

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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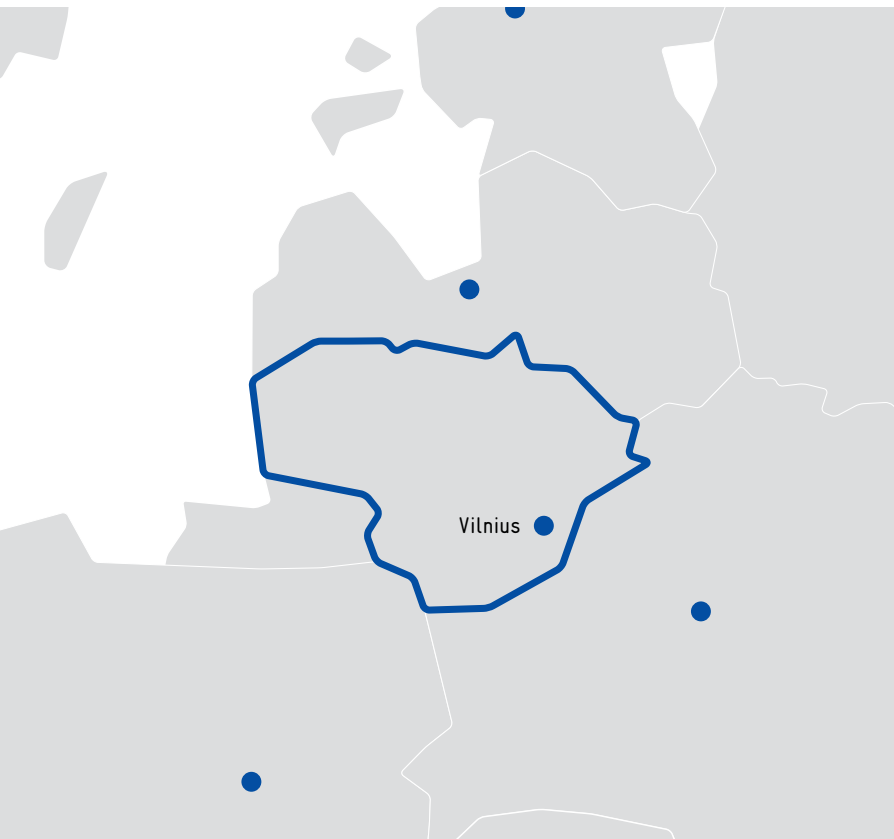


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1. General information

1.1. General types of insolvency proceedings for companies

- Restructuring proceedings (aimed at rescue of companies)
- 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; restructuring administrator supervises company management and oversees implementation of approved restructuring plan. The administrator may under certain conditions request dismissal of the management.
- Bankruptcy: no

1.3. Insolvency register

- For restructuring proceedings (only available in Lithuanian) <http://www.bankrotodep.lt/veiklos-sritys/nemokumas-2/moni-restrukturizavimas/>
- For bankruptcy proceedings (only available in Lithuanian) <http://www.bankrotodep.lt/veiklos-sritys/nemokumas-2/moni-bankrotas>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- County court (Apygardos teismas) where the company is located

1.5. Average duration of proceedings

- Restructuring proceedings:
 - No official statistics are available.
 - Out of 495 restructuring cases opened from 2001 to 30-06-2019, only 48 companies were successfully restructured (however, 3 of them have subsequently filed for bankruptcy) while 90 cases are still pending.

- Bankruptcy proceedings:

- Average duration of proceedings finished in the first semester of 2019 was 1.76 years. (For comparison, the average duration of proceedings finished in the same period of 2018 was 1.81 years).

1.6. Approximate satisfaction rate of bankruptcy proceedings

Type of creditor	Ranking	Average satisfaction (%)
Employees	1st	57.5
State	2nd	7.2
Unsecured creditors	3rd	3.3
Secured creditors	priority	41.4
Total rate (approved vs satisfied claims, including secured creditors,		14.5

NB: Statistics are for proceedings terminated in the first semester of 2019.)

