CENTRAL AND EASTERN EUROPE

Insolvency & Restructuring

Survey | 2020/2021

bnt attorneys in CEE

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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.

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

Co-Head of the bnt Insolvency & Restructuring practice group

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 voidance of transaction rights and distressed M&A.

Sincerely,
Frank Heemann and Stela Ivanova

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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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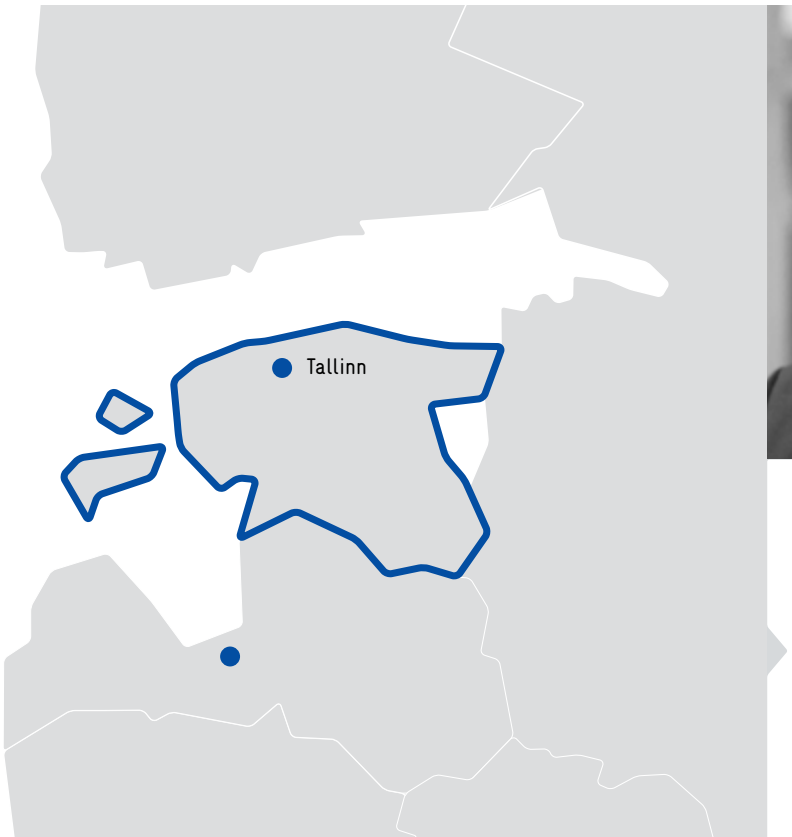

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1. General information

1.1. General types of company insolvency proceedings

- Reorganisation proceedings (aimed at overcoming economic difficulties, restoring liquidity, improving profitability and ensuring sustainable management)
- Bankruptcy proceedings (aimed at satisfying claims by debtors)
- Abatement (ending proceedings without declaring bankruptcy if the debtor's assets are insufficient to cover the costs of bankruptcy proceedings and it is impossible to recover or reclaim assets or to file a claim against a member of the directing body)
- Note: specific rules apply to some corporations e.g. banks, credit institutions and insurance companies.

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; restructuring administrator supervises management and implementation of approved restructuring plan.
- Bankruptcy: no

1.3. Insolvency register

- For bankruptcy announcements (only available in Estonian) https://www.ametlikudteadaanded.ee/
- The insolvency of a specific enterprise is indicated in the commercial register (in Estonian and English) https://ariregister.rik.ee/index?lang=eng

1.4. Competent court for opening bankruptcy and restructuring proceedings

- County court where the company is located

1.5. Average duration of proceedings

- Restructuring:
  - no official statistics available
- Bankruptcy:
  - no official statistics available

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons who can file a petition for bankruptcy

- Creditors and Debtor
- Management board
- Liquidator
- Successor to a debtor, Executor of debtor's will, Administrator of debtor's estate

