

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.*



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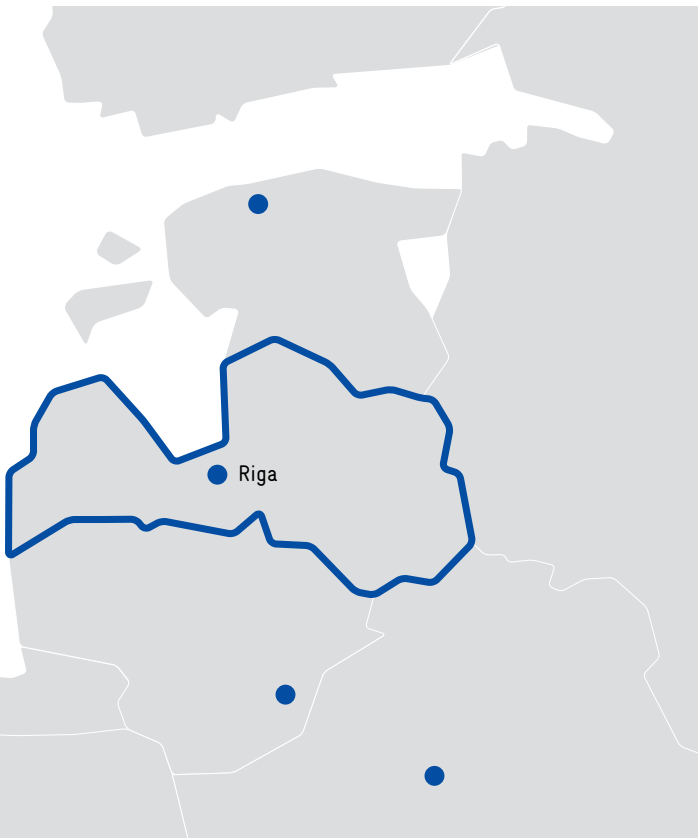


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## 1. General information

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

- Legal protection proceedings (aimed at renewing the debtor's ability to settle their debt obligations if they already have or expect to encounter financial difficulties)
- Insolvency (bankruptcy) proceedings (aimed at liquidating the debtor to settle creditors' claims, thus facilitating honouring of debtor's obligations)
- Note: specific rules apply to credit institutions, insurance companies and certain other participants in the financial and capital market under the oversight of the Financial and Capital Market Commission.

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

- Restructuring proceedings: restrictions are imposed upon the debtor's freedom to perform activities that have the potential to further deteriorate the financial situation or harm creditors' interests. Thus, the debtor may not issue loans, give guarantees, presents and donations, distribute profits, or fulfil any financial obligations not listed in the restructuring plan. To ensure the debtor adheres to these restrictions, the appointed restructuring administrator oversees its activities.
- Bankruptcy: following announcement of insolvency proceedings, the insolvency practitioner (IP) acquires the rights of the debtor's management and other bodies.

### 1.3. Insolvency register

- For bankruptcy and restructuring proceedings (only available in Latvian): [http://mkd.gov.lv/lv/maks\\_subjekti/](http://mkd.gov.lv/lv/maks_subjekti/)
- The Insolvency Register captures important information on all insolvency proceedings (available in Latvian and English): <https://maksatnespeja.ur.gov.lv/insolvency/practitioner/lv>

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

- District court according to the registered domicile of the debtor three months prior to applying to the court

### 1.5. Average duration of proceedings

- Restructuring proceedings:
  - Average duration of restructuring proceedings in 2019 was 6.1 months.
- Bankruptcy proceedings:
  - Average duration of proceedings finished in 2019 was 17 months.

### 1.6. Approximate satisfaction rate of bankruptcy proceedings

Type of creditor	Ranking	Average satisfaction (%)
Employees	1st	49.8
State	2nd	7.6
Unsecured creditors	3rd	12.1
Secured creditors	priority	32.9
Total rate (approved vs satisfied claims):		25.6

- The Insolvency Control Service gathers abundant data from insolvency administrators' reports and compiles comprehensive statistical reports on the Latvian insolvency system.
- The data collection system could be further improved through integration with the Court Information system, which provides additional information and allows for verification of information reported by insolvency administrators.

