

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](http://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

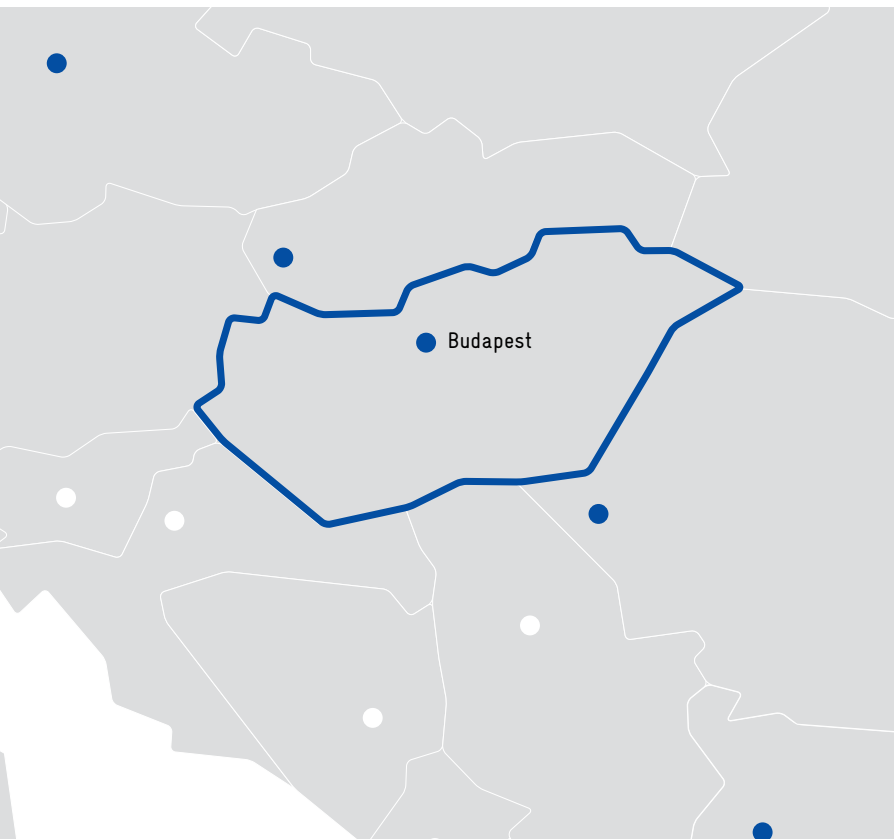


**Stela Ivanova**  
Attorney-at-law (Advokat)  
(LMU)

Co-Head of the bnt Insolvency & Restructuring practice group

# Hungary

bnt ügyvédi iroda  
Stefánia út 101-103.  
H - 1143 Budapest



## YOUR CONTACT

**dr. Gábor Jánoshalmi**  
Associated Partner

T +361 413 3400  
gabor.janoshalmi@bnt.eu

## › 1. General information

### 1.1. General types of insolvency proceedings for companies

- Bankruptcy proceedings (generally aimed at liquidation of companies)
- Restructuring proceedings (aimed at rescue of companies)

### 1.2. Debtor in possession (self-administration)

- Bankruptcy proceedings: There is no legal possibility for a debtor in possession.
- Restructuring proceedings: management is not dismissed. A court-appointed administrator supervises/assists company management and oversees preparation of a restructuring plan and settlement between debtor and creditors. The administrator approves the debtor's financial commitments and may contest these at its discretion. The administrator ranks the creditors. The debtor retains possession and ownership and control of its properties.

### 1.3. Insolvency register

- The webpage of the national insolvency register is <https://fizeteskeptelenseg.im.gov.hu>, although the system is not perfectly reliable.
- The opening of proceedings is announced in the Corporate Gazette (in Hungarian "Cégekőzlöny" - only available in Hungarian).
- Added to the name of the enterprise is the suffix "f.a." ("in bankruptcy") or "cs.a." ("under restructuring").

