

How to Deal with the Liability Risk Called Insolvency

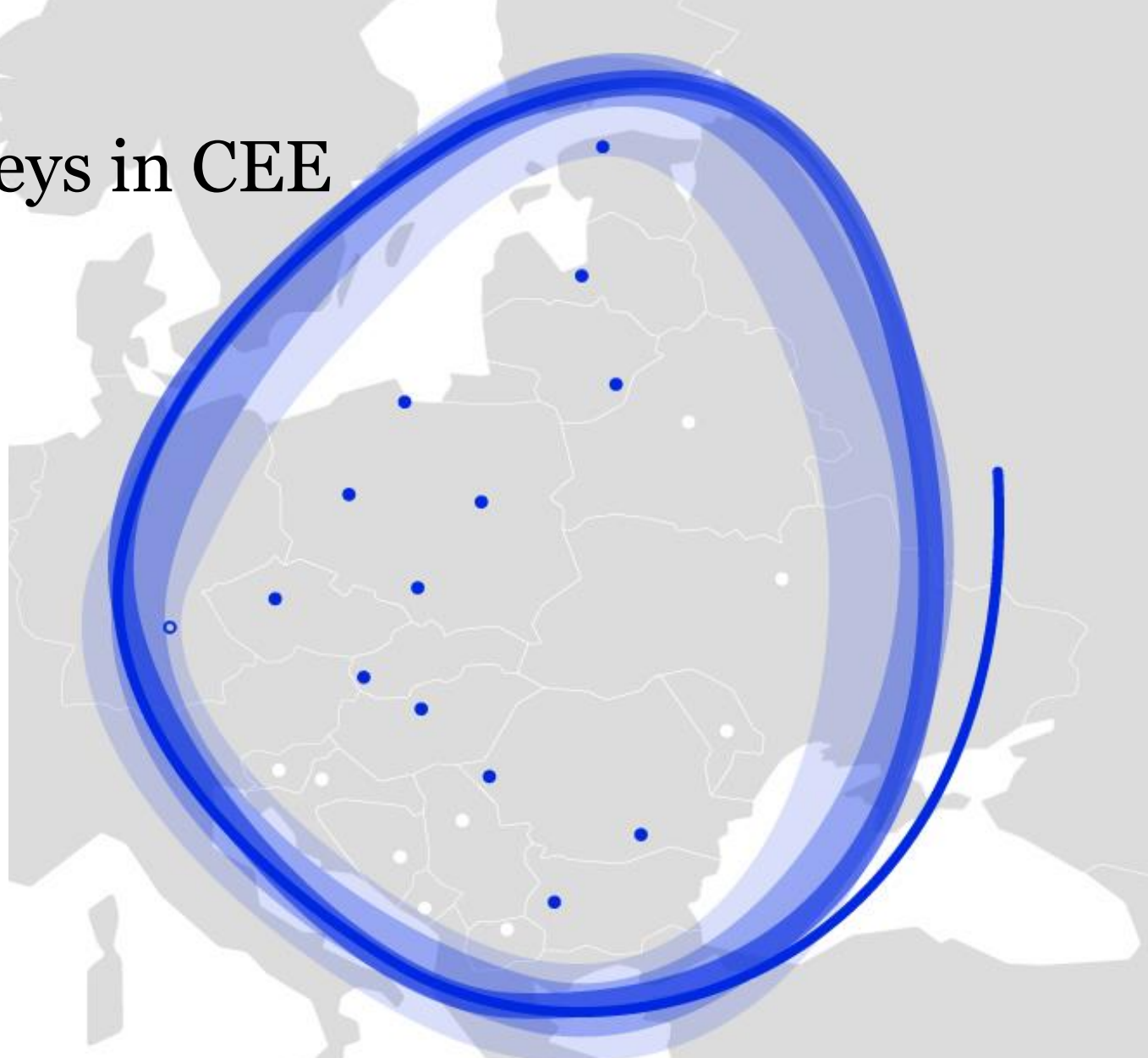
FAQs for Managers of Companies in Central & Eastern Europe

2025

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DISCLAIMER

This publication deals with the critical time before you as a General Manager (GM) of a company in distress are given support by an insolvency court and a court-appointed Insolvency Practitioner (IP).

The publication only depicts general rules. Individual cases and their legal assessment may gravely differ from and even oppose the principles we explain here. Please therefore be aware that the information further down does not represent legal advice, cannot replace it and will not imply any author's professional liability.

The correct way to go is to have all your questions clarified on a case-to-case basis with the lawyer of your trust.

How would you like to go on?

I. BY SHORTCUT

(click on a question to head straight to the point, you will be asked for the country in addition):

1. Filing requirements: When must I file for insolvency?
2. How much money must the company have upon filing?
3. Shareholders: Must I tell them, what and when?
4. Period of uncertainty: How long must I wait for court guidance?
5. To pay or not to pay? Typical dilemmas before you get an IP:
LEVIES - LABOR - SUPPLIES - LOANS - MYSELF
6. May I sell and/or encumber company assets?
7. What must I do to protect company assets and documents?
8. May I resign and how?
9. Who will pay for all the consultants?
10. Am I personally liable for the company debts?

II. BY COUNTRY

(click on a name for a complete country report):

Poland

Czech Republic

Slovak Republic

Hungary

Romania

Lithuania

Latvia

Estonia

Bulgaria

COUNTRY REPORTS

POLAND



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1. When must I file for Insolvency?

**Within 30 days
starting with
the state of insolvency
which is given with:**

Inability to pay:

This is when the company has not been able to pay a mature debt for more than 3 months.

OR

Overindebtedness:

This is when the monetary obligations of a company have been in excess of the value of its assets for a period longer than 24 months.

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2. How much money must the company have upon filing?

**Enough
to cover the costs
of the
insolvency proceedings:**

The full insolvency procedure will take place if there is sufficient substance to cover the expenses.

Plan with no less than EUR 20,000 (if there are no specific assets to be liquidated).

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3. Shareholders: Must I tell them, what and when?

It is not a must.

**But you may
want to:**

To decide whether a state of insolvency has occurred is a responsibility for the GM to face. There is no obligation to inform the shareholder(s).

Shareholders are nevertheless usually informed because this opens the possibility of recapitalizing a company or obtaining a loan.

