

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.



Frank Heemann
Attorney-at-law
(Rechtsanwalt)
(UCT)

Co-Head of the bnt Insolvency & Restructuring practice group

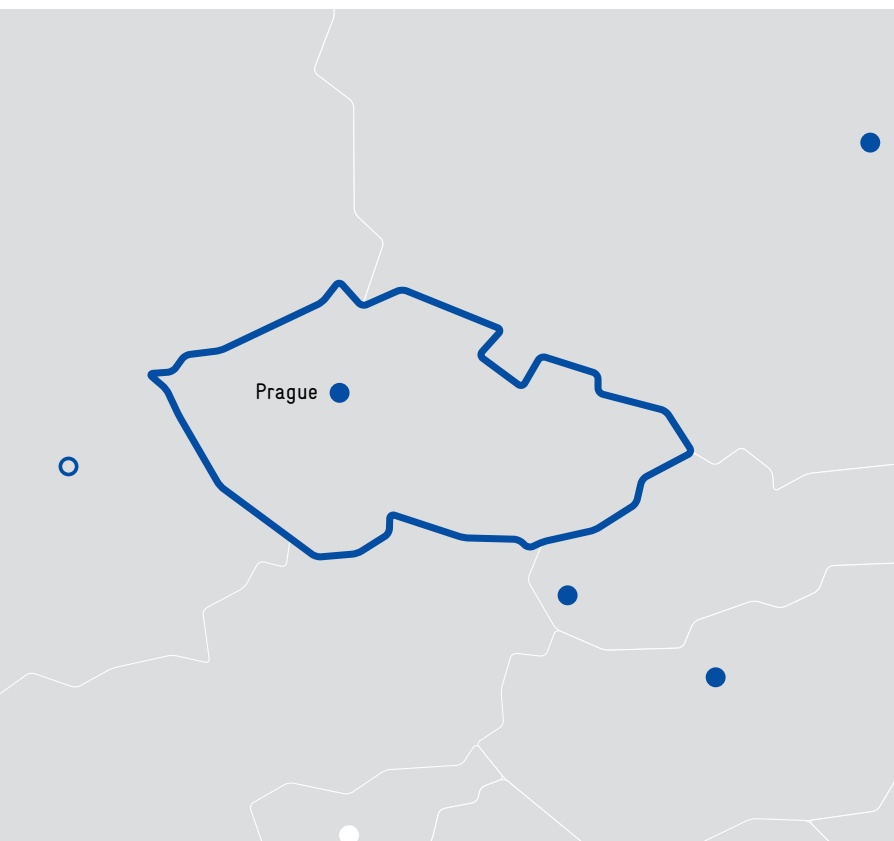


Stela Ivanova
Attorney-at-law (Advokat)
(LMU)

Co-Head of the bnt Insolvency & Restructuring practice group

Czech Republic

bnt attorneys-at-law s.r.o.
Slovanský dům (building B/C)
Na příkopě 859/22,
CZ-110 00 Prague



YOUR CONTACT

Pavel Pravda
Partner

T +420 222 929 301
pavel.pravda@bnt.eu

1. General information

1.1. General types of insolvency proceedings for companies

- Restructuring proceedings (aimed at company rescue)
- 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; insolvency practitioner supervises company management and oversees implementation of approved restructuring plan. The insolvency practitioner may under certain conditions request limitation of the debtor's right to dispose of assets.

- Bankruptcy: no

1.3. Insolvency register

- For all insolvency proceedings (only available in Czech)
<https://isir.justice.cz/isir/common/index.do>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- District court (Krajský soud / in Prague: Městský soud) for region where debtor has registered seat or domicile

1.5. Average duration of proceedings

- Restructuring proceedings:
 - For out-of-insolvency proceedings terminated between 2008 and 2014 the average length of reorganization proceedings from filing an insolvency petition until approval of a restructuring plan was 1 year and 1 month (the period from approval of restructuring plan until termination of reorganization proceedings differs based on the method of reorganization).

