

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

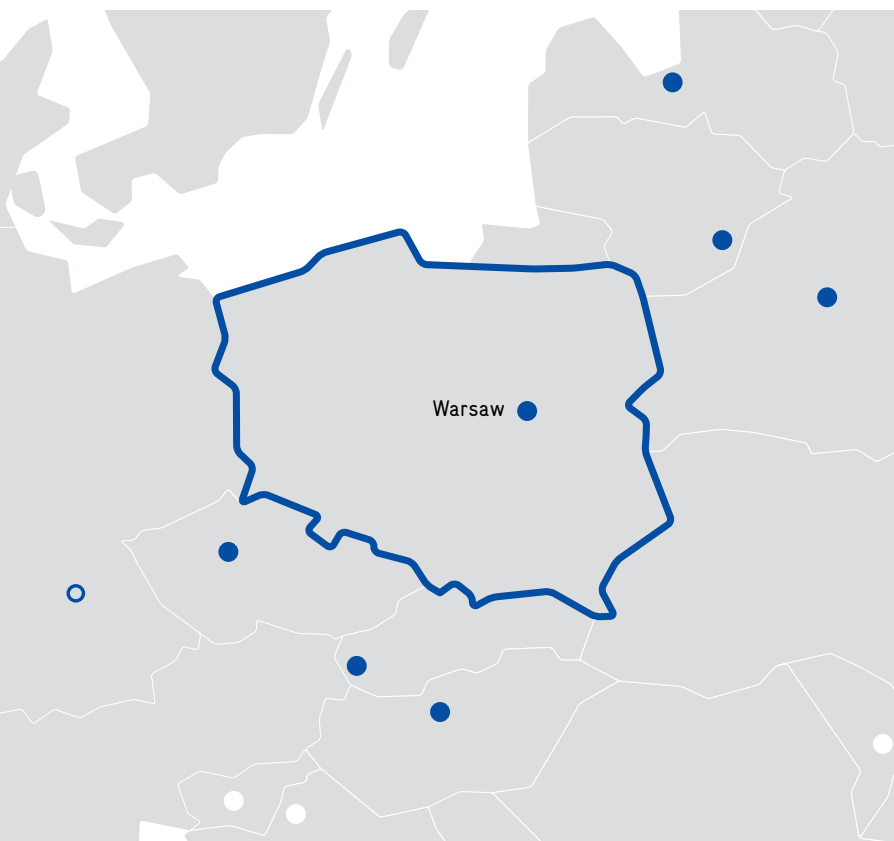


Stela Ivanova
Attorney-at-law (Advokat)
(LMU)

Co-Head of the bnt Insolvency & Restructuring practice group

Poland

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL-00 867 Warsaw



YOUR CONTACT

Jarosław Sobstel
Junior Associate

T +48 22 373 65 50
jaroslaw.sobstel@bnt.eu

› 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: the bankrupt loses the right of management and disposal of company assets.

1.3. Insolvency register

- There is no national insolvency register.
- Transparency ensured by:
 - affixes to company names “w upadłości likwidacyjnej” (“in insolvency”) or “w restrukturyzacji” (“under restructuring”)
 - changes regarding the name can be checked online via the National Court Register <https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu> (only available in Polish) or at the Central Registration And Information on Business, online at: <https://prod.ceidg.gov.pl/> (available in Polish or English);
 - opening of proceedings published in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy) (CCG).

1.4. Competent court for opening bankruptcy and restructuring proceedings

- Regional court (Sąd Rejonowy) where the company is located

1.5. Average duration of proceedings

- Restructuring proceedings:
 - no official statistics available
 - in 2018 a total of 381 restructuring cases were opened.
- Bankruptcy proceedings:
 - in 2018 a total of 1081 bankruptcy cases were opened
 - average duration of proceedings is 3,5 years.

1.6. Approximate satisfaction rate of bankruptcy proceedings:

- 60%

› 2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Entitled to file:
 - Creditors
 - Manager of the company or other person authorised under founding documents
 - Liquidator
- Obligated to file:
 - Debtor (within 30 days)

2.2. Grounds for filing a petition

- Company fails to pay salaries and other employment-related payments.
- Company fails to pay for goods or services on time and fulfil other monetary obligations.
- Company fails to pay taxes and other compulsory payments on time.

- Company has no assets or income from which debts could be recovered so the bailiff cannot enforce creditors' claims.

