

CENTRAL AND EASTERN EUROPE

Insolvency & Restructuring

Survey | 2018



Financial distress and insolvency continue to be major risk factors for businesses. Company owners, managers and other executive staff have to be aware of these risks and the implications of business partners facing insolvency. Only then are they able to make the right decisions well in advance, to secure the interests of their businesses and – ideally – find themselves in a position that is legally safe but at the same time more favourable than unprepared and unsecured creditors in insolvency proceedings.

A serious challenge for businesses operating cross-border is that insolvency laws still vary considerably between different states, even within the European Union (EU) and despite the EU having intensified processes aimed at an increased degree of harmonization between the insolvency laws of member states. The EU Insolvency Regulation, in effect since 2002, was certainly a significant step forward in offering a certain degree of harmonization and legal certainty. However, it was never the aim of the Regulation to harmonize member states' insolvency laws. What is more, though directly applicable in each member state, the Regulation is not necessarily interpreted and applied in the same way by all member states. This situation will not necessarily change under the amended EU Insolvency Regulation (Recast) that came into effect in mid-2017. Courts, insolvency practitioners and businesses are still in the process of familiarizing themselves with the changes brought about by the Regulation-Recast, including completely new tools such as coordinated proceedings for insolvent companies belonging to the same group.

This Survey focuses on Central and Eastern Europe (CEE) a region with a comparably recent history of a free market economy where insolvency proceedings are widely accepted as an instrument either to liquidate a debtor in orderly proceedings or to help rescue the company and allow it to continue business. In the wake of the financial crisis since 2008 many countries in CEE have reacted to the need to modernize their legal framework for insolvencies and have amended or even completely re-enacted their insolvency and related laws. We can certainly also expect more and significant changes to local (national) laws in CEE, once the competent EU bodies have finalized their current deliberations and have approved the new EU Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

The first edition of this Survey was released in 2015. Since then, we have received ample feedback from our respected readers, for which we are immensely grateful. This feedback was not only motivating but also proved valuable when preparing this second edition of the Survey. Our aim remains the same: to provide a useful overview of the rapidly changing legal framework for insolvencies in CEE, to help decision makers get a sense of the impact of insolvencies in CEE jurisdictions and thus enable them to take the right decisions at an early stage, including the decision to consult insolvency experts to help secure their interests.

Sincerely,
Frank Heemann

Note that this Survey was prepared based on laws in effect on 30 April 2018. Later changes are not reflected. Note also that, despite having been prepared diligently, this Survey and the information in it are not to be understood as legal advice, which should be sought from an insolvency specialist for each specific case.



Frank Heemann
Attorney-at-law
(Rechtsanwalt) LL.M.
(UCT)

Co-Head of the bnt
Insolvency & Restructur-
ing practice group

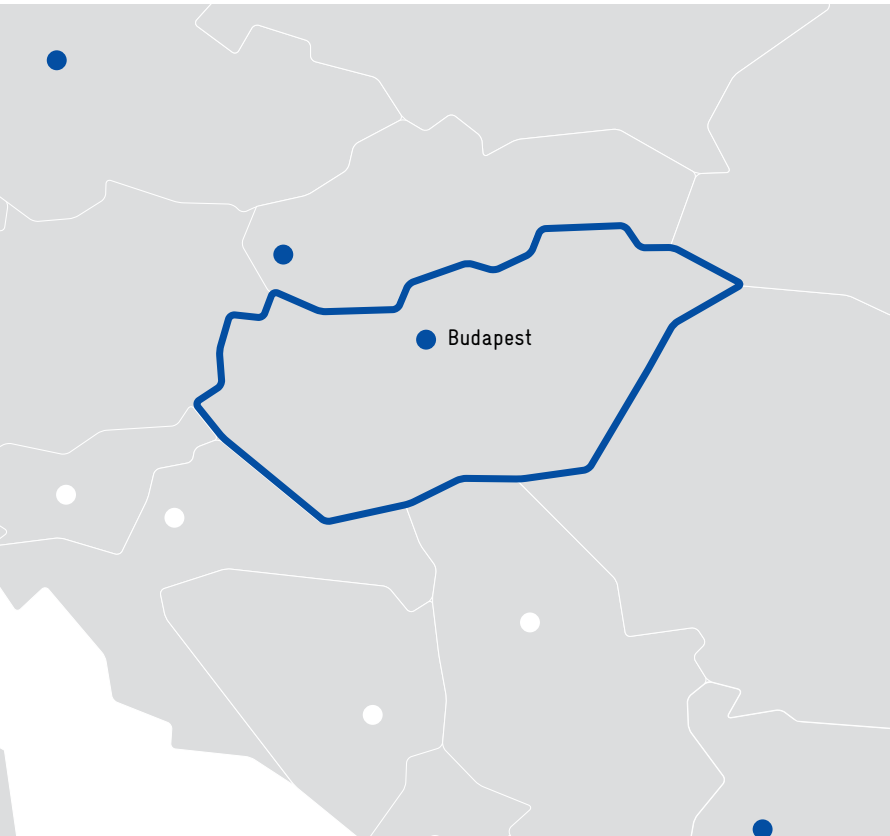
¹ Except for Denmark

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Hungary

bnt ügyvédi iroda
Stefánia út 101-103.
H - 1143 Budapest



YOUR CONTACT

dr. Gábor Jánoshalmi
Associated Partner

T +361 413 3400
gabor.janoshalmi@bnt.eu

› 1. General information

1.1. General types of insolvency proceedings for companies

- Bankruptcy proceedings (generally aimed at liquidation of companies)
- Restructuring proceedings (aimed at rescue of companies).

1.2. Debtor in possession (self-administration)

- Bankruptcy proceedings: no legal possibility of a debtor in possession.
- Restructuring proceedings: management is not dismissed as a main rule (but they might be under certain circumstances); a court-appointed administrator supervises/assists company management and oversees preparation of a restructuring plan and settlement between debtor and creditors. The administrator approves the debtor's financial commitments and may contest these at its discretion. The administrator ranks the creditors. The debtor retains possession and ownership and control of its properties.

1.3. Insolvency register

- No national register in operation.
- The opening of proceedings is announced in the Corporate Gazette (in Hungarian "Cégek közlöny" - only available in Hungarian).
- Added to the name of the enterprise is the suffix "f.a." ("in bankruptcy") or "cs.a." ("under restructuring").

1.4. Competent court for opening bankruptcy and restructuring proceedings

- Regional court (Törvényszék) where the debtor's seat is located.

1.5. Average duration of proceedings

- Restructuring proceedings:
 - 702 restructuring proceedings have been initiated since 2008 (before then it was impossible to obtain a moratorium due to

different legal framework)

- No official statistics available on duration or success rate; the technical maximum duration is 365 days from opening proceedings.

• Bankruptcy proceedings:

- No official data available on average duration of proceedings; the technical maximum duration is 2 years; this may be exceeded with court approval in some cases.

1.6. Approximate satisfaction rate of bankruptcy proceedings

- No official statistics available on satisfaction rate.
- In general secured creditors have a greater chance of their claims being satisfied.

› 2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors.
- Manager of the debtor or other person authorised under founding documents.
- Liquidator.

2.2. Grounds for filing a petition

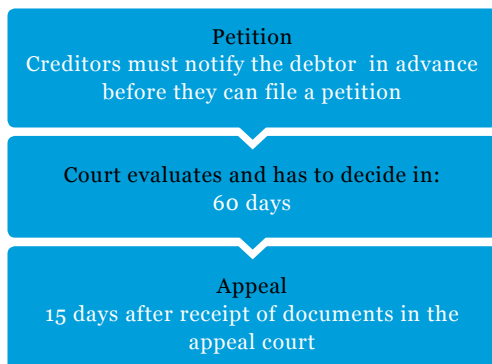
- Restructuring proceedings were not successful (debtor fails to fulfil payment obligations in restructuring settlement).
- Failure to restore lawful operation of the enterprise despite the court of registry's request, where the enterprise has assets.
- The enterprise fails to pay a fine imposed in criminal proceedings.

- The enterprise fails to pay due claims by creditors (amount of claim must be over HUF 200 000 – without interest – ca. € 645).

2.3. Grounds for opening bankruptcy proceedings

- The debtor fails to settle or contest previously uncontested and acknowledged contractual debts within twenty days of the due date, and fails to satisfy a debt upon receipt of a creditor's written payment notice, or
- The debtor fails to settle a debt within the deadline specified in a final court decision or order for payment, or
- An enforcement procedure against the debtor was unsuccessful, or
- The debtor did not fulfil a payment obligation as set in a composition agreement in restructuring or bankruptcy proceedings, or
- The court has declared previous restructuring proceedings terminated or
- The debtor's liabilities in proceedings initiated by the debtor or by the liquidator exceed the debtor's assets.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court issues a decision to open bankruptcy proceedings:
 - court appoints insolvency practitioner (IP)

- debtor's management does not lose their powers; powers might be limited if a preliminary administrator is appointed

- Decision to open bankruptcy proceedings comes into effect:

- debtor's management loses its powers
- IP takes over management of the debtor, assets and documents
- creditors have 40 days to file claims (claims filed between 40 and 180 days are treated as subordinated; claims filed after 180 days are not registered)
- IP submits draft administration expenses budget for court approval
- financial obligations including set-offs are prohibited
- calculation of interest, penalties and other mandatory payments is suspended

2.6. Persons obliged to file for bankruptcy

- Manager of the debtor or other person authorised under founding documents immediately after the debtor becomes insolvent and the shareholders did not take action necessary to restore the solvency of the debtor.
- During a voluntary company winding-up, the appointed liquidator immediately after it becomes evident that the company would not be able to pay off its creditors.

2.7. Sanctions for not filing for bankruptcy in time

- Civil liability – compensation of damages incurred by the debtor and its creditors.
- Other – manager of the debtor might be prohibited from holding a post as manager, member of board of directors or supervisors for 5 years.
- No criminal liability for (late) filing, but for other insolvency-related management conduct (e.g.: fraudulent bankruptcy).

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints an insolvency practitioner – called a liquidator in these proceedings – usually based on random electronic selection with special software.
- The court may overrule random selection on grounds detailed in the reasoning of its decision (mostly because of the requirement for special knowledge by the liquidator).
- For insolvency proceedings of financial institutions, insurance companies and other privileged companies based on cabinet decision, a state-owned liquidator might be appointed.

2.9. Ethical standards for insolvency practitioners

- There is no statutory code of conduct but the professional organization of insolvency practitioners (www.foe.hu) has drafted a uniform code of conduct to foster application of ethical norms in the operation of insolvency administrators. Membership in the organization is not obligatory.

2.10. Time for lodging creditors' claims, consequences of failure

- Deadline is set by law.
- Creditors may lodge their claims within 40 days from publication of the opening of the proceedings in the Corporate Gazette.
- If a creditor misses this deadline, a claim may still be lodged within 180 days from the commencement date but will only be satisfied if the remaining assets suffice after satisfaction of other registered creditors.
- No claims may be lodged after expiry of the 180-day deadline.
- Claims arising during the bankruptcy proceedings may be lodged within 40/180 days following the date when the claim falls due under the legal consequences as above.
- Consequences of not filing a claim: non-recognition of claim, no participation in proceedings.

2.11. Costs of filing claims

- Payment of a fee amounting to 1% of the capital sum claimed at a minimum of approx. € 16 (HUF 5 000) and capped at approx. € 645 (HUF 200 000).

2.12. Administration costs

- The fixed costs of ordinary proceedings amount to 5% of the whole sum of the value of assets sold in the course of bankruptcy and proceeds from claims – arising at the time of opening of bankruptcy proceedings – recovered, but not less than approx. € 970 (HUF 300 000). If the debtor continues operating during the bankruptcy procedure, 2 % of sales revenues arising can be taken into account as a fee. In the case of a settlement, the basis of the fee is 5 % of the value of the assets included in the settlement.
- The fee amounts to approx. € 970 (HUF 300 000) in simplified proceedings.

3. Ranking of claims / creditors

3.1. Secured creditors

- Paid first of all from proceeds of realizing security but only after contributing to administration costs arising from the sale.
- Pledged / mortgaged property must usually be sold at public auction.

3.2. Unsecured creditors

- Settled proportionately within their respective rank. Lower ranking claims only satisfied after all higher ranking claims are fully satisfied.

3.3. Employees

- Claims by employees constitute the first category of unsecured creditors.
- If employees' claims are not satisfied, the state reimburses these if the enterprise in bankruptcy complies with provisions of the Wage Guarantee Fund.

3.4. Nullifying contracts

- The liquidator may terminate with immediate effect contracts concluded by the debtor or rescind the contract if neither of the parties rendered services. Any claim due to the other party may be enforced by notifying the liquidator within forty days from the date when the rescission or termination was communicated.
- A creditor and the liquidator may file for legal action before the court within 90 days from gaining knowledge or within a 1-year forfeit deadline from the date of publication of the notice of liquidation to contest:
 - contracts concluded by the debtor within 5 years before the date when the court received a petition to open liquidation proceedings or thereafter, or other commitments if intended to conceal the debtor's assets or to defraud any creditor or all creditors and the other party had or should have known of that intent;
 - contracts concluded by the debtor within two years before the date when the court received a petition to open liquidation proceedings or thereafter, or other commitments if intended to transfer the debtor's assets without compensation or to undertake a commitment to encumber any part of the debtor's assets, or if the stated consideration constitutes unreasonable and extensive benefits to a third party;
 - contracts concluded by the debtor within 90 days before the date when the court received a petition to open liquidation proceedings or thereafter, or other commitments if intended to give preference and privileges to any one creditor, e.g. amending an existing contract to the benefit of a creditor, or providing financial collateral to a creditor that does not have any.

4. Restructuring proceedings (aiming at rescuing debtor)

4.1. Preconditions for restructuring

- If the debtor is in financial difficulty: unable to settle its debt (debts) or is expected to fail its liabilities on the date due:
 - the debtor may file for restructuring in a court of law; legal representation is mandatory
 - the debtor may not file a petition for restructuring if already adjudicated in restructuring, or if a request for bankruptcy has been filed and a decision has already been adopted in the first instance for the debtor's liquidation
 - activities of the debtor do not cease

4.2. Stages

- Initiating restructuring proceedings by filing a petition and additional necessary documents.
- The court orders a payment moratorium of 120 days and the opening of proceedings automatically within 1 business day.
- Decision published in the Corporate Gazette .
- Appointment of IP.
- Filing of creditors' claims. Costs of filing claims: Payment of a fee amounting to 1% of the sum claimed at a minimum of approx. € 16 (HUF 5 000) and capped at approx. € 320 (HUF 100 000).
- Confirmation of claims by the administrator.
- Negotiations with creditors' meeting on contents of restructuring settlement.
- Confirmation of settlement by the creditors' meeting (at least the majority counted from the total amount of creditors' claims approved by the court in both secured and unsecured groups of creditors).

- Confirmation of settlement by the court.
- Satisfaction of creditors' claims in accordance with the settlement.

4.3. Restructuring plan

- List of creditors taking part in the settlement, their category, amount of claims, number of votes.
- Accepted debt assessment and restructuring plan, method of execution and supervision.
- Possible modifications to payment deadlines, quitclaim statements and acceptance of claims, everything that creditors and/or the debtor consider necessary in order to settle the debt amount and re-establish and sustain liquidity.

4.4. Approval of restructuring plan

- Debtor's management body submits draft restructuring plan to debtor's shareholders.
- IP consults management during preparation of the plan.
- Upon shareholders' approval of draft plan, creditors are given draft restructuring plan and invited to a meeting aiming at negotiating and obtaining approval of the plan.
- Draft restructuring plan is approved if it gains more than 50 % of the votes among both secured and unsecured creditors.
- The approved draft restructuring plan is filed with the court for approval within 5 working days of voting.
- Court issues a decision within 15 working days from receipt of the restructuring plan; the decision to approve the draft plan is final and binding.

4.5. Filing a petition for restructuring proceedings

- Filing a petition is the competence of management.
- There is no statutory deadline for filing.

4.6. Main content of petition

- Basic data on the enterprise.
- Documentary evidence concerning prior approval of the decision making body to initiate the proceedings and notify employees.
- A financial statement of the enterprise not older than 3 months and written confirmation by management that the statement gives a realistic and reliable picture of the financial situation.
- A summary of changes in the financial situation after issue of the above financial statement.
- Any contracts regarding the company group (if the enterprise belongs to one).
- Basic information on claims against the enterprise and claims by the enterprise against others.
- Certificate of payment of fee payable by the debtor to start the proceedings.
- Payment service providers where the debtor has a current account, showing account numbers and the name of the investment firm where the debtor has a securities account.
- Declaration by management notifying payment service providers affected at the time of filing the petition for opening restructuring proceedings on having the petition filed.

4.7. Time for lodging creditors' claims, consequences of failure

- 30 days after publishing the decision on initiating restructuring proceedings.
- If the deadline is missed, claims are not part of the restructuring proceedings and not subject to restructuring settlement.
- Claims arising during insolvency proceedings may be lodged within 8 business days under the above legal consequences.

4.8. Selection of restructuring administrators

- Court appoints administrator.