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

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

- Creditor
- Debtor
- Liquidator in the main proceedings under Article 29(a) of Council Regulation (EC) No. 1346/2000, now Article 37(1)(a) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
- Liquidator of enterprise in liquidation
- Restructuring administrator in legal protection proceedings
- Employees of the debtor who have not been duly remunerated for their work, received compensation for damages in connection with work-related accidents, or whose mandatory social insurance payments are at least two months overdue

### 2.2. Grounds for filing a petition

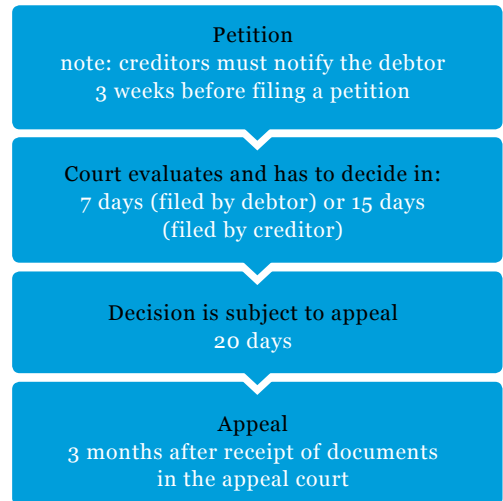
- Debtor fails to execute a compulsory court judgment.
- Debtor's principal debt is at least 3 weeks overdue and exceeds € 4268 (for limited liability and joint stock companies) or € 2134 (if the debtor is another kind of entity, e. g. a partnership), and the creditor has sent a warning to the debtor's legal address regarding intention to file an insolvency application, and the debtor has not settled their debt liabilities or raised substantiated objections within 3 weeks.
- Payment of salaries and other employment or social security-related payments is at least 2 months overdue.
- Debtor cannot settle liabilities in the plan of measures of legal protection proceedings (LPP).
- Debtor has not fulfilled its debt liabilities due for more than two months.

- Debtor in liquidation lacks assets to satisfy all proven creditors' claims during liquidation.

### 2.3. Grounds for opening bankruptcy proceedings

- The debtor is not under legal protection proceedings at the time of filing the petition.
- The state fee and administrative deposit have been duly covered.
- The court confirms the existence of grounds for filing an insolvency petition indicated in the application on the day of examination.

### 2.4. Statutory procedure for opening bankruptcy proceedings



### 2.5. Effects of opening bankruptcy proceedings

- Each insolvency administrator will be directly selected by the court (from a list maintained in the Insolvency Control Service System), using the fully automatic and electronic mechanism of the Court Information System.
- Once the court decision to open bankruptcy proceedings comes into effect:
  - Debtor loses its property rights, which are assumed by the IP.
  - Activities by the debtor's management are halted; the IP takes over management of the company, assets and documents.

- Increase of interest, penalties and other mandatory payments is suspended.
- Creditors have one month to file claims.

## 2.6. Persons obliged to file for bankruptcy

- Debtor: if the debtor cannot comply with the obligations set in the plan for legal protection proceedings.
- Debtor: if obligations are at least 2 months overdue, and either no agreement has been reached with creditors, or no restructuring petition has been filed.
- Liquidator of the company – if during the liquidation process it becomes apparent that the debtor's property will not suffice to satisfy all the legitimate claims of creditors.

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

- Civil liability: personal liability of a board member (joint liability if insolvency caused by more than one member) to the debtor and/or creditors.
- Administrative liability: penalty imposed upon board members or natural persons ranging from € 280 to € 700 for failure to file insolvency petition and penalty ranging from € 70 to € 700 for breaching insolvency or legal protection proceedings.
- Other: board members and representatives of the debtor can be prohibited from holding certain positions within companies.
- Criminal liability reserved for:
  - Causing insolvency due to neglect: possibility of imprisonment for up to 1 year or temporary imprisonment, or community service, or a fine, along with a prohibition on holding certain positions within companies.
  - Intentionally causing insolvency: possibility of imprisonment for up to 3 years or temporary imprisonment, or community service, or a fine, along with a prohibition on holding certain positions within companies.

