this study identifies six core reform levers (see Figure 11). First, changing the cultural stigma around insolvency is critical. While this is a mid to long-term goal, it is realistically achievable through targeted campaigns, educational programs via e.g., IHKs (Chambers of Industry and Commerce), and increased presence at industry forums. Normalizing restructuring as a value-creation strategy would benefit both entrepreneurs and investors.

Second, addressing the inability to terminate long-term obligations under StaRUG remains essential. Although politically challenging due to strong lobby resistance (e.g., insolvency administrators), introducing narrowly defined exit clauses for burdensome leases or supply contracts would align the StaRUG more closely with Chapter 11 functionality.

Third, improving judicial expertise and specialization could be implemented in the medium term. Dedicated training programs and the creation of centralized restructuring courts would help reduce inconsistent rulings and increase investor trust. This could mirror ongoing discussions in the legal community (see interview I and M).

Fourth, greater transparency and standardization in the appointment of insolvency administrators is also needed. The current system is often perceived as being driven by informal networks and favoritism, which undermines procedural fairness. Establishing clearer criteria and oversight

mechanisms would enhance predictability, an aspect repeatedly emphasized by both investors and practitioners. However, the feasibility of reform in this area is considered medium to low due to the strong lobbying power within the community.

Fifth, the DIP mechanism should be made more attractive, especially for smaller companies. Introducing clearer standards for CRO appointments, reducing procedural costs, and simplifying access could significantly expand its practical use. In parallel, DIP financing needs urgent reform: protections under § 55 StaRUG must be strengthened, and cram-down thresholds should be harmonized with EU levels (66.6%), currently being at 75%, to make cross-class cram-downs more feasible.

Finally, Germany should incentivize distressed investors, particularly private equity, with investment-related tax incentives (e.g., accelerated depreciation or temporary tax reliefs). These could significantly boost early-stage turnaround capital, similar to U.S. practices.

Stigma reduction is a long-term cultural goal but can be addressed quickly through awareness campaigns and professional training, making its implementation highly feasible. Improving the DIP mechanism and financing has moderate feasibility. While its strategic value is clear, regulatory complexity and inconsistent court application remain key barriers that require coordinated reforms. Attracting distressed private equity ranks medium to high in feasibility. Since proposed incentives like tax breaks or €1 deals avoid major lobbying conflict, they could be introduced with limited political resistance. Addressing long-term obligations under StaRUG is critical but difficult. Lobbying pressure and legal hurdles make this reform unlikely in the short term, despite its strategic importance. Judicial education and environment reform is moderately feasible. Enhancing judge selection and training would help reduce mismatches in complex cases and improve overall court consistency.

To sum up, while some reforms will require systemic change, others, such as stigma reduction or PE incentives, are actionable in the near term and could significantly strengthen Germany's restructuring landscape. The following spider web map (Figure 11) outlines the relative feasibility and expected timelines for **six key restructuring reforms**. A better restructuring regime in German would contribute to improving the competitive positioning of German firms and industries in accordance with strategic management theory alluded to in this study.

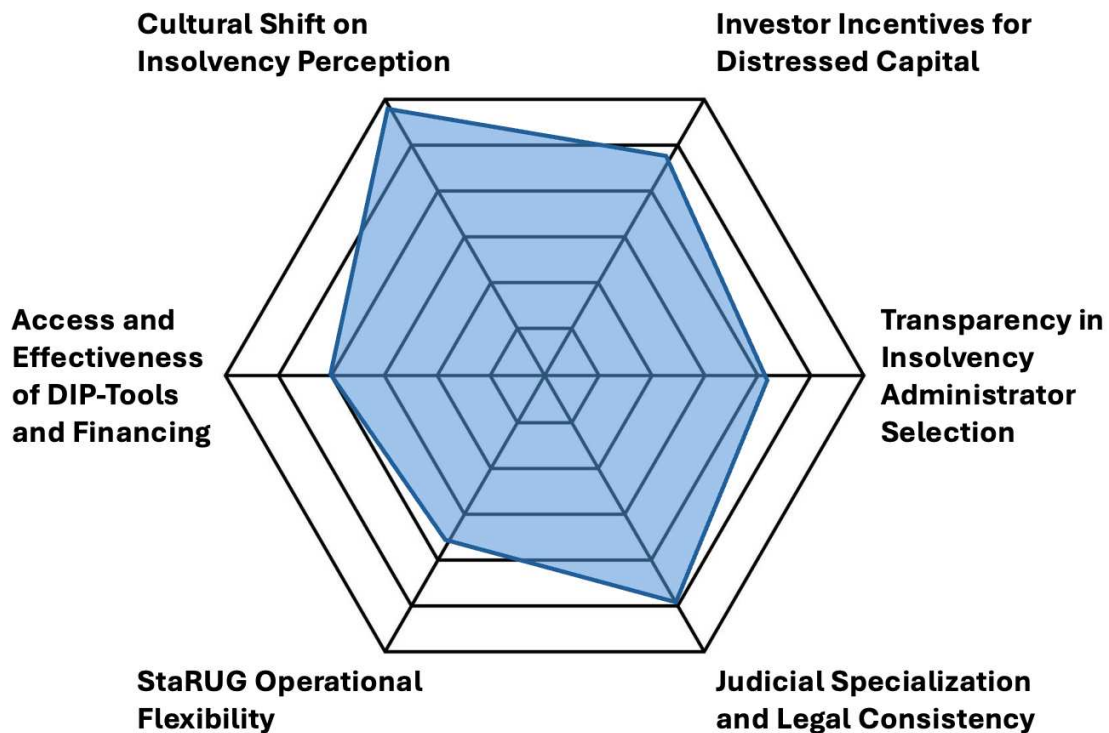


Figure 11: Spider web map of the core reform levers by implementation likelihood

7. Limitations

Limitations influence the extent, validity or generalizability of our results (Queirós et al., 2017). The research was conducted within a short period, which restricted the ability to observe the long-term impact of the StaRUG. StaRUG is still a rather new instrument which still needs to see more use, potentially constraining the depth of literature obtained.

7.1 Expert Interviews

Semi-structured expert interviews, based on the literature review and developed in an inductive process, may have unintentionally introduced bias. Although the quality of experts was high, the novelty and unproven nature of restructuring reforms posed a challenge. Moreover, the composition of the expert sample had potential issues. Specifically, Interviewees E, F, G, and I were directly involved in the development or advisory processes surrounding the StaRUG framework. While their insights provided valuable detailed knowledge, their perspectives potentially carried a degree of positive bias. A sense of ownership and pride in the legal architecture could have influenced how they assessed its effectiveness and practical relevance.

While thematic coding ensured a systematic approach, the subjective nature of qualitative research means that interpretative biases could not be completely ruled out. Additionally, translation bias may have influenced the interpretation of qualitative data, particularly where nuances in language might have impacted the thematic.

7.2 Future Research

Future studies could perform longitudinal case studies on companies that attempted pre-insolvency restructuring under StaRUG could provide valuable insight into success factors and common pitfalls. This would also allow for tracking the long-term effectiveness of early intervention tools

Scholars should also examine the relationship between investor expectations and regional legislative restrictions as the involvement of private equity and foreign distressed investors expands. Finding transferable practices and structural flaws in the German system may be aided by comparative research on investor behavior in various restructuring regimes (such as those in France, Italy, and the Netherlands). Third, more thorough behavioral study on the stigma associated with insolvency in Germany, specifically among employees, SME owners, and the general public, may help develop more successful public awareness and policy communication campaigns.

Finally, future studies should consider the judicial side of restructuring in greater depth. Empirical research on court decision patterns, judge specialization, and regional disparities could help refine proposals for a more professionalized and consistent legal environment. Together, these research directions would support a more data-driven, investor-ready, and resilient restructuring system in Germany.

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Appendices

Appendix A:

Jahr	eröffnete Insolvenzverfahren	mangels Masse abgelehnte Insolvenzverfahren	eröffnete Vergleichsverfahren/ Schuldenbereinigungsplan angenommen ²	Insolvenzen	
				insgesamt ³	darunter: Unternehmensinsolvenzen
2024	110 131	10 075	468	120 674	21 812
2023	101 429	8 148	601	110 178	17 814
2022	97 416	7 292	821	105 529	14 590
2021	112 128	7 226	885	120 239	13 993
2020	65 795	8 029	1 220	75 044	15 841
2019	93 558	9 002	1 509	104 069	18 749
2018	98 409	9 485	1 690	109 584	19 302
2017	104 287	9 456	1 889	115 632	20 093
2016	111 197	9 347	1 970	122 514	21 518
2015	115 847	9 711	1 880	127 438	23 101
2014	123 231	9 924	1 716	134 871	24 085
2013	129 269	10 264	1 799	141 332	25 995
2012	137 653	10 826	1 819	150 298	28 297
2011	145 702	11 798	1 918	159 418	30 099
2010	153 549	12 770	2 139	168 458	31 998
2009	147 974	12 935	1 998	162 907	32 687
2008	140 979	12 107	2 116	155 202	29 291
2007	149 489	13 206	1 902	164 597	29 160
2006	143 781	15 607	2 042	161 430	34 137
2005	115 469	19 280	1 805	136 554	36 843
2004	95 035	21 450	1 789	118 274	39 213
2003	77 237	22 135	1 352	100 724	39 320
2002	61 691	21 551	1 186	84 428	37 579

Table 5: Number of Insolvencies by years in Germany (Destatis, 2025)

Appendix B: Interview A

Occupation: Director for Restructuring Practice at Deloitte

CW	How many years of professional experianc do you have in the distressed environment?
A	12+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
A	<ul style="list-style-type: none"> • A rise in insolvencies and zombie companies is expected in the near future. • Sectors most affected: <ul style="list-style-type: none"> ○ Retail (e.g., Galeria and Gerry Weber as notable examples) ○ Manufacturing ○ Automotive industry, especially Suppliers • Many zombie firms were artificially kept alive but are now under increasing pressure due to weak economic conditions.

