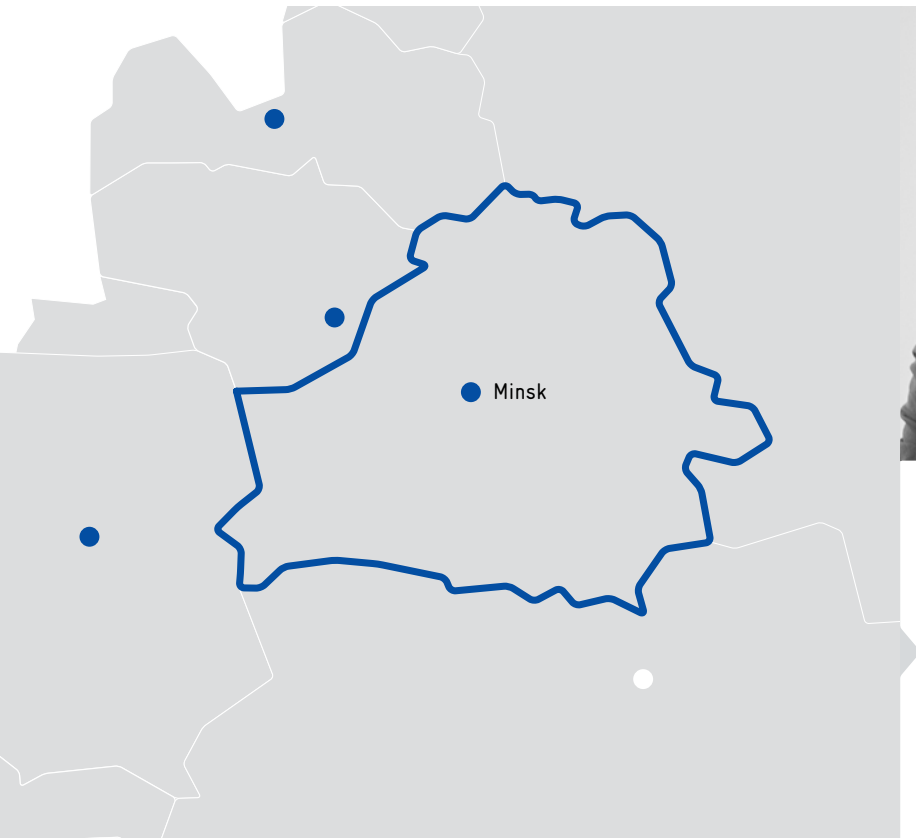


# Belarus

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## 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 (Ekonomicheskyy 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

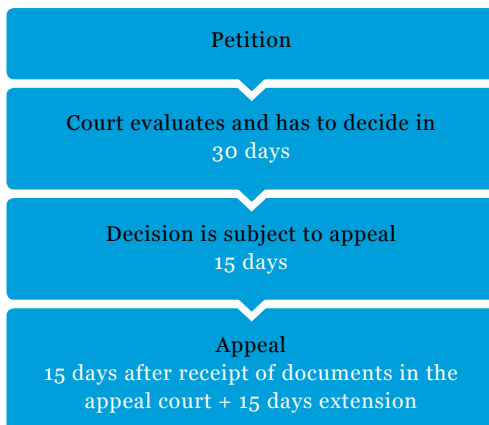
- The debtor is entitled to file a petition:
  - insolvency is constant or
  - insolvency is tending to be constant
- The debtor must file a petition:
  - if after satisfying claims by one or several creditors it is impossible to satisfy claims of other creditors in full or if satisfaction of claims 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

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## > 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

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