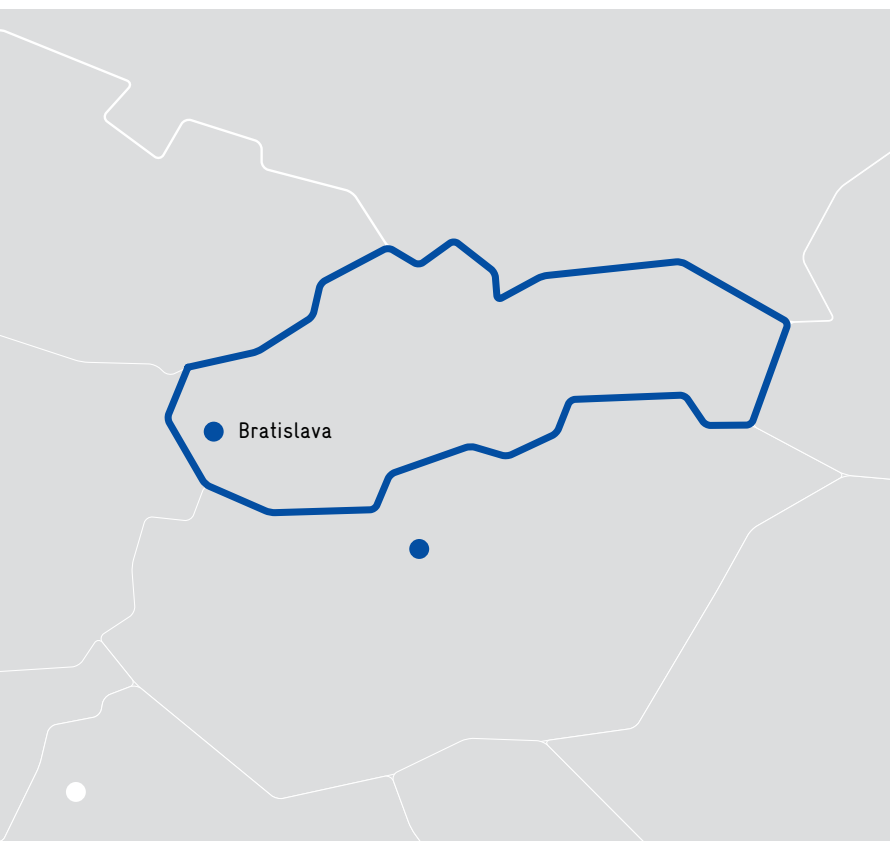


# Slovakia

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## › 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

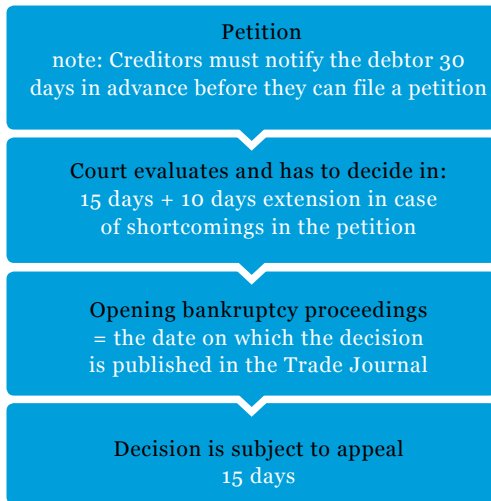
### 2.2. Grounds for filing a petition

- 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)
- 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

## 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.
- 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

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