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4. Period of uncertainty: How long must I wait for court guidance?

The Polish court will not give you automatic and immediate guidance after you file for insolvency!

Duration of opening proceedings:
Count with 3 to 18 months.

Why:
Polish Courts are flooded with insolvency cases.

What shall I do:
Ask for support by applying for a temporary IP and/or court injunctions.

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5.1. To pay or not to pay **LEVIES: taxes and social contributions**

**Safe
to pay**

The revenue service and social security funds rank first:
In the end, the state will receive outstanding taxes and social contributions ahead of everyone so you will not damage creditors by paying levies.

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5.2. To pay or not to pay LABOR COSTS: salaries & severance payments

**Quite safe
to pay**

Employees are privileged:

In the end, employees will receive outstanding salaries before any other unsecured private creditor, so it is hard to damage creditors by paying salaries.

Severance payments:

Firing people in groups can be lengthy and expensive. Start in advance, well before applying for insolvency. Keep employed someone who knows the company well to support the future IP.

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5.3. To pay or not to pay SUPPLIES: essential and other

**Pay only
if bill is
congruent!**

**For a valid (congruent)
payment
the bill must:**

- be due AND
- fall within the company's usual activity AND
- correspond to market value

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5.4. To pay or not to pay **LOANS: banks, shareholders and others**

**Avoid
payment!**

Secured lenders (banks) are privileged and will press you:
To lower their pressure until insolvency proceedings are opened, ask for a court injunction.

Unsecured private lenders come second-to-last:
Put any such re-payment on hold.

Shareholders come last
Do not re-pay shareholders!

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5.5. To pay or not to pay: my own REMUNERATION

**Prepare
for changes:**

If you are an employee, you can pay yourself as far as you pay the other employees and your salary is adequate.

If you are a contractor you can pay yourself as long as your bill is congruent. But even so, you cannot avoid the risks that such payment be annulled later.

Once the insolvency proceedings are opened, the IP will have the right to terminate your contract. If you are a contractor with outstanding remuneration you will be last in line to be considered when debts are settled.

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6. May I sell and/or encumber company assets?

No!

Unstable transactions:

Any transaction closed within the year before the application to open insolvency proceedings was filed is vulnerable.

Any encumbrance established on company assets and any payment ahead of maturity can be attacked if taken over within the 6 months prior to filing.

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7. What must I do to protect company assets and documents?

**Protect
from theft, loss
and/or damage
until
a preliminary IP
is appointed and
has taken over:**

Archive documents, physical and electronic. Store documentation and equipment under surveillance by a security-service provider.

Sell perishable goods at market value and deposit the income.

When in doubt: Demand injunction by your insolvency court.

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8. May I resign and how?

Yes!

A GM is not obligated to remain on board and may resign.

Mind your contractual notice period.

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9. Who will pay for all the consultants?

**Do not
mix up costs!**

Company consultants

are payable, if their bills be congruent, by the company.

Your consultants

must be paid by yourself.

How to tell the difference:

Advice (typically on your resignation) which can affect the company negatively while affecting you positively is your personal cost.

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10. Am I personally liable for the company debts?

No.

**But you
can be made
personally liable
if:**

- you are late in applying for insolvency
- OR
- you pay and/or sell and/or encumber company assets in breach of the insolvency-related restrictions
- OR
- you have acted in breach of your due diligence as company manager and have thus caused the insolvency in the first place.

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CZECH REPUBLIC



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1. When must I file for Insolvency?

Without undue delay as soon as you are able (under reasonable diligence) to become aware that the company is in any of these situations:

Illiquidity:

The company you lead has at least 2 creditors and monetary obligations which are overdue for more than 30 days which it is unable to meet.

Over-indebtedness:

The company you lead has multiple creditors whereas the total amount due to them is greater than the value of assets the company holds.

Impending insolvency:

It is more likely than not that the company you lead will not be able to meet a significant part of its due payment obligations on time.

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2. How much money must the company have upon filing?

There is no such requirement.

However:

The full insolvency procedure will only take place if there is sufficient substance to cover the expenses and to justify the proceedings from an economic point of view.

A deposit of currently CZK 50,000 (EUR 2,000) is required.

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

Everything. Tell them about the situation and any need of capital.

When:

As soon as you sense danger. Demand fresh capital in any thinkable way. Call together the shareholder assembly.

Note:

If the shareholders do not take measures, you must file for insolvency. Notify them on the commencement of insolvency proceedings. This is important to honour the shareholders' interest in protecting their investments.

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4. Period of uncertainty: How long must I wait for court guidance?

**Plan with
2 months:**

Insolvency proceedings commence on the very day your application reaches the court. The court will check and decide whether the company is indeed in a state to justify opening of insolvency proceedings. If so, the court will appoint an IP.

The IP will take strategical and practical decisions on the run of the insolvency proceedings. The power to dispose of the assets will usually pass to the IP.

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5.1. To pay or not to pay **LEVIES: taxes and social contributions**

**Relatively safe
to pay**

Principle of stability

Taxes and social contributions, once paid, cannot be challenged later.

Ill-faith exceptions

Payments of taxes and social contributions can be challenged if errors or fraudulent activities were involved in their payment.

Keep in mind

Consider carefully whether it is reasonable to keep your employees.

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5.2. To pay or not to pay **LABOR COSTS: salaries & severance payments**

**Relatively safe
to pay**

Employees are privileged:

In the end, employees will receive their outstanding salaries before any other unsecured private creditor, so it is hard to damage creditors by paying salaries.

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5.3. To pay or not to pay **SUPPLIES: essential and other**

Yes.

**But
only
if essential:**

GMs must act with the care of a prudent businessperson to prevent greater damage and to preserve the core functions of the business. Therefore, supply payments essential to maintaining the business operations have priority over others.

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5.4. To pay or not to pay LOANS: banks, shareholders and others

Banks are privileged:

Payments to first-rank secured banks are quite stable but can nevertheless be challenged later.

Shareholders come last:

Re-payments to shareholders rank last and you should not pay them.

Other lenders:

Unsecured other loans rank second-to-last and you should put payments here on hold.

To lower the pressure by company creditors, ask for a debt

moratorium:

This is a protective shield procedure which will give you time to try negotiate debt haircuts with creditors.