- The administrator is appointed randomly by an electronic system (similarly to the liquidator - insolvency administrator).

4.9. Ethical standards for restructuring administrators

- Same requirements apply as for liquidators in bankruptcy proceedings.

4.10. Main rights of the creditors' meeting

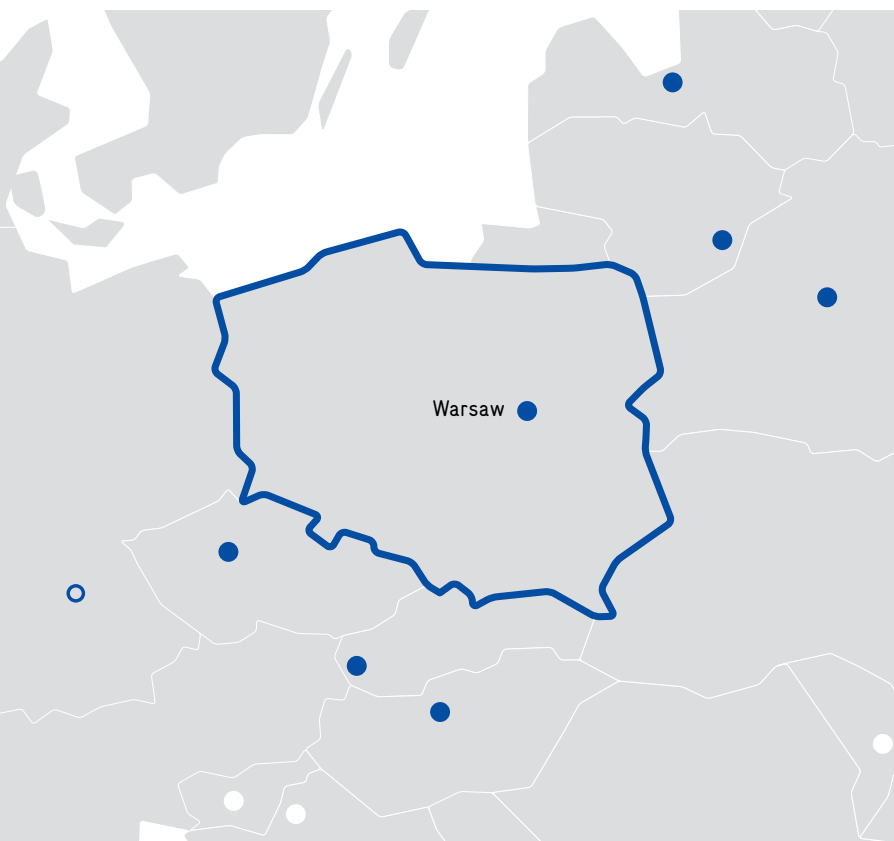
- Selects a committee of creditors and transfers specific rights to it.
- Approval of extensions of moratorium (extended moratorium is capped at 365 days).
- Approval of restructuring settlement and amendments.
- Application to the court to dismiss the administrator and appoint a new one.

4.11. Final proceedings

- If restructuring settlement is approved by creditors:
 - the court approves the restructuring settlement and the proceedings are terminated
 - decision is published in the Corporate Gazette if there are more than 100 creditors
 - the administrator loses their position
 - claims by creditors are paid by the enterprise under the settlement
 - claims arising after restructuring proceedings enforceable separately before the court
- If the settlement is not approved by creditors: the court declares the debtor is insolvent ex officio and orders bankruptcy proceedings.

Poland

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL-00 867 Warsaw



YOUR CONTACT

Jakub Woliński
Associate

T +48 22 373 65 50
jakub.wolinski@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Restructuring proceedings (aimed at rescue of companies).
- Bankruptcy proceedings (usually aimed at liquidation).
- Note: specific rules apply to some corporations e.g. banks, credit unions, insurance companies.

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; restructuring administrator supervises company management and oversees implementation of approved restructuring plan. The administrator may under certain conditions request dismissal of the management.
- Bankruptcy: the bankrupt loses the right of management and disposal of company assets.

1.3. Insolvency register

- There is no national insolvency register.
- Transparency ensured by:
 - affixes to company names “w upadłości likwidacyjnej” (“in insolvency”) or “w restrukturyzacji” (“under restructuring”)
 - changes regarding the name can be checked online via the National Court Register <https://ems.ms.gov.pl/krs/wyszukiwanie-podmiotu> (only available in Polish) or at Central Registration And Information on Business, online at: <https://prod.ceidg.gov.pl/> (available in Polish or English);
 - opening of proceedings published in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy) (CCG).

1.4. Competent court for opening bankruptcy and restructuring proceedings

- Regional court (Sąd Rejonowy) where the company is located.

1.5. Average duration of proceedings

- Restructuring proceedings:
 - no official statistics available
 - in 2016 a total of 230 restructuring cases were opened
- Bankruptcy proceedings:
 - in 2016 a total of 530 bankruptcy cases were opened
 - average duration of proceedings is 3 years

1.6. Approximate satisfaction rate of bankruptcy proceedings: 60%

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Entitled to file:
 - creditors
 - manager of the company or other person authorised under founding documents
 - liquidator
- Obligated to file:
 - insolvent company (within 30 days)

2.2. Grounds for filing a petition

- Company fails to pay salaries and other employment-related payments.
- Company fails to pay for goods or services on time and fulfil other monetary obligations.
- Company fails to pay taxes and other compulsory payments on time.

- Company has no assets or income from which debts could be recovered so the bailiff cannot enforce creditors' claims.

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent (i.e. does not meet its due obligations, the value of which exceeds the value of the assets on the balance sheet, for a period over 24 months).
- Company fails to pay salaries and other employment-related payments (according to court practice only when the company faces financial difficulties), where the delay in fulfilling liabilities is over 3 months or
- Company fails to discharge its liabilities or will not be able to discharge its liabilities in the future.
- The court cannot open bankruptcy proceedings while restructuring proceedings are in progress against the company.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court verifies whether a statutory condition exists to dismiss the petition and whether the debtor's assets will cover the costs of insolvency proceedings (an expert may be appointed to check this).

- Assets may be secured by e.g. appointment of (1) a temporary court supervisor (supervisor's consent is necessary for any transaction exceeding the scope of ordinary affairs) or (2) a compulsory supervisor (debtor loses the right to manage and dispose of assets).
- Decision to open bankruptcy proceedings comes into effect:
 - court appoints insolvency practitioner (IP) who is not active until decision comes into effect
 - company management is no longer in charge of company affairs (with some exceptions); IP takes over management of the company, assets and documents
 - IP liquidates assets to satisfy claims of approved creditors
 - court, administrative, as well as court and administrative proceedings in respect of the bankruptcy estate may be instituted and continued only or against the IP
 - creditors to file claims against debtor within deadline indicated by the court in its decision to open bankruptcy
 - financial obligations including set-offs are prohibited

2.6. Persons obliged to file for bankruptcy

- Manager of the company or other person authorised under founding documents – not later than 30 days after the company becomes insolvent.
- Liquidator of the company – not later than 30 days after it becomes evident that the company would not be able to pay off its creditors.

2.7. Sanctions for not filing for bankruptcy in time

- Civil liability of management board member or liquidator for damages due to late filing.
- Possible criminal prosecution.
- Ban on conducting commercial activity on

a person liable for improper filing or not filing at all for insolvency.

2.8. Appointment of insolvency practitioner (IP)

- Natural person holding a liquidator's licence or commercial partnership (company) – only if all partners bearing liability for partnership obligations without limitation with their whole property or members of the management board of the partnership (company) hold a liquidator's licence.
- IP licence granted by Minister of Justice to a person who meets all statutory requirements, i.e.:
 - knowledge of Polish sufficient to perform liquidator's duties;
 - higher education diploma with master's or equivalent degree obtained in a member state of the EU, Switzerland or an EFTA member state party to the EEA Agreement,
 - impeccable reputation;
 - managing – for at least 3 years in the 15 years before applying for a licence – property of an insolvent entity, its business or a part thereof in Poland, another member state of the EU, Switzerland or in an EFTA member state party to the EEA Agreement;
 - passed an exam before an examination board appointed by the Minister of Justice.

2.9. Ethical standards for insolvency practitioners

- There is no statutory Code of Conduct.
- The Polish National Chamber of Liquidators (www.izbasyndykow.pl), a voluntary association of liquidators, drafted a Code of Liquidators' Professional Ethics which is binding only on members of the Polish National Chamber of Liquidators.

2.10. Time for lodging creditors' claims, consequences of failure

- Deadline is set by court.

- Filing a claim after delay is possible if valid reason for delay can be shown.

- Consequences of not filing a claim: non-recognition of claim, no participation in proceedings.

2.11. Costs of filing claims

- Registering a claim in Polish insolvency proceedings is free of charge.
- Costs of insolvency proceedings resulting from delayed filing of a claim by a creditor to be borne by the creditor.

2.12. Administration costs

- Administration costs consist of liquidator's (administrator, supervisor) remuneration and expenses to be repaid.
- Initial remuneration set by the court at the request of the liquidator (administrator, supervisor).
- Final amount set by the court after confirmation by the judge-commissioner of the final report to be prepared by the trustee (administrator, supervisor).
- Liquidator (administrator, supervisor) entitled to advance payments towards remuneration.

> 3. Ranking of claims / creditors

3.1. Secured creditors

- Any creditor secured by mortgage, pledge, or transfer of ownership by way of security is entitled to priority (privileged satisfaction of claims out of secured assets).

3.2. Unsecured creditors

- Unsecured claims are divided into 4 categories.
- Claims may only be settled if all claims from preceding categories are settled.

- Within the same category claims are settled proportionally.

3.3. Employees

- Claims by employees for 3 years preceding announcement of insolvency are to be covered in the first category.
- Employees' claims are secured to a certain extent by the Guarantee Fund.

3.4. Nullifying contracts

- Some legal transactions are to be considered legally ineffective in relation to the bankruptcy estate if performed within the statutorily prescribed period (no longer than 1 year) before filing application for insolvency and if some other statutory conditions are fulfilled (in particular the transaction is undertaken by the debtor free of charge or value of benefit rendered by the debtor grossly exceeds value of mutual benefit received by the debtor).
- IP (administrator, supervisor) may apply to the court for a declaration that a given legal transaction by the debtor is ineffective towards creditors, if performed to creditors' detriment.

indicates that it may become insolvent in the near-term.

- May not be initiated if the effect of such proceedings would be a detriment to creditors or if the ruling on the declaration of bankruptcy against that company became valid.

4.3. Stages

- Initiation of restructuring by preparing and filing a statement on initiating restructuring proceedings together with necessary documents and declarations including a restructuring plan with grounds.
- After the statement is accepted by the court, the entrepreneur announces filing for restructuring proceedings in the CCG, at least in one national + one local newspaper.
- Entrepreneur enters information on initiating proceedings in the commercial register.
- Court appoints a supervisor with whom the entrepreneur must conclude an agreement for payment for court supervisor's duties.
- Meeting of creditors to be prepared and led by court supervisor.
- Adoption or rejection of restructuring settlement by creditors' meeting to be based on restructuring proposals as to the debtor's liabilities presented by the entrepreneur (debtor).
- Approval (or rejection) by the court of restructuring settlement.

4. Restructuring proceedings (aiming at rescuing company)

4.1. Types of restructuring proceedings:

- Proceedings for approval of plan.
- Accelerated arrangement proceedings.
- Arrangement proceedings.
- Remedial proceedings.

4.2. Preconditions for restructuring

- Applicable to an insolvent company unable to fulfil its due financial obligations (e.g. payment delay exceeds 3 months or the value of its obligations exceeds the value of company assets), or a company whose economic situation

4.4. Restructuring plan

- Description of the current status of the company.
- List of creditors and debtors of the company.
- Warranties and guarantees issued for the benefit of third parties.
- Information about cases where money claims are made against the company.
- Aims, duration and means of restructuring (conversion of claims into shares or stock

(“debt-equity swap”); modification, exchange or cancellation of a right securing a claim.

- Business plan (presentation of proposed future strategy).
- Estimated administrative costs.
- Satisfaction of claims (following the mandatory ranking of claims).

4.5. Approval of restructuring plan

- The court declines to approve a plan that infringes the law, in particular if it is clear that the plan will not be performed, which is presumed if the debtor fails to satisfy liabilities arising after the day of opening the restructuring proceedings.
- The court may decline to approve a plan whose conditions are clearly detrimental to the creditors who voted against the plan and lodged their reservations.
- In proceedings for approval of the plan or in accelerated arrangement proceedings, the court declines to approve a plan where the total sum of disputed receivable debts exceeds 15% of the total sum of receivable debts.
- The court discontinues restructuring proceedings if it finds that the plan has not been adopted due to lack of the required majority.
- The decision to approve the arrangement may be appealed but this must be lodged within 2 weeks.

4.6. Filing a petition for restructuring proceedings

- Petition should be filed within 30 days from the day on which grounds for declaration of bankruptcy arose.
- Management body applies for restructuring proceedings.
- The best solution is to file for restructuring and bankruptcy at the same time, thus avoiding the risk of late filing for bankruptcy if the court declines to start company restructuring.

4.7. Main content of petition

- basic data on the entrepreneur (debtor)
- location of the debtor’s enterprise or other assets
- circumstances justifying the statement on initiating restructuring proceedings showing likelihood of positive outcome
- statutorily specified attachments and in particular:
 - current list of debtor’s assets, including their estimated value
 - list of creditors including statutorily required information
 - declaration confirming no circumstance due to which the proceedings would not be allowed
 - restructuring plan with grounds

4.8. Time for lodging creditors’ claims, consequences of failure

- Provisions on restructuring proceedings do not set a procedure for lodging creditors’ claims and in particular a deadline.
- Debtor must draw up list of creditors.
- Court informs creditors of the date of the creditors’ meeting convened to adopt the restructuring plan, along with proposals, information about division of creditors as to categories of interests and provides information about voting at the meeting.
- A creditor that was not notified of the meeting of creditors and that has not notified its claim at its own initiative is not bound by the restructuring settlement.

4.9. Selection of restructuring administrators

- Court appoints IP.
- Petitioner must propose an IP and submit their consent to appointment.

- Natural or legal persons can be IP.

4.10. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings.

4.11. Main rights of the creditors' meeting

- Selection of a committee of creditors and transfer to it of creditors' meeting rights.
- Approval of restructuring plan and amendments.
- Application to court to restrict functions of management bodies.
- Application to court to dismiss IP and appoint a new one.
- Approval of proposal by IP to terminate restructuring proceedings.

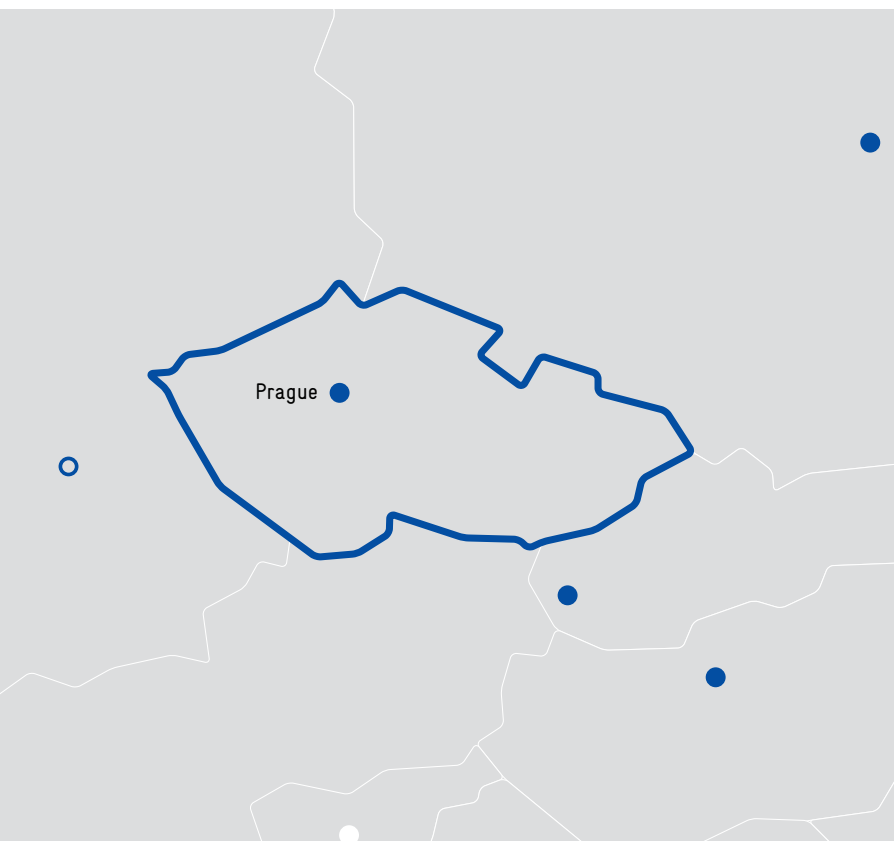
4.12. Final proceedings

- Claims by creditors are satisfied by the company according to the restructuring plan.
- The management body may manage and dispose of all assets in compliance with the restructuring plan and under supervision of the IP.
- Decision of the court to end restructuring proceedings terminates the proceedings.