	<ul style="list-style-type: none"> We can currently observe Companies entering insolvencies the second or even third time
CW	What macroeconomic trends do you see as the most influential drivers of corporate distress in Germany today?
A	<ul style="list-style-type: none"> Artificially delayed effects of the COVID-19 crisis Weak consumer and retail environment Rising interest rates driven by the debt brake High energy cost
CW	What geopolitical factors are shaping insolvency trends in Germany?
A	<ul style="list-style-type: none"> Growing geopolitical uncertainty is a key factor Potential medium-term disruptions from U.S. trade policy and tariffs Strong competitive pressure from Chinese EV manufacturers entering the German market Political disruptions also contribute to uncertainty and reduced demand (e.g., Tesla)
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
A	<ul style="list-style-type: none"> Creditor Protection Priority: Clear legal focus on protecting creditors' rights, usually good. Legal Structure Exists: Formal legal frameworks (InsO and StaRUG) are in place and aligned with EU restructuring initiatives. The insolvency administrator (Insolvenzverwalter) lobby is powerful and resistant to reform Insolvency in Germany carries a heavy social and market stigma This discourages early and transparent restructuring efforts Customers tend to react negatively to signs of restructuring, impacting business relationships during the process Regular insolvency proceedings are seen as destructive to enterprise value Often, an external party takes over and halts operations, causing delays and risk aversion. Unlike in Anglo-American systems (e.g., Chapter 11), there's limited scope for restructuring before formal insolvency
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
A	<ul style="list-style-type: none"> StaRUG is rarely applied in real restructuring cases Often used as a negotiation tool ("We agree now, or I go through StaRUG"). Functions more as a threat scenario than an actively used legal process Precisely, it can be very effective in pressuring stakeholders to reach an agreement early Designed for early intervention before formal insolvency Inspired by EU directives aiming for more flexible pre-insolvency solutions The StaRUG does not fully exploit the flexibility that was intended by EU reform goals Offers a structured alternative to full insolvency proceedings Intended to reduce stigma and preserve enterprise value through early action, not yet fully accepted
CW	Do you believe that Germany's focus on creditor satisfaction over debtor rehabilitation should be reconsidered?
A	<ul style="list-style-type: none"> It is a culture thing, difficult to change Usually a good thing yet sometimes to stiff Often lacks incentive to ensure refinancing or sustainable continuation
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
A	<ul style="list-style-type: none"> The German system is often aligned with liquidation goals ("Konkursverfahren") The German system is creditor-friendly with less emphasis on business continuation The US system prioritizes business continuation and reorganization In the US system focuses more on keeping the company alive, often takes precedence, over immediate creditor returns The US system is seen as more flexible and enterprise-focused
CW	What key aspects of Chapter 11 could be adapted to enhance the German insolvency and restructuring framework?

A	<ul style="list-style-type: none"> • Need for a larger pool of investors focused on distressed assets • Turnaround investing needs to be more culturally accepted and established • Greater willingness to take entrepreneurial and financial risks • Distressed investing shares traits with venture capital - both thrive in the U.S. but are underdeveloped in Germany • Funds should not flow to creditors, instead being reinvested into the company • More flexibility and better incentives for investors to engage in active restructuring
CW	What do you think about the DIP mechanism?
A	<ul style="list-style-type: none"> • Allows the existing management to stay in control during insolvency • Maintains operational knowledge and leadership stability • Enables the company to actively use restructuring tools that were unavailable before formal insolvency • Greater potential for sustainable turnaround when handled internally • Avoids issues often associated with insolvency administrators (e.g., nepotism, favored consultants) • Seen as a counter to inefficiencies and self-interest in the administrator-driven process • High professional fees involved in self-administration setups • Can increase the overall damage to the company due to added financial strain • Potential for enrichment of a few stakeholders at the cost of the wider restructuring effort • If poorly executed, it can lead to even greater reputational and financial damage than standard proceedings
CW	Why is the American system currently more attractive than the German for investors?
A	<ul style="list-style-type: none"> • Larger pool of investors focused on distressed assets • Turnaround investing is more culturally accepted and established • Greater willingness to take entrepreneurial and financial risks • Distressed investing shares traits with venture capital - both thrive in the U.S. but are underdeveloped in Germany • Strong creditor protection limits operational freedom during restructuring • Funds often flow to creditors instead of being reinvested into the company • Less flexibility and fewer incentives for investors to engage in active restructuring • Allows capital to support reorganization efforts • Enables investors to influence the process and benefit from a successful turnaround
CW	What are possible drivers to improve the current German system?
A	<ul style="list-style-type: none"> • Currently under-implemented in Germany, especially within the StaRUG • More instruments and flexibility from the EU proposal should be adopted • Need to make the system better understandable and accessible for international investors • Desire for tools to resolve long-term liabilities (e.g., contracts, leases) more efficiently • Greater ability to implement workforce adjustments as part of restructuring • Stronger instruments should be introduced carefully • Legal safeguards are necessary to prevent potential abuse of new restructuring powers

Table 6: Summary - Interview A

Appendix C: Interview B

Occupation: Managing Partner at a German mid market PE, focused on distress

CW	How many years of professional experience do you have in the distressed environment?
B	20+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
B	<ul style="list-style-type: none"> • Zombie companies are structurally unprofitable and survive only through cheap financing or support

	<ul style="list-style-type: none"> • They hinder essential restructuring efforts and immobilizing capital and resources that could be allocated to more viable enterprises • Their overall number is currently stable, but there has been a notable increase over the past years • In the current environment, banks are more likely to push for an exit due to the lack of long-term prospects, so it is likely that the market will be shaken and many companies will be liquidated • Unlike during COVID-19, the current crisis has no clear end point
CW	What macroeconomic trends do you see as the most influential drivers of corporate distress in Germany today?
B	<ul style="list-style-type: none"> • Rising interest rates and high energy costs are key economic burdens • Perceived economic pivot away from Europe in global economic policy • Some optimism sparked by new government investment plans in Germany • However, confidence remains low due to uncertain implementation and outcomes
CW	What geopolitical factors are shaping insolvency trends in Germany?
B	<ul style="list-style-type: none"> • The U.S. is perceived as politically unpredictable • Trade tensions and tariffs create uncertainty for international business planning • The situation around Taiwan is seen as a risk factor, especially in relation to China • Unclear how to proceed with international locations and operations due to geopolitical instability
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
B	<ul style="list-style-type: none"> • The InsO has in the last years become increasingly <i>reorganization- and continuation-oriented</i>. • Aimed at preserving value and enabling business continuity • Particularly effective for <i>out-of-court restructurings</i> • The introduction of StaRUG allowed for majority-based creditor decisions (less than 100% approval), closing gaps where previously Germany required full creditor agreement (e.g., Schuldschein loans) • Administrators make little in consumer/bankruptcy cases and rely on large corporate insolvencies • Creates incentives for self-interest over restructuring outcomes • Courts appoint administrators from small pools, often with personal connections ("Vetternwirtschaft") • Reduces trust and efficiency in the system • France, for example, caps fees in large cases and provides more state support in small cases—seen as more balanced and fair
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
B	<ul style="list-style-type: none"> • StaRUG has seen very few applications in real-world restructuring cases. • Often employed as a negotiation tool: <i>"Let's agree, or I'll initiate StaRUG proceedings."</i> • Its mere existence can be effective in pressuring creditors to settle, even if it's not actually used in practice • While the framework offers useful tools, its actual impact on pre-insolvency restructuring remains limited due to low usage
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
B	<p>German System (InsO):</p> <ul style="list-style-type: none"> • Core objective: <i>creditor satisfaction (Gläubigerbefriedigung)</i> • Insolvency is still strongly associated with liquidation and value recovery for creditors <p>U.S. Chapter 11:</p> <ul style="list-style-type: none"> • Focus: <i>business continuation above all</i> • Reorganization and operational recovery are prioritized over immediate creditor returns

	<ul style="list-style-type: none"> Chapter 11 is not viewed as a failure, but rather as a <i>strategic tool for restructuring</i>
CW	What key aspects of Chapter 11 could be adapted to enhance the German insolvency and restructuring framework?
B	<ul style="list-style-type: none"> Need for a larger pool of investors focused on distressed assets Turnaround investing needs to be more culturally accepted and established. Greater willingness to take entrepreneurial and financial risks Distressed investing shares traits with venture capital - both thrive in the U.S. but are underdeveloped in Germany Funds should not flow to creditors, instead being reinvested into the company More flexibility and better incentives for investors to engage in active restructuring
CW	Why is the american system currently more attractive than the german for investors?
B	<ul style="list-style-type: none"> Larger pool of investors focusing on distressed assets Culturally different thinking and greater risk appetite
CW	What are possible drivers to improve the current German system?
B	<ul style="list-style-type: none"> Insolvency administrators are primarily accountable to creditors, not the company or its long-term survival If continuation is pursued, administrators should also be responsible for ensuring proper refinancing, which is often neglected The German system remains very creditor-friendly, with limited incentives for operational turnaround, need for change Restructuring often begins with an IDW S6 plan and moves into insolvency without a real check on the feasibility of continuation There's a need for greater legal certainty after transactions, especially regarding the liability of sellers—this would strengthen Germany's appeal as a restructuring location Investors need a stable and predictable legal environment to commit capital in distressed situations

Table 7: Summary - Interview B

Appendix D: Interview C

Occupation: Managing Director at a german mid market M&A Boutique, focused on distress

CW	How many years of professional experience do you have in the distressed environment?
C	15+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
C	<ul style="list-style-type: none"> Yes, there is a noticeable rise in insolvencies and partially in zombie companies, though the trend is likely not at its peak yet Many of the affected firms were already weak before COVID and should have exited the market earlier Early 2025 (Jan/Feb) saw many cases where the viability of a sale was questionable Larger companies are generally less affected, but there has been a noticeable uptick this year Key affected sectors: <ul style="list-style-type: none"> Automotive, particularly suppliers (Zulieferer), despite OEMs still holding strong positions Chemicals, especially due to high industrial electricity costs Real estate, increasingly under pressure Retail, with Galeria as a prominent example of a long-time zombie firm that required frequent refinancing and state support—recently sold
CW	What macroeconomic trends do you see as the most influential drivers of corporate distress in Germany today?