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5.5. To pay or not to pay: my own REMUNERATION

**Tricky.
Seek legal advice!**

GMs are not employees so you are generally a private unsecured creditor privileged only in comparison to shareholders. The future IP will take a look into the payments you have given yourself and may let you keep those of them that are justified and in line with the company's financial situation.

However, this is rather unlikely for parts of our remuneration which may depend on future events (such as performance bonuses). They will usually receive low priority .

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6. To sell or not to sell? May I sell and/or encumber company assets?

Yes.

However:

GMs must act with the care of a prudent businessperson to prevent greater damage and to preserve the core functions of the business.

Therefore:
No sale and/or encumbrance of assets significantly below their market value!

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7. What must I do to protect company assets and documents?

**Protect
from theft, loss
and/or damage
until an IP
is appointed
and takes over.**

Archive documents, physical and electronic.

Store documentation and equipment under surveillance by a security-service provider.

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8. May I resign and how?

It is possible.

**But
keep in mind:**

General duty:

A GM must ensure that their resignation does not violate any legal obligations including the general duty to act in the best interest of the company and its creditors.

Notification duty:

A resignation must be properly communicated to the relevant corporate bodies (board of directors or shareholders).

Perpetuate cooperation duty:

Even after resignation, a GM is still required to cooperate with the IP and provide necessary information related to the insolvency proceedings.

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9. Who will pay for all the consultants?

**Do not
mix up costs!**

Company consultants
are payable by the company.

GM consultants
must be paid by yourself.

How to tell the difference?
Advice (such as on your resignation)
which can affect the company
negatively while affecting you
positively, is your personal cost.

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10. Am I personally liable for the company debts?

Under certain conditions:

- **Breach of Duties:** If a GM is found in breach of duties, such as failing to act in the best interest of the company and its creditors, they can be held personally liable for the company's debts.
- **Return of Benefits:** A GM can be forced to return any salary or financial benefits received within the two years prior to the beginning of insolvency proceedings if such receipt contributed to the insolvency through negligence or misconduct.
- **Liability for Damages:** If a GM's actions or omissions caused damage to the company or its creditors, the GM can be held liable for those damages.

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SLOVAK REPUBLIC



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1. When must I file for Insolvency?

**No later than
30 days
starting with
the day of:**

Inability to pay:

- factual inability to serve
- at least 2 monetary obligations
- to at least 2 different creditors
- for 90 days after maturity

OR

Overindebtedness:

The company has more than one creditor and the sum of liabilities exceeds the value of assets.

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2. How much money must the company have upon filing?

It is a matter of calculation.

Plan with a minimum of EUR 8,000.

EUR 1,500

are payable upon filing the application for opening insolvency proceedings. This is the mandatory advance payment for the costs of the preliminary IP.

EUR 6,500:

constitute the minimal value of company assets including cash for the court to open insolvency proceedings at all. Should the court reject opening due to lack of assets the GM will be presumed liable for damage.

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

All you know and should have known. Explain current financial situation, demonstrate prospects and suggest appropriate measures to be adopted in order to overcome insolvency.

When:

Without undue delay, even if there is only a threat of insolvency (when circumstances suggest that the company will become insolvent within 12 months).

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4. Period of uncertainty: How long must I wait for court guidance?

**Less
than a month**

Opening insolvency proceedings:

The court will open insolvency proceedings 15 days after the company has filed a proper insolvency application. The court can appoint a preliminary IP at this stage for the purpose of ascertaining whether the company has sufficient assets to be declared insolvent.

Declaring insolvency:

5 days later the court will declare the company insolvent and the IP will take over.

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5.1. To pay or not to pay **LEVIES: taxes and social contributions**

**Safe
to pay**

A must-pay situation: Payroll taxes and social contributions must be paid, if there is enough cash at moment of maturity. Otherwise, the GM will be subject to criminal liability.

However:

A GM will not be criminally liable if cash positions had to be used for supplies critical for the core business.

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5.2. To pay or not to pay **LABOR COSTS: Salaries & severance payments**

**Mostly safe
to pay**

Employees are heavily privileged:

Salaries must be paid if there is enough cash at moment of maturity. Otherwise, the GM will be subject to criminal liability. The permissibility of severance payments must be analyzed individually.

However:

A GM will not be criminally liable if cash positions had to be used for supplies critical for the core business. Moreover, claims by employees are secured to a certain level by the means of a statutory insurance.

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5.3. To pay or not to pay **SUPPLIES: essential and other**

**Payment
of critical supplies
permissible:**

Critical supplies

Suppliers critical to the going concern have priority.

Other suppliers

Payment to any other supplier is permitted only up to the part which would correspond to their eventual satisfaction at the end of the insolvency proceedings. As the permissible amount to pay is hard to calculate, other suppliers can wait.

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5.4. To pay or not to pay **LOANS: banks, shareholders and others**

Different counterparts, different approaches:

Banks

Banks are not legally privileged unless secured. In practice however, they mostly hold securities and have priority.

Other lenders

Unsecured other loans rank second-to-last and payments here should be put on hold.

Shareholders and affiliated entities

They rank last. Don't repay such loans.

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5.5. To pay or not to pay: my own REMUNERATION

No!

In Slovakia,
GMs are treated as affiliated persons
and subordinated creditors.

You cannot validly pay yourself
your GM remuneration.

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6. To sell or not to sell? May I silver and/or encumber company assets?

**Generally yes.
But:**

General Rule:

Transactions carried out by the debtor before or after the declaration of insolvency are considered valid.

Claw-back (Annulment) Threat:

However, transactions closed within the 12 months (in some circumstances 60 months) before the day the insolvency proceedings were opened can be attacked by the IP when they fail to match market value, benefit one creditor or damage another.

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7. What must I do to protect company assets and documents?

Protect from theft, loss and/or damage until an IP is appointed. Provide full assistance to appointed IP.

Archive documents, both physical and electronic. Store documents and equipment under the supervision of a security service provider.

Sell perishable goods at market value and deposit the proceeds.

Provide immediate assistance to the court once requested and to the IP once appointed.

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8. May I resign and how?

Yes.

**But
you cannot
just leave.**

GM duties go on for up to 3 months:
Your resignation shall take effect when the shareholders resolve to accept it. Only if they fail to do so sooner, the resignation shall enter into effect 3 months after the day of its service to the Company.