Author: Jakub Woliński

Czech Republic

bnt attorneys-at-law s.r.o.
Slovanský dům (building B/C)
Na příkopě 859/22,
CZ - 110 00 Prague



YOUR CONTACT

Pavel Pravda
Partner

T +420 222 929 301
pavel.pravda@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Restructuring proceedings (aimed at company rescue).
- Bankruptcy proceedings (usually aimed at liquidation).
- Note: specific rules apply to some corporations (e.g. banks, credit unions, insurance companies).

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; insolvency practitioner supervises company management and oversees implementation of approved restructuring plan. The insolvency practitioner may under certain conditions request limitation of the debtor's right to dispose of assets

- Bankruptcy: no

1.3. Insolvency register

- For all insolvency proceedings (only available in Czech)
<https://isir.justice.cz/isir/common/index.do>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- District court (Krajský soud / in Prague: Městský soud) for region where debtor has registered seat or domicile.

1.5. Average duration of proceedings

- Restructuring proceedings:
 - out of insolvency proceedings terminated between 2008 and 2014 the average length of reorganization proceedings from filing an insolvency petition until approval of restructuring plan was 1 year and 1 month (the period from approval of restructuring plan until termination of reorganization proceedings differs based on the method of reorganization)

- Bankruptcy proceedings:

- average duration is 2 years (data based on insolvency proceedings terminated in the period 2008-2014)

1.6. Approximate satisfaction rate in bankruptcy proceedings

| Type of creditor | Ranking | Average satisfaction (%) |
|---|----------|--------------------------|
| Receivables against assets | 1st | 85.7 |
| Receivables set on same level as receivables against assets | 1st | 45.3 |
| Unsecured creditors | 2nd | 3.7 |
| Secured creditors | priority | 28.2 |

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors.
- Managing director of company or other person authorized under founding documents.
- Liquidator.

2.2. Grounds for filing a petition

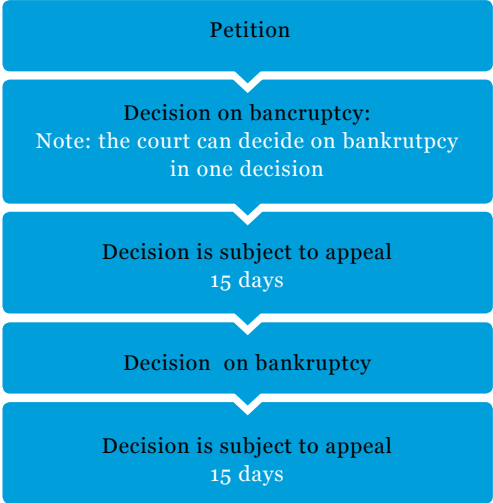
- Company is financially insolvent (platební neschopnost), i.e. having
 - at least two creditors,
 - financial obligations at least 30 days overdue and
 - unable to pay those obligations
- A statutory presumption of inability to pay financial obligation arises if:

- debtor stops payments for a substantial part of its financial liabilities, or defaults for over 3 months overdue, or
 - satisfaction of financial receivables due from the debtor may not be achieved by enforcing a decision or execution, or
 - debtor fails to comply with obligation to file lists (referred to in the insolvency act) imposed upon it by the insolvency court
- Debtor that is a legal entity or a natural person, i.e. an entrepreneur, is considered insolvent even if it simply has excess debts, i.e. is over-indebted. A debtor that has several creditors and its total due liabilities exceed the value of its property has excess debts and is over-indebted (předlužení).

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent (i.e. company financially insolvent or over-indebted), the court declares the company bankrupt and restructuring proceedings are excluded (i.e. bankruptcy proceedings are the only way to resolve the company's insolvency)

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Opening insolvency proceedings, i.e. publication of petition in the insolvency register:
 - receivables due from the debtor can be claimed only by lodging creditors' claims in the insolvency proceedings
 - no new security can be established over the debtor's assets (except for lender in regime under the insolvency act)
 - execution or enforcement against debtor's assets is prohibited
- On decision to declare bankruptcy:
 - company management loses its powers
 - insolvency practitioner (IP) takes over company management, assets and documents
 - all claims against the debtor (even those not already due) are now considered due
 - the debtor's orders and power of attorney are terminated
 - offsetting assets forming part of the debtor's assets is prohibited
 - judicial, administrative and other proceedings are suspended where the debtor is a party concerning rights and obligations relating to its assets or to be satisfied by those assets
 - IP can terminate a lease or sublease agreement after bankruptcy proceedings are opened
 - the counterparty to a lease or sublease agreement cannot terminate or withdraw from the agreement after bankruptcy proceedings are opened on the ground of the debtor's delay in paying rent or other issue that occurred before the bankruptcy proceedings or for deterioration of the debtor's property situation

2.6. Persons obliged to file for bankruptcy

- The statutory body of a company must file an insolvency petition immediately on becoming aware (or with due diligence could have become aware) of insolvency (bankruptcy).
- Liquidator of the company must file an insolvency petition immediately on becoming aware that the company is insolvent.

2.7. Sanctions for not filing for bankruptcy in time

- A person who violates their responsibility for filing an insolvency petition for the debtor is liable to creditors for damage caused by late (or non-) filing of a petition except on proof of having acted with the care of a prudent businessman.
- Criminal responsibility arises under the Criminal Code (law No 40/2009 Coll.) e.g. for fraud, damaging creditors, causing insolvency.

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints IP – usually chosen by procedure set by the day of registration of its seat or establishment in list of insolvency practitioners kept by the court.
- For companies with annual turnover over CZK 100 million, banks and financial institutions, only IPs with special permission can be appointed.

2.9. Ethical standards for IPs

- They must put the interests of creditors above their own interests.
- They operate independently and in line with insolvency law.
- There is no official code of ethical standards for IPs.

2.10. Time for lodging creditors' claims and consequences of failure

- A creditor can lodge a claim in insolvency proceedings from opening of the proceedings until the deadline set by the court in its deci-

sion on bankruptcy.

- Deadline set by court for lodging claims: not less than 30 days and not over 2 months from the insolvency court's decision on bankruptcy.
- Consequences of not filing a claim: non-recognition of claim, excluded from proceedings.

2.11. Costs of filing claims

- No stamp duties for filing a claim.
- A creditor filing an insolvency petition pays a sum to cover costs of the proceedings (€ 2 000 for petition against legal entity/entrepreneur and € 400 for petition against legal entity/non-entrepreneur or against a natural person).
- A deposit cannot be required from an employee of the debtor if the claim is job-related.

2.12. Administration costs

- Administration costs include remuneration payable to the IP as well as other administration costs (e.g. costs of managing assets: accounting, transportation, stationery and office supplies, legal services, storage, costs of expert report, employee salaries, taxes).
- Administration costs are remunerated before other expenses from the proceeds of company assets sold.

> 3. Ranking of claims / creditors

3.1. Secured creditors

- Secured creditors are paid first from the proceeds of realizing their security after deduction of legal and administrative costs.

3.2. Unsecured creditors

- Unsecured creditors are included in the lowest rank and settled proportionately.

3.3. Employees

- Job-related claims by employees are put on the same level with claims against the debtor's assets and are satisfied first.
- Employees may – if an insolvent employer is the debtor – ask the state to pay them their salaries for up to 3 months if conditions of the act on protection of employees are met.

3.4. Nullifying contracts

- The insolvency act differentiates between nullity and ineffectiveness.
- The insolvency court may check for nullity of contracts and legal deeds + is not bound by decisions of other courts or organs.
- A deed is ineffective if used by the debtor to lessen the possibility to satisfy creditors or if giving preferential treatment to one creditor at the expense of others.
- IP checks legal deeds entered into within at least 3 years before bankruptcy proceedings and brings actions to invalidate legal deeds of the company without adequate consideration and disadvantageous legal deeds and even within at least 5 years in the case of legal deeds that deliberately lessen the possibility to satisfy creditors.
- Persons affected by the ineffectiveness of a legal deed must refund the original payment or other fulfilment by the debtor to the debtor's assets (details according to the insolvency act)

- not already in liquidation
- not a trader in securities (special rules for bankruptcy of financial institutions and insurers = a special kind of reorganization)
- a business has yearly turnover over ca. €1.8 Mio. in the last business year or at least 50 employees. These requirements do not apply if the debtor presents a restructuring plan and an insolvency petition within 15 days after the decision on bankruptcy, in which case the restructuring plan must be approved by at least 50% secured + unsecured creditors

4.2. Stages

- Petition insolvency court for permission to reorganize within 10 days before first meeting of creditors after decision on bankruptcy.
- Insolvency court allows reorganization (if not, the matter continues as bankruptcy proceedings).
- Possible limitation of debtor's competence to act (on application by the IP and/or the creditors' meeting).
- Restructuring plan, with content in line with insolvency law.
- Choice of methods to realize reorganization.
- Insolvency court accepts restructuring plan; only creditors who do not agree to the plan may appeal the decision.
- Restructuring plan legally enters into force.
- Functioning of the debtor according to the restructuring plan.
- After the restructuring plan: all claims by creditors are excluded except those mentioned in the restructuring plan.
- If the restructuring plan is violated, the insolvency court can cancel it and further proceedings are in bankruptcy.

➤ 4. Restructuring proceedings (aiming at company rescue)

4.1. Preconditions for restructuring

- The debtor is:
 - a business (mainly legal entities) in bankruptcy and an insolvency petition has already been lodged

- If the restructuring plan is fulfilled, the insolvency court issues a statement that the reorganization has ended + decides on the IP's fees and expenses

4.3. Restructuring plan

- Obligatory content of restructuring plan is listed in insolvency law:
 - list of creditors + their position in groups in the reorganization and how to deal with claims by creditors in different groups
 - specification of reorganization methods, e.g.: restructuring creditors' claims by reducing claims; sale of debtor's property or all/part(s) of the business; merger of the debtor with another legal entity; issue of shares or other securities; assurance of financing for the debtor's business; change of debtor's statutes regulating internal relations.
- Appointing persons to fulfil the restructuring plan, including their rights.
- Information whether and under what conditions the activity of the business or part of it will continue.
- Information about persons involved in financing the restructuring plan or taking over the debtor's obligations or assuring their fulfilment, and information about their participation in the plan.
- Information under insolvency law on whether the restructuring plan influences the number of employees in the debtor's business, and documents in this respect.
- Information whether the debtor will have any obligations after the reorganization ends and if so, then also specification of those obligations.
- How court claims are secured and up to what amount these will be reserved for creditors under the restructuring plan.
- The restructuring plan must contain true data on the debtor's business and legal outlook.

4.4. Approval of restructuring plan

- Report on restructuring plan must be formally approved by the insolvency court.
- Report on restructuring plan is published in the insolvency register after approval by the insolvency court.
- Draft restructuring plan and report on the plan to be published in the insolvency register at least 15 days before the creditors' meeting.
- Draft restructuring plan approved by majority of voting creditors in each group whose receivables account for at least 50% of the total nominal value of claims by creditors in that group that voted to adopt the plan (note: voting in groups).
- Draft restructuring plan approved by creditors is approved by the court.
- Creditors who voted against the restructuring plan can appeal against the decision of the court approving the plan.
- Draft restructuring plan to be filed with the court within 120 days after the decision of the court to declare bankruptcy; this term can be prolonged once by the court but by no more than another 120 days.
- Amendments to restructuring plan are subject to the same procedure for originally approving the restructuring plan.

4.5. Filing a petition for restructuring proceedings

- The debtor must file a petition for reorganization with the insolvency court in the case of pending bankruptcy no later than the day of the decision on bankruptcy. In all other cases, a petition can be filed until 10 days before the scheduled first meeting of creditors after the decision on bankruptcy.
- The decision of the insolvency court confirming reorganization contains a 120-day deadline to file a restructuring plan.

4.6. Main content of petition

- General requirements for petitions under insolvency law.
- All information on the debtor, its capital structure, and on the property of persons who own the debtor.
- Information on reorganization method.

4.7. Time for lodging creditors' claims, consequences of failure

- The insolvency court sets a deadline in its decision on bankruptcy for lodging creditors' claims (30 days to 2 months after the decision); claims can be lodged immediately after an insolvency petition is filed with the insolvency court.
- A claim that misses the deadline is no longer admissible.
- Deadlines for foreign creditors: see chapter on general insolvency procedure, above.
- The decision on bankruptcy can be joined with the decision of the insolvency court confirming reorganization.

4.8. Selection of restructuring administrators

- The insolvency court appoints an IP (there is no special practitioner for reorganization) according to the principles mentioned in the chapter on bankruptcy insolvency procedure.
- The debtor can nominate an IP at its discretion in the restructuring plan filed with an insolvency petition.

4.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings.

4.10. Main rights of the creditors' meeting

- Approves restructuring plan.
- Can appeal the decision of the insolvency court approving a restructuring plan.

- Monitors fulfilment of restructuring plan.

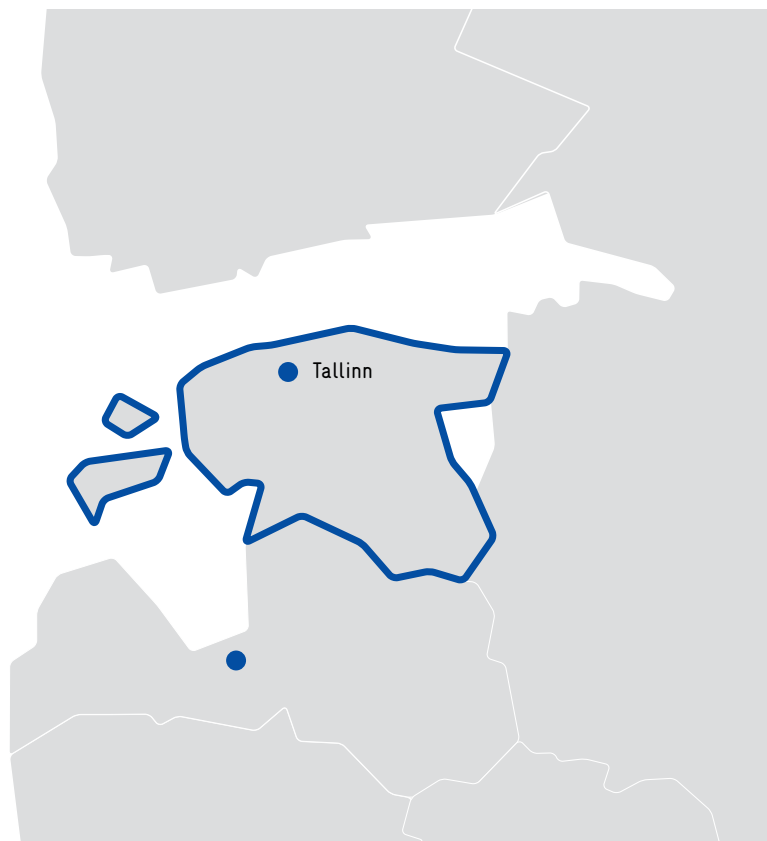
4.11. Final proceedings

- If the debtor fails to fulfil the restructuring plan, the reorganization proceedings can be ended by the insolvency court; the proceedings will follow the principles of bankruptcy proceedings (leading to satisfaction of creditors from the complete assets of the debtor and to liquidation of the debtor).
- On fulfilment of the restructuring plan, the insolvency court confirms that this is so + the reorganization is completed.
- The insolvency court decides on the IP's fee.

Author: Pavel Pravda

Estonia

bnt attorneys-at-law
Advokaadibüroo OÜ
Tatari 6
EE-10116 Tallinn



YOUR CONTACT

Aet Bergmann
Partner

T +372 667 6240
aet.bergmann@bnt.eu

1. General information

1.1. General types of company insolvency proceedings

- Reorganisation proceedings (aimed at overcoming economic difficulties, restoring liquidity, improving profitability and ensuring sustainable management).
- Bankruptcy proceedings (aimed at satisfying claims by debtors).
- Abatement (ending proceedings without declaring bankruptcy if the debtor's assets are insufficient to cover the costs of bankruptcy proceedings and it is impossible to recover or reclaim assets or to file a claim against a member of the directing body).
- Note: specific rules apply to some corporations e.g. banks, credit institutions and insurance companies.

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; restructuring administrator supervises management and implementation of approved restructuring plan.
- Bankruptcy: no.

1.3. Insolvency register

- For bankruptcy announcements (only available in Estonian) <https://www.ametlikudteadaanded.ee/>
- The insolvency of a specific enterprise is indicated in the commercial register (in Estonian and English) <https://ariregister.rik.ee/index?lang=eng>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- County court where the company is located.