- Bankruptcy proceedings:

- Average duration is 2 years (data based on insolvency proceedings terminated in the period 2008-2014).

1.6. Approximate satisfaction rate in bankruptcy proceedings

Type of creditor	Ranking	Average satisfaction (%)
Receivables against assets	1st	85.7
Receivables set on same level as receivables against assets	1st	45.3
Unsecured creditors	2nd	3.7
Secured creditors	priority	28.2

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Managing director of company or other person authorized under founding documents

- Liquidator

2.2. Grounds for filing a petition

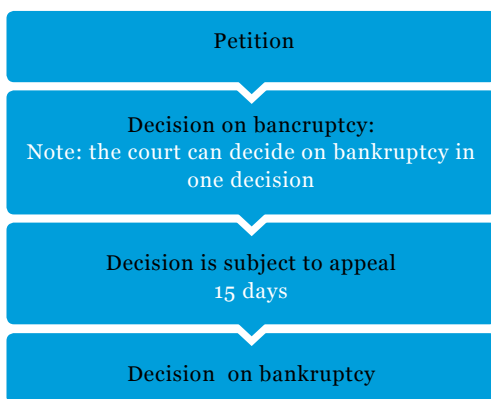
- Company is financially insolvent (platební neschopnost) when
 - having at least two creditors
 - having financial obligations at least 30 days overdue
 - and is unable to pay those obligations
- A statutory presumption of inability to pay financial obligation arises if:

- debtor stops payments for a substantial part of its financial liabilities, or defaults for over 3 months overdue, or
 - satisfaction of financial receivables due from the debtor may not be achieved by enforcing a decision or execution, or
 - debtor fails to comply with obligation to file lists (referred to in the insolvency act) imposed upon it by the insolvency court.
- Debtor that is a legal entity or a natural person, i.e. an entrepreneur, is considered insolvent even if it simply has excess debts, i.e. is over-indebted. A debtor that has several creditors and its total due liabilities exceed the value of its property has excess debts and is over-indebted (předlužení).

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent (i.e. company financially insolvent or over-indebted), the court declares the company bankrupt and restructuring proceedings are excluded (i.e. bankruptcy proceedings are the only way to resolve the company's insolvency).

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- After opening insolvency proceedings, i.e. publication of petition in the insolvency register:

- receivables due from the debtor can be claimed only by lodging creditors' claims in the insolvency proceedings, and
 - no new security can be established over the debtor's assets (except for lender in regime under the insolvency act), and
 - execution or enforcement against debtor's assets is prohibited.
- Upon decision to declare bankruptcy:
 - company management loses its powers, and
 - insolvency practitioner (IP) takes over company management, assets and documents, and
 - all claims against the debtor (even those not already due) are now considered due, and
 - the debtor's orders and power of attorney are terminated, and
 - offsetting assets forming part of the debtor's assets is prohibited, and
 - judicial, administrative and other proceedings are suspended where the debtor is a party concerning rights and obligations relating to its assets or to be satisfied by those assets.
 - IP can terminate a lease or sublease agreement after bankruptcy proceedings are opened.
 - The counterparty to a lease or sublease agreement cannot terminate or withdraw from the agreement after bankruptcy proceedings are opened on the ground of the debtor's delay in paying rent or other issue that occurred before the bankruptcy proceedings or for deterioration of the debtor's property situation.

2.6. Persons obliged to file for bankruptcy

- The statutory body of a company must file an insolvency petition immediately on becoming aware (or with due diligence could have become aware) of insolvency (bankruptcy).

- Liquidator of the company must file an insolvency petition immediately on becoming aware that the company is insolvent.

2.7. Sanctions for not filing for bankruptcy in time

- A person who violates their responsibility for filing an insolvency petition for the debtor is liable to creditors for damage caused by late (or non-) filing of a petition except on proof of having acted with the care of a prudent businessman.
- Criminal responsibility arises under the Criminal Code (law No 40/2009 Coll.) e.g. for fraud, damaging creditors, causing insolvency.