Some duties perpetuate:
An effective resignation shall not free the GM from a statutory duty to continue assisting the insolvency court and the IP in the course of the insolvency proceedings.

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9. Who will pay for all the consultants?

**Do not
mix up costs!**

Company consultants
are payable, if at all, by the company.

GM consultants
must be paid by yourself.

How to tell the difference?
Advice (sch as on your resignation)
which can affect the company
negatively while affecting you
positively, is your personal cost.

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10. Am I personally liable for the company debts?

No.

Unless:

- you have been late to file the application for opening insolvency proceedings;

OR

- you have acted in breach of your due diligence as GM and have thus caused the insolvency in the first place, including a failure to inform the shareholders in due time.

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HUNGARY



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1. When must I file for Insolvency?

**You have
no obligation
to file
an application
for insolvency.**

However:

You must inform the shareholders if you detect the company is at risk of becoming insolvent.

The shareholder assembly has the right to decide whether to proceed with insolvency. If they say “no”, you have no authority to pursue with such action.

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2. How much money must the company have upon filing?

**There is
no such
legal
requirement.**

However:

If you detect that the company is at risk of becoming insolvent, you must warn the shareholders.

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

Everything. Tell them the company is facing a financial crisis and demand capital.

When:

Once it becomes clear that the company is in financial crisis (however, there is no specific legal deadline for doing so).

Note:

If the shareholders do not take measures, you can resign.

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4. Period of uncertainty: How long must I wait for court guidance?

The Hungarian court will not give you guidance in such matters!

Duration of opening proceedings
Count with 60 days to 2 years.

Why?

Hungarian courts are overloaded (more than 27,000 cases were initiated in 2023 alone).

What shall I do?

Ask the court to appoint a temporary IP who gives you support and guidance.

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5.1. To pay or not to pay LEVIES: taxes and social contributions

**Relatively safe
to pay**

These obligations can be paid as long as they do not jeopardize the payment of other higher priority claims, such as employment-related claims and secured claims.

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5.2. To pay or not to pay **LABOR COSTS: salaries & severance payments**

**Generally
safe
to pay**

Employees are privileged, so you can pay
Salaries and severance payments are first in line when settling company debts. If it is not possible to pay everyone's salary, employees must be paid proportionally. However, it is advisable that those with lower salaries receive a higher percentage compared to those with higher salaries, especially to members of management.

Wage Guarantee Fund

If the insolvent company is unable to pay its employees, the state steps in (up to a certain limit) through the Wage Guarantee Fund, which advances the unpaid salaries.

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5.3. To pay or not to pay SUPPLIES: essential and other

**There is
no general
prohibition
on making
payments.**

However:

- Once the insolvency proceedings are opened, creditors must be paid in a specific order as outlined by the law, and if a group of creditors can't be fully paid, they must be paid proportionately within their respective rank.
- As no creditor may be favored, it is advisable that payments, even when done before the insolvency proceedings are opened, follow the same order of priority that would apply after opening.

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5.4. To pay or not to pay **LOANS: banks, shareholders and others**

Shareholders rank last

Don't pay to shareholders.

Other lenders

Unsecured other loans rank after employment-related claims and secured claims according to the specific order set out in the law. Avoid paying other lenders.

Banks are in a strong position

Banks have payment priority over other suppliers, and they are usually satisfied during the insolvency proceedings from the proceeds of securities. It is therefore relatively safe to pay to banks. If the company's liquid assets are insufficient to cover all creditor claims, it is advisable to pay the banks only after settling payments arising from employment relationships.

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5.5. To pay or not to pay: my own REMUNERATION

It depends:

If you are an employee

Like other employees, you are first in line when the company debts are settled, but to a certain limit. Please note: If it is not possible to pay everyone's salary, employees must be paid proportionally. Those with lower salaries should receive a higher percentage compared to those with higher salaries, especially to members of management.

If you are not an employee

You will be last in line to be considered when debts are settled.

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6. May I sell and/or encumber company assets?

**The sale
or encumbrance
of company assets
is not prohibited.**

However:

Interests of creditors must be of top priority, and any actions involving the sale or encumbrance of assets must be made with those interests in mind.

You have full powers until insolvency is ordered, but if you sell company assets without considering the interests of creditors, the contract might be challenged. You may also face other legal consequences.

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7. What must I do to protect company assets and documents?

**Protect these
to the best
of the creditors' interests.**

**Hand over records and
assets to the IP,
once appointed.**

This is especially important for

- financial reports AND
- environmental declarations.

Failing to do so could significantly increase the risk of future legal actions against you.

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8. May I resign and how?

You may resign if:

- you detect that the company is at risk of insolvency
AND
- you warn the shareholders
BUT
- they fail to take action.

You must notify the shareholder assembly of your resignation.

However:

If you are the only manager of the company, your resignation does not automatically end your role. Your management duties continue for 60 days after the resignation.

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9. Who will pay for all the consultants?

Until insolvency proceedings are opened all consultant fees will be paid by the company. After that:

The fees of company consultants are neither protected, nor privileged.

The fees of consultants for issues that relate to you (typically with regard to your resignation) must be paid by yourself.

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10. Am I personally liable for the company debts?

**Possible,
but not likely:**

Your personal liability is not automatic, it depends on complex facts and complicated procedures.

Your personal liability may arise if:

- insolvency proceedings have been initiated,
- creditors have not been satisfied in full, AND
- unsatisfied creditors prove that you did not act as required from the moment you detected the company was at risk of becoming insolvent.

Such claims are extremely rare in Hungary.

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ROMANIA



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1. When must I file for Insolvency?

**No later than
30 days
from the day
on which
the company
has reached
insolvency status.**

Insolvency status is given when the company is unable or it can already be demonstrated that it will be unable to pay creditor receivables above a threshold of approximately EUR 10,000 whilst this inability has persisted or will persist for 60 days after maturity.

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2. How much money must the company have upon filing?

**EUR 50
(judiciary tax stamps)**

However:

There are several mandatory documents that need to be submitted to initiate insolvency proceedings, including financial records and sworn statements.

The fees for obtaining these documents from professional services providers should be taken into account additionally.

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

Shareholders have the authority to decide whether to liquidate or reorganize their company. The GM has a general obligation to disclose all relevant information to facilitate their decision.

When:

Without undue delay, even if there is a threat of insolvency.