1.5. Average duration of proceedings

- Restructuring:
 - no official statistics available

- out of 153 restructuring cases opened from 2008 to 2011, only 20 involved approval of a reorganisation plan

- Bankruptcy:
 - no official statistics available

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons who can file a petition for bankruptcy

- creditors and debtors
- management board
- liquidator
- successor to a debtor, executor of debtor's will, administrator of debtor's estate

2.2. Grounds for filing a petition

- A creditor is entitled to file if:
 - the debtor has failed to perform an obligation within 30 days after it falls due and the creditor has then warned the debtor in writing of intention to file a bankruptcy petition and the debtor thereafter has failed to perform the obligation within 10 days
 - a claim in execution proceedings cannot be satisfied for 3 months due to lack of assets or the assets of the debtor are clearly insufficient to perform all obligations
 - the debtor or its legal representative has destroyed, hidden or squandered the debtor's property or made grave errors in management or has otherwise intentionally caused insolvency
 - the debtor notifies the creditor, the court or the public that it cannot perform its obligations

¹ https://www.just.ee/sites/www.just.ee/files/elfinder/article_files/maksejouetuse_menetlemise_tohususe_uuringu_kokkuvote_o.pdf

- the debtor has destroyed, hidden or squandered its property or made grave errors in management as a result of which the debtor is now insolvent, or has otherwise intentionally caused insolvency
- the debtor has left Estonia, or is in hiding in order to evade performing obligations.
- The management board must file if an enterprise is insolvent and insolvency is not temporary
- The liquidator must file during liquidation if the assets of the enterprise are clearly insufficient to satisfy all creditors' claims
- The court will hear a bankruptcy petition within 10 days or, for good reason, within 30 days after appointment of an interim trustee
- The court will hear a creditor's petition within 30 days or, for good reason, within 2 months after appointment of an interim trustee
- After hearing a bankruptcy petition, the court declares bankruptcy, dismisses the petition or terminates the proceedings by abatement
- Persons obliged to file for bankruptcy:
 - Management board - within 20 days of the date when insolvency became evident

2.3. Grounds for opening bankruptcy proceedings

- The debtor fails to perform an obligation within 40 days
- The debtor has notified its inability to perform obligations
- The debtor is in hiding in order to evade performance of obligations
- The debtor is evading performance of obligations
- The debtor has intentionally caused the insolvency
- A claim in execution proceedings cannot be satisfied

2.4. Effects of opening bankruptcy proceedings

- Acceptance of bankruptcy petition: the court will not accept a petition that does not make it clear that the petitioner has a claim against the debtor, or the creditor's petition is based on a claim to which a restructuring plan or a debt restructuring plan applies
- Appointment of interim trustee: within 10 days after accepting a petition, or within 20 days if the petition was filed by a creditor
- Upon appointment of an interim trustee, the court timetables the court session for hearing the bankruptcy petition

- Liquidator - if the assets of the company in liquidation are insufficient to satisfy all claims by creditors, the liquidator must file a bankruptcy petition

2.5. Sanctions for not filing for bankruptcy in time

- Management board members jointly compensate the enterprise for payments made (a) after insolvency became obvious and (b) without due diligence

2.6. Appointment of insolvency practitioner (IP)

- Named by the court, approved by the general meeting of creditors
- Must be a sworn advocate, sworn auditor, bailiff or person authorised to act as a trustee who:
 - has an officially recognised bachelor's degree + at least 2 years' professional experience in finance, law, management or accounting or who has an officially recognised master's degree
 - is honest and of high moral character
 - has oral and written proficiency in Estonian
 - has passed the examination + undergone training for trustees

2.7. Ethical standards for IPs

- Good Professional Practice 2011 (available at

<http://www.kpkoda.ee/doc/Hea%20kutsetava.pdf>, in Estonian) Includes requirements on independence, impartiality, confidentiality, honour, dignity, trustworthiness, relationship with parties to the proceedings, colleagues, the public

2.8. Time for lodging creditors' claims, consequences of failure

- Within 2 months from publication of the bankruptcy notice in the official publication in *Ametlikud Teadaanded*
- If a claim is filed with good reason after expiry of the term, the general meeting restores the term for filing the claim at the request of the creditor. A claim cannot be filed after a distribution proposal has been submitted to the court for approval
- The term for filing a claim need not be restored if the claim is secured by a pledge
- If the term for filing a claim is not restored, the claim may be defended but, if accepted, the claim is satisfied after satisfaction of accepted claims filed on time

2.9. Cost of filing claims

- State fees for filing a petition:
 - € 10 if the petition is filed by the debtor, successors, administrator of estate
 - € 300 if the petition is filed by a creditor
 - € 300 state fee for filing restructuring petition
- No fees for filing claims in bankruptcy by creditors

2.10. Administration costs

- Before appointing an interim trustee, the court may require the petitioning creditor to pay a sum set by the court into a designated account as a deposit in order to cover the remuneration and expenses of the interim trustee if there is reason to assume that the bankruptcy estate is insufficient to cover expenses. In practice, the amount is approx. € 2 000-5 000. The

deposit is returned to the person who made the payment under the Bankruptcy Act if the debtor has sufficient funds to cover the remuneration and expenses of the interim trustee

- If the debtor's assets are insufficient to cover the costs of bankruptcy proceedings, then, in order to avoid abatement of the proceedings, the court sets (a) the amount payable to a designated account as a deposit to cover the costs of bankruptcy proceedings and (b) the deadline for payment. The deposit is returned to the person who makes the payment under the Bankruptcy Act if the debtor has sufficient funds to cover the costs of bankruptcy proceedings
- The court sets the remuneration of the trustee on approval of the final report on the bankruptcy proceedings after hearing the opinions of the trustee, the debtor and the bankruptcy committee
- The trustee may claim reimbursement of expenses necessarily incurred in performing their obligations

3. Ranking of claims / creditors

3.1. Secured creditors

- Claims secured by pledge are satisfied first to the extent of the sum received from the sale of the pledged object less payments in a certain ratio relating to bankruptcy proceedings
- These payments deducted are in proportion to the ratio of the sum received from the sale of the pledged object to the total sum received from the sale of the bankruptcy estate, but not more than 15/100 of the sum received from the sale of the pledged object

3.2. Unsecured creditors

- Paid after secured creditors

3.3. Employees

- The unemployment insurance scheme provides

partial coverage of an employer's obligations in case of insolvency

- Contracts are usually terminated and employees made redundant

3.4. Nullifying contracts

- The court revokes transactions concluded or other acts performed by the debtor before declaration of bankruptcy and which harm the interests of creditors
- Contracts are reviewed up to 5 years before appointment of the interim trustee

› 4. Restructuring proceedings (aiming at rescuing company)

4.1. Preconditions for restructuring

- The enterprise is likely to become insolvent in the future
- The enterprise requires restructuring
- Sustainable management of the enterprise is likely after restructuring
- No bankruptcy proceedings are current against the enterprise
- No court ruling exists on compulsory dissolution or supplementary liquidation
- Over 2 years have passed from termination of any previous restructuring proceedings

4.2. Stages

- Restructuring application to court
- Court ruling to initiate restructuring
- Restructuring notice – restructuring administrator notifies creditors that proceedings are in progress and the amount of their claims against the enterprise according to list of debts
- Deadline for filing rejection of claim

- Preparation of restructuring plan and submission of plan for examination

- Acceptance of restructuring plan by creditors
- Approval of restructuring plan by the court
- Fulfilment of restructuring plan
- Termination of restructuring

4.3. Restructuring plan

- Description of economic position of the enterprise + analysis of why restructuring is needed
- The expected economic position of the enterprise after restructuring
- The deadline for compliance with the restructuring plan
- A description of restructuring measures to be implemented and analysis of their usefulness, including a description of and justification for transforming a claim by a creditor
- The impact of the restructuring plan on employees of the enterprise

4.4. Approval of restructuring plan

- Creditors accept reorganisation plan by vote at or without a meeting
- The number of votes of each creditor is proportional to the amount of their principal claim
- A reorganisation plan must be accepted if at least 50% of creditors who hold at least 2/3 of all the votes vote in favour
- If creditors are divided into groups on the basis of a reorganisation plan, the plan must be accepted if, in each group, at least 50% of creditors who belong to the same group and who hold at least 2/3 of all the votes represented in the group vote in favour of the reorganisation plan
- Once a reorganisation plan is accepted by creditors, it must be submitted to the court for approval within the deadline set by the court. The voting record and any annexes must be

attached to the reorganisation plan

- The court approves an accepted reorganisation plan within 30 days. In that connection, the court will verify whether:
 - the reorganisation notice (a) has been communicated to creditors and (b) complies with legal requirements
 - the draft reorganisation plan has been communicated to creditors for examination
 - the notice concerning participation at the meeting to approve the reorganisation plan or an invitation to submit a position has been communicated to creditors
 - the reorganisation plan complies with the requirements of the Reorganisation Act
- the reorganisation plan has received the required number of votes and the rights of creditors have not been violated upon voting

4.5. Upon approval of a reorganisation plan, the court issues an opinion on a creditors application for refusal to approve the reorganisation plan

- In order to decide approval of a reorganisation plan, the court may hold a session
- The court will not approve a reorganisation plan and will terminate reorganisation proceedings if it becomes evident that:
 - violation of a legal requirement has significantly influenced the voting results
 - on the basis of the reorganisation plan, a creditor is treated substantially less favourably compared to other creditors
 - reorganisation of the enterprise is unlikely or
 - other circumstances exist that justify refusal to approve the reorganisation plan

4.6. Filing a petition for restructuring proceedings

- The enterprise applies to the court.

4.7. Main content of petition

- The petition must explain the reasons for economic difficulties and show that:
 - the enterprise is likely to become insolvent in the future
 - the enterprise requires restructuring
 - sustainable management of the enterprise is likely after restructuring
- Annexed to the petition: financial statement for the previous financial year + overview of the financial situation + debtor's profit or loss and cash flow + list of debts as at the date of filing the petition

4.8. Time for lodging creditors' claims, consequences of failure

- A creditor must file a claim if they reject the (amount of the) claim in the restructuring notice
- The term must not be shorter than 2 weeks or longer than 4 weeks
- The creditor must file a written application setting out the part of the claim in the restructuring notice which they reject plus evidence certifying the circumstances
- A creditor that fails to apply by the due date is deemed to have agreed the claim

4.9. Selection of restructuring administrators

- The court appoints a restructuring administrator on commencement of proceedings after having considered the opinion of the enterprise
- The following may act as restructuring administrators:
 - sworn advocates or their senior clerks, trustees in bankruptcy, auditors
 - other natural persons who are honest and of moral character and who are proficient in oral and written Estonian, who possess good economic knowledge and the necessary legal knowledge and who have an officially

recognised master's degree or comparable qualifications including a comparable foreign qualification

- investment firms and credit institutions

4.10. Ethical standards for restructuring administrators

- No specific regulations established
- Must be honest and of moral character
- An administrator who is a sworn advocate or their senior clerk, a trustee in bankruptcy or auditor must comply with their own specific professional codes

4.11. Main rights of the creditors' meeting

- Acceptance of restructuring plan

4.12. Final proceedings

- Fulfilment of restructuring plan or premature termination of restructuring
- Grounds for premature termination:
 - the enterprise fails to perform the obligation to cooperate
 - the enterprise fails to pay into court the sum set by the court for remuneration and expenses of a restructuring administrator or expert
 - the court refuses to approve the restructuring plan
 - refusal to satisfy an application to approve a restructuring plan which has not been accepted
 - refusal to approve a restructuring plan which has not been accepted
 - on the basis of an application by the enterprise
 - where the basis for launching restructuring proceedings ceases to exist
 - upon squandering the property of an enter-

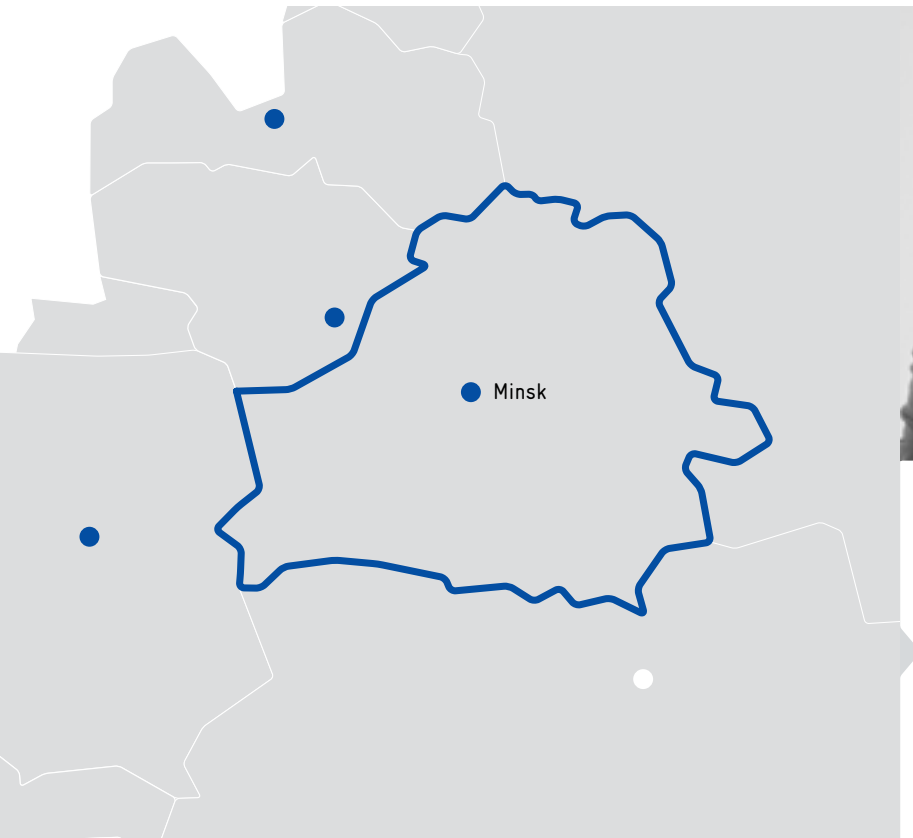
prise or harming the interests of creditors

- failure to submit a restructuring plan by the due date
- due to ambiguity of a claim

Author: Aet Bergmann

Belarus

bnt legal and tax
Revolutsionnaya Str. 9
building 4 office 40
BY-220030 Minsk



YOUR CONTACT

Alexander Liessem
Partner

T +375 17 203 94 55
alexander.liessem@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Restructuring proceedings (aimed at financial rehabilitation for debtor)
- Bankruptcy proceedings (aimed at liquidation)
- Note: specific rules apply to some corporations (e.g. banks, companies in one-company towns, agricultural companies, insurance companies, professional participants of the securities market, individual entrepreneurs)

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; the insolvency practitioner (IP) supervises company management: the company bodies may make transactions only with approval by the IP. The IP may under certain conditions request dismissal of the management
- Bankruptcy: no

1.3. Insolvency register

- A uniform state insolvency register contains information both on restructuring and bankruptcy proceedings (only available in Russian): <https://bankrot.gov.by>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- Economic court (Ekonomichesky sud) where the company is located

1.5. Average duration of proceedings

- Restructuring proceedings: no official statistics on duration of proceedings available.
 - on 1 February 2018 in state-owned companies out of 208 insolvency cases the court decides in 109 cases for restructuring; no statistics for private companies available
- Bankruptcy proceedings: no official statistics on duration of proceedings available.

- on 1 February 2018 in state-owned companies out of 208 insolvency cases the court decides in 81 cases for liquidation; no statistics for private companies available

1.6. Approximate satisfaction rate of bankruptcy proceedings

- No official data available.