### 1.4. Competent court for opening bankruptcy and restructuring proceedings

- Regional court (Törvényszék) where the debtor's seat is located

### 1.5. Average duration of proceedings

- Restructuring proceedings:
  - No official statistics are available on duration or success rate; the technical maximum duration is 365 days from opening proceedings.

- Bankruptcy proceedings:

- No official data is available on average duration of proceedings; the technical maximum duration is 2 years; this may be exceeded with court approval in some cases.

### 1.6. Approximate satisfaction rate of bankruptcy proceedings

- no official statistics available on satisfaction rate

## › 2. Bankruptcy proceedings (generally aimed at liquidation)

### 2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Debtor: the manager with the prior consent of the general meeting of the shareholders or the founder in case if there is only one shareholder

- Company court
- Criminal court in case of criminal proceedings
- Liquidator

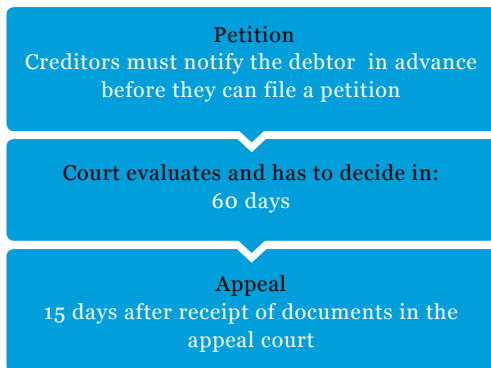
### 2.2. Grounds for filing a petition

- Restructuring proceedings were not successful (debtor fails to fulfil payment obligations in restructuring settlement).
- Company fails to restore lawful operation of the enterprise despite the court of registry's request, where the enterprise has assets.
- The enterprise fails to pay a fine imposed in criminal proceedings.
- The enterprise fails to pay due claims by creditors (amount of claim must be over HUF 200 000 – without interest – ca. € 592).

### 2.3. Grounds for opening bankruptcy proceedings

- The debtor fails to settle or contest previously uncontested and acknowledged contractual debts within twenty days of the due date, and fails to satisfy a debt upon receipt of a creditor's written payment notice.
- The debtor fails to settle a debt within the deadline specified in a final court decision or order for payment.
- An enforcement procedure against the debtor was unsuccessful.
- The debtor did not fulfil a payment obligation as set in a composition agreement in restructuring or bankruptcy proceedings.
- The court has declared previous restructuring proceedings terminated.
- The debtor's liabilities in proceedings initiated by the debtor or by the liquidator exceed the debtor's assets.

### 2.4. Statutory procedure for opening bankruptcy proceedings



### 2.5. Effects of opening bankruptcy proceedings

- Once decision to open bankruptcy proceedings comes into effect:
  - Debtor's management loses its powers and will be replaced by the insolvency practitioner (IP) appointed by the court.
  - IP takes over management of the debtor, assets and documents.

- Creditors have 40 days to file claims (claims filed between 40 and 180 days are treated as subordinated; claims filed after 180 days are not registered).
- IP submits draft administration expenses budget for court approval.
- Financial obligations including set-offs are prohibited.
- Calculation of interest, penalties and other mandatory payments is suspended.

### 2.6. Persons obliged to file for bankruptcy

- During a voluntary company winding-up, the appointed liquidator immediately after it becomes evident that the company would not be able to pay off its creditors.

### 2.7. Sanctions for not filing for bankruptcy in time

- Not filing for bankruptcy by the manager might be considered as not acting in the interest of creditors which might be a ground for civil liability – compensation of damages incurred by the debtor and its creditors by the managers.
- There is no criminal liability for (late) filing, but for other insolvency-related management conduct (e.g.: fraudulent bankruptcy).

### 2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints an insolvency practitioner – called a liquidator in these proceedings – generally based on random electronic selection with special software.
- For insolvency proceedings of privileged companies based on cabinet decision, a state-owned liquidator might be appointed.

### 2.9. Ethical standards for insolvency practitioners

- There is no statutory code of conduct but the professional organization of insolvency practitioners ([www.foe.hu](http://www.foe.hu)) has drafted a uniform code of conduct to foster application of ethical norms in the operation of insolvency administrators. Membership in the organization is not obligatory.