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4. Period of uncertainty: How long must I wait for court guidance?

Help is on its way!

7 days
is what it takes
for the Romanian court to open
insolvency proceedings.

Make sure you file a properly
prepared application to avoid
delays

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5.1. To pay or not to pay LEVIES: taxes and social contributions

**Relatively safe
to pay**

Current taxes and social contributions must be paid, if there is enough cash at moment of maturity.

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5.2. To pay or not to pay LABOR COSTS: salaries & severance payments

**Safe
to pay**

Employees are privileged:
Salaries must be paid, if there is enough cash at the moment of maturity.
Salaries rank first in the order of satisfaction in the insolvency proceedings so it is hard to damage a creditor by paying salaries.

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5.3. To pay or not to pay SUPPLIES: essential and other

**Critical supplies
only!**

Critical suppliers:

Suppliers critical to the debtor's daily activity can be paid.

Other suppliers:

Payments to other suppliers are permitted only up to the part, which would corresponded to their eventual satisfaction in the insolvency proceedings. Calculating that part is a challenge and therefore risky.

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5.4. To pay or not to pay **LOANS: banks, shareholders and others**

Different counterparts, different approaches:

Banks

Bank loans are usually secured and have priority as such. Even when they are not secured, bank loans rank before other unsecured debts.

Other lenders

Unsecured loans rank second-to-last and payments here should be put on hold.

Shareholders and affiliated entities

Their claims are treated subordinated in an insolvency procedure. Don't pay.

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5.5. To pay or not to pay: my own REMUNERATION

**Your work
incurs
labor costs.**

- In Romania, GMs are generally employed by the company therefore they receive their remuneration as a salary.
- This applies also to payments for directors, auditors, employees, and managers with contracts, as per law or company bylaws.

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6. May I sell and/or encumber company assets?

Yes.

But:

Creditors have the right to challenge fraudulent actions by a debtor undertaken within the two years before the day of insolvency status.

Suspicious activities include gratuitous transfers, preferential payments to unsecured creditors, early debt repayments, transactions where the debtor's obligations exceed received value, and dealings with individuals who have control over the company. These actions can be challenged if they occurred within the six months prior to the day the insolvency application was filed.

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7. What must I do to protect company assets and documents?

**Protect
from theft, loss
and/or damage
until an IP
is appointed.**

**Provide assistance
to the IP!**

- Archive all documents, secure assets, sell perishable goods, and cooperate fully with IP and court.
- Not providing company documents or assets to the IP could lead to personal liability.

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8. May I resign and how?

**Yes.
But:**

A GM can resign but remains liable for decisions and actions made during their tenure.

Shareholders must appoint a new GM or a special administrator to handle the company until the IP gains full control. Otherwise, the court may appoint the resigning GM as a special administrator to transfer company assets and documents to the IP.

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9. Who will pay for all the consultants?

**Do not
mix up costs!**

Company consultants,
Especially when preparing the opening
of the insolvency procedure are payable
by the company.

GM consultants
must be paid by yourself.

How to tell the difference?
Advice (such as on your resignation)
which can affect the company negatively
while affecting you positively, is your
personal cost.

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10. Am I personally liable for the company debts?

No.

Unless:

- you are late 6 months or more with filing for insolvency (this may trigger criminal liability) OR
- you have breached your management due diligence duties (this may trigger personal liability for company debts under specific circumstances outlined in the Romanian Insolvency Law).

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LITHUANIA



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1. When must I file for Insolvency?

Take action as soon as you detect a state of insolvency, that is:

Inability to pay:

This is when the company is unable to meet its proprietary obligations (including payment) when due

OR

Overindebtedness:

This is when the liabilities of the company exceed the value of its assets

Provided: None of the above is temporary

What to do:

1. **Immediately** send specific notice letters to all creditors.
2. Wait for the **appropriate deadlines** in the letters to expire.
3. **Immediately** after deadlines file into court an application to open insolvency proceedings.

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2. How much money must the company have upon filing?

Enough to cover the costs of insolvency proceedings (sum to be determined on a case-to-case basis)

Insolvency procedures require sufficient assets to cover the expenses of the proceedings.

If the company has insufficient assets, the filing party will be invited to advance the funds required for administration costs.

If this does not happen, the court will invite IPs to administer on their own risk.

If there is no volunteer, proceedings will not be opened. The court will send the matter to the commercial register for forced liquidation of the company.

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3. Shareholders: Must I tell them, what and when?

Yes!

Once the state of insolvency is likely:

Immediately inform the shareholder(s) and ask them to solve the financial problems.

Once the state of insolvency is given:

Immediately initiate insolvency proceedings. Take care of the pre-filing obligation to inform the shareholder(s).

Note: It is the GM's obligation to always monitor the financial situation of the company.

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4. Period of uncertainty: How long must I wait for court guidance?

The Lithuanian court will not give you automatic and immediate guidance after you file for insolvency!

Duration of opening proceedings:

Count with 1 to 5 months: Why? The court must decide within 1 month from the day you file for opening but may prolong the deadline by 1 additional month. The court decision to open insolvency proceedings will take effect only after the possibilities to appeal have been exhausted (up to 3 months in addition).

What to do meanwhile?

Be prepared for up to 2 months without court decision. Ensure up-to-date accounting until you hand over to the IP! Otherwise, you risk being held personally liable to compensate the costs for bringing the accounting up-to-date.

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5.1. To pay or not to pay LEVIES: taxes and social contributions

**Tricky.
Seek legal
advice!**

In principle:

Social security contributions enjoy priority and can be paid unless there are creditors with enforceable titles.

However:

- You must be able to pay other claims in the same rank (especially employee-related claims) at least in the same proportion.
- You must minimize unnecessary costs so as not to damage the creditors. If possible, reduce workforce and/order downtime.
- Of all tax related claims, only social security claims are privileged under insolvency law. However, there is a risk of criminal liability in case of non-payment of other taxes, too.

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5.2. To pay or not to pay LABOR COSTS: salaries & severance payments

Relatively safe

In principle:

Salaries can be paid, unless there are creditors with enforceable titles.

Note:

- Pay employee-related claims in the same proportion as other claims in the same rank (especially social security levies).
- Take steps to minimize damages to creditors by cutting staff, working times and/or other costs.
- In case of doubt, ask for legal advice.