2.2. Grounds for filing a petition

- A creditor is entitled to file if:
  - the debtor has failed to perform an obligation within 30 days after it falls due and the creditor has then warned the debtor in writing of intention to file a bankruptcy petition and the debtor thereafter has failed to perform the obligation within 10 days
  - a claim in execution proceedings cannot be satisfied for 3 months due to lack of assets or the assets of the debtor are clearly insufficient to perform all obligations
  - the debtor or its legal representative has destroyed, hidden or squandered the debtor's property or made grave errors in management or has otherwise intentionally caused insolvency
  - the debtor notifies the creditor, the court or the public that it cannot perform its obligations
  - the debtor has destroyed, hidden or squandered its property or made grave errors in management as a result of which the debtor is now insolvent, or has otherwise intentionally caused insolvency

  - the debtor has left Estonia, or is in hiding in order to evade performing obligations.

- The management board must file if an enterprise is insolvent and insolvency is not temporary.

- The liquidator must file during liquidation if the assets of the enterprise are clearly insufficient to satisfy all creditors' claims.

2.3. Grounds for opening bankruptcy proceedings

- The debtor fails to perform an obligation within 40 days.

- The debtor has notified its inability to perform obligations.

- The debtor is in hiding in order to evade performance of obligations.

- The debtor is evading performance of obligations.

- The debtor has intentionally caused the insolvency.

- A claim in execution proceedings cannot be satisfied.

2.4. Effects of opening bankruptcy proceedings

- Acceptance of bankruptcy petition: the court will not accept a petition that does not make it clear that the petitioner has a claim against the debtor, or the creditor's petition is based on a claim to which a restructuring plan or a debt restructuring plan applies.

- Interim trustee is appointed within 10 days after accepting a petition, or within 20 days if the petition was filed by a creditor.

- Upon appointment of an interim trustee, the court timetables a court session for hearing the bankruptcy petition.

- The court will hear a bankruptcy petition within 10 days or, for good reason, within 30 days after appointment of an interim trustee.

- The court will hear a creditor's petition within 30 days or, for good reason, within 2 months after appointment of an interim trustee.

- After hearing a bankruptcy petition, the court declares bankruptcy, dismisses the petition or terminates the proceedings by abatement.

- **Persons obliged to file for bankruptcy:**

  - Management board - within 20 days of the date when insolvency became evident

  - Liquidator - if the assets of the company in liquidation are insufficient to satisfy all claims by creditors

2.5. Sanctions for not filing for bankruptcy in time

- Management board members jointly compensate the enterprise for payments made (a) after insolvency became obvious and (b) without due diligence.

2.6. Appointment of insolvency practitioner (IP)

- IP is named by the court, approved by the general meeting of creditors.

- IP must be a sworn advocate, sworn auditor, bailiff or person authorised to act as a trustee who:

  - has an officially recognised bachelor's degree + at least 2 years' professional experience in finance, law, management or accounting or who has an officially recognised master's degree

  - is honest and of high moral character

  - has oral and written proficiency in Estonian

  - has passed the examination + undergone training for trustees.

2.7. Ethical standards for IPs

- Good Professional Practice 2011 (available at http://www.kpkoda.ee/doc/Hea%20kutsetava.pdf, in Estonian) Includes requirements on independence, impartiality, confidentiality,

honour, dignity, trustworthiness, relationship with parties to the proceedings, colleagues, the public

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

- Claims are lodged within 2 months from publication of the bankruptcy notice in the official publication in Ametlikud Teadaanded.
- If a claim is filed with good reason after expiry of the term, the general meeting restores the term for filing the claim at the request of the creditor. A claim cannot be filed after a distribution proposal has been submitted to the court for approval.
- The term for filing a claim need not be restored if the claim is secured by a pledge.
- If the term for filing a claim is not restored, the claim may be defended but, if accepted, the claim is satisfied after satisfaction of accepted claims filed on time.

