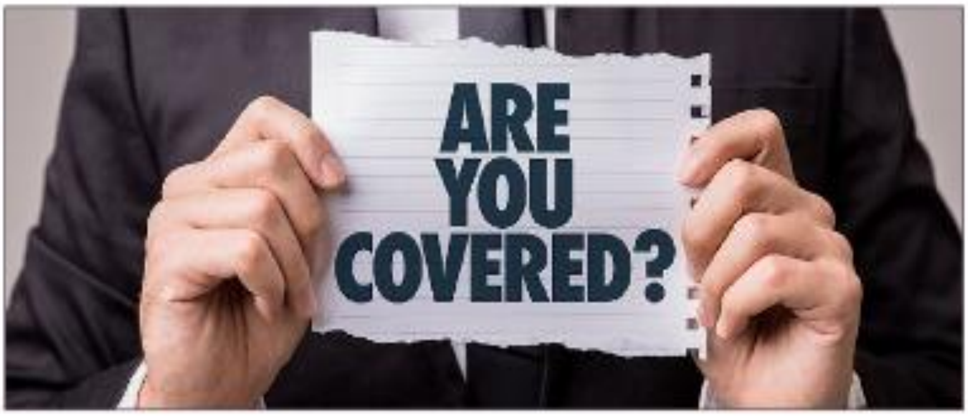
New Court Decision Changes Rules for Going Concerns in Germany

By Oliver Biernat



In a 2017 decision of the German Federal Court of Justice (BGH), the German rules for using going concern or liquidation values in a company's financial statements have been re-interpreted. Following this decision, it is no longer allowed to use going concern values when there is a threat of insolvency (e.g. over-indebtedness, illiquidity or imminent illiquidity). Exceptions are possible if:

- a credible insolvency plan for continuation is presented,
- a reorganising take-over is intended within the next 12 months or
- it is expected that the company can carry on with its business after opening insolvency procedures for at least 12 months after the balance-sheet date.

Violations may raise personal liability issues for the legal representative of the company. Tax advisors that prepare annual financial statements must now not only inform and warn their clients if there is a threat of insolvency but also make their own judgement if the assumptions of the client are plausible in order to prevent a liability of their own. If they think they are not plausible they must insist on using liquidation values.

The court's decision is in contrast to the prevailing view in the literature and the Institute of Chartered Accountants in Germany, where going concern is generally accepted as long as the company is expected to carry on with its business. It is recommended that if you wish to avoid personal liability, you should consult with an insolvency expert.

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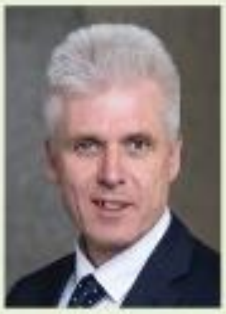

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