- Conduct related to insolvency, e.g. fraud, delaying insolvency proceedings.

## 2.8. Appointment of insolvency practitioner (IP)

- Each insolvency practitioner will be directly selected by the court. The IP is a natural person who must meet the following requirements:
  - full legal capacity
  - at least 25 years old
  - fluent in Latvian
  - qualified lawyer
  - has passed the insolvency practitioner's exam
  - has at least three years' professional experience as a lawyer or other legal professional
  - has an impeccable reputation
  - has not committed an intentional crime
  - has not been the target of insolvency proceedings in the last five years.

## 2.9. Ethical standards for IPs

- Code of Ethics is issued by the professional organization of insolvency practitioners.
- IPs must be independent, objective, diligent, and reliable, maintain the interests of creditors and ensure the lawfulness of insolvency proceedings.
- Statutory sanctions include issue of a warning, reprimand, suspension, and withdrawal of licence to act as IP in cases of misconduct.
- IPs are liable for losses caused to the state, creditors, debtors or other parties.
- IPs must hold valid civil liability insurance.

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

- One month from publication of insolvency proceedings in the Insolvency Register.

- Consequences of missing the one-month deadline – revocation of voting rights.
- Deadline for acknowledging a claim: no later than 6 months after publication of insolvency proceedings in the Insolvency Register.
- Failure to abide by the 6-month deadline: the limitation period sets in, so the creditor loses both its creditor status and the right to claim against the debtor. The creditor has the right to claim against the debtor through the Electronic insolvency registration system.

#### 2.11. Costs of filing claims

- € 70.00 if the petition is filed by the debtor
- € 355 if the petition is filed by a creditor

#### 2.12. Administration costs

- Costs are covered from the debtor's property.
- Costs consist of remuneration for the liquidator, including a certain fraction of recovered funds depending on the amount recovered, and expenses to be repaid.
- The person who files the petition must lodge a deposit amounting to two minimum monthly salaries (totalling € 860 in 2020) as security for costs of the proceedings.

## › 3. Ranking of claims / creditors

### 3.1. Secured creditors

- Liquidator realizes pledged properties (securities) by (or without) an auction and transfers the proceeds to secured creditors.

### 3.2. Unsecured creditors

- After covering administrative costs, employee and state tax authority claims, remaining property divided between acknowledged unsecured creditors proportionally to sums claimed.

### 3.3. Employees

- Claims by employees are settled from the debtor's property but if this is insufficient, claims are settled from a guarantee fund as follows:
  - work remuneration for the last three months
  - reimbursement for annual paid leave
  - compensation for other types of paid leave in the last 3 months
  - severance payment
  - compensation of damages
  - employment-related tax payments.

## › 4. Nullifying contracts

- The IP must seek revocation of contracts causing losses to the debtor.
- The following contracts may be reviewed:
  - contracts made in the last 4 months before filing insolvency proceedings or the day after, regardless of whether the counterparty was aware of possible losses to the debtor
  - contracts made in the last 3 years before filing insolvency proceedings if the counterparty was aware or should have been aware of possible losses to the debtor
  - where the counterparty was either a shareholder, director, manager of or other person related to the debtor.

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

### 5.1. Preconditions for restructuring

- Debtor has or is likely to have financial difficulties.

- No bankruptcy proceedings have been initiated against the debtor.

### 5.2. Stages

- Debtor files a restructuring petition with the court.
- Within 2 months (an additional deadline extension amounting to 1 month can be granted) a restructuring plan must be drawn up and approved by:
  - secured creditors whose principal claims amount to 2/3 of the total amount of secured creditors' principal claims against the debtor
  - unsecured creditors whose principal claims amount to more than 1/2 of the total amount of unsecured creditors' principal claims
  - the restructuring administrator
  - the court itself.
- Deadline for executing restructuring is 2 years with the option to prolong up to another 2 years.