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Debtor
- Creditors
- Representative of the debtor's employees (if the debtor is not able to pay employment-related obligations)
- Competent public authorities under certain circumstances
- Liquidator

2.2. Grounds for filing a petition

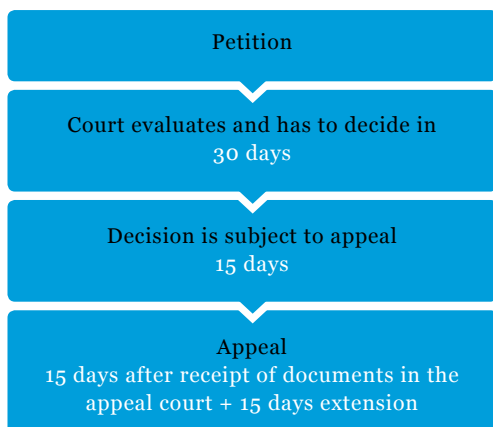
- The debtor is entitled to file a petition:
 - insolvency is constant or
 - insolvency is tending to be constant
- The debtor must file a petition:
 - if after satisfying claims by one or several creditors it is impossible to satisfy claims of other creditors in full or if satisfaction of claims will stop the debtor's activity
 - if the debtor's corporate body which can decide on liquidation decides to file for insolvency
 - if the owner of the property of a unitary enterprise decides to file for insolvency

- if during the liquidation procedure it appears that the debtor's assets are not sufficient to satisfy creditors' claims in full or are lacking
- Creditors, representatives of the debtor's employees, competent public authorities may file under the following cumulative circumstances:
 - a creditor has reliable documentary proof that the debtor's insolvency is (or is becoming) constant
 - enforcement of a court decision during the last three months was not possible due to debtor's lack of assets
 - the debtor has liabilities to the creditor who filed a bankruptcy petition in an amount of at least 100 base units (approx. € 1 000 on 4 May 2018) or at least 2 500 base units (approx. € 25 300 on 4 May 2018) if the debtor is a company in a one-company town or similar enterprise

2.3. Grounds for opening bankruptcy proceedings

- Insolvency of debtor is constant
- Company fails to pay salaries and other employment-related payments because insolvency is tending to be constant
- Other circumstances confirming insolvency of debtor

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- The court appoints an IP who:
 - secures the debtor's assets
 - ascertains who the creditors are
 - organises and analyses the debtor's economic activity
 - analyses the debtor's financial state and solvency
 - facilitates the debtor's operations and promotes voluntary settlement
 - informs creditors and debtor
 - reports to the court on the debtor's financial state and solvency
- Company management lose their powers
- Information about opening bankruptcy proceedings is published in the mass media
- Calculation of interest, penalties and other mandatory payments is suspended
- Creditors have 2 months after the information on opening insolvency procedure is published to file claims
- IP organizes the creditors' meeting and submits to the meeting an insolvency plan (liquidation or restructuring), creditors approve or reject the plan

- On the basis of creditors' decision the court decides on liquidation or restructuring

2.6. Persons obliged to file for bankruptcy

- Company manager or other person authorised under founding documents – not later than 1 month after becoming aware of insolvency grounds provided in legislation
- Liquidator of the company – not later than 1 month after it becomes clear that the company would not be able to pay off its creditors

2.7. Sanctions for not filing for bankruptcy in time

- If the debtor filed for insolvency when it had enough funds to satisfy all creditors' claims in full, the debtor is liable for actual damage caused by late filing
- If insolvency is caused by the owner of debtor's assets, debtor's shareholders or its managing bodies, they jointly bear subsidiary liability towards creditors
- If the debtor's officials, the director of the liquidation committee or others responsible for filing fail to file for insolvency as required by law, they jointly bear subsidiary liability towards creditors
- The debtor's officials responsible for filing are subject to administrative liability if they fail to file for insolvency as soon as grounds for filing arise. False insolvency and non-disclosure of insolvency are reasons for prospective criminal liability of the debtor's officials, founder, owner of the debtor's assets or shareholders

2.8. Appointment of insolvency practitioner (IP)

- The court appoints an IP from candidates proposed by the petitioner
- The IP must have a certificate of category A, B or C issued by a competent authority which enables the IP to manage an insolvent company with up to 100 employees, up to 1000 employees or a company with an unlimited number of employees

2.9. Ethical standards for insolvency practitioners

- IP must enjoy the confidence of the court and creditors
- IP cannot be party of interest related to the debtor and (or) creditors

2.10. Time for lodging creditors' claims, consequences of failure

- Creditors must file claims within 2 months after information on opening insolvency proceedings is officially published

- A claim notified late can only be paid from the funds of the debtor remaining after payment of claims filed on time. Revival of failed period is not permitted
- Consequences of not filing a claim: non-recognition of claim, no participation in proceedings

2.11. Costs of filing claims

- None

2.12. Administration costs

- Remuneration consists of: 1) minimum reward of 1 basic unit for each calendar day (approx. € 10); 2) additional quarterly reward; 3) extra compensation
- If a contract exists between the IP and the public authority, the IP's remuneration is set by the contract and is calculated as set by governmental resolution
- IP's remuneration is set by the court based on a proposal by the creditors' meeting
- Generally remuneration is paid from the debtor's assets
- If the debtor's assets are not sufficient, remuneration is paid from the state budget
- General rules on the IP's remuneration are set by governmental regulation

> 3. Ranking of claims / creditors

3.1. Secured creditors

- Claims by secured creditors rank 4th in priority and are paid after the following claims are satisfied:
 - claims by individuals on indemnification for death and health injury (first priority)
 - claims by employees (second priority)
 - claims for compulsory payments such as

taxes, duties (third priority)

3.2. Unsecured creditors

- Lower ranking claims only satisfied after all higher ranking claims are fully satisfied (1st, 2nd, 3rd and 4th priority)
- Claims by unsecured creditors have 5th (lowest) priority and are settled proportionately

3.3. Employees

- According to the priority order, payments to employees are made in the second rank and include remuneration and dismissal pay

3.4. Nullifying contracts

- The court may invalidate:
 - a transaction concluded 6 months prior to bankruptcy proceedings if made in favour of one or several creditors and against the interests of other creditors
 - a transaction concluded 1 year before bankruptcy proceedings if the debtor intentionally caused harm to creditors and other parties to the transaction who were aware of this
 - a transaction concluded 3 years before bankruptcy proceedings if insolvency was caused by the debtor's criminal action and other parties to the transaction were aware of this
 - a transaction that contradicts state interests or public policy
 - other transactions

➤ 4. Restructuring proceedings (aiming at rescuing company)

4.1. Preconditions for restructuring

- The court starts restructuring proceedings:
 - On the basis of a creditors' decision

- At its own initiative in case of disagreement between the IP and creditors; if the creditors' meeting does not approve the restructuring plan proposed by the IP. The court may initiate restructuring proceedings on an agricultural company even if the IP and creditors decided on liquidation. The court may do so if it ascertains that the debtor will be able to satisfy creditors' claims from profit that the debtor will receive after the respective agricultural period

4.2. Stages

- Drafting a restructuring plan by IP on the basis of debtor's economic activities, financial analysis and solvency
- Examination of possible amendments and additions to (and following prolongation of restructuring period) and approval of restructuring plan by creditors (or disapproval and following liquidation; or disapproval and appointment of new IP; or approval of settlement agreement)
- Decision by the court to open restructuring proceedings
- Taking restructuring measures required by law and aimed at re-establishing the debtor's solvency
- IP's report to creditors and proposal: (i) to cancel restructuring due to reestablishment of the debtor's solvency; (ii) to conclude a settlement agreement; (iii) to prolong the restructuring period; (iv) to cancel restructuring proceedings and to start liquidation proceedings
- Examination of the IP's report and a decision by the creditors' meeting based on the IP's proposal: (i) to cancel restructuring due to reestablishment of the debtor's solvency; (ii) to conclude a settlement agreement; (iii) to apply to the court for prolongation of the restructuring period; (iv) to apply to the court to start liquidation proceedings
- Approval of the IP's decision by the court and setting a deadline for satisfaction of creditors' claims (not more than 12 months from the day when the period was set)
- If creditors' claims are satisfied within the

deadline, the bankruptcy proceedings are cancelled by the end of the period

- If creditors' claims are not satisfied within the established period, the court takes a decision on the debtor's liquidation

4.3. Restructuring plan

- Measures aimed at re-establishing the debtor's solvency and duration of plan
- Analysis of debtor's activities, financial analysis and analysis of debtor's solvency

4.4. Approval of restructuring plan

- See the section "Stages"

4.5. Filing a petition for restructuring proceedings

- The restructuring plan approved by the creditors' meeting plus the minutes of the creditors' meeting are to be filed with the court within 5 days after the creditors' meeting

4.6. Main content of petition

- No requirements

4.7. Time for lodging creditors' claims, consequences of failure

- Creditors' claims are filed before the decision on restructuring is taken
- Creditors must file their claims within 2 months after information on opening insolvency proceedings is officially published
- In case of delay a creditor may claim reinstatement of the period. A decision on reinstatement is taken by the court

4.8. Selection of restructuring administrators

- A restructuring administrator (the same as IP) is appointed before the decision on liquidation or restructuring is taken. The IP is eligible to perform their functions in either liquidation or restructuring proceedings

4.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings

4.10. Main rights of the creditors' meeting

- Approval or disapproval of restructuring plan
- Amendments and additions to the restructuring plan
- Conclusion of settlement agreement

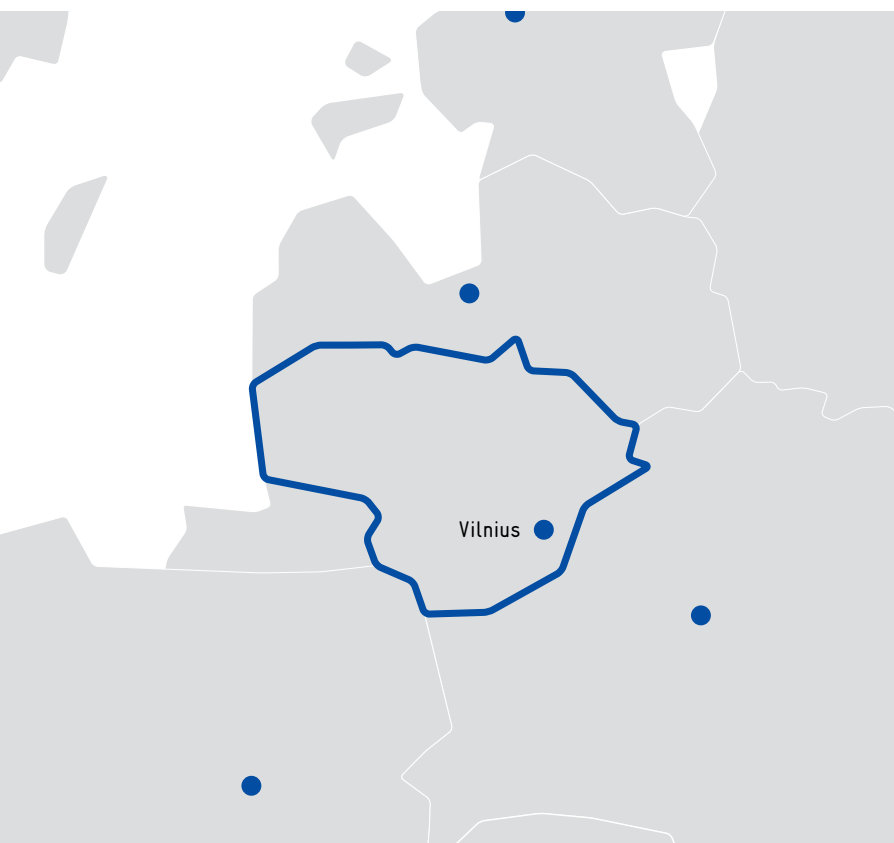
4.11. Final proceedings

- Claims by creditors are satisfied in compliance with the restructuring plan
- After restructuring is completed, rights of the debtor's management bodies are restored and all restrictions imposed during bankruptcy proceedings are removed

Author: Alexander Liessem

Lithuania

bnt Heemann APB
Embassy House
Kalinausko 24, 4th floor
LT-03107 Vilnius



YOUR CONTACT

Frank Heemann
Partner

T +370 5 212 16 27
frank.heemann@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Restructuring proceedings (aimed at rescue of companies)
- Bankruptcy proceedings (usually aimed at liquidation)
- Note: specific rules apply to some corporations e.g. banks, credit unions, insurance companies

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; restructuring administrator supervises company management and oversees implementation of approved restructuring plan. The administrator may under certain conditions request dismissal of the management
- Bankruptcy: no

1.3. Insolvency register

- For restructuring proceedings (only available in Lithuanian) <http://www.bankrotodep.lt/veiklos-sritys/nemokumas-2/moni-restrukturizavimas/>
- For bankruptcy proceedings (only available in Lithuanian) <http://www.bankrotodep.lt/veiklos-sritys/nemokumas-2/moni-bankrotas>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- County court (Apygardos teismas) where the company is located

1.5. Average duration of proceedings

- Restructuring proceedings:
 - no official statistics available
 - out of 446 restructuring cases opened from 2001 to 2017, only 42 companies were successfully restructured while 97 of cases are still pending
- Bankruptcy proceedings:

- average duration of proceedings finished in the first three quarters of 2017 was 1.9 years. (For comparison, the average duration of proceedings finished in 2016 was 2.2 years)

1.6. Approximate satisfaction rate of bankruptcy proceedings

| Type of creditor | Ranking | Average satisfaction (%) |
|--|----------|--------------------------|
| Employees | 1st | 54.6 |
| State | 2nd | 5.1 |
| Unsecured creditors | 3rd | 3.9 |
| Secured creditors | priority | 20.2 |
| Total rate (approved vs satisfied claims): | | 12.6 |

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Company manager or other person authorised under founding documents
- Liquidator

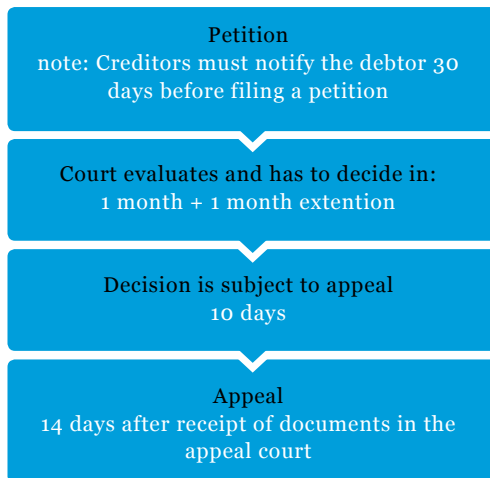
2.2. Grounds for filing a petition

- Company fails to pay salaries and other employment-related payments.
- Company fails to pay on time for goods or services received and to perform other monetary obligations.
- Company fails to pay taxes and other compulsory payments on time.
- Company has no assets or income from which debts could be recovered so the bailiff cannot enforce creditors' claims.

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent (i.e. company does not meet its due obligations and the value of those obligations exceeds 50 % of the value of the assets on the balance sheet) or
- Company fails to pay salaries and other employment-related payments (according to court practice only when the company faces financial difficulties) or
- Company fails to discharge its liabilities or will be unable to discharge its liabilities in the future.
- The court cannot open bankruptcy proceedings while restructuring proceedings are opened against the company.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court issues a decision to open bankruptcy proceedings:
 - court appoints insolvency practitioner (IP) who is not active until decision comes into effect
 - company management do not lose their powers
 - real estate and non-current assets are seized

until decision comes into effect

- Decision to open bankruptcy proceedings comes into effect:
 - company management lose their powers
 - IP takes over management of the company, assets and documents
 - creditors have ~45 days to file their claims
 - IP submits draft budget of administration expenses for court approval
 - financial obligations including set-offs are prohibited
 - calculation of interest, penalties and other mandatory payments is suspended

2.6. Persons obliged to file for bankruptcy

- Company manager or other person authorised under founding documents – not later than 5 days after the company becomes insolvent and the shareholders did not take action necessary to restore company solvency
- Liquidator of the company – not later than 15 days after it becomes evident that the company would not be able to pay off its creditors

2.7. Sanctions for not filing for bankruptcy in time

- Civil liability – compensation of damages incurred by the company and its creditors
- Administrative liability – € 1 400 – 3 000 fine
- Other – manager of the company might be prohibited from holding a post as manager, member of board of directors or supervisors for 3 – 5 years
- No criminal liability for (late) filing, but for other insolvency-related conduct of management (for example: fraudulent bankruptcy)

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints IP - as a rule, randomly chosen by a computer program

- The computer program places insolvency practitioners and insolvent companies into the following categories:
 - insolvent companies: small, medium, or large (according to the value of the company's estate, the total value of creditor claims, and the absolute number of creditors and employees)
 - insolvency practitioners: A1, A2, B, C (according to their general experience, sum of previously administered companies of different sizes, special experience such as cross-border elements, effective penalties, past refusals to accept an appointment, current workload)

2.9. Ethical standards for insolvency practitioners

- Code of conduct applies for insolvency practitioners
- Statutory sanctions: warning, public warning and withdrawal of licence to carry out activities as bankruptcy administrator for misconduct
- Failure to hold valid civil liability insurance is regarded as breach of ethical standards
- In practice, liability cases against IPs for damages by the estate and/or the debtor's creditors have been rare and court practice is not well developed as yet

2.10. Time for lodging creditors' claims, consequences of failure

- Deadline set by the court for lodging claims may not exceed 45 days from entry into force of the court decision to initiate bankruptcy proceedings
- Filing a claim after delay is possible if valid reason for delay can be shown
- Consequences of not filing a claim: non-recognition of claim, no participation in proceedings

2.11. Costs of filing claims

- No stamp duties or other court fees for filing a claim

2.12. Administration costs

- Administration costs include remuneration payable to the IP as well as other administration costs (accounting services, transportation, stationery and office supplies, legal services, storage of goods)
- Administration costs are remunerated first of all other expenses from the proceeds of the sold assets of the company (including pledged and mortgaged property)
- Law establishes recommended minimal administration costs which depend on the following criteria:
 - type of bankruptcy: standard case, cross-border bankruptcy, bankrupt company is a credit institution, formal bankruptcy, extrajudicial bankruptcy
 - type of company: small, medium, or large (according to the value of the company's estate, total value of creditor claims, and the absolute number of creditors and employees)
- E.g., the recommended minimal administration costs for cross-border bankruptcy of a medium company would amount to € 30 400 while costs for a standard bankruptcy case of a small company would not exceed € 9 500
- Premium payments calculated from the proceeds collected from liquidated assets as well as bonuses from the number of cases initiated in court depending on their complexity and premium for realization of assets at a higher price than established by creditors (excluding realization by way of public auction)
- If sufficient basis exists to suspect that company assets will not cover legal and administrative expenses, the court may require the person who lodged the petition to open proceedings to pay an amount of up to € 7 500 into the court deposit account in order to allow opening of bankruptcy proceedings; the sum may later be reclaimed jointly from the company manager and owner(s) for not meeting their obligation to initiate bankruptcy in due time

