

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

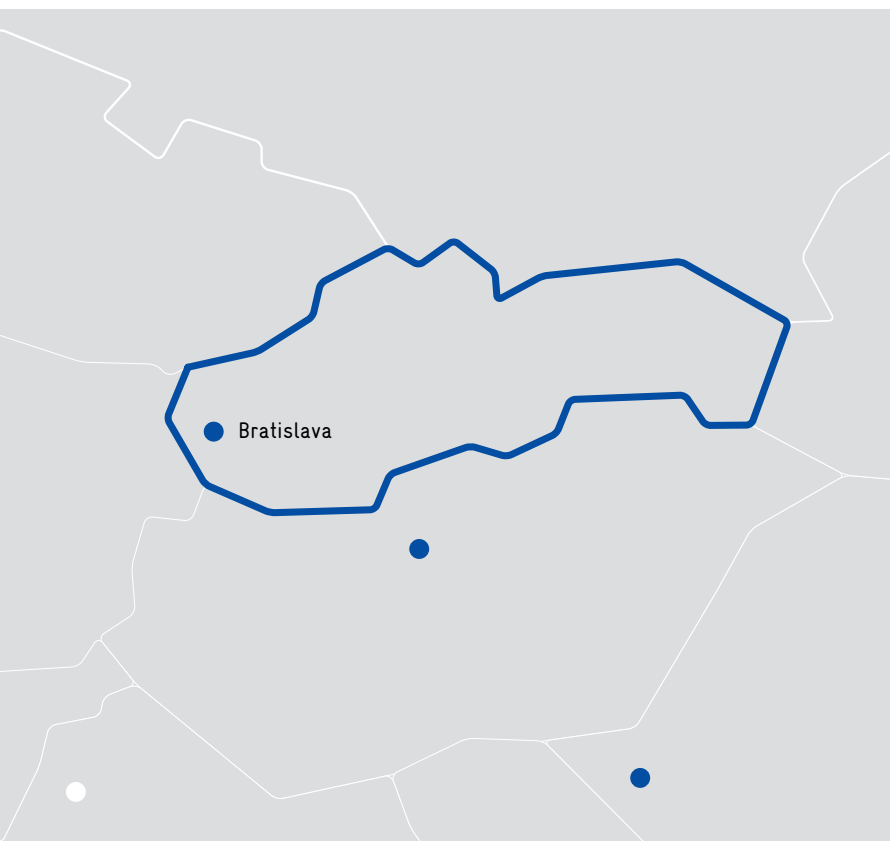


Stela Ivanova
Attorney-at-law (Advokat)
(LMU)

Co-Head of the bnt Insolvency & Restructuring practice group

Slovakia

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK-811 08 Bratislava



YOUR CONTACT

Mgr. Ing. Dávid Oršula
Partner

T +421 257 88 00 88
david.orsula@bnt.eu

› 1. General information

1.1. General types of insolvency proceedings for companies

- Bankruptcy proceedings (usually aimed at liquidation of companies)
- Restructuring proceedings (aimed at rescue of companies)
- Discharge of natural persons (fresh start (FS) and no fresh start (NFS)/recovery plan)
- Note: specific rules apply to some corporations e.g. banks, credit unions, insurance companies, as well for small businesses, i.e. “small bankruptcy” (“malý konkurz”).

1.2. Debtor in possession (self-administration)

- Restructuring proceedings: management stays in place; an insolvency practitioner (IP) supervises company management and oversees implementation of the approved restructuring plan.
- Bankruptcy: no
- Discharge of natural persons: not for a FS, as the IP acts in matters relating to debtor’s property. Yes for a NFS.

1.3. Insolvency register

- For bankruptcy proceedings and restructuring proceedings (only available in Slovak) <https://ru.justice.sk/>

1.4. Competent court for opening bankruptcy and restructuring proceedings

- District court (Okresný súd) located in the seat of the Regional Court in the circuit of which the debtor is located

1.5. Average duration of proceedings

- Restructuring proceedings:
 - In 2018, only 15 restructuring proceedings were opened in Slovakia, out of which 6 were approved. The average duration was roughly 11 months.

- In 2019, out of 15 initiated restructuring proceedings only 1 was approved

• Bankruptcy proceedings:

- The average duration of bankruptcy proceedings that terminated in 2017 was 100 days and in 2019 – 168 days, but this number is heavily affected by a huge number of proceedings where the courts quickly rejected opening bankruptcy due to lack of assets and a rapid increase in debt discharge proceedings of natural persons. Other statistics show that the average duration of some 3.191 currently pending bankruptcy proceedings is more than 3 years.