### 2.10. Time for lodging creditors' claims, consequences of failure

- Deadline is set by law.
- Creditors may lodge their claims within 40 days from publication of the opening of the proceedings in the Corporate Gazette.
- If a creditor misses this deadline, a claim may still be lodged within 180 days from the commencement date but will only be satisfied if the remaining assets suffice after satisfaction of other registered creditors.
- No claims may be lodged after expiry of the 180-day deadline.
- Claims arising during the bankruptcy proceedings may be lodged within 40/180 days following the date when the claim falls due under the legal consequences as above.
- Consequences of not filing a claim are: non-recognition of claim, no participation in proceedings.

### 2.11. Costs of filing claims

- A fee amounting to 1% of the capital sum claimed at a minimum of approx. € 15 (HUF 5 000) and capped at approx. € 592 (HUF 200 000).

### 2.12. Administration costs

- The fixed costs of ordinary proceedings amount to 5% of the whole sum of the value of assets sold in the course of bankruptcy and proceeds from claims – arising at the time of opening bankruptcy proceedings – recovered, but not less than approx. € 887 (HUF 300 000). If the debtor continues operating during the bankruptcy procedure, 2 % of sales revenues arising can be taken into account as a fee. In the case of a settlement, the basis of the fee is 5 % of the value of the assets included in the settlement.
- The fee amounts to approx. € 887 (HUF 300 000) in simplified proceedings.

## 3. Ranking of claims / creditors

### 3.1. Secured creditors

- Secured creditors are paid first of all from proceeds of realizing security
- Pledged / mortgaged property must usually be sold by public auction.

### 3.2. Unsecured creditors

- Unsecured creditors are settled proportionately within their respective rank. Lower ranking claims only satisfied after all higher ranking claims are fully satisfied.

### 3.3. Employees

- Claims by employees constitute the first category of unsecured creditors.
- If employees' claims are not satisfied, the state reimburses these if the enterprise in bankruptcy complies with the Wage Guarantee Fund.

## 4. Nullifying contracts

- The liquidator may terminate with immediate effect contracts concluded by the debtor or rescind a contract if neither of the parties rendered services. Any claim due to the other party may be enforced by notifying the liquidator within 40 days from the date when rescission or termination was communicated.
- A creditor and the liquidator may file for legal action before the court within 120 days from gaining knowledge or within a 1-year forfeit deadline from the date of publication of the notice of liquidation to contest:
  - contracts concluded by the debtor within 5 years before the date when the court received a petition to open liquidation proceedings or thereafter, or other commitments if intended to conceal the debtor's assets or to defraud any creditor or all creditors and the other party had or should have known of that intent.

- contracts concluded by the debtor within 3 years before the date when the court received a petition to open liquidation proceedings or thereafter, or other commitments if intended to transfer the debtor's assets without compensation or to undertake a commitment to encumber any part of the debtor's assets, or if the stated consideration constitutes unreasonable and extensive benefits to a third party.
  - contracts concluded by the debtor within 90 days before the date when the court received a petition to open liquidation proceedings or thereafter, or other commitments if intended to give preference and privileges to any one creditor, e.g. amending an existing contract to the benefit of a creditor, or providing financial collateral to a creditor that does not have any.
- Decision is published in the Corporate Gazette.
  - Restructuring administrators are appointed.
  - Creditors file claims. Costs of filing claims: Payment of a fee amounting to 1% of the sum claimed at a minimum of approx. € 15 (HUF 5 000) and capped at approx. € 592 (HUF 200 000).
  - Claims are confirmed by the administrator.
  - Negotiations with creditors' meeting on contents of restructuring settlement take place.
  - Settlement is confirmed by the creditors' meeting (at least the majority counted from the total amount of creditors' claims approved by the court in both secured and unsecured groups of creditors).