C	<ul style="list-style-type: none"> • Rising interest rates • Economic effects of the war in Ukraine • Possibly emerging trade tariffs • A notable change is the declining strength of management teams, even small strategic missteps now have a greater impact on company stability • High overall market uncertainty is reducing willingness to invest
CW	What geopolitical factors are shaping insolvency trends in Germany?
C	<ul style="list-style-type: none"> • War in Ukraine continues to be a major destabilizing factor. • Growing concerns about future trade policy and tariffs add to uncertainty. • Broader geopolitical instability contributes to reduced investment confidence and planning challenges for companies.
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
C	<ul style="list-style-type: none"> • StaRUG has seen very few applications in real-world restructuring cases • While the framework offers useful tools, its actual impact on pre-insolvency restructuring remains limited due to low usage • Often too expensive due to too much consulting, rarely needed
CW	Do you believe that Germany's focus on creditor satisfaction over debtor rehabilitation should be reconsidered?
C	<ul style="list-style-type: none"> • It is a culture thing, difficult to change • On first thought it is good but brings difficulties when trying to work with the StaRUG
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
C	<ul style="list-style-type: none"> • Not much knowledge about Chapter 11
CW	What do you think about the DIP mechanism?
C	<ul style="list-style-type: none"> • In some cases, the same manager responsible for the company's failure enters self-administration (Eigenverwaltung) and negotiates with banks in a "new" role—this is seen as problematic and unwise • There's skepticism about allowing previous management to retain control during insolvency • However, the effectiveness of the DIP mechanism can vary significantly from case to case and should be evaluated individually
CW	Why is the American system currently more attractive than the German for investors?
C	<ul style="list-style-type: none"> • Larger pool of investors focusing on distressed assets • Cultural mindset in Germany is less risk-oriented, which limits the appeal of distressed investing • The number of targets is not an issue but many are already depleted and offer little turnaround potential • Current political and industrial conditions in Germany are unattractive for investors, even for those with lower return expectations like distressed funds • Many investors hesitate due to weak IRR prospects
CW	What are possible drivers to improve the current German system?
C	<ul style="list-style-type: none"> • Energy policy needs reform; current laws make operations more costly and less attractive for businesses • Labor policies are seen as too employee-friendly, reducing motivation and performance in some cases (e.g., influence of Bürgergeld) • From a financial investor's perspective, insolvency purchases usually mean asset deals, which are challenging if the business is working-capital intensive—rebuilding that capital base makes the investment less attractive • Formal insolvency proceedings provide legal clarity, freeze liabilities, and allow investors to acquire businesses via asset deals free of legacy debt, more attractive for distressed investors.

	<ul style="list-style-type: none"> • Compared to pre-insolvency restructurings, which involve higher risks such as hidden liabilities, legal uncertainty, or accusations of fraudulent conveyance, formal insolvency often enables more favorable deal terms and lower valuations. • Profits must be generated quickly with highly taxed capital, increasing pressure on investors • Bureaucracy is a major obstacle—e.g., a mid-sized machinery company with €100M enterprise value must submit a 100-page ESG report just to secure a credit line, which is seen as excessive and impractical • Overall, regulation and compliance demands make doing business unnecessarily difficult
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Table 8: Summary - Interview C

Appendix E: Interview D

Occupation: Senior Associate at Alvarez & Marsal

CW	How many years of professional experience do you have in the distressed environment?
D	5+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
D	<ul style="list-style-type: none"> • Yes, there is a noticeable increase in insolvencies, zombies are rather stable, yet a high number • Particularly larger companies are increasingly affected • Key sectors include automotive, production and retail (fashion)
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
D	<ul style="list-style-type: none"> • Rising interest rates • Economic effects of the war in Ukraine • Chip-crisis still ongoing • Possibly emerging trade tariffs • Chinese competitors are gaining a growing foothold in the German market
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
D	<ul style="list-style-type: none"> • Strength: ability to quickly terminate long-term obligations, which is especially useful for retailers (e.g., leases) • Strength: provides legal tools that are otherwise unavailable outside insolvency • Weakness: public perception and negative stigma surrounding insolvency remain strong • Weakness: managing director liability is a concern—requires careful documentation that no over-indebtedness existed prior to filing • Weakness: insolvency is often associated with personal failure, making it harder to use the process constructively (DIP)
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
D	<ul style="list-style-type: none"> • Rarely applied in practice but often prepared in the background to create strategic pressure • Useful for dealing with blocking minority creditors, e.g., a small bank refusing to cooperate in hopes of being bought out • StaRUG helps overcome such obstacles by allowing majority decisions to bind dissenting parties • High costs for legal and advisory services make it unattractive for smaller mid-sized firms • As a result, it's often not a practical option for typical Mittelstand companies
CW	Why do restructurings or refinancing often fail before insolvency?
D	<ul style="list-style-type: none"> • Often industry-specific, particularly in sectors like industrials where many targets are unattractive or already zombie companies • Insolvency is increasingly used as a tool for market consolidation

	<ul style="list-style-type: none"> Buyers prefer to acquire companies out of insolvency to avoid legacy issues and liabilities Pre-insolvency restructurings are less appealing when the business model is fundamentally broken or lacks turnaround potential
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
D	<ul style="list-style-type: none"> The U.S. Chapter 11 process starts much earlier than the German system It is more debtor-friendly and focused on preserving the business StaRUG is an attempt to bring German law closer to the U.S. model However, Germany still remains more creditor-oriented in practice
CW	What key aspects of Chapter 11 could be adapted to enhance the German insolvency and restructuring framework?
D	<ul style="list-style-type: none"> The ability to unilaterally terminate long-term obligations like leases or rent, even without the landlord's consent In Germany, this is not possible outside of formal insolvency, which limits restructuring flexibility Adopting this feature could improve negotiation power and restructuring outcomes, especially for asset-heavy or retail businesses
CW	Why is the German system currently less attractive than the US system for investors?
D	<ul style="list-style-type: none"> Too much regulation and many special legal topics make transactions complex Foreign investors often underestimate the challenges of acquiring companies out of insolvency Legal issues like business succession and automatic employee transfer are triggered unintentionally and require specific local knowledge Current market conditions are difficult, and many German investors are highly risk-averse German business culture tends to be more skeptical and cautious when it comes to risk In contrast, American investors often have a culturally ingrained openness toward risk and opportunity
CW	Would a greater presence of distressed investors benefit the German market?
D	<ul style="list-style-type: none"> Yes, but only funds with expertise in distress and special situations would add value to the market A broader investor base could support more successful restructurings and create competitive dynamics
CW	What are possible drivers to improve the current German system?
D	<ul style="list-style-type: none"> The rising number of insolvencies is expanding the market, which increases its attractiveness A larger distressed market creates more opportunities, especially if private equity firms choose to specialize in this area Reducing regulatory complexity would remove one of the biggest current barriers The system needs to become more flexible to respond effectively to restructuring needs

Table 9: Summary - Interview D

Appendix F: Interview E

Occupation: Professor and academic researcher in Germany, involved in shaping the StaRUG framework

CW	How many years of professional experience do you have in the distressed environment?
E	24 years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
E	<ul style="list-style-type: none"> Yes, sectors most affected: automotive, retail, real estate, and general industry No significant increase in zombie companies, their number has stagnated

	<ul style="list-style-type: none"> • Change in financing conditions has limited the further rise of zombie firms
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
E	<ul style="list-style-type: none"> • Most influential factors include: <ul style="list-style-type: none"> ○ Rising interest rates ○ Economic effects of the war in Ukraine ○ Chip-crisis still ongoing ○ Possibly emerging trade tariffs
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
E	<ul style="list-style-type: none"> • Strength: Germany is well-positioned in terms of administrator quality and efficiency • Strength: Transferred restructuring (übertragende Sanierung) works well in practice • Weakness: Lack of effective procedural options that allow owners to use insolvency law without losing control • Weakness: Once an insolvency filing is made, owners are typically pushed out of decision-making • As a result, insolvency is often only used as a last resort when all other options are exhausted
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
E	<ul style="list-style-type: none"> • It's a good instrument in principle with useful restructuring tools • Problem: often perceived as an insolvency-related process, which gives it an unnecessary stigma • Too expensive for many, especially small and mid-sized companies • High advisory and legal costs are a major barrier to broader use • There's still a lack of standardised processes, but they are emerging, which could make application easier in the future
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
E	<ul style="list-style-type: none"> • Many elements of the Chapter 11 have already been adopted into the German system • What's still lacking are established financing solutions, especially DIP financing • Although more DIP providers are emerging, it's still underdeveloped compared to the U.S. • StaRUG focuses mainly on financial restructuring, not operational measures • It doesn't allow for termination or modification of long-term obligations like leases or employment contracts • In contrast, Chapter 11 enables both financial and operational restructuring, giving it broader impact
CW	What key aspects of Chapter 11 could be adapted to enhance the German insolvency and restructuring framework?
E	<ul style="list-style-type: none"> • The ability to unilaterally terminate long-term obligations like leases or rent, even without the landlord's consent • In Germany, this is not possible outside of formal insolvency, which limits restructuring flexibility • Adopting this feature could improve negotiation power and restructuring outcomes, especially for asset-heavy or retail businesses
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
E	<ul style="list-style-type: none"> • One key issue is that insolvency administrators are appointed solely by the court, often based on suggestions • The decision to leave appointments with courts in Germany is intentional, as some judges are more familiar with certain industries • It wouldn't make sense to appoint someone unfamiliar with the sector, which is why specialization is considered in practice • Other countries like the Baltics have experimented with different models, but experiences have been mixed • There is currently no unified solution that works universally across systems