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints IP – usually chosen by procedure set by the day of registration of its seat or establishment in list of insolvency practitioners kept by the court.
- For companies with annual turnover over CZK 100 million, banks and financial institutions, only IPs with special permission can be appointed.

2.9. Ethical standards for IPs

- They must put the interests of creditors above their own interests.
- They operate independently and in line with insolvency law.
- An official code of ethical standards for IPs is issued by the Ministry of Justice.

2.10. Time for lodging creditors' claims and consequences of failure

- A creditor can lodge a claim in insolvency proceedings from opening of the proceedings until the deadline set by the court in its decision on bankruptcy.
- Deadline set by court for lodging claims: not less than 30 days and not over 2 months from the insolvency court's decision on bankruptcy.
- Consequences of not filing a claim: non-recognition of claim, excluded from proceedings.

2.11. Costs of filing claims

- no stamp duties for filing a claim
- A creditor filing an insolvency petition pays a sum to cover costs of the proceedings (€ 2 000 for petition against legal entity/entrepreneur and € 400 for petition against legal entity/non-entrepreneur or against a natural person).
- A deposit cannot be required from an employee of the debtor if the claim is job-related.

2.12. Administration costs

- Administration costs include remuneration payable to the IP as well as other administration costs (e.g. costs of managing assets: accounting, transportation, stationery and office supplies, legal services, storage, costs of expert report, employee salaries, taxes).
- Administration costs are remunerated before other expenses from the proceeds of company assets sold.

> 3. Ranking of claims / creditors

3.1. Secured creditors

- Secured creditors are paid first from the proceeds of realizing their security after deduction of legal and administrative costs.

3.2. Unsecured creditors

- Unsecured creditors are included in the lowest rank and settled proportionately.

3.3. Employees

- Job-related claims by employees are put on the same level with claims against the debtor's assets and are satisfied first.
- Employees may – if an insolvent employer is the debtor – ask the state to pay them their salaries for up to 3 months if conditions of the act on protection of employees are met.

› 4. Nullifying contracts

- The insolvency act differentiates between nullity and ineffectiveness.
- The insolvency court may check for nullity of contracts and legal deeds + is not bound by decisions of other courts or organs.
- A deed is ineffective if used by the debtor to lessen the possibility to satisfy creditors or if giving preferential treatment to one creditor at the expense of others.
- IP checks legal deeds entered into within at least 3 years before bankruptcy proceedings and brings actions to invalidate legal deeds of the company without adequate consideration and disadvantageous legal deeds and even within at least 5 years in the case of legal deeds that deliberately lessen the possibility to satisfy creditors.
- Persons affected by the ineffectiveness of a legal deed must refund the original payment or other fulfilment by the debtor to the debtor's assets (details according to the insolvency act).

› 5. Restructuring proceedings (aiming at company rescue)

5.1. Preconditions for restructuring

- The debtor is:
 - a business (mainly legal entities) in bankruptcy and an insolvency petition has already been lodged
 - not already in liquidation
 - not a trader in securities (special rules for bankruptcy of financial institutions and insurers = a special kind of reorganization)
 - the business has yearly turnover over ca. €1.8 Mio. in the last business year or at least 50 employees. These requirements do not apply if the debtor presents a restructuring plan no later than publication of decision

on bankruptcy in the Insolvency Register, in which case the restructuring plan must be approved by at least 50% secured + unsecured creditors.