2.9. Cost of filing claims

- State fees for filing a petition:
  - € 10 if the petition is filed by the debtor, successors, administrator of estate
  - € 300 if the petition is filed by a creditor
  - € 300 state fee for filing restructuring petition
- no fees for filing claims in bankruptcy by creditors

2.10. Administration costs

- Before appointing an interim trustee, the court may require the petitioning creditor to pay a sum set by the court into a designated account as a deposit in order to cover the remuneration and expenses of the interim trustee if there is reason to assume that the bankruptcy estate is insufficient to cover expenses. In practice, the amount is approx. € 2 000-5 000. The deposit is returned to the person who made the payment under the Bankruptcy Act if the debtor has sufficient funds to cover the remuneration and expenses of the interim trustee.
- If the debtor's assets are insufficient to cover the costs of bankruptcy proceedings, then, in order to avoid abatement of the proceedings, the court sets (a) the amount payable to a designated account as a deposit to cover the costs of bankruptcy proceedings and (b) the deadline for payment. The deposit is returned to the person who makes the payment under the Bankruptcy Act if the debtor has sufficient funds to cover the costs of bankruptcy proceedings.
- The court sets the remuneration of the trustee on approval of the final report on the bankruptcy proceedings after hearing the opinions of the trustee, the debtor and the bankruptcy committee.
- The trustee may claim reimbursement of expenses necessarily incurred in performing their obligations.

3. Ranking of claims / creditors

3.1. Secured creditors

- Claims secured by pledge are satisfied first to the extent of the sum received from the sale of the pledged object less payments in a certain ratio relating to bankruptcy proceedings.
- These payments deducted are in proportion to the ratio of the sum received from the sale of the pledged object to the total sum received from the sale of the bankruptcy estate, but not more than 15/100 of the sum received from the sale of the pledged object.

3.2. Unsecured creditors

- paid after secured creditors

3.3. Employees

- The unemployment insurance scheme provides partial coverage of an employer's obligations in case of insolvency.

- Contracts are usually terminated and employees made redundant.

4. Nullifying contracts

- The court revokes transactions concluded or other acts performed by the debtor before declaration of bankruptcy and which harm the interests of creditors.
- Contracts are reviewed up to 5 years before appointment of the interim trustee.

5. Restructuring proceedings (aiming at rescuing company)

5.1. Preconditions for restructuring

- The enterprise is likely to become insolvent in the future.
- The enterprise requires restructuring.
- Sustainable management of the enterprise is likely after restructuring.
- No bankruptcy proceedings are current against the enterprise.
- No court ruling exists on compulsory dissolution or supplementary liquidation.
- Over 2 years have passed from termination of any previous restructuring proceedings.

5.2. Stages

- restructuring application to court
- court ruling to initiate restructuring
- restructuring notice – restructuring administrator notifies creditors that proceedings are in progress and the amount of their claims against the enterprise according to list of debts
- deadline for filing rejection of claim
- preparation of restructuring plan and submission of plan for examination
- acceptance of restructuring plan by creditors
- approval of restructuring plan by the court
- fulfilment of restructuring plan
- termination of restructuring

5.3. Restructuring plan

- description of economic position of the enterprise + analysis of why restructuring is needed
- expected economic position of the enterprise after restructuring
- deadline for compliance with the restructuring plan
- description of restructuring measures to be implemented and analysis of their usefulness, including a description of and justification for transforming a claim by a creditor
- impact of the restructuring plan on employees of the enterprise

5.4. Approval of restructuring plan

- Creditors accept reorganisation plan by vote at or without a meeting.
- The number of votes of each creditor is proportional to the amount of their principal claim.
- A reorganisation plan must be accepted if at least 50% of creditors who hold at least 2/3 of all the votes vote in favour.
- If creditors are divided into groups on the basis of a reorganisation plan, the plan must be accepted if, in each group, at least 50% of creditors who belong to the same group and who hold at least 2/3 of all the votes represented in the group vote in favour of the reorganisation plan.
- Once a reorganisation plan is accepted by creditors, it must be submitted to the court for approval within the deadline set by the court.