› 3. Ranking of claims / creditors

3.1. Secured creditors

- Paid first of all from proceeds of realizing security, but only after contributing to court and administration costs.
- Pledged / mortgaged property must usually be sold at public auction.
- Secured creditor may in certain situations request the meeting of creditors to allow taking over the pledged / mortgaged property (security)

3.2. Unsecured creditors

- Settled proportionately within their rank. Lower ranking claims only satisfied after all higher ranking claims are fully satisfied
- Ranking of claims as follows
 - 1st rank: claims by employees
 - 2nd rank: claims by the state (tax, social security)
 - 3rd rank: all other unsecured claims

3.3. Employees

- Employment contracts are usually terminated. Employees are paid severance pay of 2 average monthly wages (0.5 average monthly wage if employment less than a year)
- Employees' claims are secured to a certain extent by the Guarantee Fund

3.4. Nullifying contracts

- IP reviews transactions entered into within at least 36 months before bankruptcy proceedings and brings actions to invalidate contracts contrary to objectives of company activities
- In case of established fraudulent bankruptcy, all transactions 5 years prior to bankruptcy proceedings are reviewed

› 4. Restructuring proceedings (aiming at rescuing company)

4.1. Preconditions for restructuring

- The company has financial difficulties (or is likely to within the next 3 months)
- Activities have not ceased
- Bankruptcy proceedings have not been opened
- Company is not insolvent (i.e. no obligation to start bankruptcy proceedings)
- Certain requirements relating to minimum period of existence of the company and the end of previous restructuring proceedings, if any

4.2. Stages

- Initiation of restructuring proceedings by drafting guidelines for restructuring plan by the management body
- Confirmation of guidelines and decision to apply to the court by the shareholders/ owners of the company
- Filing petition with the court
- Decision by the court to open restructuring proceedings, appointment of restructuring administrator (IP)
- Submission of creditors' claims to the IP
- Confirmation of claims by the IP and the court
- Confirmation of restructuring plan by shareholders/owners of the company
- Confirmation of restructuring plan by the creditors' meeting (at least 2/3 qualified majority counted from the total amount of creditors' claims approved by the court)
- Confirmation of restructuring plan by the court
- Satisfaction of creditors' claims according to the restructuring plan

- Decision of the court to end the proceedings

4.3. Restructuring plan

- Description of the current status of the company
- List of creditors and debtors of the company
- Warranties and guarantees issued for the benefit of third parties
- Information about cases where money claims are submitted against the company
- Aims, duration and means of restructuring
- Business plan
- Estimated administrative costs
- Satisfaction of claims (following the mandatory ranking of claims: priority for secured creditors on pledged / mortgaged property (security), 1st rank: employees, 2nd rank: other unsecured creditors, 3rd rank: claims by shareholder(s) with controlling stake; note: creditors that provide DIP financing are satisfied before creditors in the 2nd rank)
- Other important information

4.4. Approval of restructuring plan

- Company management body submits draft restructuring plan to shareholders
- Upon approval of draft plan by shareholders, company management submits the draft to the IP within 1 working day (at least 1 month before filing the plan with the court)
- IP drafts assessment as to feasibility of implementing the plan (assessment) and submits it to company management, coordinates the date for the meeting of creditors and notifies creditors of the meeting venue and time (to be convened at least 10 working days before the date of submission of the plan to the court)
- The draft restructuring plan is approved by creditors if approved by creditors whose claims amount to at least 2/3 of all claims approved by the court (note: no voting in groups)

- The approved draft restructuring plan is submitted to the IP within 5 calendar days after the creditors' meeting; within 3 working days the IP submits the draft to the court together with the IP's assessment of the plan

- The draft restructuring plan must be submitted to the court within 6 months after the decision of the court to open restructuring proceedings takes effect; this term can be prolonged once by the court, though not longer than by 1 month

- Court issues a decision within 15 calendar days upon receipt of the above documents; the decision to approve the draft plan is final and binding

- Amendments to restructuring plan are subject to the above procedure for approving restructuring plan

4.5. Filing a petition for restructuring proceedings

- Up to 5 business days as of the decision by the shareholders / owners to apply to the court for restructuring
- Management body applies for restructuring proceedings

4.6. Main content of petition

- Reasons for initiation
- Name of candidate for IP and their consent
- Guidelines for restructuring plan
- Decision on approval of guidelines by company shareholders/owners
- Set of financial statements for the previous financial year

4.7. Time for lodging creditors' claims, consequences of failure

- The court sets a deadline for submission of claims to the IP (30-45 days after the decision comes into force)
- Claims submitted later are approved only if lodged too late for important reasons

- Court approves claims

4.8. Selection of restructuring administrators

- Court appoints IP
- Petitioner must propose an IP and submit their consent to appointment
- Natural or legal persons can be IP

4.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings

4.10. Main rights of the creditors' meeting

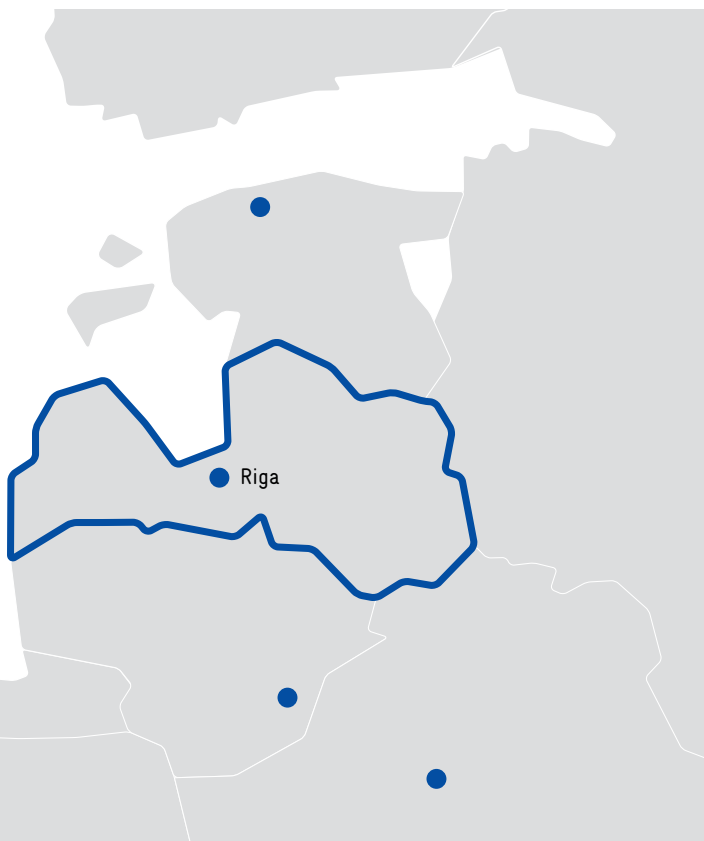
- Selection of a committee of creditors and transfer to it of creditors' meeting rights
- Approval of restructuring plan and amendments
- Application to court to restrict functions of management bodies
- Application to court to dismiss IP and appoint a new one
- Approval of proposal by IP to terminate restructuring proceedings
- Application to court for prolongation of restructuring proceedings

4.11. Final proceedings

- Claims by creditors are satisfied by the company according to the restructuring plan
- The management body may manage and dispose of all assets in compliance with the restructuring plan and under supervision of the IP
- Decision of the court to end restructuring proceedings terminates the proceedings

Latvia

Jensen & Svikiš Legal
Antonijas iela 24-7
LV-1010 Rīga



YOUR CONTACT

Frank Heemann
Partner

T +371 25 23 20 22
frank.heemann@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Legal protection proceedings (aimed at renewal of debtor's ability to settle their debt obligations if the debtor already has or expects to encounter financial difficulties).
- Insolvency (bankruptcy) proceedings (aimed at liquidating the debtor to settle creditors' claims, thus facilitating honouring of debtor's obligations).
- Note: specific rules apply to credit institutions, insurance companies and certain other participants in the financial and capital market under the oversight of the Financial and Capital Market Commission.

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: restrictions are imposed upon the debtor's freedom to perform activities that have the potential to further deteriorate the financial situation or harm creditors' interests. Thus the debtor may not issue loans, give guarantees, presents and donations, distribute profits, and fulfil any financial obligations not provided for in the restructuring plan. To ensure the debtor's adherence to these restrictions, the appointed restructuring administrator oversees its activities.
- Bankruptcy: following announcement of insolvency proceedings, the insolvency practitioner (IP) acquires the rights of the management and other bodies of the debtor.

1.3. Insolvency register

- For bankruptcy and restructuring proceedings (only available in Latvian): http://www.mna.gov.lv/lv/maks_subjekti/baze/
- Private source with access to the Insolvency Register (available in Latvian, English and Russian): <https://www.lursoft.lv/>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- District court according to the registered

domicile of the debtor three months prior to submission of application to the court.

1.5. Average duration of proceedings

- Restructuring proceedings:
 - Out of a total of 1495 restructuring cases opened from 2001 to 2017, only 124 companies were successfully restructured while a total of 87 cases are still pending.
- Bankruptcy proceedings:
 - Average duration of proceedings finished in the first three quarters of 2017 was 1.7 years (for comparison, the average duration of proceedings finished in 2016 was 1.9 years).

1.6. Approximate satisfaction rate of bankruptcy proceedings

| Type of creditor | Ranking | Average satisfaction (%) |
|--|----------|--------------------------|
| Employees | 1st | 49.8 |
| State | 2nd | 7.6 |
| Unsecured creditors | 3rd | 12.1 |
| Secured creditors | priority | 32.9 |
| Total rate (approved vs satisfied claims): | | 25.6 |

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditor.
- Debtor.
- Liquidator in the main proceedings under Article 29(a) of Council Regulation (EC) No. 1346/2000, now Article 37(1)(a) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency

proceedings.

- Liquidator of enterprise in liquidation.
- Restructuring administrator in legal protection proceedings.
- Employees of the debtor who have not been duly remunerated for their work, received compensation for damages in connection with work-related accidents, or whose mandatory social insurance payments are at least two months overdue.

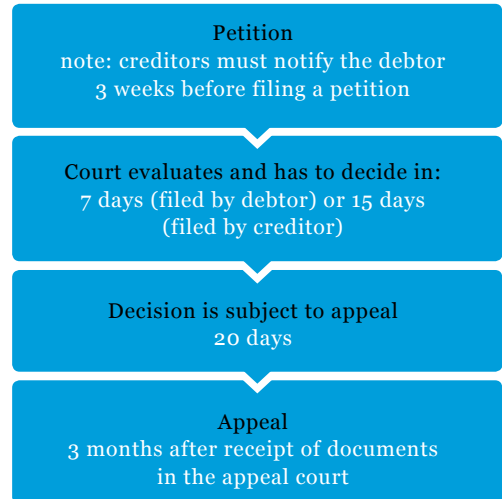
2.2. Grounds for filing a petition

- Debtor fails to execute a compulsory court judgment.
- Debtor's principal debt is at least 3 weeks overdue and exceeds € 4268 (for limited liability and joint stock companies) or € 2134 (for other commercial establishments).
- Payment of salaries and other employment or social security-related payments is at least 2 months overdue.
- Violation of legal protection proceedings.

2.3. Grounds for opening bankruptcy proceedings

- The debtor is not subject to legal protection proceedings at the time of filing the petition.
- The state fee and administrative deposit have been duly covered.
- The court confirms the existence of grounds for filing an insolvency petition indicated in the application on the day of examination.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court issues a decision to open bankruptcy proceedings:
 - Court appoints an insolvency practitioner (IP) proposed by the Insolvency Administration if the IP complies with statutory requirements.
- Decision to open bankruptcy proceedings comes into effect:
 - Debtor loses its property rights, which are assumed by the IP.
 - Activities of the debtor's management are halted; the IP takes over management of the company, assets and documents.
 - Increase of interest, penalties and other mandatory payments is suspended.
 - Creditors have one month to file claims.

2.6. Persons obliged to file for bankruptcy

- Debtor – if the debtor cannot comply with the obligations set in the plan for legal protection proceedings.
- Debtor – if obligations are at least 2 months overdue, and either no agreement has been

reached with creditors, or no restructuring petition has been filed.

- Liquidator of the company – if during the liquidation process it becomes apparent that the debtor's property will not suffice to satisfy all the legitimate claims of creditors.

2.7. Sanctions for not filing for bankruptcy in time

- Civil liability – personal liability of a board member (joint liability if insolvency caused by more than one member) to the debtor and/or creditors.
- Administrative liability – penalty imposed upon board members or natural persons ranging from € 280 to € 700 for failure to file insolvency petition and penalty ranging from € 70 to € 700 for breaching insolvency or legal protection proceedings.
- Other: board members and representatives of the debtor can be prohibited from holding certain positions within companies.
- Criminal liability reserved for:
 - Causing insolvency due to neglect – possibility of imprisonment for up to 1 year or temporary imprisonment, or community service, or a fine, along with a prohibition on holding certain positions within companies.
 - Intentionally causing insolvency – possibility of imprisonment for up to 3 years or temporary imprisonment, or community service, or a fine, along with a prohibition on holding certain positions within companies.
 - Conduct related to insolvency, e.g. fraud, delaying insolvency proceedings.

2.8. Appointment of insolvency practitioner (IP)

- Court appoints an IP proposed by the Insolvency Administration.
- The IP is a natural person who must meet the following requirements:

- full legal capacity;
- at least 25 years old;
- fluent in Latvian;
- qualified lawyer;
- has passed the insolvency practitioner's exam;
- has at least three years' professional experience as a lawyer or other legal professional;
- has an impeccable reputation;
- has not committed an intentional crime;
- has not been the target of insolvency proceedings in the last five years.

2.9. Ethical standards for IPs

- Code of Ethics issued by the professional organization of insolvency practitioners.
- IPs must be independent, objective, diligent, and reliable, maintain the interests of creditors and ensure the lawfulness of insolvency proceedings.
- Statutory sanctions include issue of a warning, reprimand, suspension, and withdrawal of licence to act as IP in cases of misconduct.
- IPs are liable for losses caused to the state, creditors, debtors or other parties.
- IPs must hold valid civil liability insurance.

2.10. Time for lodging creditors' claims, consequences of failure

- One month from publication of insolvency proceedings in the Insolvency Register.
- Consequences of missing the one-month deadline – revocation of voting rights.
- Deadline for acknowledging a claim – no later than 6 months after publication of insolvency proceedings in the Insolvency Register.
- Failure to abide by the 6-month deadline – the

limitation period sets in, so the creditor loses both its creditor status and the right to claim against the debtor.

2.11. Costs of filing claims

- € 71.14 if the petition is filed by the debtor.
- € 355.72 if the petition is filed by a creditor.

2.12. Administration costs

- Costs are covered from the debtor's property.
- Costs consist of remuneration for the liquidator, including a certain fraction of recovered funds depending on the amount recovered, and expenses to be repaid.
- The person who lodges the petition must file a deposit amounting to two minimum monthly salaries (totalling € 860 in 2018) as security for costs of the proceedings.

3. Ranking of claims / creditors

3.1. Secured creditors

- Liquidator realizes pledged properties (securities) at (or without) an auction and transfers the proceeds to the secured creditors.

3.2. Unsecured creditors

- After covering administrative costs, employee and state tax authority claims, remaining property divided between acknowledged unsecured creditors proportionally to sums claimed.

3.3. Employees

- Claims by employees are settled from the debtor's property but if this is insufficient, claims are settled from a guarantee fund as follows:
 - work remuneration for the last three months
 - reimbursement for annual paid leave
 - compensation for other types of paid leave

in the last 3 months

- severance payment
- compensation of damages
- employment-related tax payments

3.4. Nullifying contracts

- The IP must seek revocation of contracts causing losses to the debtor.
- The following contracts may be reviewed:
 - contracts made in the last 4 months before filing insolvency proceedings or the day after, regardless of whether the counterparty was aware of possible losses to the debtor;
 - contracts made in the last 3 years before filing insolvency proceedings if the counterparty was aware or should have been aware of possible losses to the debtor;
 - where the counterparty was either a shareholder, director, manager of or other person related to the debtor.

4. Restructuring proceedings (aiming at rescuing company)

4.1. Preconditions for restructuring

- Debtor has or will have financial difficulties.
- No bankruptcy proceedings have been initiated against the debtor.

4.2. Stages

- Debtor files a restructuring petition with the court.
- Within 2 months (an additional deadline extension amounting to 1 month can be granted) a restructuring plan must be drawn up and approved by:
 - secured creditors whose principal claims

amount to 2/3 of the total amount of secured creditors' principal claims against the debtor;

- unsecured creditors whose principal claims amount to more than 1/2 of the total amount of unsecured creditors' principal claims;
 - the restructuring administrator;
 - the court itself.
- Deadline for executing restructuring is 2 years with the option to prolong up to another 2 years.

4.3. Restructuring plan

- Plan for fulfilment of obligations.
- Different measures needed to renew solvency, e.g. cancellation or reduction of existing debts.
- Existing and planned core types of economic activities of the debtor.
- Deadline for execution of restructuring plan.
- Limitations imposed upon debtor's freedom of action (e.g. certain transactions and amounts) without the restructuring administrator's consent.
- Candidate for the role of restructuring administrator.