1.6. Approximate satisfaction rate for bankruptcy proceedings

- no relevant data available

› 2. Bankruptcy proceedings (generally aimed at liquidation)

2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Debtor – managing director
- Debtor’s liquidator or other persons authorised by law

2.2. Grounds for filing a petition

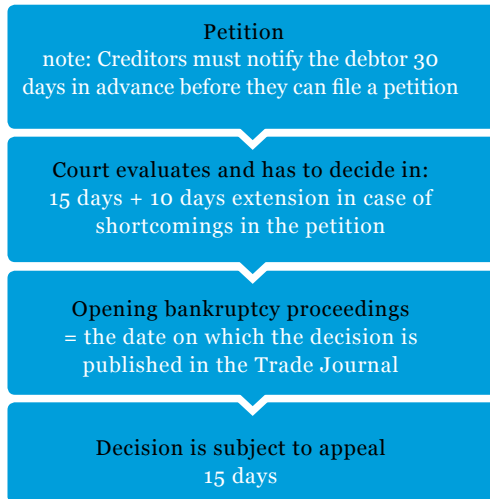
- An over-indebted debtor must file a bankruptcy petition within 30 days from becoming (or should have become) aware of insolvency while maintaining expert care; this obligation on the debtor also affects the statutory body or a member of the statutory body of the debtor, liquidator or the legal representative.
- A creditor may file for bankruptcy if a reasonable assumption exists that the debtor is insolvent; this can be reasonably assumed when the debtor is over 30 days late with payment of at least 2 financial obligations to more than one

creditor and was reminded to pay by at least one creditor.

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent if either of the following grounds is established:
 - debtor fails to pay at least 2 obligations over 30 days overdue to more than 1 creditor
 - debtor has more than 1 creditor and value of liabilities exceeds value of assets.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Company must restrict its activities except for daily business operations.
- All ongoing enforcement proceedings against company are suspended, new enforcement proceedings are barred.
- Realisation of a pledge cannot affect the assets of the company and has to be suspended (except claims arising from e.g. bank accounts, securities).
- Dissolution without liquidation is suspended.

- Decision on merger, acquisition or division of the company cannot be adopted.
- Decision to open bankruptcy proceedings comes into effect the day after the decision is published in the Trade Journal.

2.6. Persons obliged to file for bankruptcy

- The debtor must file a bankruptcy petition within 30 days from when they became (or should have become) aware of insolvency (over-indebtedness) while maintaining expert care; this obligation on the debtor also affects the statutory body or a member of the statutory body of the debtor, liquidator and the legal representative.

2.7. Sanctions for not filing for bankruptcy in time

- A person who is obliged – but who fails – to file a bankruptcy petition on behalf of a debtor in time violates the law and is liable to creditors for damage caused unless proving that they acted with expert care.
- As of April 2015, for breaching the duty to file a bankruptcy petition in time, a limited liability company or joint stock company and the person responsible but who failed to file a bankruptcy petition in time are deemed to have agreed on a contractual penalty amounting up to half of the minimum registered capital of the company (€ 12 500). Any agreement between the company and the person responsible for filing a bankruptcy petition in time on its behalf that excludes or restricts the right to the contractual penalty is prohibited; the shareholders' agreement or by-laws may not restrict or exclude the right to this payment. The company cannot waive its right to receive payment of the contractual penalty or conclude a settlement agreement regarding this right; set-off is not allowed and nor is any other form of compensation. The right to a contractual penalty does not affect the entitlement to claim damages exceeding the contractual penalty. If the court decides that the person breached the obligation to file a proposal for the bankruptcy in time and therefore the person is obliged to pay the contractual penalty as

described above, the person will be disqualified by the court to be a member of the statutory body of the company (as debtor) and also of other companies and the prohibition can be up to 3 years.

2.8. Appointment of insolvency practitioner (IP)

- Insolvency court appoints an IP, randomly chosen by a computer program from IPs on the Register of IPs.

2.9. Ethical standards for insolvency practitioners

- IP must perform administrative activity without undue delay.
- IP must be trustworthy, professionally qualified and must have full legal capacity to enter legal relationships.
- IP must perform activities honestly, responsibly and conscientiously.
- IP must perform activities with professional care, using all their experience and professional expertise.