5.2. Stages

- Petition to insolvency court for permission to reorganize within 10 days before first meeting of creditors after decision on bankruptcy
 - Permission by insolvency court for reorganization (if not, the matter continues as bankruptcy proceedings), besides
 - possible limitation of debtor's competence to act (on application by the IP and/or the creditors' meeting), besides
 - restructuring plan, with content in line with insolvency law, besides
 - choice of methods to realize reorganization.
 - Insolvency court accepts restructuring plan; only creditors who do not agree to the plan may appeal the decision.
 - Restructuring plan legally enters into force.
 - Functioning of the debtor according to the restructuring plan.
 - After the restructuring plan: all claims by creditors are excluded except those mentioned in the restructuring plan.
 - If the restructuring plan is violated, the insolvency court can cancel it and further proceedings are in bankruptcy.
 - If the restructuring plan is fulfilled, the insolvency court issues a statement that the reorganization has ended + decides on the IP's fees and expenses.
- ### 5.3. Restructuring plan
- Obligatory content of restructuring plan is listed in insolvency law:
 - list of creditors + their position in groups in the reorganization and how to deal with claims by creditors in different groups, besides

- specification of reorganization methods, e.g.: restructuring creditors' claims by reducing claims; sale of debtor's property or all/part(s) of the business; merger of the debtor with another legal entity; issue of shares or other securities; assurance of financing for the debtor's business; change of debtor's statutes regulating internal relations.
- Furtheron, the following is necessary:
 - appointing persons to fulfil the restructuring plan, including their rights
 - information whether and under what conditions the activity of the business or part of it will continue
 - information about persons involved in financing the restructuring plan or taking over the debtor's obligations or assuring their fulfilment, and information about their participation in the plan
 - information under insolvency law on whether the restructuring plan influences the number of employees in the debtor's business, and documents in this respect
 - information whether the debtor will have any obligations after the reorganization ends and if so, then also specification of those obligations
 - proposal on how court claims are secured and up to what amount these will be reserved for creditors under the restructuring plan.
- The restructuring plan must contain true data on the debtor's business and legal outlook.

5.4. Approval of restructuring plan

- Report on restructuring plan must be formally approved by the insolvency court.
- Report on restructuring plan is published in the insolvency register after approval by the insolvency court.
- Draft restructuring plan and report on the plan must be published in the insolvency register at least 15 days before the creditors' meeting.

- Draft restructuring plan must be approved by majority of voting creditors in each group whose receivables account for at least 50% of the total nominal value of claims by creditors in that group that voted to adopt the plan (note: voting in groups).
- Draft restructuring plan approved by creditors must be approved by the court.
- Creditors who voted against the restructuring plan can appeal against the decision of the court approving the plan.
- Draft restructuring plan must be filed with the court within 120 days after the decision of the court to declare bankruptcy; this term can be prolonged once by the court but by no more than another 120 days.
- Amendments to restructuring plan are subject to the same procedure for originally approving the restructuring plan.

5.5. Filing a petition for restructuring proceedings

- The debtor must file a petition for reorganization with the insolvency court in the case of pending bankruptcy no later than the day of the decision on bankruptcy. In all other cases, a petition can be filed until 10 days before the scheduled first meeting of creditors after the decision on bankruptcy.
- The decision of the insolvency court confirming reorganization contains a 120-day deadline to file a restructuring plan.

5.6. Main content of petition

- general requirements for petitions under insolvency law
- all information on the debtor, its capital structure, and on the property of persons who own the debtor
- information on reorganization method

5.7. Time for lodging creditors' claims, consequences of failure

- The insolvency court sets a deadline in its

decision on bankruptcy for lodging creditors' claims (30 days to 2 months after the decision); claims can be lodged immediately after an insolvency petition is filed with the insolvency court.

- A claim that misses the deadline is no longer admissible.
- For deadlines for foreign creditors: see chapter on general insolvency procedure above.
- The decision on bankruptcy can be joined with the decision of the insolvency court confirming reorganization.

- On fulfilment of the restructuring plan, the insolvency court confirms that this is so + the reorganization is completed.
- The insolvency court decides on the IP's fee.