4.4. Approval of restructuring plan

- No sooner than 1 month after registration of intent to execute a restructuring plan with the competent authority and publication of restructuring in the official gazette, the restructuring proposal is submitted to a meeting of shareholders.
- Following the shareholders' approval, the company notifies creditors with rights to a claim about the restructuring plan within 15 days.
- The restructuring plan is then submitted to creditors for approval; the required thresholds are as follows:

- secured creditors whose principal claims amount to 2/3 of the total amount of secured creditors' principal claims against the debtor;
- unsecured creditors whose principal claims amount to more than 1/2 of the total amount of unsecured creditors' principal claims.

- Upon approval of the plan by creditors, the plan is submitted to the restructuring administrator.
- Objections raised by creditors deemed contestable by the debtor are assessed by an independent certified auditor.
- The administrator evaluates the plan's compliance with statutory requirements and submits the plan to the court.
- The court issues a decision within 15 days upon receipt of the above documents; the decision to approve the draft plan is final and binding.
- Amendments to the restructuring plan are subject to the above procedure of approval of restructuring plan.

4.5. Filing a petition for restructuring proceedings

- Debtor (legal person, partnership, individual merchant, person registered in a foreign country performing permanent economic activities in Latvia, producer of agricultural products) can apply for restructuring to renew solvency.
- No time limit.

4.6. Main content of petition

- Confirmation that none of the facts mentioned below exists:
 - liquidation proceedings against the debtor;
 - debtor has successfully implemented a restructuring plan in the last 5 years;
 - debtor has unsuccessfully attempted to execute a restructuring plan during the last four months or the restructuring petition was rejected by the court.

- Document confirming the payment of state duty of € 142.29.
- Circumstances why the debtor is asking for restructuring.

4.7. Time for lodging creditors' claims, consequences of failure

- Claims must be filed within the 2-month deadline for drawing up the restructuring plan.
- If restructuring has begun and the restructuring plan is approved by all those listed above, the plan is binding on the debtor and creditors, including creditors who did not approve the plan.

4.8. Selection of restructuring administrators

- The debtor may propose a restructuring administrator, but approval by a majority of creditors is required for the proposed restructuring administrator and afterwards by the court.
- If the debtor cannot agree with the majority of creditors on a restructuring administrator, the court will approve one of the candidates proposed by the majority of creditors.
- Restructuring administrator is a natural person who must meet the following requirements:
 - has full legal capacity;
 - has the right to live and work in Latvia throughout the legal protection proceedings;
 - has not been convicted of an intentional crime;
 - has not had insolvency proceedings launched against themselves;
 - has not caused insolvency of a legal entity;
 - has not been dismissed or suspended from such post within the past 5 years;
 - has not been barred from holding a position within companies;
 - has not been released from overseeing restructuring proceedings due to abuse of

authority within the past 5 years.

4.9. Ethical standards for restructuring administrators

- The same requirements set by law for IP also apply to restructuring administrators.
- Main rights of the creditors' meeting
- Right to approve, reject, and amend the restructuring plan.
- Right to propose and dismiss the insolvency administrator.
- Right to approve or dismiss extension of restructuring plan execution deadline.

4.10. Final proceedings

- Claims of creditors are satisfied in accordance with the restructuring plan.
- Decision of the court to terminate the restructuring in case of failure and, if necessary, start insolvency proceedings.

Author: Frank Heemann

Slovakia

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK-811 08 Bratislava

A stylized map of Slovakia is shown in the lower-left portion of the page. The country's border is outlined in a thick blue line. Within the country, a blue dot is placed and labeled "Bratislava". Another blue dot is visible in the southern part of the country, and a white dot is in the southwest. The surrounding areas are light gray with white lines indicating neighboring countries.

Bratislava



YOUR CONTACT

Mgr. Ing. Dávid Oršula
Partner

T +421 257 88 00 88
david.orsula@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Bankruptcy proceedings (usually aimed at liquidation of companies)
- Restructuring proceedings (aimed at rescue of companies)
- Discharge of natural persons (fresh start (FS) and no fresh start (NFS)/recovery plan)
- Note: specific rules apply to some corporations e.g. banks, credit unions, insurance companies

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; an insolvency practitioner (IP) supervises company management and oversees implementation of the approved restructuring plan
- Bankruptcy: no
- Discharge of natural persons: not for a FS, as the IP acts in matters relating to debtor's property. Yes for a NFS.

1.3. Insolvency register

- For bankruptcy proceedings and restructuring proceedings (only available in Slovak)
<https://ru.justice.sk/ru-verejnost-web/pages/home.xhtml>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- County court (Okresný súd) where the company is located

1.5. Average duration of proceedings

- Restructuring proceedings:
 - in 2017, only 9 restructuring proceedings were approved in Slovakia. The average duration was roughly 11 months.
- Bankruptcy proceedings:

- the average duration of bankruptcy proceedings that terminated in 2017 was 100 days but this number is heavily affected by a huge number of proceedings where the courts quickly rejected opening bankruptcy due to lack of assets and a rapid increase in debt discharge proceedings of natural persons. Other statistics show that the average duration of some 4,350 currently pending bankruptcy proceedings is roughly 3 years and 9 months.

1.6. Approximate satisfaction rate for bankruptcy proceedings

- No relevant data available

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Debtor – managing director
- Debtor's liquidator or other persons authorised by law

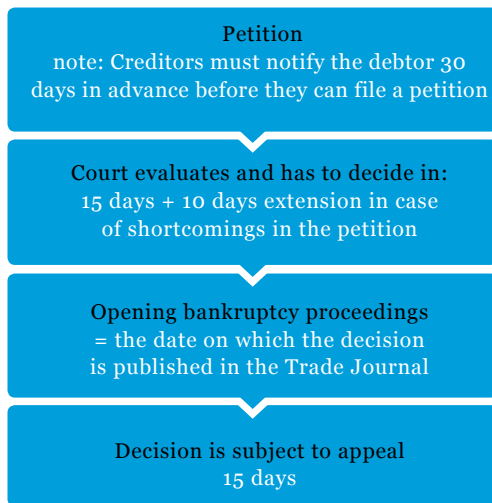
2.2. Grounds for filing a petition

- An over-indebted debtor must file a bankruptcy petition within 30 days from becoming (or should have become) aware of insolvency while maintaining expert care; this obligation on the debtor also affects the statutory body or a member of the statutory body of the debtor, liquidator or the legal representative.
- A creditor may file for bankruptcy if a reasonable assumption exists that the debtor is insolvent; this can be reasonably assumed when the debtor is over 30 days late with payment of at least 2 financial obligations to more than one creditor and was reminded to pay by at least one creditor.

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent if either of the following grounds is established:
 - debtor fails to pay at least 2 obligations over 30 days overdue to more than 1 creditor
 - debtor has more than 1 creditor and value of liabilities exceeds value of assets

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Company must restrict its activities except for common acts.
- All ongoing enforcement proceedings against company are suspended, new enforcement proceedings are barred.
- Realisation of a pledge cannot affect the assets of the company and has to be suspended (except claims arising from e.g. bank accounts, securities).
- Dissolution without liquidation is suspended.
- Decision on merger, acquisition or division of the company cannot be adopted.
- Decision to open bankruptcy proceedings comes into effect the day after the decision is

published in the Trade Journal.

2.6. Persons obliged to file for bankruptcy

- The debtor must file a bankruptcy petition within 30 days from when they became (or should have become) aware of insolvency (over-indebtedness) while maintaining expert care; this obligation on the debtor also affects the statutory body or a member of the statutory body of the debtor, liquidator and the legal representative.

2.7. Sanctions for not filing for bankruptcy in time

- A person who is obliged – but who fails – to file a bankruptcy petition on behalf of a debtor in time violates the law and is liable to creditors for damage caused unless proving that they acted with expert care.
- As of April 2015, for breaching the duty to file a bankruptcy petition in time, a limited liability company or joint stock company and the person responsible but who failed to file a bankruptcy petition in time are deemed to have agreed on a contractual penalty amounting up to half of the minimum registered capital of the company (€ 12 500). Any agreement between the company and the person responsible for filing a bankruptcy petition in time on its behalf that excludes or restricts the right to the contractual penalty is prohibited; the shareholders' agreement or by-laws may not restrict or exclude the right to this payment. The company cannot waive its right to receive payment of the contractual penalty or conclude a settlement agreement regarding this right; set-off is not allowed and nor is any other form of compensation. The right to a contractual penalty does not affect the entitlement to claim damages exceeding the contractual penalty.

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints an IP, randomly chosen by a computer program from IPs on the Register of IPs

2.9. Ethical standards for insolvency practitioners

- IP must perform administrative activity without

undue delay

- IP must be trustworthy, professionally qualified and must have full legal capacity to enter legal relationships
- IP must perform activities honestly, responsibly and conscientiously
- IP must perform activities with professional care, using all their experience and professional expertise

2.10. Time for lodging creditors' claims, consequences of failure

- Claims to be lodged within 45 days after declaration of bankruptcy
- If a creditor delivers a claim to the IP later, the application will be taken into account but the creditor loses voting and associated rights. Claims would be satisfied but only from the proceeds of the general bankruptcy estate

2.11. Costs of filing claims

- No stamp duties or other court expenses for filing a claim

2.12. Administration costs

- Before filing a bankruptcy petition the applicant must pay an advance payment (€ 1 500) of the remuneration and expenses of the preliminary IP.
- If after appointment of a preliminary IP the bankruptcy court finds that the debtor's assets will be insufficient even to cover the expenses of bankruptcy, then bankruptcy proceedings would end.
- If the debtor's assets do not cover legal and administrative expenses, the person who lodged a petition may pay an amount into the court's deposit account; then, bankruptcy proceedings will be initiated; the creditor may apply for a refund in bankruptcy proceedings.
- Remuneration of the IP until the first creditors' meeting is a lump sum under Decree no. 665/2005 Coll. for execution of provisions of the Bankruptcy and Restructuring Act.

- After the first creditors' meeting the IP is entitled to remuneration determined as a percentage of proceeds.

3. Ranking of claims / creditors

3.1. Secured creditors

- Paid first of all from proceeds of realizing security (separate insolvency estate), after claims against this separate estate are satisfied
- A creditor who could – with regard to the reservation of ownership – otherwise request exclusion from the list of property may lodge this right in bankruptcy in the same way as lodging a security right. The provisions governing the status of a secured creditor will apply accordingly to the legal status of that creditor

3.2. Unsecured creditors

- Settled proportionately within their respective rank (*pari passu*) from the general insolvency estate. Lower ranking claims only satisfied after all higher ranking claims are fully satisfied
- Ranking of claims as follows:
 - 1st rank: preferred rank – optional, e.g. creditors if restructuring changed to bankruptcy
 - 2nd rank: average rank – within this rank, satisfaction is as follows:
 - a) costs of the insolvency proceedings, including mainly costs of selling assets, remuneration of the IP
 - b) employees' wages and other claims by employees arising after bankruptcy was declared
 - c) taxes, duties, health insurance payments, social insurance payments and other contributions to the state
 - d) other claims.

- 3rd rank: subordinated rank – related persons of debtor

3.3. Nullifying contracts

- IP or creditor may bring actions for ineffectiveness of contracts (contestable legal acts) entered into within 1 year before opening of bankruptcy proceedings
- In the case of related persons, contracts are examined 3 to 5 years back in time
- Contestable legal acts are:
 - Contracts without adequate consideration (non-gratuitous legal act or gratuitous legal act of the debtor on the basis of which the debtor provided or agreed to provide fulfilment with a market value significantly higher than the market value of the fulfilment that was obtained or was to be obtained)
 - Privileging legal acts (privileging treatment of one creditor at the expense of others).
 - Detrimental legal acts (legal acts of the debtor that intentionally harm creditors, and the debtor's intention was or must have been known by the contracting party)

4. Restructuring proceedings (aiming at rescuing company)

4.1. Preconditions for restructuring

- The company is in crisis – insolvent or in danger of insolvency. A company is in danger of insolvency when the ratio of equity (net worth) and obligations is 8 to 100. This should be without prejudice to the obligation to file a bankruptcy petition in due time.
- Bankruptcy proceedings have not been opened.
- A debtor who may authorize an IP to prepare a restructuring report for the purposes of determining whether the conditions for restructuring are met.

- Creditors may appoint an IP to prepare a report if they agree with the debtor to provide the necessary cooperation. IP may recommend restructuring of debtor if:

- the debtor carries on business operations
- the debtor's bankruptcy is impending or the debtor is already bankrupt
- maintaining at least a substantial part of the debtor's business operations could reasonably be expected
- the financial statements of the debtor provide a true and fair view of the facts that are subject to accounting and of the financial situation of the debtor
- a minimum of two years has passed since the end of the last restructuring of the debtor or its legal predecessor; and
- if permission is granted, restructuring can reasonably be expected to meet a wider range of creditor satisfaction than in a bankruptcy

4.2. Stages

- Preparation of restructuring report on demand by debtors or creditors.
- Filing petition with the court within 30 days after recommendation by IP in the report.
- If filing a petition, a creditor must attach the debtor's acknowledgment of insolvency and agreement to restructuring.
- Decision by the court to open restructuring proceedings within 15 days.
- After opening proceedings, the court has 30 days to approve restructuring of debtor.
- Decision of the court to approve restructuring of debtor, random appointment of IP from the Register of IPs.
- Confirmation of claims by the IP and the court.
- Creditors' meeting takes place within 30 days from approval of restructuring, creating

restructuring plan and electing the creditors' committee.

- Confirmation of restructuring plan by the creditors' committee; if rejected, the debtor goes into bankruptcy.
- Confirmation of restructuring plan by the creditors' meeting (basically an absolute majority counted from the total amount of creditors' claims approved by the court).
- Confirmation of restructuring plan by the court.
- Satisfaction of creditors' claims.

4.3. Restructuring plan

- Restructuring plan consists of two parts – descriptive part and binding part.
- The restructuring plan is a document regulating the creation, modification or extinction of the rights and obligations of the persons listed therein (plan participants).
- Restructuring plan must provide unsecured creditors with satisfaction of their claims at least 20% higher than they would get in a bankruptcy. It may also provide that the unsecured creditors' claims may be converted into share rights or membership rights in the debtor (debt-to-equity swap).
- Once the court plan is confirmed, the plan is binding on all plan participants.

4.4. Approval of restructuring plan

- Restructuring plan must be submitted by debtor or creditor to the creditors' committee for preliminary approval within 90 days after approval of restructuring.
- If the plan is approved by creditors' committee, they ask the IP to convene an approval meeting, which consists of plan participants. Changes to the restructuring plan may be requested by any creditor no longer than 7 days before approval meeting.
- Date and place of approval meeting must be published in the trade journal.

- After restructuring plan is approved by approval committee it must be filed with the court. Court issues a decision within 15 calendar days upon receipt of the petition for approval of the restructuring plan.

- If the restructuring plan is refused at any stage of the approval process, bankruptcy must be declared.

4.5. Filing a petition for restructuring proceedings

- A petition must be filed by debtor or creditor with the court within 30 days after a recommendation by the IP in the restructuring report.

4.6. Main content of petition

- General requirements for petitions
- Restructuring report
- Lists of debtor's assets and obligations
- List of debtor's related persons
- List of legal acts of the debtor with related persons undertaken in the last two years concerning the debtor's assets in the amount of:
 - 10% higher than the amount of the debtor's registered capital
 - 5% higher than the lowest value of the registered capital of a joint stock company, if the debtor does not create registered capital
- Set of financial statements for the previous financial year

4.7. Time for lodging creditors' claims, consequences of failure

- Creditors lodge their claims with the IP within 30 days from approval of restructuring
- Claims lodged later are not accepted

4.8. Selection of restructuring administrators

- Court appoints an IP randomly chosen by a computer program from IPs on the Register of IPs

4.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings

4.10. Main rights of the creditors' meeting

- Election of creditors' committee and transfer to the committee of certain rights
- Creditors' meeting may propose to the IP to file for bankruptcy of the debtor

4.11. Final proceedings

- Claims by creditors are satisfied by the company according to the restructuring plan
- The management body may manage and dispose of all assets in compliance with the restructuring plan and under supervision of the IP
- Decision of the court to end restructuring proceedings terminates the proceedings

Author: Mgr. Ing. Dávid Oršula

Bulgaria

bnt Neupert Ivanova & kolegi adv.dr.
Gladstone 48
BG - 1000 Sofia



YOUR CONTACT

Stela Ivanova
Partner

T +359 2 980 1117
stela.ivanova@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Insolvency proceedings (usually aimed at liquidation with a possibility – though not commonly used – to rescue a company).
- Two types of restructuring proceedings. These are:
 - option to restructure within the insolvency proceedings (not a must)
 - separate stabilization proceedings in prevention of insolvency proceedings (newly introduced in 2017).
- Note: specific rules apply to some corporations e.g. banks and insurance companies.

1.2. Debtor in possession (self-administration)

- Stabilization proceedings: Yes.
- Insolvency: Possible if restructuring is still an option or is in progress. In practice seldom.