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

- Claims must be lodged within 45 days after declaration of bankruptcy.
- If a creditor delivers a claim to the IP later, the application will be taken into account, but the creditor loses voting, security interest and other associated rights. Claims would be satisfied but only from the proceeds of the general bankruptcy estate.

2.11. Costs of filing claims

- no stamp duties or other court expenses for filing a claim

2.12. Administration costs

- Before filing a bankruptcy petition the applicant must pay an advance payment (€ 1 500) of the remuneration and expenses of the preliminary IP.

- If after appointment of a preliminary IP the bankruptcy court finds that the debtor's assets will be insufficient even to cover the expenses of bankruptcy, then bankruptcy proceedings would end.

- If the debtor's assets do not cover the bankruptcy expenses, the creditor who filed the petition may pay the full amount of the bankruptcy expenses (€ 6500); if paid, the court must declare bankruptcy and appoint an administrator; the creditor may apply for a refund in bankruptcy proceedings.

- Remuneration of the IP until the first creditors' meeting is a lump sum under Decree no. 665/2005 Coll. for execution of provisions of the Bankruptcy and Restructuring Act.

- After the first creditors' meeting the IP is entitled to remuneration determined as a percentage of proceeds.

› 3. Ranking of claims / creditors

3.1. Secured creditors

- Secured creditors must file their claims in the basic 45 days period.
- They are paid first of all from proceeds of realizing security (separate insolvency estate), after claims against this separate estate are satisfied.
- A creditor who could – with regard to the retention of title – otherwise request exclusion from the insolvency estate may lodge this right in bankruptcy in the same way as lodging a security right. The provisions governing the status of a secured creditor will apply accordingly to the legal status of that creditor.

3.2. Unsecured creditors

- Unsecured creditors are settled proportionately within their respective rank (parri passu) from the general insolvency estate. Lower ranking claims only satisfied after all higher ranking claims are fully satisfied.

- Ranking of claims as follows:
 - 1st rank: preferred rank – optional, e.g. creditors if restructuring changed to bankruptcy
 - 2nd rank: average rank – within this rank, satisfaction is as follows:
 - a. costs of the insolvency proceedings, including mainly costs of selling assets, remuneration of the IP
 - b. employees' wages and other claims by employees arising after bankruptcy was declared
 - c. taxes, duties, health insurance payments, social insurance payments and other contributions to the state
 - d. other claims
 - 3rd rank: subordinated rank – related persons of debtor.

› 4. Nullifying contracts

- IP or creditor may bring (clawback) actions for ineffectiveness of contracts (contestable legal acts) entered into within 1 year before opening of bankruptcy proceedings.
- In the case of related persons, contracts are examined 3 to 5 years back in time.
- Contestable legal acts are:
 - contracts without adequate consideration (non-gratuitous legal act or gratuitous legal act of the debtor on the basis of which the debtor provided or agreed to provide fulfilment with a market value significantly higher than the market value of the fulfilment that was obtained or was to be obtained)
 - privileging legal acts (privileging treatment of one creditor at the expense of others).
 - detrimental legal acts (legal acts of the debtor that intentionally harm creditors,

and the debtor's intention was or must have been known by the contracting party).

› 5. Restructuring proceedings (aiming at rescuing company)

5.1. Preconditions for restructuring

- The company is in crisis – insolvent or in danger of insolvency. A company is in danger of insolvency when the ratio of equity (net worth) and obligations is 8 to 100. This should be without prejudice to the obligation to file a bankruptcy petition in due time.
- Bankruptcy has not been declared.
- A debtor who may authorize an IP to prepare a restructuring report for the purposes of determining whether the conditions for restructuring are met.
- Creditors may appoint an IP to prepare a report if they agree with the debtor to provide the necessary cooperation. IP may recommend restructuring of debtor if:
 - the debtor carries on business operations
 - the debtor's bankruptcy is impending or the debtor is already bankrupt
 - maintaining at least a substantial part of the debtor's business operations could reasonably be expected
 - the financial statements of the debtor provide a true and fair view of the facts that are subject to accounting and of the financial situation of the debtor
 - a minimum of two years has passed since the end of the last restructuring of the debtor or its legal predecessor; and
 - if permission is granted, restructuring can reasonably be expected to meet a wider range of creditor satisfaction than in a bankruptcy.