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent (i.e. does not meet its due obligations, the value of which exceeds the value of the assets on the balance sheet, for a period over 24 months).
- Company fails to pay salaries and other employment-related payments (according to court practice only when the company faces financial difficulties), where the delay in fulfilling liabilities is over 3 months or
- Company fails to discharge its liabilities or will not be able to discharge its liabilities in the future.
- The court cannot open bankruptcy proceedings while restructuring proceedings are in progress against the company.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court verifies whether a statutory condition exists to dismiss the petition and whether the debtor's assets will cover the costs of insolvency proceedings (an expert may be appointed to check this).

- Assets may be secured by e.g. appointment of (1) a temporary court supervisor (supervisor's consent is necessary for any transaction exceeding the scope of ordinary affairs) or (2) a compulsory supervisor (debtor loses the right to manage and dispose of assets).

- Decision to open bankruptcy proceedings comes into effect:

- Court appoints insolvency practitioner (IP) who is not active until decision comes into effect.
- Company management is no longer in charge of company affairs (with some exceptions); IP takes over management of the company, assets and documents.
- IP liquidates assets to satisfy claims of approved creditors.
- Court, administrative, as well as court and administrative proceedings in respect of the bankruptcy estate may be instituted and continued only or against the IP.
- Creditors to file claims against debtor within deadline indicated by the court in its decision to open bankruptcy.
- Financial obligations including set-offs are prohibited.

2.6. Persons obliged to file for bankruptcy

- Manager of the company or other person authorised under founding documents: not later than 30 days after the company becomes insolvent.
- Liquidator of the company: not later than 30 days 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

- civil liability of management board member or liquidator for damages due to late filing
- possible criminal prosecution
- ban on conducting commercial activity on a

person liable for improper filing or not filing at all for insolvency

2.8. Appointment of insolvency practitioner (IP)

- IP can be a natural person holding a liquidator's licence or commercial partnership (company): only if all partners bearing liability for partnership obligations without limitation with their whole property or members of the management board of the partnership (company) hold a liquidator's licence.
- IP licence is granted by Minister of Justice to a person who meets all statutory requirements, i.e.:
 - knowledge of Polish sufficient to perform liquidator's duties
 - higher education diploma with master's or equivalent degree obtained in a member state of the EU, Switzerland or an EFTA member state party to the EEA Agreement
 - impeccable reputation
 - managing – for at least 3 years in the 15 years before applying for a licence – property of an insolvent entity, its business or a part thereof in Poland, another member state of the EU, Switzerland or in an EFTA member state party to the EEA Agreement
 - passed an exam before an examination board appointed by the Minister of Justice.

2.9. Ethical standards for insolvency practitioners

- There is no statutory Code of Conduct.
- The Polish National Chamber of Liquidators (www.izbasyndykow.pl), a voluntary association of liquidators, drafted a Code of Liquidators' Professional Ethics which is binding only on members of the Polish National Chamber of Liquidators.

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

- Deadline is set by court.

- 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

- Registering a claim in Polish insolvency proceedings is free of charge.
- Costs of insolvency proceedings resulting from delayed filing of a claim by a creditor to be borne by the creditor.

2.12. Administration costs

- Administration costs consist of liquidator's (administrator, supervisor) remuneration and expenses to be repaid.
- Initial remuneration is set by the court at the request of the liquidator (administrator, supervisor).
- Final amount is set by the court after confirmation by the judge-commissioner of the final report to be prepared by the trustee (administrator, supervisor).
- Liquidator (administrator, supervisor) is entitled to advance payments towards remuneration.

> 3. Ranking of claims / creditors

3.1. Secured creditors

- Any creditor secured by mortgage, pledge, or transfer of ownership by way of security is entitled to priority (privileged satisfaction of claims out of secured assets).

3.2. Unsecured creditors

- Unsecured claims are divided into 4 categories.
- Claims may only be settled if all claims from preceding categories are settled.

- Within the same category claims are settled proportionally.

3.3. Employees

- Claims by employees for 3 years preceding announcement of insolvency are to be covered in the first category.
- Employees' claims are secured to a certain extent by the Guarantee Fund.

