

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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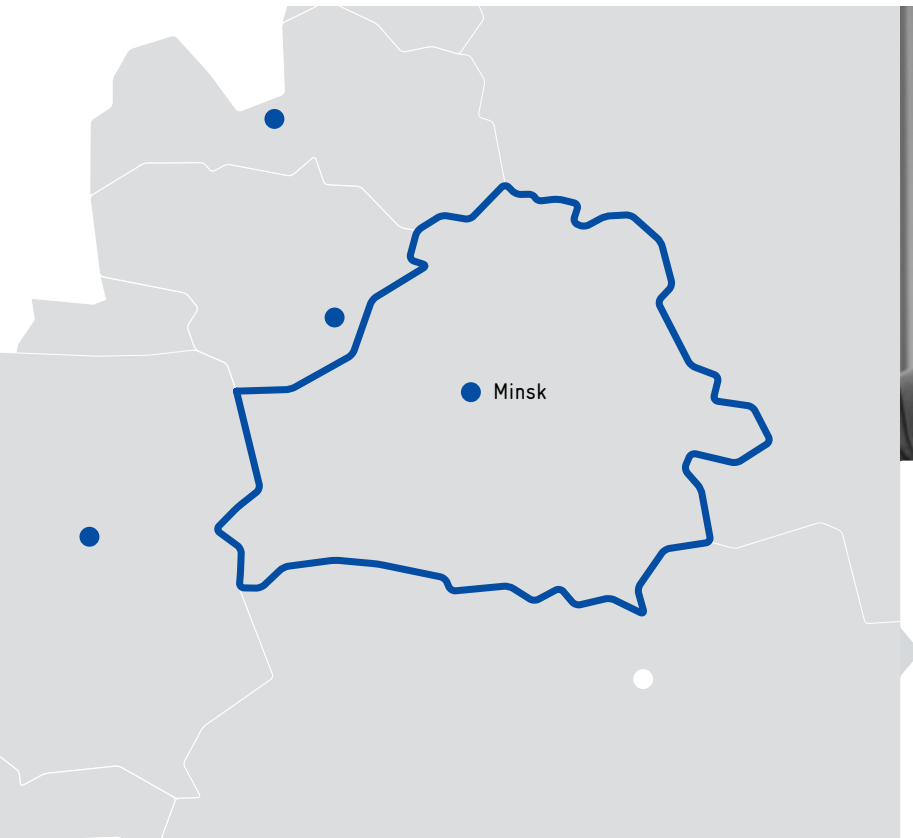


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› 1. General information

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 in 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: company bodies may undertake 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 available on duration of proceedings.
 - During 2019 in state-owned and private companies out of 2193 insolvency cases the court decided on restructuring in 6 cases.
- Bankruptcy proceedings: no official statistics available on duration of proceedings.
 - During 2019 in state-owned and private companies out of 2193 insolvency cases the

court decided on 909 cases for liquidation.

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 unable 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 when:
 - 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 by other creditors in full or if satisfaction of claims will stop the debtor's activity
 - the debtor's corporate body which can decide on liquidation decides to file for insolvency
 - the owner of the property of a unitary enterprise decides to file for insolvency
 - during the liquidation procedure it appears that the debtor's assets are not sufficient

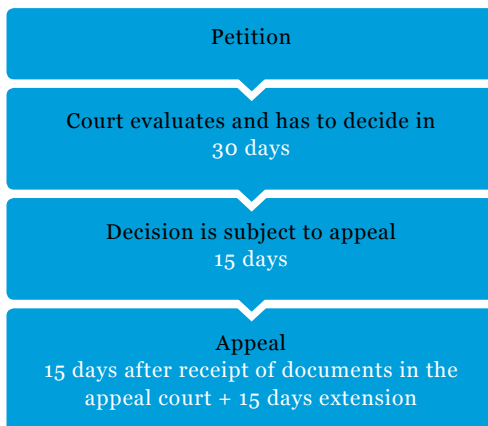
to satisfy creditors' claims in full or are lacking.

- 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 the 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 01 March 2020) or at least 2 500 base units (approx. € 25 400 on 01 March 2020) 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 public announcement on opening insolvency procedure 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 listed 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 actually had enough funds to satisfy all creditors' claims in full (potentially false bankruptcy), the debtor is liable for actual damage caused to creditors by such filing.
- If insolvency is caused by the owner of the debtor's assets, its 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, the 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 a 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 are 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.

› 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.

› 5. Restructuring proceedings (aiming at rescuing company)

5.1. 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 on an agricultural company even if the IP and creditors decide 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 agricultural season.

5.2. 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 restructuring; (iv) to cancel restructuring and to start liquidation
- 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

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bnt at a glance

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