5.2. Stages

- preparation of restructuring report on demand by debtor or creditors
- filing petition with the court within 30 days after recommendation by IP in the report
- decision by the court to open restructuring proceedings within 15 days
- approval by court (after opening proceedings, the court has 30 days to approve restructuring of debtor)
- decision of the court to approve restructuring of debtor, random appointment of IP from the Register of IPs
- confirmation of claims by the IP and the court
- creditors' meeting (takes place within 75 – 80 days from approval of restructuring, creating restructuring plan and electing the creditors' committee)
- confirmation of restructuring plan by the creditors' committee (if rejected, the debtor goes into bankruptcy)
- confirmation of restructuring plan by the creditors' meeting (basically an absolute majority counted from the total amount of creditors' claims approved by the court)
- confirmation of restructuring plan by the court
- satisfaction of creditors' claims.

5.3. Restructuring plan

- Restructuring plan consists of two parts – descriptive part and binding part.
- The restructuring plan is a document regulating the creation, modification or extinction of the rights and obligations of the persons listed therein (plan participants).
- As a general rule, restructuring plan must provide unsecured creditors with satisfaction of their claims at least 20% higher than they would get in a bankruptcy. It may also provide that the unsecured creditors' claims may be

converted into share rights or membership rights in the debtor (debt-to-equity swap).

- Unsecured creditors must obtain satisfaction in the amount of at least 50% of their filed claims within 5 years at the latest.
- Once the court plan is confirmed, the plan is binding on all plan participants.

5.4. Approval of restructuring plan

- Restructuring plan must be submitted by debtor or creditor to the creditors' committee for preliminary approval within 90 days after approval of restructuring. Deadline can be prolonged by 60 days by the creditors' committee.
- If the plan is approved by creditors' committee, they ask the IP to convene an approval meeting, which consists of plan participants. Changes to the restructuring plan may be requested by any creditor no longer than 7 days before approval meeting.
- Date and place of approval meeting must be published in the trade journal.
- After restructuring plan is approved by approval meeting it must be filed with the court. Court issues a decision within 15 calendar days upon receipt of the petition for approval of the restructuring plan.
- If the restructuring plan is refused at any stage of the approval process, bankruptcy must be declared.

5.5. Filing a petition for restructuring proceedings

- A petition must be filed by debtor or creditor with the court within 30 days after a recommendation by the IP in the restructuring report.

5.6. Main content of petition

- general requirements for petitions
- restructuring report
- lists of debtor's assets and obligations

- list of debtor's related persons
- list of legal acts of the debtor with related persons undertaken in the last two years concerning the debtor's assets in the amount of:
 - 10% higher than the amount of the debtor's registered capital
 - 5% higher than the lowest value of the registered capital of a joint stock company, if the debtor does not create registered capital
- set of financial statements for the previous financial year

- Decision of the court to end restructuring proceedings terminates the proceedings.

Author: Mgr. Ing. Dávid Oršula

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

- Creditors lodge their claims with the IP within 30 days from approval of restructuring
- Claims lodged later are not accepted

5.8. Selection of restructuring administrators

- Court appoints an IP randomly chosen by a computer program from IPs on the Register of IPs

5.9. Ethical standards for restructuring administrators

- Same requirements apply as for IP in bankruptcy proceedings

5.10. Main rights of the creditors' meeting

- election of creditors' committee and transfer to the committee of certain rights
- proposal to the IP to file for bankruptcy of the debtor

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.

> 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

Bosnia and Herzegovina,
 Croatia, Macedonia,
 Montenegro, Russia, Serbia,
 Slovenia, Ukraine
 further information:
 www.bnt.eu

Connected with the world, strong on the spot

NORTH SEA

ATLANTIC OCEAN

Nuremberg

Rely on our cross-border experience to handle complex challenges efficiently and effectively. Our international teams of experts are at your side in ten bnt offices – directly on the spot in the major cities of Central and Eastern Europe. We are at home in the region and can therefore offer you a comprehensive solution and clear communication.

● bnt office

○ bnt cooperating partner



Tallinn

Riga

Vilnius

Minsk

Warsaw

close

Prague

Bratislava

Budapest

Timisoara

Bucharest

Sofia

MEDITERRANEAN
SEA

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.

FACTS

10

offices
in CEE

30+

partners

120+

lawyers

22

working languages

17+

years of expertise
in CEE

MANY

awards