	<ul style="list-style-type: none"> Investors criticize administrators for charging excessive fees and for stripping value before leaving companies in massless insolvency
CW	What do you think about the DIP mechanism?
E	<ul style="list-style-type: none"> In mid-sized companies, the quality of management is often a key concern when considering DIP (Eigenverwaltung) DIP is only viable when there's a trusted individual on the debtor side to guide the process Typically triggered when for example a bank detects a covenant breach and reviews the situation through an IDW S6 analysis If trust exists, DIP can be granted, often supported by a trust structure (Treuhand) Overall, trust and transparency are critical preconditions for successful DIP in practice
CW	Do you expect any shifts in the political approach to insolvency and restructuring in Germany?
E	<ul style="list-style-type: none"> Small companies cannot go into formal insolvency due to a lack of assets; something could possibly change here But most likely no change, besides a review of the StaRUG During COVID-19, state support kept many zombie firms alive for too long While short-term help was appropriate, prolonged intervention distorted the market Unlike the 2008/09 crisis, the current situation is more complex and drawn out, with structural issues rather than just temporary balance sheet pressure So in the end caution is advised when it comes to the state intervening in the economy with aid, this can quickly have a negative impact
CW	What are possible drivers to improve the current German system?
E	<ul style="list-style-type: none"> The pre-insolvency area should be expanded beyond just financial creditors and lenders Currently, restructuring tools like StaRUG mainly apply to financial stakeholders, which limits effectiveness In cases like Galeria or Gerry Weber, long-term obligations (e.g. leases) couldn't be renegotiated pre-insolvency There's no legal mechanism to address or modify such contracts outside formal insolvency In contrast, in the UK, such tools already exist—even if controversial—offering more restructuring flexibility

Table 10: Summary - Interview E

Appendix G: Interview F

Occupation: Managing Partner at a German PE. Until recently Global Head of Restructuring at Roland Berger and involved in shaping the StaRUG framework

CW	How many years of professional experience do you have in the distressed environment?
F	30+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
F	<ul style="list-style-type: none"> The number of zombie companies in Germany has increased over the past few years but is now stable Many companies are stuck in a restructuring loop and can't achieve a sustainable turnaround There are repeated insolvency cases within PE portfolios, suggesting a structural issue Sectors most affected include automotive, retail, B2C in general, and construction materials Regulatory-heavy sectors are particularly vulnerable, showing a positive correlation with zombie firms The last Green-led government added further pressure through regulatory measures, which is viewed as unhelpful
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?

F	<ul style="list-style-type: none"> • Rising interest rates and energy costs are major stress factors • Tarrifs from the US are a threat • These are not purely external shocks but largely self-inflicted (endogenous problems) • A subsidized industrial electricity price could help, but it raises the question of who would fund it—likely the taxpayer • The core issue is the excessively high regulatory and structural cost burden in Germany • Labor costs are a major disadvantage due to high absenteeism, generous vacation, and low working hours • Productivity does not offset these labor-related disadvantages, leading to a clear loss in competitiveness as a business location
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
F	<ul style="list-style-type: none"> • Strength: Germany is well positioned in terms of administrator quality and efficiency • Weakness: Lack of effective procedural options • Weakness: Once an insolvency petition is filed, owners are generally pushed out of the decision-making process not a good procedure
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
F	<ul style="list-style-type: none"> • StaRUG is inspired by tools from Chapter 11 and the UK system, offering pre-insolvency restructuring options without shifting the case abroad • It serves as a useful threat in negotiations and helps keep ownership structures intact • However, it raises the question whether this approach rewards the right stakeholders, especially when the business lacks a viable going-concern prognosis • A key weakness is the inability to terminate long-term obligations like leases or employment contracts • In the past, older German frameworks (e.g. Vergleichsordnung) allowed for more flexibility, including contract termination and workforce adjustments • Today, companies often resort to self-administration (Eigenverwaltung) to deal with such obligations—something StaRUG alone cannot achieve • StaRUG is costly, particularly for SMEs, with advisory fees often being unaffordable • While it can be used without advisors in theory, creditors rarely trust standalone processes from small businesses • If StaRUG allowed for termination of long-term obligations, it could reduce the need for formal insolvency proceedings altogether
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
F	<ul style="list-style-type: none"> • The restructuring culture in the U.S. is fundamentally different, especially in terms of risk appetite • Chapter 11 combines features of both StaRUG and InsO in one comprehensive process • It allows for greater flexibility in adjusting long-term obligations, which is more limited in the German system • The U.S. approach is more debtor-friendly, while the German system prioritizes creditor protection • These structural and cultural differences make Chapter 11 more adaptable in complex restructuring
CW	What are the main reasons for the limited presence of distressed investors in Germany so far?
F	<ul style="list-style-type: none"> • Germany has a fundamentally different financing market, still dominated by traditional bank lending • The secondary market for trading distressed debt is underdeveloped and heavily regulated • Cultural consensus around insolvency and distress remains negative, with strong stigma attached • Distress is viewed less as an opportunity and more as a failure in Germany • A broader presence of distressed investors could have a positive impact on the market by normalizing restructuring as a value-creation tool
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
F	<ul style="list-style-type: none"> • Overall, the system is functioning well with high-quality insolvency administrators • There is no major criticism of the administrator selection process itself

	<ul style="list-style-type: none"> • The issue lies more with the courts, where judges often lack experience in insolvency matters • Judges are sometimes appointed without having the necessary professional background or specialization • This can lead to inconsistent decisions and reduced efficiency in proceedings
CW	Is a policy change on the horizon that could reshape the framework for insolvency and corporate restructuring?
F	<ul style="list-style-type: none"> • No changes besides a review of the StaRUG are expected
CW	What are possible drivers to improve the current German system?
F	<ul style="list-style-type: none"> • Basel III requires banks to hold more capital for non-performing loans, increasing their incentive to offload such assets quickly • Credit trading in Germany is legally and regulatorily complex due to data protection, consent requirements, and formalities around loan assignments • BaFin imposes strict regulations on credit sales, making it hard for debt funds to directly acquire or manage loans • Legal transfer of loans (cession) is administratively burdensome for both banks and debt funds • A dedicated legal framework for the secondary loan market could simplify the process and encourage activity • Reducing legal and procedural barriers to support more efficient debt transactions • The upcoming implementation of the EU NPL Directive into German law may introduce helpful changes in this area • Overall, streamlining credit sales would significantly enhance the attractiveness of the distressed debt market for financial investors

Table 11: Summary - Interview F

Appendix H: Interview G

Occupation: Managing Partner at a German PE: Until recently Head Restructuring of Roland Berger Germany, involved in shaping the StaRUG framework

CW	How many years of professional experience do you have in the distressed environment?
G	30+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
G	<ul style="list-style-type: none"> • Yes, there is a clear increase in insolvencies, also driven by the effects of the COVID-19 crisis • Zombie companies, especially in the automotive and retail sector are gradually being cleared out through the rise in insolvencies • A noticeable bubble has formed due to aggressive private equity activity • They stymie necessary reorganization initiatives and keep money and resources from being put to better use in other businesses. • Many companies have been repeatedly bought and sold, creating "repeat offenders" in portfolios • It's unsustainable for a company to be sold three times in ten years and deliver a 4x MoM each time • Sectors with high insolvency activity include manufacturing, automotive, chemicals, retail, and related industries
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
G	<ul style="list-style-type: none"> • Ongoing semiconductor shortages impacting production and supply chains • Persistent supply chain disruptions creating operational instability • Skilled labor shortage putting pressure on productivity and growth • Overall increasingly uncertain economic and geopolitical environment (tariffs)

CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
G	<ul style="list-style-type: none"> • Creditor protection is the top priority in Germany, which can be seen as both a strength and a weakness depending on perspective • There has been a positive shift toward business continuation rather than liquidation • However, the system places too much emphasis on financial restructuring and too little on operational turnaround • This imbalance is seen as a key weakness, especially in cases where companies were structurally sound but ended up in distress due to repeated resale and profit-driven strategies, particularly by private equity • A more balanced approach that strengthens operational restructuring is needed for long-term stability
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
G	<ul style="list-style-type: none"> • StaRUG currently focuses too heavily on financial restructuring and neglects the operational side • Long-term obligations (Dauerschuldverhältnisse) are not covered, which limits its practical impact • Expanding StaRUG to include operational restructuring would be useful, but political resistance exists • Strong lobbying by insolvency administrators is seen as a barrier to broader reform • There is concern that expanding StaRUG could reduce the relevance of formal insolvency proceedings, threatening established roles • For SMEs, the topic has been discussed, but no breakthrough has been achieved so far
CW	Why do private equity takeovers fail?
G	<ul style="list-style-type: none"> • Overly optimistic purchase prices and future expectations • Return targets that are misaligned with the actual business potential • Stakeholder constellations that don't fit, e.g. lack of alignment with banks or key suppliers • Friction with existing structures and lack of operational fit often lead to breakdowns in execution
CW	Why has there been limited activity from distressed investors in Germany so far, and would a greater presence be beneficial?
G	<ul style="list-style-type: none"> • Germany has a fundamentally different financing structure, still dominated by strong bank lending • Restructuring is often more difficult, as German banks are typically more cautious and less willing to accept major write-downs or deep restructuring measures • In contrast, U.S.-based investors (e.g. hedge funds) tend to be more aggressive in pushing for change, debt swaps, or takeovers • A larger presence of distressed investors could be beneficial in principle • However, it depends on the investors' strategies—the market needs to be understood, and their vision and intention must be clearly aligned with long-term restructuring goals
CW	Do you expect political or legal adjustments in the near future?
G	<ul style="list-style-type: none"> • A formal review of the StaRUG is expected to assess how effectively it has been implemented • Potential adjustments may be needed, especially around unresolved issues like over-indebtedness • Fiduciary duties and conflicts of interest are increasingly discussed—particularly when managers are installed by private equity owners and act in their interest rather than in the company's best interest • Misaligned incentives can lead to harmful decisions for the long-term health of the business • There is debate around limiting the influence of financial creditors (especially lenders) on management decisions • The idea of a “switch of duties” for management in crisis was discussed during the StaRUG drafting but was not included in the final version.
CW	What are possible drivers to improve the current German system?
G	<ul style="list-style-type: none"> • There's a clear rejection of adopting a U.S.-style “predatory capitalism” approach—restructuring should aim to preserve viable businesses, not extract value • Private equity, especially international funds, are seen as more extractive than supportive in many cases • The focus in restructuring should shift back to the operational core of the company, not just financing structures

	<ul style="list-style-type: none"> • Banks used to evaluate each case individually, but due to bureaucracy and regulation, that's no longer feasible • There is a strong need to reduce bureaucratic burdens on banks to enable more flexible and case-specific restructuring decisions • In some situations, liquidation may be better than artificially keeping zombie companies alive • Some argue that going back to the older insolvency model (Konkursordnung) could lead to faster and clearer outcomes, although it would eliminate current frameworks like StaRUG and ESUG • Such a shift faces strong opposition from the restructuring and advisory lobby, which benefits from the current complex system • A key structural issue is the overemphasis on financial restructuring—companies have increasingly layered and complex capital structures, shifting the focus away from operational solutions • The old system may not have produced better outcomes, but it was often more efficient in driving clear decisions on liquidation or turnaround
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Table 12: Summary - Interview G

Appendix I: Interview H

Occupation: Managing Director at a German M&A Boutique, focused on distress

CW	How many years of professional experience do you have in the distressed environment?
H	15+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
H	<ul style="list-style-type: none"> • There hasn't necessarily been a noticeable increase in zombie companies recently, but their overall number remains rather high • What has clearly risen is the number of insolvencies and financially distressed situations • Many companies were artificially kept alive in the past, which is now leading to a correction phase • The market is currently seeing the consequences of prolonged support measures and delayed restructuring
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
H	<ul style="list-style-type: none"> • Industrial and automotive sectors are heavily affected, with the automotive industry facing a prolonged structural crisis • Retail is under pressure, particularly due to intense competition from low-cost Asian manufacturers • German companies, especially in tech, struggle to compete with significantly lower international price levels • Potential conflicts with the U.S. and global tariff policies could further harm the competitiveness of German exports • Political uncertainty and mismanagement in the German government • The chemical sector, which was previously stable, is now increasingly distressed due to high energy and raw material costs
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
H	<ul style="list-style-type: none"> • A major weakness is the rigid regulation around employee transfer under § 613a BGB, which makes restructurings less flexible • Mandatory employee takeover in insolvency cases is often problematic and limits strategic options • A more liberal approach to workforce adjustments would be beneficial, though difficult due to Germany's historical and legal context • It's a positive development that insolvency transactions now also include share deals, not just asset deals • This shift improves the overall restructuring environment and can offer better continuity for employees and operations

CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
H	<ul style="list-style-type: none"> • So far, StaRUG has seen limited exposure and usage in practice • It tends to work better for larger companies with sufficient resources to manage the process • Smaller companies remain skeptical due to the high cost burden, particularly for legal and advisory services • The instrument is rarely used, partly because it lacks operational restructuring tools • Some argue that if StaRUG allowed for the termination of long-term obligations, it could make formal insolvency procedures like InsO unnecessary in many cases • Yet it would be beneficial to allow targeted intervention in long-term obligations under certain conditions, to increase flexibility without fully entering insolvency proceedings
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
H	<ul style="list-style-type: none"> • Gained exposure to Chapter 11 during an exchange program in the U.S. • Negotiations with creditors are much freer and more flexible under Chapter 11, which simplifies many aspects of restructuring • U.S. courts are generally much more experienced and capable in handling complex restructuring cases compared to German courts • The higher level of court expertise contributes significantly to the efficiency and success of the Chapter 11 process
CW	What do you think about the DIP mechanism?
H	<ul style="list-style-type: none"> • There's a significant difference when a company is in DIP compared to regular insolvency proceedings • Effectiveness depends heavily on the company and its management team • In DIP, interests can be aligned and implemented more easily than under regular insolvency, where the administrator takes control • Preserving the existing organizational structures is an advantage • Management is generally more responsive and easier to guide within a DIP setting, allowing for more strategic flexibility
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
H	<ul style="list-style-type: none"> • A few years ago, the system was much more problematic with unfair conditions and limited transparency • The situation has gradually improved, especially with the introduction of ESUG and StaRUG • These reforms have fostered fairer competition and increased professionalism among insolvency administrators • While not perfect, the landscape is moving in a positive direction
CW	Are there currently enough interested investors in the German market? If not, what are the reasons for the lack of activity?
H	<ul style="list-style-type: none"> • The deals currently available on the market are not particularly attractive to investors • Only assets with clear strategic potential are being sold successfully • Key sectors like automotive are under significant pressure, making many opportunities unappealing • Germany's economic outlook is uncertain, leading to investor caution • There is an abundance of opportunities right now, allowing private equity funds to be highly selective • As a result, many M&A boutiques decline mandates, knowing the assets are unlikely to sell • This leads to more liquidations, which is starting to cleanse the market—a process that hasn't happened in over a decade • Cheap capital in the past allowed struggling companies to survive longer, but that's no longer the case in the current environment
CW	What are possible drivers to improve the current German system?
H	<ul style="list-style-type: none"> • A greater presence of distressed-focused private equity investors would be welcome • Success depends on having a strong operational team and a well-thought-out continuation plan

	<ul style="list-style-type: none"> • Challenges arise with international investors who often approach deals too aggressively and lack familiarity with German legal structures - in combination with language barriers • German labor law, union involvement, and co-determination are often difficult for international investors to understand and navigate • Foster a better and more open culture around turnaround • These factors create a high entry barrier and lead to misunderstandings or missteps in the restructuring process
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Table 13: Summary - Interview H

Appendix J: Interview I

Occupation: Managing Partner for Germany at a magic circle law firm, specialized in restructuring and M&A and involved in shaping the StaRUG framework

CW	How many years of professional experience do you have in the distressed environment?
I	30+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
I	<ul style="list-style-type: none"> • COVID-19 has been the main driver, with many companies having taken on large amounts of debt • These firms are now increasingly struggling with repayments, contributing to financial distress • The term “wall of debt” is often used to describe this looming repayment pressure • The number of zombie companies has remained relatively constant overall, with no major recent surge • However, sector-specific trends show clear increases in distress, particularly in already weakened industries like manufacturing and automotive
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
I	<ul style="list-style-type: none"> • Rising interest rates and energy costs remain key pressure points for many companies • The war in Ukraine continues to impact supply chains and overall economic stability • Potential tariffs, especially on steel and aluminum (up to 25%), could have a significant impact if fully implemented • While these tariffs haven’t yet taken effect, their looming presence is already creating uncertainty • U.S. investors are hesitant and taking a wait-and-see approach due to the unclear trade environment • Medium-term planning has become extremely difficult for managers, especially with regard to global trade relations and cost forecasting
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
I	<ul style="list-style-type: none"> • The German Insolvency Code (InsO) is fundamentally a strong tool • Compared to the US (Chapter 11) or UK (Scheme of Arrangement), some aspects may function better, but this is often due to market conditions rather than the law itself • Chapter 11 procedures in the US are significantly more expensive, often costing \$50 million even for standard cases • In Germany, insolvency processes are leaner and more cost-efficient • Advisor fees are generally lower in Germany compared to the US, yet often too high • Although there is room for improvement, the negative stigma around insolvency has decreased in large cases in Germany • Creditors often prefer the appointment of a skilled insolvency administrator rather than allowing struggling management to continue
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
I	<ul style="list-style-type: none"> • StaRUG has been rarely used in practice, with only a few high-profile success cases like EMAG, VARTA, and LEONI