## › 5. Restructuring proceedings (aiming at rescuing debtor)

### 5.1. Preconditions for restructuring

- If the debtor is in financial difficulty: unable to settle its debt (debts) or is expected to fail to discharge its liabilities on the date due:
  - The debtor may file for restructuring in a court of law; legal representation is mandatory.
  - The debtor may not file a petition for restructuring if already adjudicated in restructuring, or if a request for bankruptcy has been filed and a decision has already been adopted at first instance for the debtor's liquidation.
- Activities of the debtor do not cease.

### 5.2. Stages

- Restructuring proceedings are initiated by filing a petition and additional necessary documents.
- The court orders a payment moratorium of 120 days and the opening of proceedings automati-

cally within 1 business day.

- Settlement is confirmed by the court.
- Creditors' claims are satisfied in accordance with the settlement.

### 5.3. Restructuring plan

- list of creditors taking part in the settlement, their category, amount of claims, number of votes
- accepted debt assessment and restructuring plan, method of execution and supervision
- possible modifications to payment deadlines, quitclaim statements and acceptance of claims, everything that creditors and/or the debtor consider necessary in order to settle the debt amount and re-establish and sustain liquidity

### 5.4. Approval of restructuring plan

- Debtor's management body submits draft restructuring plan to debtor's shareholders.
- IP consults management during preparation of the plan.
- Upon shareholders' approval of draft plan, creditors are given draft restructuring plan and invited to a meeting aiming at negotiating and

obtaining approval of the plan.

- Draft restructuring plan is approved if it gains more than 50 % of the votes among both secured and unsecured creditors.
- The approved draft restructuring plan is filed with the court for approval within 5 working days of voting.
- Court issues a decision within 15 working days from receipt of the restructuring plan; the decision to approve the draft plan is final and binding.

#### 5.5. Filing a petition for restructuring proceedings

- Filing a petition is the competence of management but the prior consent of the general meeting of the shareholders is required.
- There is no statutory deadline for filing.

#### 5.6. Main content of petition

- basic data on the enterprise
- documentary evidence concerning prior approval of the general meeting of the shareholders to initiate the proceedings and notify employees
- a financial statement of the enterprise not older than 3 months and written confirmation by management that the statement gives a realistic and reliable picture of the financial situation
- a summary of changes in the financial situation after issue of the above financial statement
- any contracts involving the company group (if the enterprise belongs to one)
- basic information on claims against the enterprise and claims by the enterprise against others
- certificate of payment of fee payable by the debtor to start the proceedings
- payment service providers where the debtor has a current account, showing account numbers and the name of the investment firm where the debtor has a securities account

- declaration of filing petition by management notifying payment service providers affected at the time of filing the petition for opening restructuring proceedings

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

- There is a deadline of 30 days after publishing the decision on initiating restructuring proceedings.
- If the deadline is missed, claims are not part of the restructuring proceedings and not subject to restructuring settlement.
- Claims arising during insolvency proceedings may be lodged within 8 business days under the above legal consequences.

#### 5.8. Selection of restructuring administrators

- Court appoints administrator.
- The administrator is appointed randomly by an electronic system (similarly to the liquidator - insolvency administrator).

#### 5.9. Ethical standards for restructuring administrators

- There is no statutory code of conduct but the professional organization of restructuring administrators ([www.foe.hu](http://www.foe.hu)) has drafted a uniform code of conduct to foster application of ethical norms in the operation of restructuring administrators. Membership in the organization is not obligatory.

#### 5.10. Main rights of the creditors' meeting

- selection of a committee of creditors and transfers specific rights to it
- approval of extensions of moratorium (extended moratorium is capped at 365 days)
- approval of restructuring settlement and amendments
- application to the court to dismiss the administrator and appoint a new one



### 5.11. Final proceedings

- If restructuring settlement is approved by creditors:
  - The court approves the restructuring settlement and the proceedings are terminated.
  - Decision is published in the Corporate Gazette if there are more than 100 creditors.
  - The administrator loses their position.
  - Claims by creditors are paid by the enterprise under the settlement.
  - Claims arising after restructuring proceedings enforceable separately before the court.
- If the settlement is not approved by creditors: the court declares the debtor is insolvent ex officio and orders bankruptcy proceedings.

## > 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

Bosnia and Herzegovina,  
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