

CENTRAL AND EASTERN EUROPE

Insolvency & Restructuring

Survey | 2020/2021



We are delighted to present this third edition of our Insolvency & Restructuring Survey. The second edition of the Survey was released in 2018. Since then, our readers have sent us ample feedback, for which we are immensely grateful. This feedback – from business owners and managers, from lenders and other creditors, and also from insolvency office-holders – was not only motivating but also proved valuable when preparing this third edition of the Survey. Our aim remains the same: to provide a useful overview of the rapidly changing legal framework for insolvencies in Central and Eastern Europe and to help decision makers get a sense of the impact of insolvencies in CEE jurisdictions, thus enabling them to take the right decisions at an early stage, including the decision to consult insolvency experts to help secure their interests.

Our firm's international insolvency and restructuring practice group pools the know-how and expertise of insolvency lawyers from our offices in 10 CEE jurisdictions. In this region we are thus uniquely positioned to advise creditors, debtors, insolvency office-holders and other stakeholders on all insolvency and restructuring matters, such as pre-insolvency protection of creditors' rights, creating insolvency-remote collateral, representing creditors in insolvency proceedings, pre-insolvency debt restructuring, legal duties of company bodies and shareholders in crisis, capital maintenance regulations, mandatory regulations under tax/social security law, employee questions, mass lay-offs, joint intra-group liability, prerequisites and risks of de-facto management, claw-back and avoidance of transaction rights and distressed M&A.

Sincerely,
Frank Heemann and Stela Ivanova

Note: this Survey is based on laws in effect on 31 March 2020. Due to the extraordinary dynamics of legislative measures, COVID-19 measures have been outsourced in a separate factsheet updated on a regular basis and available as a pdf on our webpage www.bnt.eu. 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.



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1. General information

1.1. General types of insolvency proceedings for companies

- Bankruptcy proceedings are one of the options under the more general term of insolvency proceedings.
- 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.
- The Ministry of Justice is, as per May 2020, working on a draft for major changes on some key issues with regard to insolvency, including the status of insolvency practitioners. The outcome is still unknown.

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

- Bankruptcy 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 bankruptcy 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 ≈ 10% |
| Unsecured creditors | 7th | No official statistics, assessed at under 5% |

› 2. Bankruptcy proceedings (generally aimed at liquidation)

- Bankruptcy proceedings are one of the options under the more general term of insolvency proceedings.

2.1. Persons entitled to file a petition for bankruptcy

- 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 and/or a private debt due to the state.
- 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 bankruptcy 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 bankruptcy 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 and courts sometimes take months to decide

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

2.5. Effects of opening bankruptcy proceedings

- Court issues a decision to open insolvency proceedings:
 - Court appoints a preliminary insolvency practitioner who becomes active immediately provided he/she accepts appointment.
 - 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 proceedings is published in the commercial register:
 - Company management as a rule loses powers.
 - Real estate and non-current assets are seized.
 - No effective payment 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 bankruptcy

- 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 bankruptcy 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 practitioner (IP)

- Insolvency court appoints preliminary IP at court's own discretion.
- Insolvency court appoints main IP following decision by the creditors' meeting.
- In 2016, the legislation provided also for the figure of the so called „assistant IP“. The idea is to enable some administrative support for the IPs when they have to deal with larger cases. In practice, no assistant IPs exist and function yet.

2.9. Ethical standards for insolvency practitioner

- No code of conduct applies to IPs yet. Widespread problems with (un)ethical conduct by IPs. Banks are known to work closely with their preferred IPs, 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 IP.

- Statutory sanctions: withdrawal of licence to carry out activities as IP for misconduct.
- In practice, liability cases against IPs 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 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 IP 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 IP 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.
- A right to withhold a piece of property belonging to the debtor will usually also construct a privilege.

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 |
| Overdue unsecured old creditors | 7th |
| Loans by shareholders | last |

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.

› 4. Nullifying contracts

- IP 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.

› 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)

5.1. 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 stabili-

zation 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.

5.2. Stages

- Within the insolvency proceedings:
 - Initiation of restructuring proceedings by filing with the court a restructuring plan by the management of the debtor, IP, 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 publication: 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

5.3. 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 on security
 - the stabilization plan may only propose a debt reduction of over 50% if the affected creditors are affiliated companies

5.4. 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 IP 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 IP 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 undergoes 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.

5.5. 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.

5.6. 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
- #### 5.7. Time for lodging creditors' claims, consequences of failure
- Within the insolvency proceedings:
 - The general rules apply to claims that emerge before opening the proceedings.
 - For later claims that emerge before the restructuring plan is declared effective,

the IP 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.

5.8. Selection of restructuring administrators

- Within the insolvency proceedings:
 - The IP 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.

5.9. Ethical standards for restructuring administrators

- No ethical rules have been established.

5.10. 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.

5.11. 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 the 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.

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