2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Company manager or other person authorised under founding documents
- Liquidator

2.2. Grounds for filing a petition

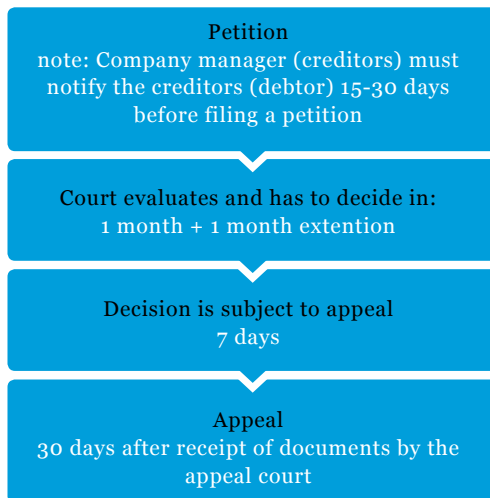
- The new Insolvency Law which came in force in Lithuania on 1 January 2020 does not explicitly indicate the specific grounds for filing a petition (in principle they are the same as the grounds for opening bankruptcy proceedings).
- Before filing a petition, the company/creditors must attempt to conclude an agreement for financial aid (the term for concluding such an

agreement must be no shorter than 15 days and no longer than 30 days).

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent, i.e.:
 - the company does not meet its due obligations on time or
 - the obligations of the company exceed the value of its assets.
- The court cannot open bankruptcy proceedings if the company is undergoing restructuring proceedings (however, there is a possibility to move from bankruptcy to restructuring and vice versa) or if there was no attempt to conclude an agreement for financial aid with the insolvent company's creditors.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court issues a decision to open bankruptcy proceedings:
 - Court appoints insolvency practitioner (IP) who is not active until decision comes into effect (after expiry of the appeal period or after dismissal of an appeal).

- Company management do not lose their powers.
- Long-term assets are seized until decision comes into effect.
- Decision to open bankruptcy proceedings comes into effect:
 - Company management lose their powers.
 - IP takes over management of the company, assets and documents.
 - Creditors have 30 days to file their claims.
 - IP submits draft budget of administration expenses for court approval.
 - Financial obligations including set-offs (with some exceptions) are prohibited.
 - Calculation of interest, penalties and other mandatory payments is suspended.

2.6. Persons obliged to file for bankruptcy

- In the event of insolvency of a legal entity, the company manager or other person authorised under founding documents must:
 - immediately inform the shareholders about the insolvency of the company and propose to restore the solvency of the company and
 - immediately initiate insolvency proceedings no later than within 5 working days of the date on which it became known or should have become known that an agreement for financial aid with creditors is not executed or inadequately executed.
- In the event of insolvency of a legal entity, the liquidator of the company must:

- suspend all payments and

- immediately initiate bankruptcy proceedings.

2.7. Sanctions for not filing for bankruptcy in time

- Civil liability: compensation of damages

incurred by the company and its creditors.

- Administrative liability: € 1 400 – 3 000 fine.
- Other: the manager of the company could be prohibited from holding a post as manager, member of board of directors or supervisors for 1 – 5 years.
- No criminal liability for (late) filing, but for other insolvency-related conduct of management (for example: fraudulent bankruptcy).

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints IP: as a rule, IP is chosen by a computer program according to an algorithm that should find the most suitable IP for the case.
- The computer program places insolvency practitioners and insolvent companies into the following categories:
 - insolvent companies: small, medium, or large (according to the value of the company's estate, the total value of creditor claims, and the absolute number of creditors and employees)¹
 - insolvency practitioners: A1, A2, B, C (according to their general experience, number of previously administered companies of different sizes, special experience such as cross-border elements, effective penalties, past refusal to accept an appointment, current workload).

2.9. Ethical standards for insolvency practitioners

- Code of conduct applies for insolvency practitioners.
- Statutory sanctions: warning, limitation of the right to be appointed as an IP for insolvency proceedings from 6 months to 2 years, withdrawal of licence to carry out activities as IP for misconduct.
- Failure to hold valid civil liability insurance is regarded as breach of ethical standards.
- In practice, liability cases against IPs for

damages by the estate and/or the debtor's creditors have been rare and court practice is not well developed as yet.

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

- The deadline set by the court for lodging claims is 30 days from the date of publication on the supervisory authority's website of the decision to open insolvency proceedings.
- Filing a claim after delay is possible if valid reason for delay can be shown.
- Not filing a claim will lead to non-recognition of claim, no participation in proceedings.