	<ul style="list-style-type: none"> • One key challenge is the lack of judicial expertise, many judges come from unrelated fields like family law • The presence of a restructuring officer (Restrukturierungsbeauftragter) helps bring some trust and stability to the process • StaRUG is primarily designed for financial restructuring and allows for very targeted, precise interventions • Unlike insolvency, not all creditors have to be at the table—only those affected, which can streamline the process • A major limitation is the inability to terminate long-term operational contracts (e.g. leases), which was originally part of the plan but removed under pressure from the insolvency administrator lobby • StaRUG is most suitable for “good companies with bad balance sheets”; for distressed operations and finances, traditional insolvency is more appropriate • This assessment mainly applies to larger companies—smaller cases often face different dynamics depending on structure and resources
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
I	<ul style="list-style-type: none"> • Most Chapter 11 cases result in an asset deal rather than a full return of the company to independence, which isn’t necessarily a positive outcome • Chapter 11 is a formal insolvency process, whereas StaRUG is a pre-insolvency tool • Together, StaRUG and InsO roughly cover what Chapter 11 offers in a single framework • Chapter 11 is fundamentally debtor-friendly, aiming to protect and preserve the company—this concept doesn’t exist in Germany, where creditor protection comes first • In France, by contrast, preserving employment is the top priority, highlighting national differences in restructuring culture • Chapter 11 procedures tend to take longer, around a year, while StaRUG proceedings are designed to be completed within about four months • StaRUG focuses narrowly on individual financial restructuring, not on comprehensive operational turnaround
CW	What do you think about the DIP mechanism?
I	<ul style="list-style-type: none"> • Generally seen as a good and useful instrument, especially when paired with a restructuring expert (CRO) • A potential issue arises when private equity is involved and installs its own manager to lead the process • This can create conflicts of interest, as the manager may prioritize the PE’s goals over the company’s long-term health • If the PE fails to follow through on commitments, the manager may still be held liable—despite acting under the PE’s direction • Clear governance and role separation are crucial to avoid misaligned incentives and legal risks
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
I	<ul style="list-style-type: none"> • The system has had questionable aspects in the past but has improved over time • For larger cases, it makes sense to appoint administrators with proven experience from prior projects • In such high-stakes situations, random assignment wouldn’t be practical or beneficial • However, for smaller and mid-sized companies (KMU), a more neutral or randomized selection process could be more appropriate • Ensuring both expertise and fairness in the selection process remains a key challenge
CW	Are there currently enough interested investors in the German market? If not, what are the reasons for the lack of activity?
I	<ul style="list-style-type: none"> • There is a noticeable lack of active buyers—very few investors are currently stepping in • Many M&A processes are initiated, but often end with disappointing results and no transactions • The central concern has shifted from deal success to whether jobs can still be preserved • Germany’s energy situation and high costs create an unattractive environment for investment • Political uncertainty adds another layer of risk and unpredictability for investors • Innovation is stagnating in some sectors, making them less appealing • Many investors prioritize liquidity and prefer to wait rather than commit capital

	<ul style="list-style-type: none"> • These factors combined are especially discouraging for international investors looking at the German market
CW	Are any legal reforms or adjustments to the German restructuring framework currently under discussion or expected in the near future?
I	<ul style="list-style-type: none"> • No major legal changes are expected at the moment • A formal review of the StaRUG is planned after four years of implementation, but significant reforms are unlikely • A current point of debate is the treatment of shareholders, particularly highlighted by the LEONI case • Shareholders felt sidelined in the StaRUG restructurings, but it would be a mistake to not attack the equity, it should be subordinated—protecting it too much would be a mistake • Until 2012, it wasn't possible to touch equity in an insolvency plan, which led to failed restructurings because creditors had to compensate equity holders just to pass a plan • Allowing equity to be part of the restructuring process was a necessary and important shift
CW	What are possible drivers to improve the current German system?
I	<ul style="list-style-type: none"> • Judges are a problem, often lacking sufficient qualification compared to those in the US or UK, where practical experience is stronger • There is frequent confusion among judges regarding responsibilities and areas of jurisdiction, which should actually be clear • The legal framework is generally satisfactory, but there are deficiencies in practical application • Lack of English proficiency among judges and administrators makes it very difficult for international investors, especially regarding transitional solutions with employees after transactions • Everything being conducted exclusively in German creates enormous translation costs and administrative hurdles • Foster a more open culture around failure and turnaround • Adjustments to the treatment of long-term contracts (Dauerschuldverhältnisse) under StaRUG could help, allowing companies to terminate them under specific conditions • However, introducing such changes would be very difficult due to Germany's strong creditor-friendly culture • If long-term contract termination were allowed, it would undermine the traditional need for full insolvency proceedings, making political and industry resistance from creditor lobbies highly likely

Table 14: Summary - Interview I

Appendix K: Interview J

Occupation: Managing Partner for Germany at Roland Berger

CW	How many years of professional experience do you have in the distressed environment?
J	25+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
J	<ul style="list-style-type: none"> • Insolvency numbers had mostly stagnated over the past few months • Recently there has been a noticeable increase in insolvencies • The COVID-19 pandemic was the main driver behind this development • Automobile, Retail and Industrials most affected
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
J	<ul style="list-style-type: none"> • The current situation is strange, as companies are cutting jobs, relocating production, and insolvencies are rising, but the expected major wave has not yet arrived • Many financially weak companies are still surviving, but a real insolvency wave is still pending • Upcoming tariff increases could become a significant problem if implemented as planned

	<ul style="list-style-type: none"> • Zombie companies are persisting for too long, and drastic measures are needed to eliminate those that cannot survive long-term • The German economy faces structural problems, particularly among workers, including more vacation demands, higher wages, and declining willingness to work, creating a misalignment with economic realities
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
J	<ul style="list-style-type: none"> • One of the main problems is the obligation to take over employees when buying a company out of insolvency • This issue persists even in the case of an asset deal • It creates significant barriers for investors interested in acquiring distressed assets efficiently
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
J	<ul style="list-style-type: none"> • The StaRUG has so far been of limited help and is often prepared but rarely applied in practice • There are very few well-known large cases where it has been successfully used • It works reasonably well for financial liabilities but is generally viewed negatively • In practice, a full new start through formal insolvency under the InsO is often seen as more effective if the company still has a chance of survival • Improvement would be possible if there were a way to terminate employee obligations before entering the StaRUG process
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
J	<ul style="list-style-type: none"> • Not much direct exposure to the U.S. Chapter 11 process • The German Insolvency Code (InsO) is still too rigid, particularly because it does not allow for easy termination of long-term contracts • The U.S. system reflects more of a start-up philosophy with a higher tolerance for risk compared to Germany • In Germany, there is a deep-seated fear of change and new developments, possibly rooted historically, such as from post-war experiences • There is a stronger cultural fear of failure and loss in Germany compared to the U.S.
CW	What do you think about the DIP mechanism?
J	<ul style="list-style-type: none"> • The effectiveness of the DIP mechanism highly depends on the people involved and on the size of the company • Some managers struggle to perform under insolvency conditions due to lack of experience or motivation, while others handle it very well • The supervising administrator (Sachwalter) plays a crucial role and must be able to recognize whether the management is capable • Fundamentally, DIP is a good instrument because it preserves existing structures initially • A disadvantage is that often little or no fresh strategic input is introduced during the process
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
J	<ul style="list-style-type: none"> • The insolvency administrator landscape is viewed rather critically • There is a perception of favoritism and connections being essential for getting mandates • Advisors must often adapt to the existing networks to succeed • In large cases, mandates are often distributed internally among a few players, while smaller cases leave little value for others • The system is seen as somewhat unbalanced • There is a clear need and openness for reforms and adjustments
CW	Are there currently enough interested investors in the German market? If not, what are the reasons for the lack of activity?
J	<ul style="list-style-type: none"> • Having more investors is generally positive • However, cultural adaptation is necessary, especially for international investors

	<ul style="list-style-type: none"> • Investors need a better understanding of German restructuring practices and market norms • Applying a purely U.S.-style "shark capitalism" mindset to the German market would be suboptimal • Success in Germany requires respecting local business culture and restructuring expectations
CW	What are possible drivers to improve the current German system?
J	<ul style="list-style-type: none"> • Greater willingness from investors is needed, as they are still too hesitant • There are too many restructuring options available, reducing pressure for decisive action • Risk appetite among investors remains too low • Many investors are holding onto cash due to fears about the short- and medium-term future • A solution must be found for the problem of long-term obligations, especially regarding employees • Without addressing long-term contract issues, StaRUG will not reach its full potential and its application will remain limited

Table 15: Summary - Interview J

Appendix L: Interview K

Occupation: Head of Risk Management for Corporate Clients at Germany's leading corporate banking institution

CW	How many years of professional experience do you have in the distressed environment?
K	25+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
K	<ul style="list-style-type: none"> • Yes, a rise in Zombies is observed, paired with more insolvencies especially in the lower mid-sized segment • During and shortly after COVID, Germany had the lowest insolvency rate due to strong state liquidity support • Around one-third of the companies that received support misused the funds, across all sectors • The natural insolvency cycle was artificially delayed by state intervention • Companies that took out fast-track loans, especially those with €5–10 million in revenue, are heavily affected • In the €50–200 million revenue range, banks are now increasingly identifying distress and classifying some firms as zombie companies • The overall economic outlook is poor and many companies lack strong management to navigate the crisis
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
K	<ul style="list-style-type: none"> • Interest rates and energy costs remain major pressure points • Supply chain disruptions are still ongoing, though highly sector-specific • The chemical industry is particularly affected by high gas prices and dependency on Russian energy • Climate-related factors also impact the chemical industry, especially due to recurring low water levels on the Rhein, which restrict shipping capacity and increase logistics costs • The agricultural and forestry sectors are under pressure due to prolonged heat and drought, leading to lower output • This also affects the construction industry, for example through reduced timber availability caused by bark beetle infestations • Tariffs and trade tensions are a major issue, causing a lack of planning certainty • Political uncertainty and lack of clarity in government • Germany is highly dependent on China for rare earths, with over 90% import share • Events like the Ever Given blockage show how easily supply chains can be disrupted or targeted • Risks are multiple, interconnected, and difficult to isolate

CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
K	<ul style="list-style-type: none"> • From a banking perspective, StaRUG has always been viewed somewhat skeptically • However, it is gradually gaining more acceptance and is used to create stability within creditor groups • The real advantage of StaRUG was not initially recognized, but over time its usefulness is becoming more apparent • Actual usage of StaRUG remains low • A major challenge is finding competent CROs, who are currently in very short supply on the market • Advisory firms are overloaded with mandates, but there are too few people who take real ownership and execute effectively • Management teams are often inexperienced in crisis situations • Banks are generally not supportive of operational interventions under StaRUG, especially not those affecting long-term contracts, as they are the primary financiers • Banks also avoid joining advisory boards and remain highly cautious toward mezzanine capital in distressed situations • Banks must maintain their role strictly as financiers to avoid being classified as equity providers • A growing problem is that the system is becoming increasingly complex, with fewer professionals who truly understand it due to rising legal and procedural fragmentation
CW	What do you think about the DIP mechanism?
K	<ul style="list-style-type: none"> • From a banking perspective, debtor-in-possession (DIP) proceedings are seen as a difficult instrument • DIP is often used to push for financial restructuring rather than operational turnaround • A well-known example is Peek & Cloppenburg, which filed for insolvency primarily to get rid of its banking obligations • This move triggered strong backlash from German banks, who now refuse to work with the company • As a result, the company can now only rely on foreign banks for financing
CW	Why is there resistance to expanding the secondary market for distressed debt in Germany, particularly with regard to international investors?
K	<ul style="list-style-type: none"> • The sale of low-performing or distressed loans already occurs but is heavily regulated, making it less attractive in practice • A key concern is that international funds, especially hedge funds, could enter creditor committees after acquiring debt • These actors are often perceived as aggressive and short-term focused, bringing a "shark-capitalism" mentality that is culturally unwelcome in the German restructuring environment • Most banks currently prefer to maintain a stable creditor consortium and avoid changes in composition • Lock-up periods are commonly used to ensure that the creditor group remains consistent during restructuring, helping preserve trust and negotiation stability
CW	What is the typical process a bank follows when a borrower breaches a financial covenant?
K	<ul style="list-style-type: none"> • The first question is always about the source of the covenant breach and whether it can be resolved through a waiver or adjustment • The case is then either handed over to the bank's intensive care unit or a classic restructuring process is initiated • In intensive care, the first step is to commission an IDW S6 expert opinion to assess whether the company is capable of being restructured • If the restructuring is feasible, negotiations with the banks begin, including a formal restructuring agreement • The forthcoming incorporation of the EU NPL Directive may result in beneficial modifications in the field of trading distressed debt • The company is then expected to implement operational turnaround measures • The bank reviews whether a loan loss provision is necessary based on the updated financial outlook • Under the back-stop rule, unsecured loans for defaulted companies must be fully written off after three years • Based on the outcome, the company either returns to the standard credit portfolio ("white area") or proceeds toward insolvency

CW	What are possible drivers to improve the current German system?
K	<ul style="list-style-type: none"> • It is very difficult to say, as there are currently few meaningful reforms on the horizon • A potential improvement would be the European harmonization of insolvency law • In the long term, this would make sense as it would enable more efficient cross-border restructuring efforts • It would also create significantly more opportunities for distressed investors • Harmonization would reduce the need to account for country-specific legal complexities

Table 16: Summary - Interview K

Appendix M: Interview L

Occupation: Director at FTI-Andersch

CW	How many years of professional experience do you have in the distressed environment?
L	10+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
L	<ul style="list-style-type: none"> • There are definitely more zombie companies in the market • This is especially noticeable in the manufacturing sector and among automotive suppliers • A key issue is the rise in leverage across many companies • Debt levels increased significantly because money was essentially free, especially starting in 2020 • During and before the COVID period, company earnings rose, which allowed for even more borrowing • Observing that companies now often entering insolvencies the second or even third time • As a result, leverage ratios became unsustainably high across many firms
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
L	<ul style="list-style-type: none"> • Over the past years, Germany has faced multiple crises including energy shocks, supply chain disruptions, climate-related issues, and rising interest rates • New pressure points include rising wages and tariff agreements that are becoming increasingly difficult for companies to manage • Labor protections are legally prioritized in Germany, which increases fixed costs and limits flexibility for employers • Industry-wide wage agreements (Flächentarifverträge) are particularly challenging for struggling firms • COVID-related loans now need to be repaid, and repayment demands are starting to surface • Many companies are facing liquidity pressure because credit lines granted during the pandemic were often too generous, and repayment burdens are now becoming significant in connection with interest
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
L	<ul style="list-style-type: none"> • A major strength of the InsO is that it allows companies to exit long-term contractual obligations and eliminate future claims • The German insolvency system is highly developed and offers a range of effective tools • The stigma around insolvency is not as severe as often portrayed • In fact, InsO can be a highly effective tool for a fresh start if the business model remains viable in the long term
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
L	<ul style="list-style-type: none"> • StaRUG can be helpful when creditor committees fail to reach consensus, as it allows the exclusion of blocking minority creditors

	<ul style="list-style-type: none"> • This provides a valuable pressure tool to prevent small creditors from obstructing restructuring efforts • In certain situations, such as with long-term lease obligations for companies like Galeria that operated as zombies for an extended time, it would have been beneficial to cancel such contracts during the StaRUG process • However, current legal restrictions prevent operational measures like lease termination under StaRUG, limiting its full potential
CW	Which stakeholder groups are typically the most challenging to deal with in a restructuring process, and why?
L	<ul style="list-style-type: none"> • It always depends on who the main interest driver is in the specific situation • In the automotive supplier sector, the most influential and challenging stakeholders are often the key customers due to strong concentration risk with just two or three major clients • In other industries, employee representatives are often difficult to manage, especially when workforce reductions are involved • Most frequently, however, the biggest challenges come from the financiers • This is often due to unclear or insecure collateral positions, which lead to conflicts and resistance during restructuring
CW	As an advisor, can you tell whether a company is private equity-owned or still family-owned, and what are the main differences in how they approach restructuring?
L	<ul style="list-style-type: none"> • The key difference often depends on whether the company has prior crisis experience • Many private equity firms, especially "sunshine PE" types, lack hands-on restructuring experience • Exceptions include firms like Aurelius, Mutares, and HFO that specialize in distressed situations • Most current PE partners took around 12 years to reach that level, meaning many have never been in decision-making roles during the last major crisis in 2008–09 • As a result, there is often a lack of internal restructuring know-how within PE-backed companies • These companies frequently rely on external advisors, CROs, or consultants to fill the gap • In family-owned businesses, the pattern is similar, but they tend to be more resistant to bringing in external help • Family owners usually try to manage the situation themselves, which leads to delays and often unnecessary asset sales just to maintain liquidity • Good CROs are rare and expensive, so many prefer to delay and rely on consulting support instead
CW	Would an increase in distressed investors be beneficial for the German restructuring market, and why or why not?
L	<ul style="list-style-type: none"> • Yes, more distressed investors would be welcome, especially those who understand the specific characteristics of the German market • Knowledge of German laws and regulations is essential, as the system is highly structured and differs significantly from Anglo-American models • International investors often lack this understanding, which makes their involvement in German distressed situations less effective • This lack of familiarity frequently leads to operational mistakes and strategic missteps during the restructuring process • Local expertise and legal know-how are critical for successful outcomes in the German distressed market
CW	What changes could be made to make the German market more attractive for distressed investors?
L	<ul style="list-style-type: none"> • The German market could become more attractive for distressed investors by combining symbolic €1 acquisitions with financial incentives • In the US, tax breaks and accelerated depreciation allowances are commonly used to stimulate investment in distressed assets • Similar investment-related tax incentives could be introduced in Germany to reward risk-taking and capital deployment • At the end of the day, distressed investors are profit-driven and respond to monetary incentives • Policymakers should focus on creating financial levers that make distressed investing more rewarding in Germany
CW	What are possible drivers to improve the current German system?
L	<ul style="list-style-type: none"> • One major lever is education and awareness-building across management levels

	<ul style="list-style-type: none"> • Active training sessions or workshops, for example through chambers of commerce (IHK), could help managers understand how to act in crisis situations • It may sound basic, but this kind of practical education is highly underestimated and rarely implemented • Key questions include: When is the right moment to intervene? What are the legal and strategic responsibilities? • Ultimately, it's up to the board or executive management to decide when to take action, and many lack the knowledge or confidence to act early
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Table 17: Summary - Interview L

Appendix N: Interview M

Occupation: Partner for Germany at Noerr, specialized in M&A and restructuring

CW	How many years of professional experience do you have in the distressed environment?
M	25+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?
M	<ul style="list-style-type: none"> • Clear increase in insolvencies over recent years • Many companies entering insolvency are already asset-light, due to pre-insolvency actions like sale-and-lease-back • This trend is particularly evident in the automotive supplier sector • The asset-light structure makes it extremely difficult to find buyers during insolvency • Banks have become very cautious with turnaround financing, especially for business models under stress • Currently, banks only offer “bridge-to-M&A” financing — temporary funding until a buyer is found • However, in many cases (especially automotive), there are no buyers, so the bridge financing fails to serve its purpose • As a result, many companies fall through the cracks and end up in insolvency despite efforts to avoid it
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
M	<ul style="list-style-type: none"> • High interest rates are a financial burden for many companies • Supply chain disruptions continue to affect operations and planning • Tariffs are expected to become a significant issue, though their full impact is still ahead • Political uncertainty and lack of clarity in government policy contribute to a hesitant investment climate and strategic indecision
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
M	<ul style="list-style-type: none"> • Stigma around insolvency remains a major barrier to early action • In principle, InsO provides a solid and effective legal framework • Companies tend to delay filing too long, which often worsens the situation • Once insolvency becomes public, stakeholders react harshly — suppliers switch to prepayment, liquidity dries up • The negative consequences of regular insolvency proceedings (e.g., loss of trust, cash pressure) are often too severe • On the positive side, the creditors' committee provides strong oversight and balances stakeholder interests effectively
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
M	<ul style="list-style-type: none"> • StaRUG is a useful tool, but it has clear limitations • Primarily helps with financial restructuring, not operational measures