4. Nullifying contracts

- Some legal transactions are to be considered legally ineffective in relation to the bankruptcy estate if performed within the statutorily prescribed period (no longer than 1 year) before filing application for insolvency and if some other statutory conditions are fulfilled (in particular the transaction is undertaken by the debtor free of charge or value of benefit rendered by the debtor grossly exceeds value of mutual benefit received by the debtor).
- IP (administrator, supervisor) may apply to the court for a declaration that a given legal transaction by the debtor is ineffective towards creditors, if performed to creditors' detriment.

5. Restructuring proceedings (aiming at rescuing company)

5.1. Types of restructuring proceedings:

- proceedings for approval of plan
- accelerated arrangement proceedings
- arrangement proceedings
- remedial proceedings

5.2. Preconditions for restructuring

- Restructuring is applicable to an insolvent company unable to fulfil its due financial obligations (e.g. payment delay exceeds 3

months or the value of its obligations exceeds the value of company assets), or a company whose economic situation indicates that it may become insolvent in the near-term.

- Restructuring may not be initiated if the effect of such proceedings would be a detriment to creditors or if the ruling on the declaration of bankruptcy against that company became valid.

5.3. Stages

- Restructuring is initiated by preparing and filing a statement on initiating restructuring proceedings together with necessary documents and declarations including a restructuring plan with grounds.
- After the statement is accepted by the court, the entrepreneur announces filing for restructuring proceedings in the CCG, at least in one national + one local newspaper.
- Entrepreneur enters information on initiating proceedings in the commercial register.
- Court appoints a supervisor with whom the entrepreneur must conclude an agreement for payment for court supervisor's duties.
- Meeting of creditors is prepared and led by court supervisor.
- Adoption or rejection of restructuring settlement by creditors' meeting is based on restructuring proposals as to the debtor's liabilities presented by the entrepreneur (debtor).
- Court approves (or rejects) restructuring settlement.

5.4. 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 made against the company
- aims, duration and means of restructuring

(conversion of claims into shares or stock (“debt-equity swap”); modification, exchange or cancellation of a right securing a claim

- business plan (presentation of proposed future strategy)
- estimated administrative costs
- satisfaction of claims (following the mandatory ranking of claims)

5.5. Approval of restructuring plan

- The court declines to approve a plan that infringes the law, in particular if it is clear that the plan will not be performed, which is presumed if the debtor fails to satisfy liabilities arising after the day of opening the restructuring proceedings.
- The court may decline to approve a plan whose conditions are clearly detrimental to the creditors who voted against the plan and lodged their reservations.
- In proceedings for approval of the plan or in accelerated arrangement proceedings, the court declines to approve a plan where the total sum of disputed receivable debts exceeds 15% of the total sum of receivable debts.
- The court discontinues restructuring proceedings if it finds that the plan has not been adopted due to lack of the required majority. The decision to approve the arrangement may be appealed but this must be lodged within 2 weeks.

5.6. Filing a petition for restructuring proceedings

- Petition should be filed within 30 days from the day on which grounds for declaration of bankruptcy arose.
- Management body applies for restructuring proceedings.
- The best solution is to file for restructuring and bankruptcy at the same time, thus avoiding the risk of late filing for bankruptcy if the court declines to start company restructuring.

5.7. Main content of petition

- basic data on the entrepreneur (debtor)
- location of the debtor’s enterprise or other assets
- circumstances justifying the statement on initiating restructuring proceedings showing likelihood of positive outcome
- statutorily specified attachments and in particular:
 - current list of debtor’s assets, including their estimated value
 - list of creditors including statutorily required information
 - declaration confirming no circumstance due to which the proceedings would not be allowed
 - restructuring plan with grounds.

5.8. Time for lodging creditors’ claims, consequences of failure

- Provisions on restructuring proceedings do not set a procedure for lodging creditors’ claims and in particular a deadline.
- Debtor must draw up list of creditors.
- Court informs creditors of the date of the creditors’ meeting convened to adopt the restructuring plan, along with proposals, information about division of creditors as to categories of interests and provides information about voting at the meeting.
- A creditor that was not notified of the meeting of creditors and that has not notified its claim at its own initiative is not bound by the restructuring settlement.

5.9. Selection of restructuring administrators

- Court appoints IP.
- Petitioner must propose an IP and submit their consent to appointment.

- Natural or legal persons can be IP.

5.10. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings.

5.11. 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
- application to court to restrict functions of management bodies
- application to court to dismiss IP and appoint a new one
- approval of proposal by IP to terminate restructuring proceedings.

5.12. 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.

> 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



Jaroslaw 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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