2.11. Costs of filing claims

- no stamp duties or other court fees for filing a claim.

2.12. Administration costs

- Administration costs include remuneration payable to the IP as well as other administration costs (accounting services, transportation, stationery and office supplies, legal services, storage of goods).
- Administration costs are remunerated first of all from the proceeds of the sold assets of the company (including pledged and mortgaged property).
- Law establishes the recommended minimal administration costs which depend on the following criteria defining a bankrupt company:
 - the value of the company's estate
 - the absolute number of creditors
 - total value of creditor claims the applicable jurisdiction (domestic or international).
- Premium payments are calculated by taking into account the difference between the bankruptcy proceeds and the costs of administering the bankruptcy proceedings.
- If sufficient basis exists to suspect that compa-

¹ As of 1 January 2021 some additional criteria will be included in the algorithm, such as the relevant jurisdiction (domestic or international).

ny assets will not cover legal and administrative expenses:

- the court may require the person who lodged the petition to open proceedings to pay an amount set by the court into the court deposit account in order to allow opening of bankruptcy proceedings; the sum may later be reclaimed jointly from the company manager and other persons who fail to meet their obligation to initiate bankruptcy in due time
- the court notifies the insolvency administrators of the possibility to administer the insolvent company accepting the risk of administering the bankruptcy process without sufficient assets to cover the expenses of the administration
- the court decides to open the bankruptcy proceedings and orders the Register of Legal Entities to liquidate the debtor if (i) the person who lodged the petition to open bankruptcy proceedings does not pay the minimum amount set by the court and necessary to cover administration costs and (ii) if no insolvency administrator agrees to administer at his own risk.

› 3. Ranking of claims / creditors

3.1. Secured creditors

- Secured creditors are paid first of all from proceeds of realizing security, but only after contributing to court and administration costs.
- Pledged / mortgaged property must usually be sold by electronic public auction.
- Secured creditor may in certain situations request the meeting of creditors to allow taking over pledged / mortgaged property (security)

3.2. Unsecured creditors

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

• Ranking of claims as follows:

- 1st rank: (i) creditors who provide DIP financing, (ii) claims by employees, (iii) state claims, (iv) claims for outstanding obligations arising out of commercial operations executed in bankruptcy proceedings
- 2nd rank: all other unsecured claims.

3.3. Employees

- Employment contracts are usually terminated. Employees are paid severance pay of 2 average monthly wages (0.5 average monthly wage if employment less than a year).
- Employees' claims are secured to a certain extent by the Guarantee Fund.

› 4. Nullifying contracts

- IP reviews transactions entered into within at least 3 years before bankruptcy proceedings and brings actions:
 - to invalidate transactions that are contrary to the objectives of company activities and which might have caused the company to default on its obligations vis-à-vis its creditors, provided that the counterparty also acted in a bad faith
 - to invalidate the company's transactions concluded or performed without obligation to do so if the transaction infringed the rights of the creditors and the company was aware or should have been aware of this, provided that the counterparty also acted in bad faith; the transaction infringes the rights of creditors if it renders the debtor insolvent or, if the company is already insolvent, gives priority to a particular creditor or otherwise infringes the other creditors' rights
 - to recognize the bankruptcy as fraudulent.
- In the case of proven fraudulent bankruptcy, limitation periods are deemed not to have lapsed.

› 5. Restructuring proceedings (aiming at rescuing company)

5.1. Preconditions for restructuring

- The company is in financial difficulties (is insolvent or likely to become so in the next 3 months).
- Activities have not ceased and there is a prospect that the company will be able to meet its obligations in the future.
- Bankruptcy proceedings have not been opened.
- There are certain requirements relating to the minimum period of existence of the company and the end of previous restructuring proceedings, if any.