The voting record and any annexes must be attached to the reorganisation plan

- The court approves an accepted reorganisation plan within 30 days. In that connection, the court will verify whether:
  - the reorganisation notice (a) has been communicated to creditors and (b) complies with legal requirements
  - the draft reorganisation plan has been communicated to creditors for examination
  - the notice concerning participation at the meeting to approve the reorganisation plan or an invitation to submit a position has been communicated to creditors
  - the reorganisation plan complies with the requirements of the Reorganisation Act
  - the reorganisation plan has received the required number of votes and the rights of creditors have not been violated upon voting.
- Upon approval of a reorganisation plan, the court issues an opinion on a creditors application for refusal to approve the reorganisation plan.
- In order to decide approval of a reorganisation plan, the court may hold a session.
- The court will not approve a reorganisation plan and will terminate reorganisation proceedings if it becomes evident that:
  - violation of a legal requirement has significantly influenced the voting results
  - on the basis of the reorganisation plan, a creditor is treated substantially less favourably compared to other creditors
  - reorganisation of the enterprise is unlikely or
  - other circumstances exist that justify refusal to approve the reorganisation plan.

5.5. Filing a petition for restructuring proceedings

- The enterprise applies to the court.

5.6. Main content of petition

- The petition must explain the reasons for economic difficulties and show that:
  - the enterprise is likely to become insolvent in the future
  - the enterprise requires restructuring
  - sustainable management of the enterprise is likely after restructuring.
- Annexed to the petition must be financial statement for the previous financial year + overview of the financial situation + debtor's profit or loss and cash flow + list of debts as at the date of filing the petition.

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

- A creditor must file a claim if they reject the (amount of the) claim in the restructuring notice.
- The term must not be shorter than 2 weeks or longer than 4 weeks.
- The creditor must file a written application setting out the part of the claim in the restructuring notice which they reject plus evidence certifying the circumstances.
- A creditor that fails to apply by the due date is deemed to have agreed the claim.

5.8. Selection of restructuring administrators

- The court appoints a restructuring administrator on commencement of proceedings after having considered the opinion of the enterprise.
- The following may act as restructuring administrators:
  - sworn advocates or their senior clerks, trustees in bankruptcy, auditors

  - other natural persons who are honest and of moral character and who are proficient in oral and written Estonian, who possess good economic knowledge and the necessary legal knowledge and who have an officially recognised master's degree or comparable qualifications including a comparable foreign qualification
  - investment firms and credit institutions.

5.9. Ethical standards for restructuring administrators

- no specific regulations established
- honesty and moral character
- An administrator who is a sworn advocate or their senior clerk, a trustee in bankruptcy or auditor must comply with their own specific professional codes.

5.10. Main rights of the creditors' meeting

- acceptance of restructuring plan

5.11. Final proceedings

- Proceedings are closed upon fulfilment of restructuring plan or premature termination of restructuring.
- Grounds for premature termination are:
  - the enterprise fails to perform the obligation to cooperate
  - the enterprise fails to pay into court the sum set by the court for remuneration and expenses of a restructuring administrator or expert
  - the court refuses to approve the restructuring plan
  - refusal to satisfy an application to approve a restructuring plan which has not been accepted
  - refusal to approve a restructuring plan which has not been accepted
  - on the basis of an application by the enterprise
  - where the basis for launching restructuring proceedings ceases to exist
  - upon squandering the property of an enterprise or harming the interests of creditors
  - failure to submit a restructuring plan by the due date
  - due to ambiguity of a claim.

