



Anteilserwerb zur Sanierung (German Edition)

Janine Appel, Oliver Krause

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Studienarbeit aus dem Jahr 2005 im Fachbereich Jura - Zivilrecht / Handelsrecht, Gesellschaftsrecht, Kartellrecht, Wirtschaftsrecht, Note: 1,0, Fachhochschule Trier - Umwelt-Campus, Standort Birkenfeld, Veranstaltung: Seminar Gesellschaftsrecht, 27 Quellen im Literaturverzeichnis, Sprache: Deutsch, Abstract: Ausgangspunkt für die Notwendigkeit des Sanierungsprivilegs war die Helaba- Sonnenring- Entscheidung des BGH aus dem Jahre 1981. 1 Eine Bank gewährte einem Bauunternehmen über Jahre hinweg Kredite, um deren Bauvorhaben zu unterstützen. Als das Unternehmen in Zahlungsschwierigkeiten geriet, trat es aufgrund einer vertraglichen Vereinbarung seine überwiegenden Anteile an eine 100 prozentige Tochtergesellschaft der Bank ab. Die Bank gewährte anschließend weitere Darlehen. Der BGH entschied nunmehr, dass die Darlehen der Bank als Eigenkapital zu qualifizieren seien und erteilte damit sowohl einer Sonderstellung der Banken, als auch einem gesamten Sanierungsprivileg auf Grundlage der Eigenkapitalersatzregeln, endgültig eine Absage. 2

Diese Rechtsprechung wurde in den Jahren danach zwar akzeptiert, aber als sanierungsfeindlich angesehen. Stimmen wurden laut, welche vom Gesetzgeber die Normierung eines Sanierungsprivilegs 3 oder gar die Streichung der Kapitalersatzregeln verlangten. 4 Der Gesetzgeber gab dem Druck der Literatur nach und fügte über Art. 10 Nr. 2 KonTraG 5 ein Sanierungsprivileg in den § 32 a III GmbHG ein. Die Norm erlangte Gültigkeit mit dem Zeitpunkt des Inkrafttretens des Gesetzes am 01. 05. 1998.

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