1.3. Insolvency register

- For stabilization proceedings:
 - Commercial register: www.brra.bg
- For insolvency proceedings:
 - informational system in terms of insolvency maintained by the Ministry of Justice: <http://ispn.mjs.bg/MJ/ispn.nsf/indexPublic.xsp?page=search>;
 - commercial register: www.brra.bg

1.4. Competent court for opening insolvency and stabilization proceedings

- District court (Okrazhen sad) at the seat of the distressed company.

1.5. Average duration of proceedings

- Insolvency proceedings:
 - no official statistics available
 - many proceedings end within 1.5 years due to lack of sufficient insolvency mass
 - if there is sufficient insolvency mass to cover the cost of the insolvency proceedings, these would, as a rule, not take less than 3 years
 - Stabilization proceedings: a stabilization plan must be adopted within 4 months from the day of opening the stabilization proceedings

1.6. Approximate satisfaction rate of insolvency proceedings

| Type of creditor | Ranking | Average satisfaction (%) |
|---|---------|--|
| Creditors secured by pledge and/or mortgage and/or lien | 1st | No official statistics, assessed over 50% |
| Cost of insolvency proceedings | 2nd | No official statistics, assessed at ≈ 40% |
| Employees | 3rd | No official statistics, assessed at ≈ 30% |
| Alimony | 4th | No official statistics, assessed at ≈ 20% |
| State | 5th | No official statistics, assessed at ≈ 10% |
| Overdue unsecured new creditors | 6th | No official statistics, assessed at ≈ 20% |
| Unsecured creditors | 7th | No official statistics, assessed at under 5% |

2. Insolvency Proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for insolvency

- Creditors
- Company manager, proxy
- Liquidator
- National Revenue Agency in the case of public debt to the treasury
- Head of Labour Inspection in the case of debt to employees
- Bulgarian National Bank in the case of bank insolvency

2.2. Grounds for filing a petition

- Debtor is unable to pay a due debt arising out of a commercial deal and/or a public debt due to the state or municipal treasury
- Over-indebtedness of a capital-based company
- Company fails to pay salaries and other employment-related payments
- Company fails to submit yearly accounts over a period of three years

2.3. Grounds for opening insolvency proceedings

- Company is insolvent (i.e. company does not meet its due obligations and the value of its short-term assets is less than the value of its short-term debt) or
- A capital-based commercial company is over-indebted (i.e. it has negative equity)

2.4. Statutory procedure for opening insolvency proceedings

Petition

note: Creditors have no duty to notify the debtor before filing a petition

Court evaluates and has to decide in: immediately, though this deadline is instructive

Decision is subject to appeal
Only 7 days starting with publication in commercial register

2.5. Effects of opening insolvency proceedings

- Court issues a decision to open insolvency proceedings:
 - court appoints a preliminary insolvency manager who becomes active immediately
 - court sets the day for the first creditors' meeting
 - court sets the exact day in the past when the prerequisites for insolvency were first met. This date, known as the "initial date of insolvency", plays a major role in regaining insolvency estate
- Decision to open insolvency proceedings is published in the commercial register:
 - company management loses powers
 - real estate and non-current assets are seized
 - no payment effective to company management possible
 - creditors have 1 month to file claims with a further final deadline of 2 more months
 - individual enforcement proceedings and court proceedings against the debtor are suspended

2.6. Persons obliged to file for insolvency

- Company manager, proxy.
- Liquidator of company.
- They must file within 7 days from the day when insolvency proceedings emerged.

2.7. Sanctions for failing to file for insolvency in time

- Civil liability – compensation of damages incurred by the company plus its creditors
- Other – company manager might be banned from holding a post as manager, member of board of directors or supervisors for an unlimited period
- Criminal liability for late filing, including the risk of a prison sentence.

2.8. Appointment of insolvency managers (Syndikus)

- Insolvency court appoints preliminary insolvency manager at court's own discretion
- Insolvency court appoints main insolvency manager following decision by the creditors' meeting

2.9. Ethical standards for insolvency managers

- No code of conduct applies to insolvency managers yet. Widespread problems with (un) ethical conduct by insolvency managers. Banks are known to work closely with their preferred insolvency managers, sometimes to the detriment of other creditors. In some cases rival companies have attempted to attack a debtor's business by abusive collaboration with an insolvency manager.
- Statutory sanctions: withdrawal of licence to carry out activities as insolvency manager for misconduct.
- In practice, liability cases against insolvency managers for damages by the estate and/or by creditors are rare and court practice is not well developed.

2.10. Time for lodging creditors' claims, consequences of failure

- Creditors who file claims within 1 month from the day of publishing the court's decision to open insolvency proceedings enjoy all rights of a creditor.
- Creditors who file claims within the following 2 months have their claims taken into consideration but lose some procedural rights (e.g. the right to object to claims filed by other creditors).
- Creditors who fail to file within the 3-month deadline lose their claims. In practice, the danger of losing claims is rather high as deadlines run independently of creditors' knowledge.

2.11. Costs of filing claims

- No stamp duties or other court fees for filing a claim.

2.12. Administration costs

- Administration costs include remuneration payable to the insolvency manager as well as other administration costs (accounting services, transportation, stationery and office supplies, legal services, storage and evaluation of goods).
- Administration costs are remunerated second (after claims secured by pledges, mortgages and liens) of all other expenses from the proceeds of sale of company assets.
- There are no rules on administration costs. Usually, an insolvency manager is awarded monthly remuneration of some BGN 800 to BGN 1 200 (€400 – 600).
- Premium payments calculated from the proceeds collected from the liquidated assets can apply only if set by a decision of the creditors' meeting.
- When the company assets will not cover legal and administrative expenses, the court requires the person who lodged the petition to open proceedings to deposit prospective costs. Usually, courts require a deposit of some BGN 10 000 to BGN 20 000 (€ 5 000 – 10 000). This sum is

paid second in line on distribution of proceeds from the insolvency estate (after claims secured by pledges, mortgages and liens). If this sum is not deposited, the court will suspend the proceedings for a year and afterwards close the proceedings, deleting the insolvent company from the commercial register. In that case, all creditors in practice lose all claims.

3. Ranking of claims / creditors

3.1. Secured creditors

- Paid first of all from proceeds of security, even before court and administration costs.
- Pledged / mortgaged property usually has to be sold by public auction. However, there are exceptions and cases of misuse are not unusual.

3.2. Unsecured creditors

- Settled proportionately within their rank. Lower ranking claims only satisfied after all higher ranking claims are fully satisfied.
- Ranking of claims is as follows:

| | |
|---------------------------------|-----|
| Cost of insolvency proceedings | 2nd |
| Employees | 3rd |
| Alimony | 4th |
| State | 5th |
| Overdue unsecured new creditors | 6th |

3.3. Employees

- Employment contracts are usually terminated. Employees are paid severance pay of 1 average monthly wage.
- Employees' claims are secured to a certain extent by the Guarantee Fund.

3.4. Nullifying contracts

- Insolvency manager examines transactions entered into within a period of up to 36 months

before filing for insolvency and brings action to annul those that have been detrimental to the insolvency proceedings.

3.5. Restructuring proceedings (aiming at rescuing company)

- There are two types of restructuring proceedings:
 - option to restructure within the insolvency proceedings
 - separate stabilization proceedings in prevention of insolvency proceedings (newly introduced in 2017)

3.6. Preconditions for restructuring

- Within the insolvency proceedings:
 - generally, every debtor with sufficient insolvency estate to cover the expenses of insolvency proceedings qualifies for restructuring
 - restructuring is not possible only when the procedure would obviously only lead to diminishment of the insolvency estate
- Stabilization proceedings:
 - a company is likely to become insolvent or stop payments within the 6 coming months
 - insolvency proceedings and earlier stabilization proceedings have not been opened in the course of the last three years
 - no more than 20% of the company's debt is to affiliated companies

3.7. Stages

- Within the insolvency proceedings:
 - Initiation of restructuring proceedings by filing with the court a restructuring plan by the management of the debtor, insolvency manager, creditors who hold at least 1/3 of secured debt, creditors who hold at least 1/3 of unsecured debt, owners who hold at least 1/3 of the debtor's capital, any personally liable partner, 1/5 of all employees. More than one plan can be proposed.

- Formal check of plan by court; court may require formal corrections from the applicant. Within 7 days from filing a formally correct plan: decision of the court to admit the plan to discussion by the creditors meeting; publication of that decision in the commercial register
 - No sooner than 45 days from the day of publishing: court session at which the creditors' meeting has the opportunity to discuss, modify and vote on propositions.
 - Creditors vote on the plan in four separate classes. Creditors may choose a controlling committee to whom the debtor must report if the plan becomes effective or ask the court to appoint a controlling committee at its discretion.
 - Creditors may file objections against the plan with the court within 7 days from the day of voting.
 - In closed session the court considers the plan and all objections and decides whether to declare the plan effective. This decision is published in the electronic commercial register and can be subject to appeal. Revision is not possible.
 - Stabilization proceedings:
 - initiation of stabilization proceedings by the management body only by filing petition with the court accompanied by a list of all creditors and a stabilization plan
 - decision of court to open stabilization proceedings, appointment of a stabilization administrator called trustee (dovereno litse)
 - objections by creditors to the list of creditors as an integral part of the petition for opening the stabilization proceedings
 - preparation by the trustee of draft final list of creditors with voting rights
 - adoption by the court of the final list of creditors with voting rights
 - adoption of the stabilization plan by the creditors with a voting right as per the final
 - list under a complicated voting system
 - confirmation of stabilization plan by the court
 - satisfaction of creditors' claims according to the stabilization plan
 - decision of the court to end the proceedings
- ### 3.8. Restructuring plan
- Within the insolvency proceedings:
 - expected degree of performance to each class of creditors
 - prospective collateral for creditors
 - list of managerial, organizational, legal, financial, technical and other measures
 - prospective effect on employment
 - Stabilization proceedings:
 - stabilization plan with proposals on how, when and what to pay, with details of security
 - the stabilization plan may only propose a debt reduction of over 50% if the affected creditors are affiliated companies
- ### 3.9. Approval of restructuring plan
- Within the insolvency proceedings:
 - Creditors approve the restructuring plan by voting in four separate classes: secured creditors, employees, creditors of public receivables and unsecured creditors. Only creditors whose claims have been accepted by the insolvency manager or deemed probable by the court on the basis of persuasive written proof can vote. Votes are submitted personally or by written statement with a notarized signature. In order to become effective, the plan must receive a simple majority of votes based on the sums claimed by every class of creditors. The amount of the claim decides the weight of a creditor's vote. However, the plan cannot be approved if over half the total admitted

claims vote against it.

- Once the restructuring plan is approved by the creditors, it will be checked by the court in terms of legality. The court decision to approve the plan can be appealed but not revised. Once the plan becomes final, the insolvency proceedings are discontinued, the mandate of the insolvency manager comes to an end and the debtor continues an independent existence but must report regularly to the controlling committee (if appointed).
- Stabilization proceedings:
 - - Creditors vote on the plan in five separate classes: secured creditors, employees, creditors of public receivables, unsecured creditors and affiliated creditors. In order to become effective, the plan must receive a simple majority of votes based on the sums claimed by every class of creditors. At the same time, the votes of no less than $\frac{3}{4}$ of all creditors in this class must be cast in favour of the plan. On a supra-class level, no less than $\frac{3}{4}$ of all receivables must have cast their vote in favour of the plan
 - After the plan is approved, it is subjected to a court check on legality. Once the stabilization plan has been approved by the court, it becomes final. Stabilization proceedings are closed. The functions of the trustee end.

3.10. Filing a petition for restructuring proceedings

- Within insolvency proceedings: within one month from the day on which the court publishes the list of adopted claims in the electronic commercial register.
- Stabilization proceedings: management body applies for stabilization proceedings according to prospective payment difficulties.

3.11. Main content of petition

- Within the insolvency proceedings:
 - restructuring plan
 - list of candidates for the controlling committee

- evaluation of the debtor's assets
- list of creditors who are prepared to take over share capital in exchange for debt

• Stabilization proceedings:

- the application to open stabilization proceedings must include many attachments, e.g. accounts for the last three years and to the end of the month preceding the application
- list of debts/creditors and receivables/debtors of the company
- list of payments over the past 3 years
- warranties and guarantees issued for the benefit of third parties
- a detailed stabilization plan

3.12. Time for lodging creditors' claims, consequences of failure

• Within the insolvency proceedings:

- the general rules apply to claims that emerge before opening insolvency proceedings
- for later claims that emerge before the restructuring plan is declared effective, the insolvency manager must prepare a separate list; unless otherwise governed by the plan, the court will oblige the debtor to pay according to this list

• Stabilization proceedings:

- creditors do not lodge claims but may file objections against the draft list of creditors
- a creditor not included in the final list of creditors is not bound by the stabilization plan

3.13. Selection of restructuring administrators

• Within the insolvency proceedings:

- the insolvency manager is appointed by the court as described above

- the court may appoint a controlling committee of three to seven members. The rules under which the committee works must be set out in the restructuring plan. The members must be natural persons of unrestricted legal capability. No further requirements are set out in the applicable legislation

- Stabilization proceedings:

- The court appoints a trustee. A trustee can be a natural person qualified as an insolvency manager. Though insolvency managers can also be persons with a university degree in the field of economics, trustees must hold a university degree in law.
- The court can also appoint an auditor.

3.14. Ethical standards for restructuring administrators

- No ethical rules have been established.

3.15. Main rights of the creditors' meeting

- Within the insolvency proceedings:

- approval of the restructuring plan under a complicated voting system
- application to the court to appoint a controlling committee and proposing its members

- Stabilization proceedings: approval of stabilization plan.

3.16. Final proceedings

- Within the insolvency proceedings:

- claims by creditors are satisfied by the enterprise under the restructuring plan
- management body can still manage and dispose of all assets in compliance with the restructuring plan and under supervision of the controlling committee administrator. Key deals need prior consent by the controlling committee. However, rights of third persons accrued in good faith remain unaffected if the deal is closed and executed

without an act of consent

- if debtor does not perform strictly under the restructuring plan, affected creditors who hold no less than 15 % of the total debt or the controlling committee can apply for renewal of the insolvency proceedings, which then continue, to end this time in liquidation of the debtor's enterprise

- Stabilization proceedings:

- once the stabilization plan is adopted by the court, the management body may manage and dispose of all assets in compliance with the stabilization plan
- the functions of the trustee end
- the court closes the stabilization proceedings
- in case of non-performance under a stabilization plan, an affected creditor can start execution based on the stabilization plan itself. In doing so, the creditor can demand the initial claim in full

Author: Stela Ivanova

› Our team: Practice Group Insolvency



dr. Gábor Jánoshalmi
Associated Partner
Hungary



Jakub Woliński
Associate
Poland



Pavel Pravda
Partner
Czech republic



Aet Bergmann
Partner
Estonia



Alexander Liessem
Partner
Belarus



Frank Heemann
Partner
Lithuania



Frank Heemann
Partner
Latvia



Mgr. Ing. Dávid Oršula
Partner
Slovakia



Stela Ivanova
Partner
Bulgaria

Our Offices

BELARUS

bnt legal and tax
 Revolutsionnaya Str. 9
 building 4 office 40
 BY-220030 Minsk
 T +375 17 2039455
 F +375 17 2039273
info.by@bnt.eu

BULGARIA

bnt Neupert Ivanova & kolegi adv.dr.
 Gladstone 48
 BG-1000 Sofia
 T +359 2 980 1117
 F +359 2 980 0643
info.bg@bnt.eu

CZECH REPUBLIC

bnt attorneys-at-law s.r.o.
 Slovanský dům (Gebäude B/C)
 Na příkopě 859/22
 CZ-110 00 Praha
 T +420 222 929 301
 F +420 222 929 309
info.cz@bnt.eu

ESTONIA

bnt attorneys-at-law Advokaadibüroo OÜ
 Tatari 6
 EE-10116 Tallinn
 T +372 667 62 40
 F +372 667 62 41
info.ee@bnt.eu

GERMANY

bnt Rechtsanwälte GbR
 Leipziger Platz 21
 D-90491 Nuremberg
 T +49 911 569 61 0
 F +49 911 569 61 12
info.de@bnt.eu

HUNGARY

bnt ügyvédi iroda
 Stefánia út 101-103.
 H-1143 Budapest
 T +36 1 413 3400
 F +36 1 413 3413
info.hu@bnt.eu

LATVIA

Jensen & Svikis Legal
 Antonijas iela 24-7
 LV-1010 Riga
 T +371 25 23 20 22
info.lv@bnt.eu

LITHUANIA

bnt Heemann APB
 Embassy House
 Kalinausko 24, 4th floor
 LT-03107 Vilnius
 T +370 5 212 16 27
 F +370 5 212 16 30
info.lt@bnt.eu

POLAND

bnt Neupert Zamorska & Partnerzy sp.j.
 ul. Chłodna 51
 PL-00 867 Warsaw
 T +48 22 373 65 50w
 F +48 22 373 65 55
info.pl@bnt.eu

SLOVAKIA

bnt attorneys-at-law, s.r.o.
 Cintorínska 7
 SK-811 08 Bratislava
 T +421 2 57 88 00 88
 F +421 2 57 88 00 89
info.sk@bnt.eu

BNT KORRESPONDENZKANZLEIEN

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