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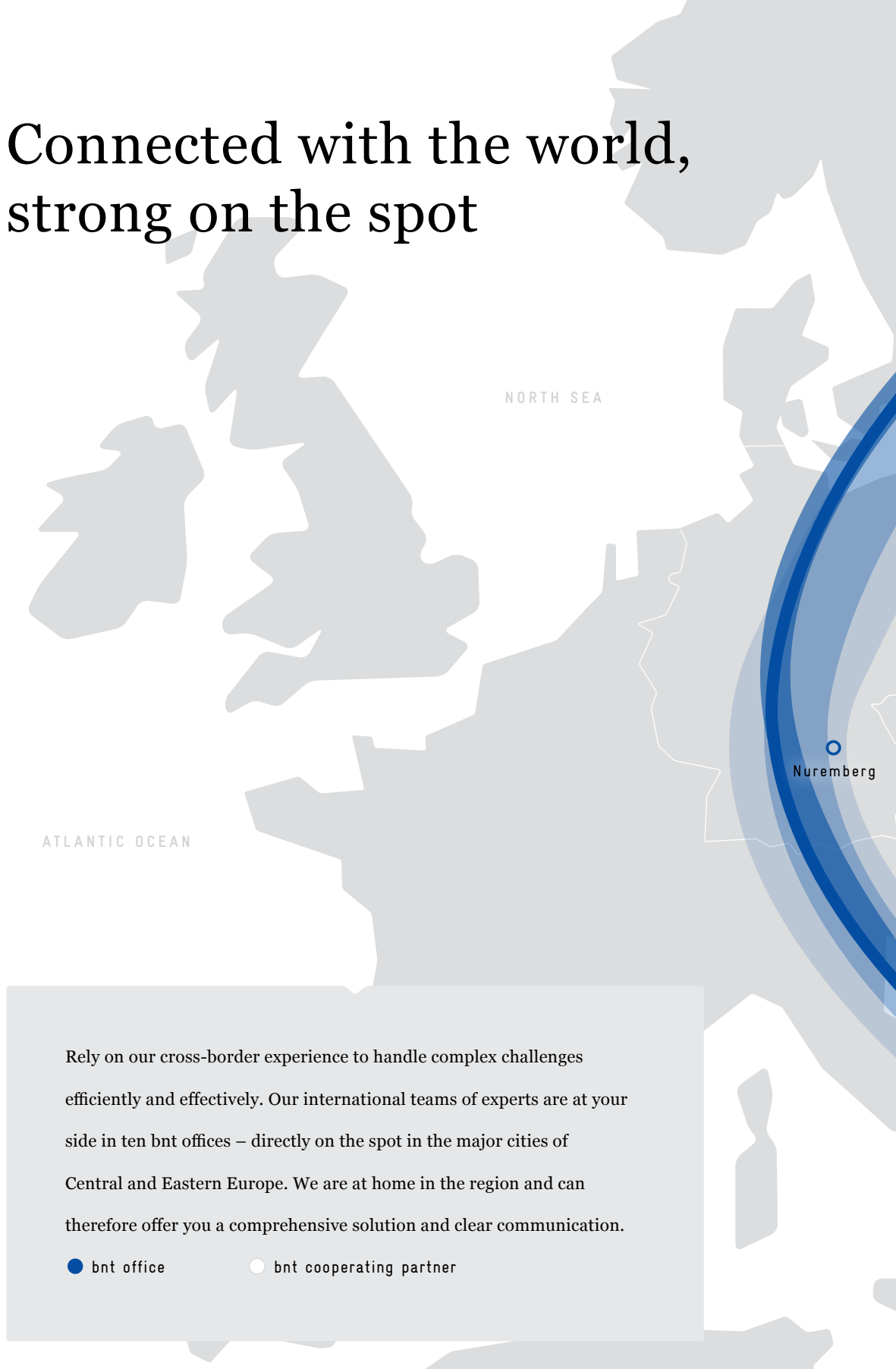

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bnt at a glance

We are one of the leading international law firms specialising in business law in Central and Eastern Europe. Clients working with us have a clear local advantage: our international teams on the spot in ten offices provide regional expertise that hardly anybody else can match. This means we can guide our clients on the shortest route to their economic targets in the region.

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