	<ul style="list-style-type: none"> • No authority to interfere with shareholder rights, which limits impact • Using StaRUG to lay off staff in cases of only imminent illiquidity would be excessive • Lease adjustments might be reasonable under strict conditions • The VARTA case sparked a heavy debate about protecting minority shareholders during StaRUG proceedings • Opinion: such protection shouldn't block restructuring — the broader recovery must take priority • Important to ensure no stakeholder ends up worse off than they would in formal insolvency
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
M	<ul style="list-style-type: none"> • Chapter 11 is a comprehensive creditor process, while StaRUG addresses individual creditor groups • StaRUG allows for more targeted and flexible interventions in specific areas • The stigma around restructuring is much stronger in Germany • This difference is largely due to cultural attitudes toward failure and insolvency
CW	How do you assess the expertise of judges in insolvency and restructuring proceedings?
M	<ul style="list-style-type: none"> • Many local court judges (Amtsrichter) lack sufficient knowledge and experience in restructuring law • Proposal: establish 3 specialized insolvency courts per federal state to ensure consistency and build expertise • Benefit: having the same judges regularly handle cases would improve quality and predictability • Main obstacle: Amtsgerichte resist giving up control, making reform difficult to implement • Overall, there is a clear need for specialization and consistency in judicial handling of complex restructuring matters
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
M	<ul style="list-style-type: none"> • In some cases, there is still nepotism and favoritism in administrator appointments • Much depends on the attitude of the presiding judge • Older generations of judges often stick to a fixed internal list and resist outside input • Younger judges are more open, engage with advisors and lawyers, and seek exchange • The situation is slowly improving, but inconsistencies in selection remain an issue
CW	What are possible drivers to improve the current German system?
M	<ul style="list-style-type: none"> • Investors often wait for formal insolvency to avoid assuming full liabilities in out-of-court deals • Sellers bear significant legal risks when selling to distressed investors pre-insolvency • One major issue: sellers remain liable for clawbacks (e.g. shareholder loans) even long after the transaction • If the buyer (e.g. a PE fund) triggers a payout from the target, the seller may face personal liability • These risks cannot be fully insured or contractually waived, making transactions unattractive • Germany has one of the earliest insolvency filing triggers in Europe due to over-indebtedness rules • The legal consequences of missing a filing are severe: criminal liability, payment bans, and director personal exposure • These factors discourage early engagement and limit options for pre-insolvency turnarounds

Table 18: Summary - Interview M

Appendix O: Interview N

Occupation: Senior Associate at White & Case LLP, specialized in restructuring and M&A

CW	How many years of professional experience do you have in the distressed environment?
N	5+ years
CW	Do you observe a rise in insolvencies and zombie companies in Germany, and which sectors are most affected?

N	<ul style="list-style-type: none"> • Insolvencies have clearly increased, particularly since the easing of pandemic-era support measures • A significant number of "zombie companies", firms kept alive through cheap capital or delayed restructuring, are now reaching a tipping point • The rise is especially visible in sectors with high fixed costs or cyclical demand, such as • Retail: Notably fashion and consumer electronics, burdened by changing demand and online competition • Automotive Suppliers: Especially those lacking EV transition strategies and confront more competition from China • Industrial Manufacturing: Facing global supply chain challenges and energy costs • Experts also note that repeat insolvencies are becoming more common.
CW	What macroeconomic trends and geopolitical factors do you see as the most influential drivers of corporate distress in Germany today?
N	<ul style="list-style-type: none"> • Rising interest rates continue to strain liquidity, especially for companies with high leverage or expiring low-interest debt structures • Energy and raw material costs remain elevated, putting pressure on manufacturing-heavy sectors and reducing margins • The lingering effects of the Ukraine war contribute to supply chain disruptions and uncertainty in Eastern European trade routes • Global protectionism is on the rise: • U.S. and China-related tariffs are creating planning difficulties for export-oriented firms • Uncertainty around EU climate and trade policy is adding regulatory risk • Labor shortages and wage pressures are structural challenges, particularly in logistics, healthcare, and skilled industrial roles • There's a general investment hesitation due to economic volatility - many firms are delaying CAPEX and transformation projects
CW	In your view, what are the main strengths and weaknesses of the current German Insolvency Code (InsO)?
N	<ul style="list-style-type: none"> • Structured and predictable legal framework, providing clarity and security for creditors and stakeholders • The system allows for asset preservation via transferred restructurings (übertragende Sanierung), which works efficiently in many cases • Creditor protection is strong, aligning with principles of fairness and liability, especially in large-scale insolvencies • For complex cases, experienced insolvency administrators and courts often handle proceedings professionally and reliably • Debtor participation is limited, once proceedings begin, control is typically shifted entirely to administrators • Insolvency still carries a social and commercial stigma, discouraging early filing or open communication with stakeholders • The lack of flexibility in operational restructuring—like adjusting labor contracts or long-term lease obligations—limits strategic options pre-insolvency
CW	How effective has the StaRUG been in facilitating pre-insolvency restructuring since its implementation?
N	<ul style="list-style-type: none"> • Rarely applied in practice so far • Mostly used as a negotiation tool, not as a formal process • Too costly for many SMEs due to legal and advisory fees • Lacks operational tools like contract or workforce adjustments • Still suffers from insolvency-related stigma • Some see it as a step in the right direction, but limited in real-world impact
CW	How familiar are you with the U.S. Chapter 11 process, and how would you compare it to the German restructuring framework?
N	<ul style="list-style-type: none"> • U.S. system is seen as more flexible and debtor-friendly • Chapter 11 prioritizes business continuation, unlike the creditor-focused German approach • Allows operational restructuring, including contract terminations

	<ul style="list-style-type: none"> Cultural acceptance of restructuring is stronger in the U.S., making Chapter 11 a more strategic tool
CW	What do you think about the DIP mechanism?
N	<ul style="list-style-type: none"> Generally viewed as a useful tool if executed properly Keeps management in place, which can support continuity Success depends heavily on the quality and credibility of management Can lead to conflicts of interest, especially with PE-backed firms
CW	What is your view on the insolvency administrator landscape, and where do you see room for improvement?
N	<ul style="list-style-type: none"> Administrators in large cases are generally well-qualified In smaller cases, selection often seen as political or relationship-based The courts are often the bigger issue, as they tend to lack restructuring expertise and are frequently unfamiliar with the specific industry sectors involved.
CW	Are there currently enough interested investors in the German market? If not, what are the reasons for the lack of activity?
N	<ul style="list-style-type: none"> Investor interest exists but is highly selective, more are always good Many assets on the market are seen as unattractive or non-viable Distressed investors often face legal complexity and regulatory hurdles German restructuring law is difficult to navigate for international investors Cultural factors and risk aversion further reduce investor appetite Market uncertainty and weak returns lead many investors to stay on the sidelines
CW	What are possible drivers to improve the current German system?
N	<ul style="list-style-type: none"> Simplify legal and regulatory framework, especially for loan and asset transfers Allow termination of long-term obligations outside formal insolvency Improve court expertise in restructuring and commercial law Encourage broader use of StaRUG through cost reduction and awareness Foster a more open culture around failure and turnaround Support the entry of specialized distressed investors through legal clarity and market incentives

Table 19: Summary - Interview N

Appendix P:

Expert	Years of Professional Exp.	Level	Sector	Insolvency Rise	Tariffs are a big concern	High Amount of Zombies in the market	Critiques the InsO	Critiques the StaRUG	StaRUG is Rather Ineffective	StaRUG is a Threat Tool	Long-Term Obligations are a Problem	Including Contract Termination in StaRUG is Difficult	Critiques the Insolvency Administrator or System	Judges Not Qualified Enough	Distress has a Negative Stigma	Inflexibility Roots in Culture	Lack of Distressed Investors	More Distressed Investors Needed	International Investors Struggle with Law
A	10+	Director	Consulting	1	0	1	1	1	1	1	1	0	1	0	1	1	1	1	1
B	20+	Managing Partner	Private Equity	1	1	1	1	1	0	1	1	0	1	0	1	1	1	1	0
C	15+	Managing Director	M&A	1	1	1	1	1	1	1	1	0	0	0	1	1	1	1	0
D	5+	Senior Associate	Legal	1	1	1	0	1	1	1	1	0	0	0	1	1	1	1	1
E	20+	Professor and academic researcher	University	1	1	1	0	1	0	0	1	1	1	0	0	0	0	0	0
F	30+	Managing Partner	Private Equity	1	1	1	1	1	0	1	1	1	0	1	1	1	0	0	0
G	30+	Managing Partner	Private Equity	1	1	1	1	1	0	1	1	1	0	0	1	1	0	0	1
H	15+	Managing Director	M&A	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
I	30+	Managing Partner	Legal	1	1	1	0	1	0	1	1	1	0	1	1	1	1	1	1
J	30+	Managing Partner	Consulting	1	1	1	0	1	1	1	1	1	0	1	1	1	1	1	1
K	20+	Head of Risk Management	Banking	1	1	1	0	1	1	1	1	1	0	0	1	0	0	0	1
L	10+	Director	Consulting	1	1	1	0	1	0	1	1	1	0	0	1	1	1	1	1
M	30+	Managing Partner	Legal	1	1	1	0	0	0	0	1	1	1	1	1	1	0	0	1
N	5+	Senior Associate	Legal	1	1	1	0	1	1	1	1	1	0	1	1	0	1	1	1

Table 20: Quantified informations shown with dummy variables with redesigned questions from the interviews