### 5.3. Restructuring plan

- The documentation must contain:
  - plan for fulfilment of obligations
  - different measures needed to renew solvency, e.g. cancellation or reduction of existing debts
  - existing and planned core types of economic activities of the debtor
  - deadline for execution of restructuring plan
  - limitations imposed upon debtor's freedom of action (e.g. certain transactions and amounts) without the restructuring administrator's consent
  - candidate for the role of restructuring administrator.

### 5.4. Approval of restructuring plan

- No sooner than 1 month after registration of

intent to execute a restructuring plan with the competent authority and publication of restructuring in the official gazette, the restructuring proposal is submitted to a meeting of shareholders.

- Following the shareholders' approval, the company within 15 days notifies creditors with rights to a claim about the restructuring plan.
  - The restructuring plan is then submitted to creditors for approval; the required thresholds are as follows:
    - secured creditors whose principal claims amount to 2/3 of the total amount of secured creditors' principal claims against the debtor
    - unsecured creditors whose principal claims amount to more than 1/2 of the total amount of unsecured creditors' principal claims.
  - Upon approval by creditors, the plan is submitted to the restructuring administrator.
  - Objections raised by creditors deemed contestable by the debtor are assessed by an independent certified auditor.
  - The administrator evaluates the plan's compliance with statutory requirements and submits the plan to the court.
  - The court issues a decision within 15 days upon receipt of the above documents; a decision to approve the draft plan is final and binding.
  - Amendments to the restructuring plan must be approved in the same way as the restructuring plan.
- ### 5.5. Filing a petition for restructuring proceedings
- Debtor (legal person, partnership, individual merchant, person registered in a foreign country performing permanent economic activities in Latvia, producer of agricultural products) can apply for restructuring to renew solvency.
  - There is no time limit.



### 5.6. Main content of petition

- Confirmation is necessary that none of the facts mentioned below exists:
  - liquidation proceedings against the debtor
  - debtor has successfully implemented a restructuring plan in the last 5 years
  - debtor has unsuccessfully attempted to execute a restructuring plan during the last four months or the restructuring petition was rejected by the court.
- Other necessary documents are:
  - document confirming payment of state duty of € 145
  - circumstances why the debtor is asking for restructuring.

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

- Claims must be filed within the 2-month deadline for drawing up the restructuring plan.
- If restructuring has begun and the restructuring plan is approved by all those listed above, the plan is binding on the debtor and creditors, including creditors who did not approve the plan.

### 5.8. Selection of restructuring administrators

- The debtor may propose a restructuring administrator, but approval by a majority of creditors is required for the proposed restructuring administrator and afterwards by the court.
- If the debtor cannot agree with the majority of creditors on a restructuring administrator, the court will approve one of the candidates proposed by the majority of creditors.
- Restructuring administrator is a natural person who must meet the following requirements:
  - has full legal capacity
  - has the right to live and work in Latvia throughout the legal protection proceedings

- has not been convicted of an intentional crime
- has not been personally subject to insolvency proceedings
- has not caused insolvency of a legal entity
- has not been dismissed or suspended from such a post within the past 5 years
- has not been barred from holding a position within companies
- has not been discharged from overseeing restructuring proceedings due to abuse of authority within the past 5 years.

### 5.9. Ethical standards for restructuring administrators

- The same requirements set by law for IP also apply to restructuring administrators.

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

- right to approve, reject, and amend the restructuring plan
- right to propose and dismiss the insolvency administrator
- right to approve or dismiss extension of restructuring plan execution deadline

### 5.11. Final proceedings

- Claims of creditors are satisfied in accordance with the restructuring plan.
- Decision by the court to terminate restructuring in case of failure and, if necessary, start insolvency proceedings.

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