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5.3. To pay or not to pay **SUPPLIES: essential and other**

Under certain conditions:

To avoid personal liability, before you pay a debt make sure that the bill:

- is mature,
- falls within the usual activity and
- corresponds to market value.

Note:

- Don't give preference to one creditor if you cannot satisfy other creditors of the same rank in the same proportion.
- Seek legal advice, if there are other creditors with priority (employees, social security funds, security holders) or with enforceable titles.

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5.4. To pay or not to pay LOANS: banks, shareholders and others

Claims of secured creditors (usually banks):

Payments to creditors secured by mortgage, pledge and similar security are relatively safe to pay but personal liability of the GM might still arise to the extent the value of the security cannot be (fully) realized in the proceedings.

Claims of unsecured lenders, including shareholders:

Unsecured loans do not enjoy priority. Here, payments should be put on hold and legal advice sought.

To lower the pressure until insolvency proceedings are opened, you can ask for a court injunction.

It is rarely granted but it is an option worth taking.

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5.5. To pay or not to pay: my own REMUNERATION

Under certain conditions:

Possible because:

- the GM has an employment contract and
- the employment contract provides for a salary.

Such a GM will be treated like a normal employee in term of his/her salary.

Voidability risk if:

- GM's remuneration is unreasonably high or
- GM's salary payments are made to the detriment of other creditors of the same rank (typically upon full payment to the GM while no or only partial payment other employees).

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6. May I sell and/or encumber company assets?

Under certain conditions (seek advice!)

A sales transaction:

is possible if conducted at market value (the GM must be able to prove this!) and the sold asset is not essential for the business of the company.

An encumbrance transaction

(pledge) is possible if conducted at market conditions and necessary for the continuation of business provided there are reasonable prospects for a turnaround (including formal restructuring proceedings).

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7. What must I do to protect company assets and documents?

Protect from theft, loss and damage until insolvency proceedings are opened and assets, documents and accounting data are handed over to IP.

Note:

A GM is and remains responsible for (and personally liable) for all assets, documents and data!

Therefore:

Store assets, documents and data (physical and electronic) in a safe place. Make sure all assets exist and can be handed over as activated in the balance sheet and shown in the accounting, including inventory lists! Sell perishable goods at market value (document this!) and deposit the income. Make sure that accounting is kept up-to-date until handed over to IP!

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8. May I resign and how?

**Yes, you can.
But:**

As a GM you can resign by a specific procedure applicable if the shareholder does not replace you upon your request.

This statutory procedure takes time, as you must prove to the commercial register that you unsuccessfully called a shareholder meeting for your replacement.

You cannot simply „run away“. Seek legal advice in order to do it properly and avoid personal liability.

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9. Who will pay for all the consultants?

Don't mix up costs!

Company consultants

can be paid by the company if the advice is required by and for the benefit of the company.

GM consultants

must be paid by yourself.

How to tell the difference?

Advice (for example for your resignation) which can affect the company negatively while affecting you positively, is your personal cost

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10. Am I personally liable for the company debts?

No.

**But
you can be held
personally liable
in some cases:**

Examples:

- you are late in initiating insolvency proceedings (including pre-filing obligations) or violate obligations such as safeguarding assets/documents, ensuring orderly accounting and proper handover to IP;
- you conclude transactions, sell or encumber company assets or commit other acts, if these actions violate insolvency-related restrictions;
- you have caused the insolvency deliberately or grossly negligent.

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LATVIA



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1. When must I file for Insolvency?

**Two months
from the day of**
the company's inability to
settle due debts.

Besides:

Immediately from the day:

- on which the financial statements reveal that the company has no sufficient assets to meet all creditor claims (**no matter if the company is in restructuring proceedings**);
- on which the debtor is no longer able to comply with the restructuring plan (**if the company is in restructuring proceedings**.)

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2. How much money must the company have upon filing?

The company must be able to pay:

1. State fee – EUR 80,00

and

2. Insolvency deposit – EUR 1480, which consists of 2 minimum salaries in Latvia (*the amount changes yearly*)

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

Everything. Tell them about the situation and demand capital.

When:

As soon as you sense danger. Demand fresh capital in any thinkable way. Call the shareholder assembly together.

Note:

If the shareholders do not take measures, you must file for insolvency within the legal deadlines.

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4. Period of uncertainty: How long must I wait for court guidance?

The Latvian court will not give you automatic and immediate guidance after you file for insolvency!

The good news:

- Opening proceedings are short in Latvia, they take some 5 days from the day the application is filed.
- Within further 15 days the court will usually declare the company insolvent and an IP will take over.

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5.1. To pay or not to pay LEVIES: taxes and social contributions

**Relatively safe
to pay**

However:

You should carefully consider whether it is reasonable to keep employees. Remember: you are under duty to minimize the damage for your creditors.

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5.2. To pay or not to pay LABOR COSTS: Salaries & severance payments

**Safe
to pay**

Employees are privileged:

In the end, employees will receive their outstanding salaries before any other unsecured private creditor, so it is relatively hard to damage creditors by paying salaries and severance payments.

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5.3. To pay or not to pay **SUPPLIES**: essential and other

**Pay only
if congruent**

**For a valid payment
the bill must:**

- be mature
- fall within the company's usual activity
- correspond to market value

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5.4. To pay or not to pay **LOANS: banks, shareholders and others**

**Different
creditors,
different rules:**

Banks are privileged

Payments to first-rank security holding banks are more stable but can nevertheless be challenged later.

Other lenders:

Unsecured other loans come second-to-last and payments here should be put on hold.

Shareholders come last

Re-payments to shareholders must be avoided.

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5.5. To pay or not to pay: my own REMUNERATION

Tricky

In Latvia, GMs are not employees
so you are a private unsecured creditor
privileged only in comparison to
shareholders

Congruency rule might help
but you will still be considered in ill-faith
as you are paying to yourself

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6. May I sell and/or encumber company assets?

No!

Unstable deals:

Any transaction younger than 4 months starting with the day the court declared the insolvency ([click here](#) to learn more on the declaration of insolvency) is vulnerable.

For transaction with related persons the period can extend to 3 years.

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7. What must I do to protect company assets and documents?

**Protect from theft,
loss and/or damage
until an IP is appointed
and has taken over.**

- Archive documents, physical and electronic.
- Store documentation and equipment.
- Sell perishable goods at market value and deposit the income.

