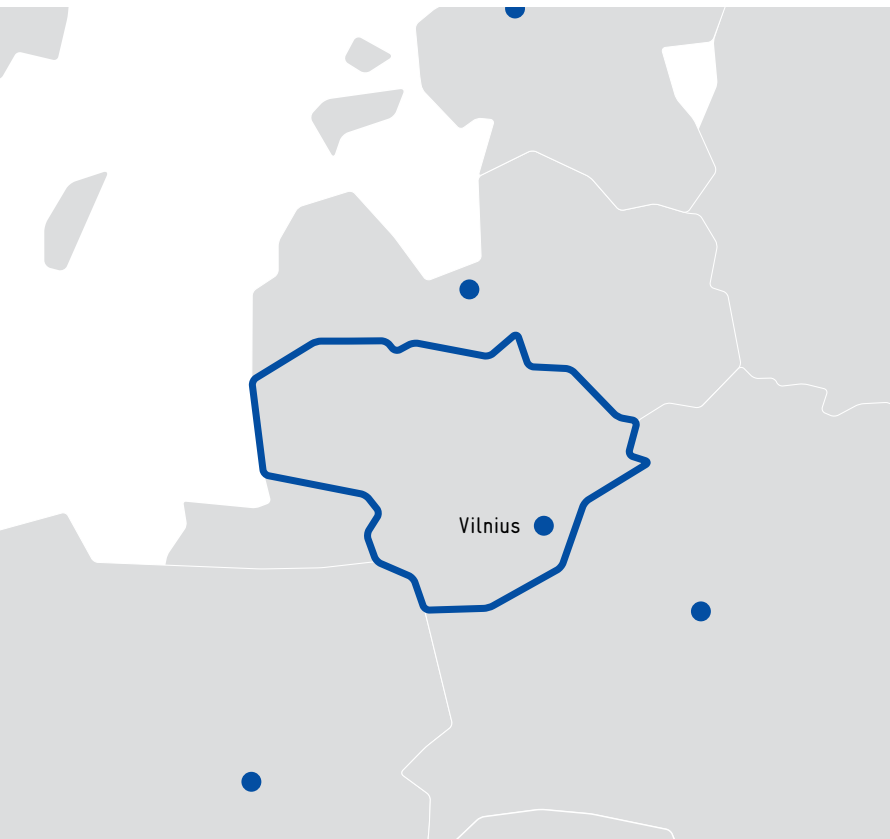


# Lithuania

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## 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

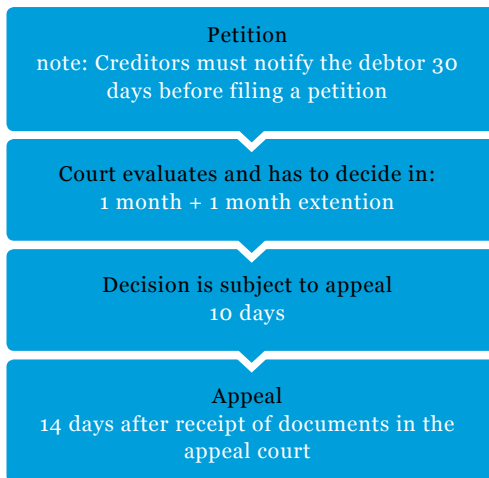
### 2.2. Grounds for filing a petition

- 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