Author: Pavel Pravda

5.8. Selection of restructuring administrators

- The insolvency court appoints an IP (there is no special practitioner for reorganization) according to the principles mentioned in the chapter on bankruptcy insolvency procedure.
- The debtor can nominate an IP at its discretion in the restructuring plan filed with an insolvency petition.

5.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings.

5.10. Main rights of the creditors' meeting

- approves restructuring plan
- can appeal the decision of the insolvency court approving a restructuring plan
- monitors fulfilment of restructuring plan

5.11. Final proceedings

- If the debtor fails to fulfil the restructuring plan, the reorganization proceedings can be ended by the insolvency court; the proceedings will follow the principles of bankruptcy proceedings (leading to satisfaction of creditors from the complete assets of the debtor and to liquidation of the debtor).

› Our team: Practice Group Insolvency



Alexander Liessem
Partner
Belarus



Stela Ivanova
Partner
Bulgaria



Pavel Pravda
Partner
Czech republic



Margus Sorga
Partner
Estonia



dr. Gábor Jánoshalmi
Associated Partner
Hungary



Karlis Svikis
Partner
Latvia



Frank Heemann
Partner
Lithuania



Jarosław Sobstel
Junior Associate
Poland



Alina Valeanu
Senior Associate
Romania



Mgr. Ing. Dávid Oršula
Partner
Slovakia

> Our Offices

BELARUS

bnt legal and tax
 Revoliutsionnaya Str. 9
 building 4 office 40
 BY - 220030 Minsk
 T +375 17 2039455
 F +375 17 2039273
 info.by@bnt.eu

BULGARIA

bnt Neupert Ivanova & kolegi
adv.dr.
 Gladstone 48
 BG - 1000 Sofia
 T +359 2 980 1117
 F +359 2 980 0643
 info.bg@bnt.eu

CZECH REPUBLIC

bnt attorneys-at-law s.r.o.
 Slovanský dům (Gebäude B/C)
 Na příkopě 859/22
 CZ - 110 00 Praha
 T +420 222 929 301
 F +420 222 929 309
 info.cz@bnt.eu

ESTONIA

bnt attorneys-at-law
Advokaadibüroo OÜ
 Tatari 6
 EE - 10116 Tallinn
 T +372 667 62 40
 F +372 667 62 41
 info.ee@bnt.eu

HUNGARY

bnt ügyvédi iroda
 Stefánia út 101-103.
 H - 1143 Budapest
 T +36 1 413 3400
 F +36 1 413 3413
 info.hu@bnt.eu

LATVIA

Jensen & Svikis Legal
 Antonijas iela 24-7
 LV-1010 Rīga
 T +371 25 23 20 22
 info.lv@bnt.eu

LITHUANIA

bnt Heemann APB
 Embassy House
 Kalinausko 24, 4th floor
 LT - 03107 Vilnius
 T +370 5 212 16 27
 F +370 5 212 16 30
 info.lt@bnt.eu

POLAND

bnt Neupert Zamorska & Partnerzy sp.j.
 ul. Chłodna 51
 PL - 00 867 Warsaw
 T +48 22 373 65 50w
 F +48 22 373 65 55
 info.pl@bnt.eu

ROMANIA

bnt Gilesco Valeanu & Partners
 69 Dacia Boulevard, 1st
 District
 RO-020051 Bucharest
 Tel.: +40 21 311 12 13
 Fax: +40 21 314 24 70
 info.ro@bnt.eu

bnt Gilesco Valeanu & Partners
 No. 1 Ionel I.C. Brătianu Square
 Bratianu Real Estate, ground
 floor
 RO-300056 Timisoara
 Tel.: +40 35 600 70 33
 Fax: +40 35 600 70 34
 info.ro@bnt.eu

SLOVAKIA

bnt attorneys-at-law, s.r.o.
 Cintorínska 7
 SK - 811 08 Bratislava
 T +421 2 57 88 00 88
 F +421 2 57 88 00 89
 info.sk@bnt.eu

BNT KORRESPONDENZKANZLEIEN

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