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8. May I resign and how?

**Sometimes
you can
and
sometimes
you cannot.**

If you are the GM you can, as a general rule, resign in writing at any time (but mind your contractual notice).

You cannot resign if at the same time you are the only and/or the dominant shareholder.

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9. Who will pay for all the consultants?

Cost separation

Company consultants
are payable, if congruent, by the company.

GM consultants
must be paid by yourself.

How to tell the difference?
Advice (such as on your resignation) which can affect the company negatively while affecting you positively, is your personal cost.

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10. Am I personally liable for the company debts?

**No.
But you can
be made
personally liable
when:**

- you are late in applying for insolvency OR
- you make payments and/or sell and/or encumber company assets in breach of insolvency-related restrictions OR
- you have acted in breach of your due diligence as GM and have thus caused the insolvency in the first place OR
- you have not informed the shareholders in due time OR
- you have failed to act as a respectable and accurate manager (*legal definition in Latvian Law*) and the company has suffered losses.

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ESTONIA



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1. When must I file for Insolvency?

**Within
20 days:**

starting with the day
on which it became evident that:

- the company was unable to pay in full due and undisputed receivables

AND

- this state of insolvency was not temporary.

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2. How much money must the company have upon filing?

There is no such requirement.

However:

The full insolvency procedure will only take place if there is sufficient substance to cover the expenses. The creditors have the option to cover the expenses and they may claim compensation of the expenses from a GM if he/she was late in filing for insolvency.

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

Everything. Tell them about the situation and demand capital.

When:

As soon as you sense danger. Demand fresh capital in any thinkable way. Call the shareholder assembly together.

Note:

If the shareholders do not take measures, you must file for insolvency within the deadline.

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4. Period of uncertainty: How long must I wait for court guidance?

The Estonian court will not give you automatic and immediate guidance after you file for insolvency! But help is on its way:

The judge will appoint an interim IP within 20 days and shall hear the bankruptcy petition of a debtor within further 30 days.

The judge can order measures to secure the bankruptcy proceedings. Ask for such measures.

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5.1. To pay or not to pay **LEVIES: taxes and social contributions**

**In Estonia,
the same
restrictive rules
apply for all payments.**

Any transaction and any performance of a duty, including any payment of a financial obligations (be it a private or a public debt) performed before the court declares bankruptcy can be annulled.

Read more [here](#):

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5.2. To pay or not to pay LABOR COSTS: salaries & severance payments

**In Estonia,
the same
restrictive rules
apply for
all payments.**

Any transaction and any performance of a duty, including any payment of a financial obligations (be it a private or a public debt) performed before the court declares bankruptcy can be annulled.

Read more [here](#):

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5.3. To pay or not to pay **SUPPLIES: essential and other**

**In Estonia,
the same
restrictive rules
apply for
all payments.**

Any transaction and any performance of a duty, including any payment of a financial obligations (be it a private or a public debt) performed before the court declares bankruptcy can be annulled.

Read more [here](#):

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5.4. To pay or not to pay **LOANS: banks, shareholders and others**

**In Estonia,
the same
restrictive rules
apply for
all payments.**

Any transaction and any performance of a duty, including any payment of a financial obligations (be it a private or a public debt) performed before the court declares bankruptcy can be annulled.

Read more [here](#):

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5.5. To pay or not to pay: my own REMUNERATION

**In Estonia,
the same
restrictive rules
apply for
all payments.**

Any transaction and any performance of a duty, including any payment of a financial obligation (be it a private or a public debt) performed before the court declares bankruptcy can be annulled.

Read more [here](#):

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6. May I sell and/or encumber company assets?

**It depends.
Consider
purpose and
impact:**

Any transaction performed within the 5 years before an interim IP is appointed can be annulled. Annulment will be possible where the transaction caused damage to creditors.

Criteria to consider:

- time of transaction;
- nature of the relationship with the counterpart AND
- whether the counterpart was in good faith (this will not be the fact when they knew or were supposed to know that the transaction would damage the remaining creditors).

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7. What must I do to protect company assets and documents?

**You have
the obligation
to avoid
damaging
creditors:**

The company documentation must be preserved and handed over to the IP.

In the time between filing for insolvency and the appointment of an interim IP the GM should avoid any transaction and any performance of any obligation which may damage any creditors. After an interim IP is appointed, transactions and performance must be pre-approved by the latter. After declaration of bankruptcy by the court only the IP will have the power to manage and act on behalf of the company.

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8. May I resign and how?

Yes, you can.

You may resign whenever but if you have resigned during the bankruptcy proceeding or within 3 years before appointment of interim IP then you will still have almost the same obligations together with current management board members throughout the bankruptcy proceeding.

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9. Who will pay for all the consultants?

Do not mix up costs!

The costs and expenses incurred by the IP shall be covered by the bankruptcy estate.

Any other party (including the GM) shall cover its own costs and expenses.

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10. Am I personally liable for the company debts?

**No.
But you can be made
personally liable:**

- for any damage caused to creditors by (i) being late with applying for insolvency OR (ii) acting in breach of obligations and restrictions applicable within bankruptcy proceeding;
- for any damage caused to the company on general legal grounds of liability such as the diligence due by a GM.

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BULGARIA



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1. When must I file for Insolvency?

**30 days
from the day
of:**

Inability to pay:

The company you lead cannot pay one or more mature and undisputed duties.

OR

Overindebtedness:

The company you lead does not have sufficient short-term assets to cover its short-term debt and/or altogether assets to cover its altogether debts.

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2. How much money must the company have upon filing?

**There is
no such
requirement.**

However:

The full insolvency procedure will take place if there is sufficient substance to cover the expenses.

Count with some EUR 500 to 1,000 per month for the IP for a period of at least one year before first assets can be sold.

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3. Shareholders: Must I tell them, what and when?

Yes!

What:

Everything. Tell them about the situation and demand capital.

When:

As soon as you sense danger. Demand fresh capital in any thinkable way. Call the shareholder assembly together.

Note:

If the shareholders do not take measures, you must file for insolvency within the deadline.

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4. Period of uncertainty: How long must I wait for court guidance?

The Bulgarian court will not give you immediate guidance after you file for insolvency but will quickly publish your application in the commercial register.