5.2. Stages

- initiation of restructuring proceedings by drafting guidelines for restructuring plan by the management body
- confirmation of guidelines and decision to apply to the court by the shareholders/ owners of the company
- filing petition with the court
- decision by the court to open restructuring proceedings, appointment of restructuring administrator (IP)
- submission of creditors' claims to the IP
- confirmation of claims by the IP and the court
- confirmation of restructuring plan by shareholders/owners of the company
- confirmation of restructuring plan by the creditors in groups (at least majority of more than 1/2 counted from the total amount of creditors' claims approved by the court in that group of creditors; there are 2 groups, secured and unsecured creditors; no possibility to create additional groups)
- confirmation of restructuring plan by the court

- satisfaction of creditors' claims according to the restructuring plan
- decision of the court to end the proceedings

5.3. Restructuring plan

- description of the current status of the company
- list of creditors and debtors of the company
- warranties and guarantees issued for the benefit of third parties
- information about cases where money claims are submitted against the company
- aims, duration and means of restructuring
- business plan
- estimated administrative costs
- satisfaction of claims (following the mandatory ranking of claims: priority for secured creditors on pledged / mortgaged property (security), 1st rank: creditors who provide DIP financing, employees, State, 2nd rank: other unsecured creditors)
- creditors' assistance to overcome financial difficulties
- other important information

5.4. Approval of restructuring plan

- Company management body submits draft restructuring plan to shareholders; approved by shareholders in accordance with statutory decision making procedure governing the appropriate form of legal entity. If the law does not provide such a procedure, then approval according to the procedure / majorities established in the founding documents and if these are silent, then approval requires more than 1/2 majority of shareholders participating in the shareholders' meeting.
- IP takes steps to establish, submit for approval and implement a restructuring plan, advise on drafting of the restructuring plan, convene and participate in creditors' meetings.

- The draft restructuring plan is approved by creditors if approved in each group of creditors by affected creditors whose claims amount to at least 1/2 of the total amount of court approved claims in that group (1st group creditors secured by pledge/mortgage, 2nd group: all other creditors).
- After approval of the draft restructuring plan by the creditors and shareholders of the company, company manager or IP submits the draft restructuring plan to the court.
- The draft restructuring plan must be submitted to the court within 4 months after the decision of the court to open restructuring proceedings takes effect; this term can be prolonged once by the court up to a total of 6 months.
- Court issues a decision within 14 calendar days upon receipt of the above documents; appeal against the approval does not suspend implementation of the restructuring plan.
- Amendments to restructuring plan are subject to the above procedure for approving restructuring plan.

5.5. Filing a petition for restructuring proceedings

- Management body applies for restructuring proceedings.
- A creditor may also initiate the restructuring process if its overdue claim against the company exceeds the amount of 10 minimum monthly wages approved by the Government (2020: threshold ca. EUR 6 070).
- Before filing a petition for restructuring proceedings, the initiator (company or creditor) must announce the intention to initiate the proceedings and set a term of 15-30 days deadline for fulfilment of the obligation or for conclusion of an agreement for financial aid.

5.6. Main content of petition

- reasons for initiation
- list of creditors and debtors of the company

- maximum sum of permissible monthly payments required to cover operational expenses and thus keep the business running
- information on expected interim financing specifying the size, terms, conditions, methods of implementation and other sources of funding expected to be received before the restructuring plan is approved
- name of candidate for IP and their consent (if proposed)
- draft restructuring plan and Decision on approval of draft by company shareholders/owners
- set of financial statements for the previous financial year

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

- Deadline set by the court for lodging claims is 30 days from the date of publication of the court decision to open the restructuring proceedings on the supervisory authority's website.
- Claims submitted later are approved only if lodged too late for important reasons.
- Court approves claims.

5.8. Selection of restructuring administrators

- Court appoints IP.
- Company, creditors' meeting, petitioner may propose an IP and submit their consent to appointment.
- Natural or legal persons can be IP.

5.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings.

5.10. Main rights of the creditors' meeting

- selection of a committee of creditors and transfer to it of creditors' meeting rights
- approval of restructuring plan and amendments (note: voting in 2 groups)
- application to court to restrict the right of a person to hold the position of manager of a public and/or private company or to be a member of a collegial management body
- application to court to dismiss IP and appoint a new one
- application to court for termination of restructuring proceedings
- decision for prolongation of restructuring proceedings (maximum 4 years with possibility to prolong once for max. 1 year)

5.11. Final proceedings

- Claims by creditors are satisfied by the company according to the restructuring plan.
- The management body may manage and dispose of all assets in compliance with the restructuring plan and under supervision of the IP.
- Decision of the court to end restructuring proceedings terminates the proceedings.

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