Although at your risk pending opening you can point the publication to creditors, especially to unsecured ones, to make them wait.

Duration of opening proceedings:
The court is supposed to open within 20 days but will usually not make it and need months instead.

Why:

The court will want to hear an expert on book-keeping and will have him check your documentation first.

What to do in the meantime:

You can ask for support by applying for an interim IP and/or injunctions by explaining how they are important to safeguard the assets of the company.

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5.1. To pay or not to pay LEVIES: taxes and social contributions

Relatively safe

Stability of payments

Taxes and social contributions, once paid, cannot be challenged later.

However:

You should carefully consider whether it is reasonable to keep your employees. Remember: you are under duty to minimize the damage for your creditors.

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5.2. To pay or not to pay LABOR COSTS: Salaries & severance payments

Less safe

Employees are privileged

In the end, employees will receive their outstanding salaries before any other unsecured private creditor, so it is hard to damage creditors by paying salaries, especially if congruent.

Hard to damage is not the same as impossible to damage:

Consider carefully whether and which employees you should keep.

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5.3. To pay or not to pay **SUPPLIES: essential and other**

Only if congruent!

**For a valid payment
the bill must:**

- be mature AND
- fall within the company's usual activity AND
- refer to a delivery younger than 30 days AND
- correspond to market value

Even so:

Consider carefully whether and what supplies are now necessary at all to safeguard the interests of the creditors. Limit yourself to absolutely critical supplies.

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5.4. To pay or not to pay LOANS: banks, shareholders and others

Banks are privileged

Payments to first-rank security holding banks are more stable but can nevertheless be challenged later.

Shareholders rank last

Re-payments to shareholders must be avoided.

Other lenders

Unsecured other loans rank second-to-last and payments here should be put on hold.

To lower the pressure by creditors until insolvency proceedings are opened, ask for a court injunction.

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5.5. To pay or not to pay: my own REMUNERATION

Tricky

In Bulgaria, GMs are not employees so you are a private unsecured creditor privileged only in comparison to shareholders.

Congruency rule might help but you may still be considered in ill-faith as you are paying to yourself.

To be safe:
Obtain a court injunction although the court may be unwilling to give it.

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6. May I sell and/or encumber company assets?

Better not!

Unstable deals

Transactions executed after the day the reason for insolvency was first given (the court will investigate and explicitly state this day) and/or younger than 2 years starting with the day on which the application for insolvency was filed are vulnerable. For donations and transactions with affiliated persons the period can extend to 3 years.

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7. What must I do to protect company assets and documents?

Protect from theft, loss and/or damage until a preliminary IP is appointed and takes over.

Archive documents, physical and electronic. Store documentation and equipment under surveillance by a security-service provider.

Sell perishable goods at market value and deposit the income.

When in doubt: Demand injunction by your insolvency court.

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8. May I resign and how?

**Sometimes
you can
and sometimes
you cannot:**

LTDs under Bulgarian law

If you are the GM but not the only shareholder you can resign in writing. 30 days after you have served the resignation to the shareholder(s), you can ask the Bulgarian commercial register to strike you out. Check your management contract for a possibly longer termination notice.

INCs under Bulgarian law

If you are in charge of an incorporation, you are generally bound by the duration of your appointment.

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9. Who will pay for all the consultants?

**Do not
mix up costs!**

Company consultants
are payable, if congruent, by the
company.

GM consultants
must be paid by yourself.

How to tell the difference?
Advice (such as on your
resignation) which can affect the
company negatively while affecting
you positively, is your personal
cost.

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10. Am I personally liable for the company debts?

No.

**But you can be
made personally liable
when:**

- you are late in applying for insolvency OR
- you pay and/or sell and/or encumber company assets in breach of the insolvency-related restrictions OR
- you have acted in breach of your due diligence as GM and have thus caused the insolvency in the first place OR
- you have not informed the shareholders in due time.

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SHORTCUTS

This is your question:

1. Filing requirements: When must I file for insolvency?

Click on a country:

<u>Polen</u>	<u>Czech Republic</u>	<u>Slovak Republic</u>	<u>Hungary</u>	
<u>Romania</u>	<u>Lithuania</u>	<u>Latvia</u>	<u>Estonia</u>	<u>Bulgaria</u>

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This is your question:

2. How much money must the company have upon filing?

Click on a country:

<u>Polen</u>	<u>Czech Republic</u>	<u>Slovak Republic</u>	<u>Hungary</u>	
<u>Romania</u>	<u>Lithuania</u>	<u>Latvia</u>	<u>Estonia</u>	<u>Bulgaria</u>

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This is your question:

3. Shareholders: Must I tell them, what and when?

Click on a country:

<u>Polen</u>	<u>Czech Republic</u>	<u>Slovak Republic</u>	<u>Hungary</u>	
<u>Romania</u>	<u>Lithuania</u>	<u>Latvia</u>	<u>Estonia</u>	<u>Bulgaria</u>

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This is your question:

4. Period of uncertainty: How long must I wait for court guidance?

Click on a country:

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This is your question:

5. To pay or not to pay?

5.1. LEVIES: taxes and social contributions

Click on a country:

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This is your question:

5. To pay or not to pay?

5.2. LABOR COSTS: salaries and severance payments

Click on a country:

<u>Polen</u>	<u>Czech Republic</u>	<u>Slovak Republic</u>	<u>Hungary</u>	
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This is your question:

5. To pay or not to pay?

5.3. SUPPLIES: essential and other

Click on a country:

<u>Poland</u>	<u>Czech Republic</u>	<u>Slovak Republic</u>	<u>Hungary</u>	
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This is your question:

5. To pay or not to pay?

5.4. LOANS: banks, shareholders and others

Click on a country:

<u>Poland</u>	<u>Czech Republic</u>	<u>Slovak Republic</u>	<u>Hungary</u>	
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This is your question:

5. To pay or not to pay?

5.5. My own REMUNERATION

Click on a country:

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This is your question:

6. May I sell or encumber company assets?

Click on a country:

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This is your question:

7. What must I do to protect company assets and documents?

Click on a country:

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This is your question:

8. May I resign and how?

Click on a country:

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This is your question:

9. Who will pay for all the consultants?

Click on a country:

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This is your question:

10. Am I personally liable for the company debts?

Click on a country:

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Thank you!

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